

## RESEARCH ARTICLES

# Paradiplomacy of Jersey: Opportunities and Challenges in the post-Brexit Era

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This paper explores challenges that Jersey faces in the post-Brexit era, and how Jersey can utilize paradiplomacy to overcome obstacles and broaden opportunities. Due to its constitutional status, preexisting international arrangements, and turbulences resulting from Brexit, the Bailiwick of Jersey is in a complicated context. Since May 2021, fishing conflicts have erupted off the coast of Jersey after the Jersey government adopted a post-Brexit fishing licensing scheme that requires French fishing boats to provide data showing they have a history of fishing in Jersey's waters. On the other hand, Jersey's export industry is stuck due to the island no longer benefiting from the free movement of goods after Brexit. In future negotiations, Jersey can use paradiplomacy to resolve post-Brexit difficulties. Jersey's interests will be best served by actively pursuing paradiplomacy with the EU and its members in order to achieve more beneficial trade and fishing arrangements for both parties. Jersey's paradiplomacy is not synonymous with protodiplomacy. It would be preferable for Jersey to remain under the sovereignty of the UK to maintain the substantial economic advantages and preferential treatment granted by the metropolitan territory.

## 1. Introduction

The Bailiwick of Jersey, the largest and southernmost of the Channel Islands, is a self-governing dependency of the British Crown. Jersey has varying forms of self-government, although the United Kingdom (UK) government is responsible for the defence and foreign affairs of the island. It has a land area of 119.5 km<sup>2</sup> and its surrounding waters cover a total territorial sea area of approximately 2000 km<sup>2</sup> (Government of Jersey, 2021a). Jersey is not part of the UK and is not represented in the British Houses of Parliament but is a self-governing Crown Dependency near the coast of northwest France.

The constitutional relationship of the Crown Dependencies with the UK is through the Crown and is not enshrined in any formal constitutional document (Torrance, 2023). It is founded on centuries of convention and charter, which indeed continue to evolve. The British parliament does not legislate for the islands without their consent in matters of taxation or other issues of purely domestic concern (Commission on the Constitution, 1973). In constitutional practice, the UK consults Jersey before committing the island to international legal obligations. Jersey was never a member or an associate member of the EU. Before the UK departed from the European Union (EU), its relationship with the EU was set out in Protocol 3 of the UK's 1972

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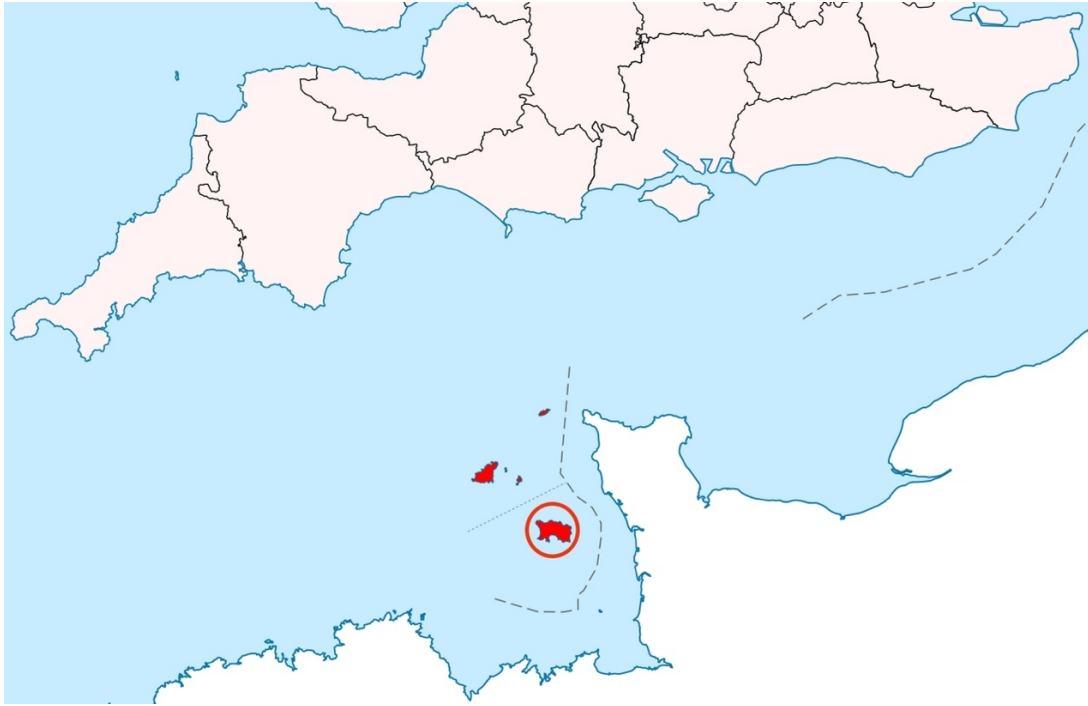


Figure 1. Map of Jersey.

Source: © Hogweard, [https://commons.wikimedia.org/wiki/File:Channel\\_Islands\\_location.svg#file](https://commons.wikimedia.org/wiki/File:Channel_Islands_location.svg#file)

Accession Treaty. Under Protocol 3, Jersey was part of the customs territory of the EU. There was free movement of industrial and agricultural goods in trade between Jersey and the EU (Europa, 1972).

Since 2007, the Jersey government has been working to develop its international identity. Jersey's chief minister and the UK's Secretary of State for Constitutional Affairs signed a framework agreement in 2007 recognizing Jersey's distinct international identity from the UK (Jersey's Chief Minister and the UK Secretary of State for Constitutional Affairs, 2007). In keeping with its growing international identity, Jersey could work directly with its partners worldwide to promote and protect the island's interests. In September 2013, the government adopted the new role of Minister for External Relations to fulfil the task of international communication and now operates three overseas representative offices in London, France and Brussels. Jersey's trade relationship with the EU has been significantly altered as a result of Brexit, as it will no longer benefit from preferential treatment under the previous agreement.

Considering the change to the status of Jersey after Brexit, based on the newly adopted Trade and Cooperation Agreement, in combination with the actual circumstances, the question of whether this new legal framework can meet the needs of Jersey has arisen. Suppose that this situation cannot be satisfactorily resolved through the current Brexit arrangement. How could Jersey adopt engagement in new negotiations with the EU to conclude a new complementary framework to satisfy its needs? More importantly, this paper

will explore the new challenges that Jersey is facing in the post-Brexit era, as well as how Jersey utilizes paradiplomacy to overcome obstacles and increase opportunities.

