

What is the truth of freedom of movement?

Whilst it is often stated that Freedom of Movement is a non-negotiable and a fundamental indivisible principle of the Single Market, the truth is actually far more complex. The 'four freedoms' are **not** indivisible for countries outside the EU, such as those who are members of the European Economic Area, (EEA).

Furthermore, the EU has made provision in legally binding and proposed agreements unilaterally to control freedom of movement along with the other freedoms of the Single Market. The UK could do the same if it remained a member of the Single Market (and wider European Economic Area, EEA) by re-joining The European Free Trade Association (EFTA). The same actually applies to the EU's proposed draft text to the Withdrawal Agreement. Thus Mrs May and her government are, at least in this regard, determined to pursue a Brexit strategy (Brexit in name only) which is far worse than what is actually available utilizing existing established agreements.

The EEA Agreement governs the Single Market (and wider EEA)

The operation of the Single Market (and wider EEA) is set by the EEA Agreement, to which all Member States of the EU and EFTA (excluding Switzerland) are signatories. For the EFTA/EEA members, the EEA Agreement is amended by the addition of Annexes and Protocols. Thus the EFTA countries have bespoke variations on the basic EEA Agreement. EFTA countries also have greater flexibility since powers retained by individual EFTA countries have often been removed from the individual Member States of the EU and transferred to the European Commission or its agencies (acting for the whole EU). Consequently EU Member States often find they cannot act unilaterally, whilst individual EFTA countries can do so and

they make use of this freedom to serve their interests.

Within the EEA Agreement Freedom of Movement is Unilaterally Controllable

The Single Market (and wider EEA), has free movement of goods, persons, services and capital as basic principles. However, the EEA Agreement also includes an opt-out which can be applied unilaterally by EFTA countries (see Chapter 4, Safeguard Provisions, Article 112), but obviously not by Members States of the EU. It states:

Safeguard Provisions, Article 112

- 1. If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Contracting Party may unilaterally take appropriate measures under the conditions and procedures laid down in Article 113.*
- 2. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement.*
- 3. The safeguard measures shall apply with regard to all Contracting Parties.*

This opt-out is intended to be “temporary” (until a permanent solution is implemented), but nevertheless can be invoked and maintained in the absence of that permanent solution. It has already been used by Liechtenstein to control immigration and Iceland to control capital flows in the wake of the financial crisis.

The EU's Ability to Unilaterally Control Freedom of Movement

So useful and/or essential does the EU regard Articles 112 and 114 of the EEA Agreement that, rather than them being toothless window-dressing, it chose to include them virtually

unchanged in its draft Withdrawal Agreement, Article 13 (Protocols NI) which states:

Article 13 Safeguards

- 1. If the application of this Protocol leads to serious economic, societal or environmental difficulties liable to persist, the Union or the United Kingdom may unilaterally take appropriate measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.*
- 2. If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.*

The EU is intentionally ensuring, whether the UK is in the EEA or not, **that the EU can unilaterally restrict immigration into the remaining Member States from the UK.** The EU is also agreeing here **that the UK can unilaterally restrict immigration from the remaining Member States into the UK.**

Implementing the Safeguard Measures Immediately

In the UK, there are permanent economic, infrastructural and societal factors which would justify implementing the existing Safeguard Measures immediately, as of 29th March 2019, when we supposedly leave the EU whilst *de facto* remaining within the Single Market. Subsequently it would be prudent to negotiate the introduction of specific clauses to enshrine a right to permanent or longer term control.

Why the untruths about Free Movement?

The kindest explanation as to why Freedom of Movement is misrepresented is that many politicians are actually being economical with the truth, and are avoiding the fuller picture which contradicts their claims. They may also fail to understand the subtleties of that fuller picture. This is somewhat obvious in Mrs May's Lancaster House speech 17th January 2017 where she appears to have accepted some very disingenuous claims about free movement. Here are her words:

But I want to be clear. What I am proposing cannot mean membership of the single market.

European leaders have said many times that membership means accepting the '4 freedoms' of goods, capital, services and people. And being out of the EU but a member of the single market would mean complying with the EU's rules and regulations that implement those freedoms, without having a vote on what those rules and regulations are. It would mean accepting a role for the European Court of Justice that would see it still having direct legal authority in our country.

Mrs May also appears to fail to understand how the EU and EEA works, including the subordination of the European Court of Justice. These are explained in more detail here with links to further information.

The great tragedy of missed opportunity

This country desperately needs the powers to choose who we should let in and under what circumstances. This was one of the loudest great messages from the Brexit Referendum result. Voters want us to be able to control our borders. To repeat, that power of control is there in legal texts. It could have been grasped by Mrs May and her colleagues in government if they had chosen to do so. They have chosen – at least up to now – instead a path of uncertainty, cave-ins to the EU and

potential chaos. It is a price the British people should not have to bear.