

# We musn't fall into the trap of accepting temporary membership of the European Economic Area

Whereas most on the Leave side are clear about their objectives for the UK to emerge from the impending Brexit negotiations as a fully independent country, there is much foggy talk in the media and amongst the Remain side. This is partly a deliberate attempt to frustrate Brexit by causing alarm, but the loose language used, for example, about 'soft' or 'hard' Brexit, reveals also a lack of understanding about the options available.

The most commonly occurring slippery use of language deployed by Remainers is when they say 'outside the single market our trade and jobs will be badly hit'. Remarks of this type are deceptive, because access to the single market is not at stake. As Lord Lamont wrote recently: "every developed country has access to the single market". Giving up our *membership* of the single market does not jeopardise trade or jobs, but it does restore decision-making to the UK Parliament, potentially releasing UK industries from reams of costly regulations.

Members of the single market are countries which have signed the European Economic Area Agreement (EEAA). These include the 28 countries of the EU, plus Norway, Iceland and Liechtenstein, which are three of the four countries in the European Free Trade Association (EFTA). It would be technically possible for the UK to leave the EU, but to retain membership of the single market by continuing as a signatory to the EEAA. Many on the Remain side would gleefully accept this option, but in his discussions of the options available I was surprised to read Lord Owen's recent endorsement of this

arrangement – albeit on a time limited basis – when he opined that “the EEAA option is better, by a large margin, and can be expected to give rise to the least hassle”.

On this matter Lord Owen is gravely mistaken. The EEAA (Single Market) represents a trap from which the UK would be unlikely ever to escape.

Central to his arguments, Lord Owen asserted that if the UK were to remain a party to the EEAA, but outside the EU, we would be free from the European Commission, and free from the European Court of Justice (ECJ). Absolutely not, in both cases: let’s take a look at the EEAA.

The EEAA is administered by the EEA Joint Committee. The non-EU states are members, but the major force on this committee is none other than the Commission, which is there to represent the countries of the EU. The Commission proposes all new regulations (just like it does in the EU). The EEA Agreement states that once the Joint Committee has agreed on a new regulation, this must be enacted in the member states of the EEA forthwith.

What about enforcement of regulations? Within the EEA this is left to both the EFTA Court and the ECJ. If the UK left the EU but stayed in the EEA without re-joining EFTA, then enforcement would fall to the ECJ, and in any case the ECJ is the court of appeal for all EEA members.

Staying in the single market post-Brexit, the Commission and the ECJ would no longer derive their authority over us via Lisbon Treaty, but through the EEAA. Crucially, in giving his endorsement of the EEA, Lord Owen appears to have overlooked this continuing and unwanted interference.

There are further reasons why the EEA represents a dangerous trap for the UK. Yes, we would be able to make trade agreements around the world, but UK industry would be left saddled with the most costly of EU laws that we were hoping to

escape from (a proportion of EU laws are also EEA laws, and the overlap happens to be most of the costly ones).

New laws in the EEA ratchet in one direction only, as they do in the EU. Being a party to the EEAA instead of the EU would be like being on the same train, but a couple of carriages farther back. We would still be subjected to new laws made by an unelected foreign body, and subject to a foreign court.

Furthermore, there is every risk that we would stay there indefinitely. Just look at the way the Remainers are trying to pull back from the result of the referendum. Parliament cannot be relied on to deliver Brexit at all, but if we lower our aims even on an interim basis, the Remainers will allow this change of status (EU to EEAA) to be enacted then argue that the command given by the people in the referendum has been fulfilled. They will say that no further action is required without another referendum.

For those who voted to Leave, this would be a most unhappy trap to be in. Apart from the points already made above, we would not have escaped from the rules on Freedom of Movement. Some people argue that there is precedent for the UK to avoid the Freedom of Movement rules. Temporary exemptions, they say, were secured for Liechtenstein on the movement of workers, and for Iceland on the movement of capital during the financial chaos in 2008. However, these exemptions are contrary to the central aim of the whole European project, and are not an appropriate basis for British foreign policy. The opening paragraph on the EFTA Court website states: "The aim of the EEA Agreement is to guarantee the free movement of persons ..."

Finally, let us consider the alternative aim for a free trade agreement, assuming (with a prayer) that our Brexit Secretary and his team do not ensnare us in the EEAA. The main argument, and it is a considerable one, is that after more than 40 years of EU regulations and directives, it is simply too complicated to extract the UK from this mass of law, interconnected cross-

border systems, product conformity certifications, and so forth, and to set up a completely new all-encompassing agreement within the remaining 21 months. What might have been possible when India achieved independence is no longer applicable in a modern economy.

The answer boils down to a determination on all sides to have an ongoing relationship that works. The Great Repeal Bill and the various bills that will be put to Parliament over the next few months will go a long way to set the framework for the future. The *acquis* will be transferred to British law, *mutatis mutandis*. But in very many fields the appropriate minister will inevitably have to make stop-gap decisions, and probably for several years beyond 2019. We have the advantage that we hit the ground running insofar as all manufactured goods, for example, on both sides of the Channel already meet the standards. We can rely too on the increasing relevance of the World Trade Organisation, and in particular the WTO Technical Barriers to Trade Agreement, and the recent WTO Trade Facilitation Agreement. The EU has signed up to these agreements, making the erection of non-tariff barriers to trade not only disadvantageous to the parties but also illegal.

The destiny of a nation cannot turn on mere complications.