## 2. Theoretical framework of paradiplomacy

Recent years have seen an increasing involvement of subnational governments in the international arena, which is not a transient fashion but does represent a change in the practice of diplomacy. The concept of paradiplomacy was introduced into the academic debate in the mid-1980s. The concept's founder, Canadian scholar Panayotis Soldatos (1990, p. 34) defined paradiplomacy as "federated units' direct, and in various instances, autonomous involvement in external-relations activities." However, when searching the grounds and boundaries of 'paradiplomacy' for a precise definition, professor Iñaki Aguirre (1999, p. 185) admitted that 'paradiplomacy' is "a buzz-word with mysterious successes in specialized literature, even though its analytical definition is not clear." In considering 'paradiplomacy', this paper refers to the literature on possibilities and approaches of external engagements by subnational governments on the international stage.

Subnational governments' paradiplomacy has become increasingly commonplace over the past 40 years. In the very earliest days of studies on this concept, scholars basically used it to describe the international activities of Canadian provinces and USA states in the context of globalization and an increase in cross-border relations in North America (Paquin, 2020). Since the 1990s, certain European subnational governments obtained the authority to undertake these kinds of diplomatic activities, such as the activities of the Basque Country and Catalonia in Spain, Flanders and Walloon in Belgium, and Tatarstan in Russia. With the new millennium, many studies examining paradiplomacy in Third World Countries have emerged. This breakthrough is a result of the improved position of non-Western Countries in world politics and the global economy (Liu & Song, 2020). These materials dealt with various cases of subnational units in Asian and South American settings, such as in China, India, Indonesia and Brazil.

Paradiplomacy, as a phenomenon, has been subject to extensive theories and studies as different scholars hold different opinions about its meaning and contents. Research on the role of subnational governments as international players can be broadly divided into three groups: conservatives, liberals and opportunists.

Some scholars held conservative views on paradiplomacy of subnational governments. In this context, Mesa-Bedoya and González-Parias (2016, p. 537) defined paradiplomacy as a tool for soft power strategies within national foreign policy when encouraged by the central government. He and his colleagues believed that the emergence of subnational governments as international actors did not imply a loss of power and functions by the central State. Paradiplomacy, in particular, is a tool for exercising the so-called soft power of the country. It has the potential to strengthen the country's

international presence and influence in ways that high and traditional diplomacy has not. Max Bouchet (2022) added that subnational diplomacy does not undercut national diplomacy; instead, it can extend it: Where nation-level actors might be unwilling or unable to engage, local ties provide more flexibility and leeway for engagement and cooperation. Novialdi et al. (2021) reckoned that the position of the central government had the highest authority and was obliged to supervise paradiplomacy activities carried out by each province of the country. In that situation, separatist groups would have no space to seek international support.

Conservative scholars deemed paradiplomacy as a tool for expanding central power, which cannot conflict with central power. They proposed some approaches for implementing paradiplomacy, which actually impose some restrictions on subnational governments' diplomatic power. Magam (2018) recommended that the legal framework of paradiplomacy be made explicit in the constitution to ensure that subnational governments work within a clear and explicit constitutional framework. The purpose of the constitutionalization of paradiplomacy is to restrict the international action of subnational entities. Andrade e Barros (2010) pointed out that there are also procedural limits for subnational governments to operate internationally. The most common constraint is prior approval from the federal sphere. The agencies in charge of approval differ. Some states grant executive power. For example, the foreign affairs ministry has the authority to approve or not approve a negotiation or agreement. In others, the legislative branch has the power to approve these agreements (Andrade e Barros, 2010). Therefore, it can be seen that conservative scholars insisted on national unity as the major premise on the issue of paradiplomacy, but they also admitted that the central government can make appropriate concessions and give local governments certain powers to better implement national foreign policy.

Some liberal scholars advocate for the interests of subnational governments in the study of paradiplomacy. This type of research is based on the interests of the subnational units, whose goals will be promoted through varying degrees of autonomy or complete independence. For Hocking (1993, p. 4), the term 'paradiplomacy' suggests an element of conflict between subnational and national units, as subnational governments "are capable of performing a variety of roles at different points in the negotiating process and may become opponents of national objectives, but, equally, can serve as allies and agents in pursuit of those objectives." Aldecoa and Keating (2013) stated that the reason why subnational governments have become more interested in engaging with foreign partners is that their central authorities have failed to effectively promote their local external interest through established state-level diplomatic channels. Tewari (2017) shared a similar view that the significance of subnational diplomacy is that there might be cases where the central government could differ with state governments on political and ideological grounds, which makes it likely that some judgments of central governments may not be viewed in the best interest of states.

To overcome this problem, scholars have proposed means to fix discrepancies between local and central governments. According to Kincaid (1990), the constitutional allocation of foreign affairs powers can provide constituent governments with more or less formal authority, and thereby, legitimacy to participate in foreign policy making. Michelmann and Soldatos (1990) claimed to be able to distinguish between high politics and low politics issues. High politics concerns, such as defence security, should remain under the authority of central governments, but low politics objectives (including economic, environmental, cultural, and scientific/academic interactions that do not pose threats to national sovereignty) can be delegated to component units (Michelmann & Soldatos, 1990). Bernhard and Dellepiane (2022) proposed that regional governments use foreign policies and subnational identification to protect regional autonomy within their quasi-federal polity. They identified three facilitating conditions for sub-state foreign policymaking: a permissive constitutional framework, regional cultural-linguistic distinctiveness, and a regionalist party capable of leading the ‘territorial mobilization’ process (Bernhard & Dellepiane, 2022).

Other liberal academics believe that paradiplomacy can promote independence in the long run. Cornago (2018) reckoned that paradiplomacy generally expresses a will of greater political autonomy and sometimes even the desire to create a new independent state. He emphasized that a regional government may establish relations with foreign governments to obtain recognition for its regional independence. This is referred to as ‘protodiplomacy’, which occurs when the autonomous government uses paradiplomacy as the instrument for the secessionism movement (Cornago, 2018). Therefore, liberal scholars’ recommendations on paradiplomacy may result in either cooperative or conflictual relations with the central government.

Liberal scholars also proposed various forms of paradiplomacy that regional governments could adopt. According to Grydehøj (2014), by imitating embassies, pseudo-embassies may not only directly increase the efficacy of the paradiplomatic activities they host, but they may also indirectly increase the willingness of foreign actors to regard these activities as legitimate. Furthermore, the goals of subnational jurisdictions seeking greater autonomy or independence could be advanced by building stronger networks of like-minded subnational jurisdictions in Europe and around the world (Grydehøj, 2014). Mocca (2020) thinks that paradiplomacy helps local authorities in consolidating their political agency to pursue self-determination and self-rule, with local governments trying to move away from the orbit of the nation-state through paradiplomatic practices, such as acting without consulting the central state, even signing binding agreements and covenants. Keating (2000) pointed out that one of the most common forms of paradiplomacy is inter-regional associations. Universal associations made up of regions with similar geographical locations or economic structures can help to establish the presence of regions as institutional actors (Keating, 2000). From Häntsche’s

(2020) point of view, more and more competencies are shifting to sub-state entities seeking to articulate their interests in foreign territories through various forms, including trade facilitation, ratification of international treaties, and even secessionist movements. Zepeda Martínez (2017) stated that subnational governments' specific forms of international activities are primarily concentrated in establishing representative offices abroad, as well as signing cooperation agreements with other states in the region. He emphasized these agreements are limited in the areas of jurisdiction of the subnational governments and reveal a degree of autonomy of subnational governments from central governments (Zepeda Martínez, 2017).

The third group consists of opportunists. Adler-Nissen and colleagues have been undertaking research on the EU-related paradiplomacy of the Faroe Islands and Greenland. Adler-Nissen (2014) argued that any discussion of the relationship between the Faroe Islands and the EU necessarily involves addressing the relationship with the metropole of Denmark—and thus the unity of the Danish realm. Thus, the real novelty is not the increased autonomy from Denmark but rather how the EU helps challenge the unity of the Danish realm and hence the myth of a homogeneous Danish nation-state (Adler-Nissen, 2014). She also pointed out that sovereignty is an important resource that non-sovereign entities may employ, whether they own it or not. The EU's current sovereignty approach does facilitate a measure of ambiguity, and the EU therefore appears less prone to deny acknowledgment of the subjectivities of non-sovereign governments if they make sovereignty claims (Adler-Nissen & Gad, 2013). Gad (2016) used Greenland as an example, claiming that the Greenland government's use of 'sovereignty games' in its relations with the EU demonstrates how a non-sovereign polity can enhance its own subjectivity in relation to third parties. He provided a series of scenarios for the slow-motion decolonization of Greenland from the Danish realm. Luc Van den Brande (2010), as a practitioner of Flanders-EU liaison, was of the opinion that Europe would need its regions to tackle the challenges of globalization effectively and to remain a leading partner on the international stage. He suggested that sub-states should therefore reorient their administrations towards the EU, focus more on the EU's ruling political agenda, and dare to better steer the EU's decision-making process. On the flip side, the EU itself should be based upon a multilevel governance model, allowing the EU to work in partnership with its regional and local authorities (Van den Brande, 2010).

Other opportunistic academics investigate the paradiplomacy of the sub-state entities from the viewpoint of outside nations. Dedushaj (2006) saw the diplomatic relations between the United States and Kosovo as a good example of non-traditional multilevel diplomacy between state and non-state actors. He stated that the state-building process in Kosovo had been directly linked to and dependent upon diplomatic relations with the United States. The Democratic League of Kosovo's representation in the USA played a crucial role when the United States decided to start air bombings against the Milošević regime (the administration that sought to strip Kosovo's autonomy) even without a proper

mandate from the UN Security Council (Dedushaj, 2006). According to Sara A. Newland (2022), paradiplomatic agreements create opportunities for public official exchanges between USA and Taiwanese representatives, which are often accompanied by visual symbols such as paired sets of USA and Taiwan flags that treat both entities as sovereign and capable of fulfilling the governance functions of a state. Rezvani (2012) argued that Hong Kong is a partially independent political entity with constitutional powers that are vigorously defended by the political-economic influence (rather than constitutional influence) it exerts upon China's central government. He believed that Hong Kong's economy is built upon the pillars of its autonomous institutions, press freedom, rule of law and civil liberties, making it immune to Beijing's maximalist interference. As a result, opportunistic academics study subnational governments' paradiplomacy from the standpoint of third countries in order to facilitate the *de facto* expansion of the influence of other nations or international organizations on certain issues.

Subnational government paradiplomacy is currently being studied by three schools of thought. Given the realities of Jersey, the ideas of liberal scholars, the second school of thought, would be best suited to maximizing local interests.

### **3. Post-Brexit challenges and opportunities for Jersey**

Jersey's relationship with European Union has changed since the termination of Protocol 3 to the UK's Treaty of Accession to the European Union on 31 December 2020. This section aims to put the new Brexit Agreement, covering several aspects of Jersey, in the bigger picture to find out whether the legal arrangements given by the EU and UK could satisfy the needs of Jersey.

#### **3.1. Jersey's practice in the negotiation of EU-UK Trade and Cooperation Agreement**

Jersey wished to be fully engaged in Brexit negotiations with a view to ensuring its position and interests are understood and protected (Government of Jersey, 2016). When Jersey requested to vote in the referendum on whether the UK should remain a member in May 2016, this was rejected by Queen Elizabeth II. Nobody in the Channel Islands had a special right to vote in the EU referendum. David Walwyn, Jersey's Director of External Relations, hoped the referendum's outcome would not have too much impact on trade between his island and the rest of Europe, whatever the result. Walwyn said, "Our position is that we are not seeking any change in the relationship Jersey has with the UK or European Union" (Morrison & Mahy, 2016). If there had been a separate referendum for Jersey or if Jersey had been allowed to participate in UK's referendum, it is highly probable that the island would have overwhelmingly voted 'remain' because it already had an ideal relationship with the EU. Nevertheless, the 'leave' decision made by the UK resulted in years of uncertainty for the UK and Jersey as it needed to establish a new economic relationship with the EU. Jersey had to make realistic and good preparations to

avoid damage to its economy or at least substantial uncertainty due to the effect of Brexit. An official statement was made by the Chief Minister of Jersey on 28 June 2016, shortly after the outcome of the poll was released on 23 June.

Jersey and the other Crown Dependencies are likely to be very low on the UK's list of priorities due to the fact that Jersey has a small population and its GDP accounts for only 0.22% of the total UK GDP in recent years (Government of Jersey, 2022b; UK Office for National Statistics, 2022). Jersey's interests concerning Brexit diverge from the UK. Especially for trade in goods, Jersey exports most of its fish to France, and by definition, fishing rights must be subject to Granville Bay Treaty. Brexit would lead to EU countries imposing administrative requirements on Jersey's fishery produce but not EU products. Hence Jersey's fishery produce would face stronger competition from continental fishers. The Government of Jersey had taken steps to engage with the UK over Brexit, including securing a commitment from the Prime Minister in July 2016 that it would be "kept informed and offered the opportunity to contribute where it is relevant and appropriate to do so" (Isle of Man Government, 2022) and various ministerial and official meetings. This engagement was more difficult to maintain as negotiations progressed as the UK would not always be in a position to represent Crown Dependency views internationally where those diverged from the UK's own interests.

The negotiations during the final phase did not progress smoothly. The EU was reluctant, in many cases, to work on consolidated texts. Both the EU and the UK attempted to reach an agreement from seemingly incompatible positions. The EU had made it clear from the beginning that its approach was that "nothing is agreed until everything is agreed" (European Council, 2017), and worse, the Crown Dependencies' concerns, especially their interests in fisheries, were not viewed as a priority. With the progress of the negotiations, Jersey's officials and ministers were increasingly concerned that if their involvement was not taken into account in the discussions, then there would be no time to consider some of the subtleties and nuance of the constitutional arrangements. In addition, the long lines of communication from the negotiating room to the ministers in Jersey would only add to the difficulty (Council of Ministers of Isles of Man, 2021). However, due to the challenges presented without the preservation of tariff-free goods trade between Jersey and the EU and to reiterate the constitutional reality of Jersey's domestic and fiscal autonomy, on 27 December 2020, the Jersey State Assembly approved the inclusion of the island in the EU-UK Trade and Cooperation Agreement (TCA) on the basis of two issues: trade in goods and fishery arrangements. While theoretically, Jersey could have refused to accede to the TCA, the economic importance of the European Union in Jersey's cross-border trade meant that it would have been politically unwise and economically reckless for Jersey to contact the EU without a preferential trade agreement.



### 3.2. The key legal implications on Jersey under the EU-UK Trade and Cooperation Agreement

The final provisions in the Trade and Cooperation Agreement define that the agreement applies in two very specific parts to Jersey, rather than in its entirety. Those parts relate to goods and fisheries. In brief, except for the reservations made by the Channel Islands, the provisions set out in Title One (Trade in Goods) of Heading One (Trade) and the Protocols and Annexes to those chapters apply to the island. Therefore, Jersey's goods in trade with the EU are treated in the same manner as UK's goods in trade with the EU.

The TCA's Chapter 3, Arrangements on Access to Waters and Resources replaced the previous Granville Bay Agreement of 2000. It establishes the basis upon which vessels from the UK and the Crown Dependencies on the one hand and the EU on the other hand can access each other's waters. The new trade agreement between UK and Jersey also involves a fishing licensing system. The Granville Bay Agreement of 2000 had established a shared-management approach in which permits would be issued by a Joint Management Committee comprised of officials from France and Jersey. Joint management would also cease after the cessation of the Granville Bay Agreement. Under the newly adopted TCA, the management of Jersey's waters is no longer shared with France. Instead, Jersey will be able to solely license French vessels in Jersey waters between 3 nm and 12 nm (States of Jersey, 2020). Namely, Jersey has ensured its sole control of management and licensing arrangements within its territorial waters.

The TCA is more restrictive in terms of European Union vessels' access to British waters than it was prior to Brexit. In the TCA's Heading Five (UK-EU TCA, 2021), two procedural provisions deal with Jersey's issues in particular. In accordance with Paragraphs 1 and 2 of Article 502, vessels that apply for the grant of access should prove that fishing activities ("the actual extent and nature of fishing activity") can be demonstrated to have taken place during the reference period between 1 February 2017 and 31 January 2020. Moreover, this article states that access can only be granted to "qualifying vessels" which can demonstrate a sufficient track record of having fished during this reference period in line with the treaty arrangement that existed on 31 January 2020 (UK-EU TCA, 2021).

Compared with the previous Granville Bay Agreement, the new treaty imposes more stringent procedural requirements for granting access permits in certain areas within the territorial sea of Jersey. Such access licenses would be licensed solely by Jersey rather than a joint management committee consisting of officials from the governments of both sides. Qualifying French vessels with an appropriate track record would continue to be able to fish in certain Jersey waters between 3 nm and 12 nm under the new treaty (UK-EU TCA, 2021). Hence, the substantive fishery rights of French vessels would not be changed if the owners of those vessels could demonstrate a track record of fishing effort in the area when applying for a license to fish in Jersey waters.

The Brexit Agreement has also resulted in significant changes in terms of trade in goods. The practical implications of the UK leaving the EU are perhaps most significant in relation to changes in customs arrangements. Prior to the UK's departure from the European Union, Jersey was incorporated into the customs union of the European Economic Community. There was tariff-free movement of all types of goods, no quantitative restrictions on imports, and no non-tariff duties imposed between Jersey and the EU due to the requirements for the same treatment of the Crown Dependencies as the UK. Nevertheless, the free movement of Jersey goods within the EU market ended with EU law ceasing to apply in the United Kingdom.

Most goods originating from Jersey could enjoy preferential tariff treatment under the TCA. Under the new free trade agreement concluded between the EU and UK, Article 21 (Prohibition of customs duties) of Chapter 1 (National treatment and market access for goods) of Heading One (Trade) states: customs duties on all goods originating in the other party shall be prohibited (UK-EU TCA, 2021). Hence zero tariffs or quotas on trade are established between the UK and the EU, where goods meet the relevant rules of origin. Goods which fail to satisfy the relevant preferential origin rules will be subject to normal WTO import tariffs. Furthermore, the non-tariff on goods originating from the UK should apply equally to Jersey due to its customs union with the UK. The Jersey also applies the same import and export prohibitions and restrictions as does the UK.

Although the tariff will not apply if the relevant origin rules are met, Jersey will face customs formalities following Brexit. The TCA asserts that the *Convention of 20 May 1987 on the Simplification of Formalities in Trade in Goods between the European Union and the European Free Trade Area* states applies to both parties after the transition period. Formalities will apply to goods in transit, customs authorities, and other agencies of both parties may require the exporters to submit appropriate data and documentation. In addition, declarations are required for imports and exports. Even traders or operators who fulfil criteria specified in other parties' laws and regulations shall make customs declarations containing a reduced set of data or supporting documents (UK-EU TCA, 2021). For the logistical operations of a certain business, including the fishery sector, its data must be pre-registered before arriving at ports of departure to enter the other party's territory.

In summary, the enormous amount of paperwork and the convoluted process required will bring additional burdens to exporters and operators on both sides. On the side of Jersey, it is becoming impossible for Jersey's fishermen to export fish into France due to decreased competitiveness of Jersey fishery products following the end of the free movement of goods arrangements. Therefore, options needed to be looked at as Jersey's fishers faced growing uncertainty after the transition period of Brexit.

### 3.3. Fishery disputes between Jersey and France

Tensions between the UK and France have been growing over implementing the rules on fisheries established in the Agreement since January 2021. Under the new fishing licenses scheme introduced by Jersey at the end of April 2021, French fishing vessels must provide data showing they have a history of fishing in Jersey's waters. However, French authorities claimed this additional post-Brexit fishing licensing scheme was added on without notice. Many French fishermen said their small fishing boats do not carry electronic fishing equipment to provide the information. On 30 April 2021, Jersey granted fishing licenses to 41 boats with the Vessel Monitoring System (VMS) (Government of Jersey, 2021c), but it unilaterally added technical restrictions on vessels without VMS to provide further evidence of their track record of fishing around the island, which the French government said was "unacceptable." Data relating to 57 boats was submitted, including 14 applications received by Jersey authorities on 30 April 2021.

The issue of fishing licenses turned into a full-scale maritime dispute in May 2021. Around 60 French fishing vessels staged a blockade of the harbour in Jersey's capital St Helier to protest against the new fishing licensing scheme, and the UK sent two patrol boats to Jersey in response to the French vessels' threats to blockade Jersey. As tension escalated, France's Maritime Minister Annick Girardin threatened to cut off Jersey's electricity supply fed by undersea cables from France in retaliation for Jersey placing limitations on the extent to which French boats can fish in the island's waters. Tension was defused after UK Prime Minister Boris Johnson and President of France Emmanuel Macron agreed to an interim accord on a two-month extension to the transition period due to come to an end on 30 June 2021. Under the new accord, until the end of September 2021, the already-licensed boats with Vessel Monitoring System equipment (47 vessels), for which evidence was already being submitted, were allowed to continue to fish in Jersey waters (Government of Jersey, 2021b).

Unfortunately, tensions further escalated in September 2021. The Jersey government issued a further 64 licenses and 31 temporary licenses while rejecting the permits for 75 French vessels, citing that "they do not meet the criteria and have either not fished in Jersey waters during the relevant period or have not been able to evidence their activities" (Reuters, 2021). In response, French authorities declined the application submitted by Jersey boats that had traditionally fished in French waters (Boffey, 2021). Owing to the growing pressure from France, Jersey issued 20 more permits for French vessels in October 2021, bringing the total number licensed to fish in its territorial sea to 162. Of the 162 licenses, 113 were permanent, an increase of two more than before, and 49 were temporary, an increase of 18. But 55 more vessels that did not get the permit would lose their fishing rights from 31 October 2021 (Hughes, 2021). Then, on 3 December 2021, nine more French fishing boats were given permanent licenses to fish in Jersey waters, all of them boats that

were previously in the ‘temporary’ category but had provided more data to the Government of Jersey. This brought the total number of permanent fishing licenses granted from Jersey to EU vessels to 126.

Following an intensive discussion between the Government of Jersey, the United Kingdom, and the European Commission, a resolution had been reached on five additional permanent licenses for applicant vessels that had provided further information demonstrating that they fished in Jersey waters for the required time. This determination brought the total number of permanent licenses issued to French vessels to 131. Other EU vessels issued with ‘temporary’ licenses that had not provided the necessary evidence were prohibited to fish in Jersey waters from 31 January 2022.

In spite of the French government’s claim that it would fight for every UK fishing license for its fishermen to operate in UK territorial waters and off Jersey (Reuters, 2021), since December 2021, no new licenses to French fishing boats have been issued by Jersey. Apart from the 131 fishing boats that have already obtained fishing licenses, France is still waiting for Jersey to approve 94 licenses for its fishermen to operate in Jersey territorial waters, representing about 42% of the total applications (225). This is significantly fewer than the roughly 350 boats that were able to fish under the previous Bay of Granville Agreement (Jersey News, 2022a). In early December 2021, France warned Britain to issue licenses before the deadline of 10 December 2021, if not, France’s seas minister Annick Girardin threatened that France would urge the European Commission to take the matter to arbitration by a committee of British and European representatives that oversees the implementation of the Brexit trade agreement. If that failed, France would push for the commission to launch litigation proceedings, a move the minister said would take time. However, the deadline set by the European Commission for the settlement of the UK-France fishing row passed without an agreement.

To make matters worse, new ‘extent and nature’ permits will be attached to existing fishing licenses, resulting in a stricter standard for EU fishing vessels. Jersey decided to update its vessel replacement policy in addition to implementing ‘extent and nature’ conditions outlined in the Brexit Agreement. On 30 September 2022, 136 permanent and two temporary licenses issued to French fishers expired. The TCA states that each party shall grant vessels of the other party access to fish in its waters, reflecting the actual extent and nature of the fishing activity carried out by qualifying vessels during a specified period (Jersey News, 2022b). From 1 February 2023, new ‘extent and nature’ permits were added to the 136 permanent licenses granted to French fishing vessels (Government of Jersey, 2023a). In this situation, only fishing vessels that meet the stringent additional requirements of ‘extent and nature’ will be allowed to fish in Jersey’s waters. Otherwise, French fishing vessels that have been issued permits risk having their licenses being revoked or cancelled.

Discussions between Jersey and the EU about the fishing permits are still ongoing as France is dissatisfied with the current fishing arrangement with Jersey. On the side of France, the French government and regional authorities

intend to keep fishing management as close to the previous Granville Agreement conditions as possible. French fishermen are concerned about being imposed new technical modalities (types of nets, quotas) associated with the licenses issued by the Jersey government, and they fear that French waters will be overfished (Le Monde avec AFP, 2022). At the annual summit regarding the Channel Islands, Normandy, and the Channel on 20 October 2022, Normandy—one of the two major French provinces that fishes in Jersey territorial waters—expressed its willingness to create a common fishery space with Jersey. Normandy hoped that this plan would allow for the protection, development, and licensing of fisheries resources by both governments (Presse de la Manche, 2022). Many Brittany and Normandy fishermen had taken catch in the waters around Jersey for centuries, and fishing is this people's main source of subsistence (Kraska, 2015). The French government has an obligation to ensure the essential conditions of subsistence for its people. From the point of view of Jersey's government, there are no grounds or evidence to issue further licenses; none have been provided by French vessels.

### **3.4. Growing difficulties for Jersey's products entering the EU market after Brexit**

Before Brexit, Jersey's export products were highly competitive in the EU market, and 90% of its fisheries products were exported to continental Europe (UK Parliament, 2017). The Bailiwick of Jersey has long agricultural and fishery traditions. Although the farming and fisheries sectors are less important in both absolute and relative terms than they were in the past, they remain vital for the fabric of the rural economy of the island. Jersey is renowned for its fresh fish and seafood quality, and many of the fishery products are exported to the EU (Channel Islands Brussels Office, 2016). The export of fishery products was covered by Protocol 3, thus the export of fish or fishery products between the EU and Jersey was regarded as intra-EU trade before Brexit.

Nonetheless, due to the UK's decision to leave the EU, the islands' formal relationship with the EU under Protocol 3 came to an end on 31 December 2020. Although the EU-UK TCA ensures that trade in fisheries and aquaculture products continues without tariffs, non-tariff measures, such as certification requirements and customs controls, associated with the UK leaving the EU single market, will involve slower and more expensive trade flows (Popescu & Scholaet, 2021). Specifically, to export fish from Jersey to the EU, fishermen need to first make sure they have pre-notified the importers in advance of arrival, then they should enter via an EU border control post (BCP) where fishery enforcement officers may inspect the fish/fishery products (Government of UK, 2020). They also need to provide a catch certificate and other relevant documents, with incomplete documents potentially leading to the rejection or confiscation of fish exported to the EU. Moreover, from 1 January 2022, all imported and exported goods from Jersey to the EU will require a customs declaration, and Jersey traders will have to complete their declarations upon or before the arrival of their goods into the EU territory (Government of Jersey, 2022c).

It is becoming more difficult to export products into France due to the enormous amount of paperwork required and the convoluted processes that seem to have arisen. The question has been raised: Are there any other markets that could easily be exported into? Unfortunately, Jersey is much farther away from the UK than it is from France, meaning that exporting to the UK would raise costs significantly. Brexit has resulted in fishermen from Jersey struggling to find a market for their fish (Morris, 2021).

Jersey did not get a vote on Brexit, which is not part of the UK, but Jersey was directly affected. The Jersey fleet, some 100 small boats that fish mostly during the day, exports lobsters, crabs and scallops to Europe via French ports. But France has said it is ready to activate “restrictive measures” if the Jersey government disagrees with the allocation of licenses, which Jersey’s fishermen say puts their future at risk (RFI, 2021). These fishermen are caught up in the middle between the licensing regime imposed on the French by the Jersey government and the following protest actions from the French.

#### **4. Recommendations**

Paradiplomacy research from the perspective of subnational governments can be applied to the resolution of Jersey’s post-Brexit difficulties. Crucially, the conflict of interest in fisheries and export trade between Jersey and France may underline the potential tensions inherent in the relationship between the UK (as a metropolitan power) and Jersey (as a subnational jurisdiction) (Tan, 2021). The UK signed the TCA with the EU on behalf of Jersey, yet island’s interests were not always taken into account during the trade deal negotiated between the UK and EU. Where the interests of the UK and Jersey conflict, the insular government’s interests may be subordinate to those of the UK (UK Parliament, 2009). Therefore, the treaty signed by the central government may not be suitable for the subnational government.

##### **4.1. Jersey’s paradiplomacy: Localization of foreign policy**

Foreign policy is becoming ‘localized’, which means that an increasing number of local groups and governmental agencies perceive themselves to be affected by events occurring outside of their national settings and have the motivation, resources, and opportunities to respond by projecting their interests at both the national and international levels (Hocking, 1993). Regarding the current situation in Jersey, the reason for Jersey’s insistence on striking out on its own and continuing to maintain its own arrangements with the EU in relation to trade and fishery matters are as follows.

Firstly, the interests of the metropolitan power are not the same as those of the dependent territory. Therefore, the purpose of this strategy is to protect the island’s key interests in commercial matters rather than to prepare for the establishment of an independent country. Secondly, the situation of the island is distinct from that of the state as a whole, given that it is assessed that Jersey’s best interests would be served by the continuation of some form of free-market access to goods and freedom of movement into the EU (States of Jersey, 2017). Regarding the fishery issue, Jersey was never subject to its Common Fisheries

Policy and had negotiated its own fishing treaty with France independently of the United Kingdom. Jersey may formulate foreign policies to conduct its international affairs which are not all recognized by the top leadership and which do not fit into a unitary design of the UK. Thirdly, the island of Jersey enjoys a high degree of autonomy, and Jersey's government is responsible for domestic affairs, including its economic regime and the management of fishing in the British territorial waters surrounding Jersey.

Different strategies and means used in paradiplomacy can be deemed as the application of external aspects of power to oversee trade and fisheries issues, both of which fall under the jurisdiction of subnational governments. Paradiplomacy is a sign of a state sharing its sovereign authority with units or entities that are decidedly subordinate to them. In the present international system, state actors are overly concerned with sovereignty. Therefore, in neither case will central states willingly or easily compromise their authority (Chatterji & Saha, 2017). In this sense, the constitutional allocation of powers can be used as a paradiplomatic tool to promote and reinforce the competence of non-sovereign governments to participate in activities at the international level (Paquin et al., 2015). Allocation of power gives central governments and subnational governments separate functions and forces them to share power. The allocation of power separates the tasks of central and subnational governments and compels them to share power. High political sensitivity issues, such as defence and security, should remain under the jurisdiction of the central government; some low political sensitivity issues, such as trade, environment, culture, and science interaction, can be delegated to the subnational government. As far as the island of Jersey is concerned, current UK legal arrangements provide that foreign affairs and defence power are reserved to the central government, while other domestic matters are delegated to the Jersey government. Trade and fishery issues are governed by the Jersey government. As a result, Jersey's interaction with other countries, regions and international organizations on those issues can be interpreted as an external aspect of Jersey's fishery and trade management power.

Certain approaches could be implemented by the Jersey government when they would best serve local interests, which sometimes diverge from national interests. To begin with, the government of Jersey can establish pseudo-embassies to improve the efficiency of its paradiplomatic activities, and to make it easier for foreign actors to recognize Jersey's activities as legitimate. These pseudo-embassies would enable the Jersey executive to establish direct political relations with other subnational, national, and EU authorities and institutions. In recent years, Jersey has set up offices in EU headquarters and EU member states in order to strengthen and maintain its longstanding political, economic and cultural relationships with its closest French neighbours and partners across Europe following Brexit. The Channel Islands Brussels Office was formed in collaboration with the Guernsey government to ensure that the Channel Islands' interests are promoted in Brussels and to serve as the central engagement point with the EU institutions. The Bureau des îles Anglo-

Normandes was established in Caen to promote the interests of the Channel Islands in the French regions (Government of Jersey, 2023b) and to promote and facilitate trade access to the EU and fisheries ties with the regional governments of France, particularly Normandy and Brittany. Jersey may in the future establish an office in Brittany to align its interests in these areas as its position is understood and closer links are developed.

Additionally, an inter-regional association made up of Jersey, EU member states, and/or subnational governments might be formed to establish subnational jurisdictions' institutional presence. According to the research of Beyers and Donas (2014), inter-jurisdictional exchanges are not driven by political alignments or similarities in terms of political autonomy; instead, exchanges with geographically close neighbours and regions with similar policy interests are much more important. This association between jurisdictions can establish a fixed place, hire specialized staff and establish specific operating mechanisms to coordinate regional involvement. In this situation, Jersey's external relationships with other countries and jurisdictions can enable the development of closer links in areas where they share common interests. Normandy and Brittany, in particular, have strong cultural and historical ties with Jersey. Furthermore, this institutional framework has the potential to lower transaction costs and ease the emergence of informal exchanges among subnational offices.

#### **4.2. Jersey's prospects for a tailor-made international agreement with the EU: Drawing experience from the Denmark-Faroe Model**

Ratification of international agreements is another important form of paradiplomacy that the government of Jersey can use to promote and protect local interests. The real question is whether Jersey, a dependent (non-sovereign) territory of a third country could conclude an international agreement with the EU. Under the UK's current constitutional arrangements, Jersey cannot sign international agreements under its own aegis; however, the UK's ratification of such instruments can extend to them, or Jersey can sign specific international agreements if they have been entrusted to do so by the UK. Over the past 15 years, Jersey has obtained entrustment in the case of tax information exchange agreements, double taxation agreements and other agreements relating to taxation that provide for the exchange of information on tax matters with third countries (Baihache, 2016; UK Ministry of Justice, 2022).

The Faroe Islands is a useful example for other subnational or non-sovereign islands hoping to successfully obtain foreign policy powers and how these can support peaceful relations with other countries and international organizations. This archipelago's high level of economic development may fuel independence and separatism, causing paradiplomacy to transform into protodiplomacy. Thus there are also valuable lessons Jersey can learn from the Denmark-Faroe model.

The Faroe Islands spent 57 years acquiring full diplomatic power over the domestic policy fields it has governed since 1948. The constitutional and international status of the Faroe Islands is defined in the so-called Home Rule



Act of 1948. The Home Rule Act established the Faroe Islands as an autonomous nation within the Danish realm. According to this arrangement, the Faroe Islands have taken over the exclusive competence to legislate and govern independently in a wide range of areas. These include trade, taxation, industrial relations, business regulation (except the banking sector); regulation of fisheries and other natural resources; energy and the environment; transport; social security, emergency preparedness; education; research; and culture (Government of the Faroe Islands, 2022). However, the Act did not mention matters regarding Danish citizenship, defence and foreign policy as well as monetary policy, which remained within the authority of the national government in Copenhagen (Adler-Nissen, 2014).

Before this subnational government obtained diplomatic authority, the engagement of the Faroe Islands with the European Union was supervised by the Danish government. The EU-Faroe Islands Free Trade Agreement was the first free trade agreement concluded between the European Union and a self-governing community of a sovereign state. In 1974, a year after Denmark joined the EEC, the Faroese Parliament decided not to become a part of the European Communities. Later, the members of the Faroese Parliament decided unanimously against joining the European Community and the European Economic Area because they particularly feared the loss of control over fishing areas (Rebhan, 2016). The European Commission's rules thus do not apply to the Faroe Islands. The Faroe Islands' official relationship with the EU is regulated by three separate bilateral agreements: a Fisheries Agreement (1977), a Free Trade Agreement (1991, last revised in 1998), and an agreement for scientific and technological cooperation (2014). For instance, the Free Trade Agreement between the European Community, on the one hand, and the Government of Denmark and the Home Rule Government of the Faroe Islands, on the other hand, was concluded in 1991 and subsequently revised in 1996. At the time, the islands had not been authorized the competence to negotiate and conclude an international agreement with foreign states or international organizations on devolved issues, including trade. Thus, the Faroese government negotiated this first Free Trade Agreement with the nominal involvement of the Danish authorities. For the Faroe Islands, access to the EU Single Market is of paramount importance due to the fact that the EU accounts for 42% of Faroese exports (Olafsson, 2000).

The Foreign Policy Act of 2005 significantly altered the Faroe Islands' constitutional and international status. The Danish and Faroese governments have been wrangling over a drastic revision of the Faroese constitution, with many clauses clashing with those of Denmark. The Foreign Policy Act of 2005 expanded the competence of the Faroese Parliament, allowing the islands to represent themselves and negotiate treaties under international law with other states and international organizations concerning all matters administered by the Faroese authorities. Faroese jurisdiction in matters of foreign policy was strengthened, although the 2005 act does not apply to agreements covering defence and security or to accession protocols to international organizations

of which Denmark is a member (Faroese Minister of Foreign Affairs, 2010; Government of the Faroe Islands, 2005; Kočí & Baar, 2021). Thus, this 2005 Authorization Act grants the islands the power to negotiate and conclude international agreements with other subjects of international law to the extent of all devolved issues within the islands' exclusive competence.

Accordingly, the Faroe Islands set an important precedent for a part of a unitary state to establish differentiated relations with the EU and other countries. Since 1948, the Faroese authorities have gradually increased the number of policy areas administered and financed by the Faroese government. Since 2005, it has successfully held the foreign policy power to conclude agreements with other countries or organizations that relate entirely to subject matters under Faroese jurisdiction. The case of Faroe, therefore, shows that, in principle, neither international nor EU law prevents Jersey from following a similar path in the era of post-Brexit. Hence, Jersey could also strive for its foreign policy power under legal arrangements with the UK in the future in order to acquire the authority to enter into international agreements on policy areas within Jersey's competence. Moreover, the Faroe-Denmark model also plausibly sets a positive precedent regarding the EU's political will to adopt similar arrangements with subnational governments.

On the other hand, 'paradiplomacy' may transform into 'protodiplomacy' when a non-sovereign government with higher autonomy imposes a separatist message on its economic, social, and cultural ties with other countries. As Adler-Nissen (2014) has noted, the Faroese-Danish relationship is being internationalized and Europeanized as the EU offers a playing ground for negotiations of political visions for an independent Faroese state. However, due to the unique geographic and economic patterns of the Faroe Islands and Greenland, the Faroese model of striving for independence after a high degree of autonomy may not necessarily apply to other subnational islands. For both the Faroe Islands and Greenland, fisheries constitute the basis of the economy. Fish exports amount to 88% of all export of goods from the Faroe Islands, and 92% of all exports from Greenland. The economies are thus highly specialized and thus display a high sensitivity to development in prices and catch in fishing. In addition, both the Faroe Islands and Greenland receive a grant from the Danish state (Andersen, 2020). The Faroese government attempted to wean itself off an annual subsidy from Copenhagen. In recent years, the Faroese authorities have asked Copenhagen to freeze their annual subsidies, implying that the importance of the central government's subsidy for the local economy is gradually diminishing over time (AFP, 2018).

While the Faroe Islands' successful development of paradiplomacy is admirable, it cannot be completely copied. The economy of the Faroe Islands is less reliant on the metropolitan territory than is the case for Jersey. In most situations, the economic wellbeing of the citizens of subnational jurisdictions has remained significantly better than that of many of their counterparts in independent territories; the gap may have even widened (Baldacchino, 2010). Concerning Jersey's economic arrangements, the current government

estimated in 2018 that 88% of the island's trade is still with the UK. While more autonomy is needed to increase its business in global markets, it is clearly consistent with Jersey's own best interests at this stage to remain under British sovereignty.

The drawing up of a new revised trade agreement could be an effective solution when Jersey's interests differ from those of the United Kingdom. On the one hand, Jersey could persuade the central government to authorize entrustment to it when it decides to conclude a new tailor-made international trade agreement with the EU. However, it can take a long time for Jersey to gain approval from the UK authority, and the conflicting interests of both parties may result in a denial from the British central government. For instance, it took four years for the island of Jersey to be authorized to negotiate a bilateral trade agreement directly with the Emirati government. As Jersey's former External Relations Minister Ian Gorst stated, "Looking to the future, it would be very bad for Jersey if the tortuous process around the UAE entrustment were to be repeated" (Jersey Evening Post, 2018). On the other hand, in practice, the subnational government is competent to directly engage in negotiations with the EU and other countries and subnational jurisdictions, even without the permission of the central government, to conclude an international agreement with a view to ensuring its position and interests are understood and protected. In the long run, it would be practical for Jersey to strive for diplomatic power in the international arena over the areas under its jurisdiction.

### 5. Conclusion and prospects

Paradiplomacy can be an effective tool for the island of Jersey in gaining more autonomy in defending its own rights and interests. According to the latest report published by Jersey's Minister for External Relations:

Jersey will continue to develop and enhance relations with France, as Jersey's closest neighbour, placing particular emphasis on the close historical regional ties with Normandy and Brittany; notwithstanding special emphasis on France, Jersey will also endeavour to maintain positive bilateral relations with other European nations; Jersey will work to develop and enhance relations with the institutions of the European Union (Government of Jersey, 2022a).

Jersey's positive paradiplomatic activities with the EU, France and other European countries are consistent with the island's foreign policy. Additionally, after Brexit, Jersey should advance negotiations with other nations and the EU, particularly if its interests conflict with those of the British government. The island of Jersey had already had an ideal relationship with the EU under Protocol 3 of the UK's 1972 accession treaty. However, the free movement of goods and the free movement of persons (with limited exceptions) ended with EU law ceasing to apply in the United Kingdom. Moreover, diplomatic tensions have been growing since 2021 between France and the island over the implementation of the rules on fisheries established

in the Trade and Cooperation Agreement between the UK and the European Union. Satisfactory results could be achieved for both Jersey and the EU by concluding a new, bespoke agreement on the basis of mutual interests. Jersey's interests will be best served by tweaking the EU-UK trade agreement to ensure the free movement of goods and the free movement of persons (with limited exceptions) between Jersey and the EU. In return, Jersey may relax licensing conditions to grant access to French fishing vessels in its waters.

Different means and forms of paradiplomacy can be used to address Jersey's post-Brexit issues. Under Jersey's present legal arrangements, constitutional allocation of power gives central governments and regional governments separate functions and forces them to share power. Regarding both trade and fishery issues, Jersey's involvement in the relations with the EU and its member states can be interpreted as the implementation of external aspects of fishery and trade management powers, as both issues are governed by Jersey. Jersey can also establish pseudo-embassies in France or other EU member states as well as establish an inter-regional association made up of Jersey, EU members, or local authorities. Over time, Jersey should strive to have the central government remove the procedural limits put on its international actions. If UK authorities refuse to grant entrustment when regional interests conflict with the central government, Jersey should press the British government to recognize the island's full diplomatic power to conclude international agreements over matters under its jurisdiction.

Jersey's paradiplomacy is not synonymous with protodiplomacy. As Adam Grydehøj (2014, p. 10) stated, "when subnational jurisdictions and sovereign states have opposing policy objectives, paradiplomacy is best capable of achieving regional governments' objectives, regardless of whether it manages to slip beneath the political radar of sovereign states or acquire the de facto concession of sovereign states." Jersey has strong links with the UK business community and, in particular, the City of London in its capacity as an International Finance Centre, as well as the vast majority of the imports coming to the island from the United Kingdom. In contrast to the Faroese and Greenlandic models, which aim for complete independence, Jersey prefers direct connectivity with other sovereign states under the sovereignty of the metropolitan territory.

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