



Reform or Reject?

Freedom of Movement and the Single Market

A Policy Network / Open Britain paper

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Forward by Chuka Umunna MP

With the Article 50 Bill wending its way through Parliament, and the Government's self-imposed deadline of 31 March fast approaching, the phony war will soon be over. The Battle in Brussels is about to begin, as negotiations begin in earnest. In this phony war, the Government's path has seemed easy and consequence-free. But the start of talks will soon illuminate the weaknesses in their present strategy.

The priority must be to deliver a deal that works, in particular, for middle and lower income households. At the heart of the negotiations will be the balance between immigration and our economy. This is a complicated business in which trade-offs are inevitable. But the Government has chosen to wave the white flag and surrender our best economic option – membership of the Single Market and Customs Union – before talks have even begun. This is a political choice to sacrifice jobs on the altar of immigration control. That was the main message of Theresa May's Lancaster House speech, and of everything we have heard from the Government since.

Even at this late stage, it is not too late for the Prime Minister to chart a different course. That is the conclusion of this excellent new pamphlet published by Policy Network and Open Britain. It makes clear that a more intelligent, subtle diplomatic strategy – based on goodwill rather than grandstanding – could win a Brexit deal for Britain that both retains our membership of the Single Market and gives us more control over the immigration system.

First, we must recognise the interests and concerns of our European partners, and demonstrate that we want a good deal for them as well as for the United Kingdom. We should start by immediately guaranteeing the rights of EU citizens living in Britain, as the cross-party Brexit Select Committee has argued. Using three million blameless people as "cards" in a negotiation – as Liam Fox described it – will do nothing but alienate our European partners. Such a strategy could also include accepting more refugees from northern France and elsewhere; and signalling openness to the principle of 'flexible solidarity' put forward by central and eastern European member states. This approach, combined with all the acknowledged strengths the UK brings to the table, would be a powerful incentive to the EU27 to treat us with generosity.

Single Market membership must be our greatest goal in negotiations. It allows for entirely free trade between this country and our biggest export market, without tariff or non-tariff barriers. This trade accounts for 44 per cent of all our exports, and supports three million jobs. The cost to business of tariffs, customs checks and regulatory barriers would be immense. David Davis told MPs earlier this year that the Government would seek a trade deal with Europe that delivers 'the exact same benefits' as we have now. That must mean the Single Market and nothing less than the Single Market.

In asking for EU-wide changes to freedom of movement, we should recognise that other countries too are dealing with populist, anti-immigrant forces; from Marine Le Pen to Geert Wilders, from Italy's Northern League to Germany's AfD. Politicians across the Continent are grappling with the challenges posed by free movement. The leader of the Dutch Labour Party has called for an end to free movement as we know it. The UK would be contributing to a Europe-wide debate that is only just beginning.

A reformed, Europe-wide approach to free movement could include some of the policies agreed by the EU27 a year ago during David Cameron's renegotiation, such as an emergency brake on benefits paid to migrants. We could, as the Swiss are considering, prioritise local workers when job vacancies are advertised. One common sense policy would be to introduce sector-specific emergency brakes.

Areas or places in which we are in dire need of workers – social care, for example – would have greater freedom to bring in migrant workers from Europe than sectors with lower skills shortages. Such an approach would balance the needs of British businesses and workers with the concerns of many about the impact of free movement.

We can also be much more imaginative in our domestic approach to immigration and integration, as I have argued through the APPG on Social Integration (which I chair). We must put far greater efforts into integrating local people into their communities once they are here, rather than leaving them to sink or swim. Equipping our young people for the new world of work is likewise vital. We should work through Training Councils to end the structural dependence on low-skilled workers in many sectors of our economy.

New thinking, both domestically and diplomatically, is the only thing that can avoid a destructive Brexit that makes working people worse off. If Theresa May and her ministers truly want to make Brexit a success, they should end the ‘no deal is better than a bad deal’ grandstanding and approach the forthcoming negotiations with the EU in the spirit of cooperation, not confrontation and threat.

Introduction

Following the EU referendum on June 23rd, Theresa May's Government has committed itself to ending free movement as it presently operates as a priority over post-Brexit trade policy. In the Prime Minister's Lancaster House speech and subsequent White Paper, she committed to leaving the Single Market and Customs Union in order to introduce new controls on EU migration to the UK. Only with great political difficulty could the Government shift in its commitment to introduce such national controls in the negotiations for UK withdrawal from the EU. Given the formal commitments to be completely outside the jurisdiction of the European Court of Justice in March 2019, it would even be problematic for the May government to postpone or phase the implementation of new migration controls during any transitional period designed to minimise the likely economic impact of leaving the EU. Opposition parties who accept the result of the referendum face similar political challenges, albeit with differing degrees of political pressure.

Our view is that, the best possible post-Brexit arrangement would be one that maintained Britain's continued full participation within the Single Market. This paper explores what reforms to free movement might be achievable without compromising that overriding objective, and what alternative policy choices could be open for the UK.

The paper first considers how the question of free movement will be affected by the likely evolution of the Government's overall negotiating stance on Brexit. It then takes a brief look at the issue of migration in the UK and what measures might be desirable to improve the management of migration in the national interest, regardless of Brexit. Next it examines the politics of free movement within other EU member states and how the UK could maximise the chances of securing reform. It then considers what options might be negotiable in Brussels. Finally, it looks at how domestic changes in policy might reduce the salience of the migration question in UK politics.

Executive summary

A change in diplomacy: generating goodwill

- Reform could be possible. Britain is not isolated in thinking that free movement should be better regulated. There is a real opportunity to generate a wider European debate for change and reform. This should, however, go alongside a conciliatory approach to the concept of free movement and a calibrated acceptance of the ‘package logic’ of the four freedoms.
- EU Member States may support national discretion in the application of free movement. The wave of populist forces across the EU presents both risk and opportunity. On the one hand the EU27, without an answer to quell anti-establishment discontent, will rally around the status quo. However, the desire to have a response to popular concern over the social consequences of largescale migration will grow and this raises the possibility of EU-wide reform within the spirit of the freedoms as they stand. This may give rise to recognition that there should be a greater degree of national discretion within the application of the freedoms.
- The UK has strong cards to generate goodwill among EU partners. First, given the close financial ties between the UK and the EU, a ‘hard Brexit’ is on balance ‘lose-lose’ all round and not just for Britain. Secondly, the EU budget will face a significant gap on Brexit. If Britain offers a reasonable deal on winding up its obligations and continues to contribute its share of the EU budget during the transition stage of our withdrawal, and potentially beyond, this would ease the path to a deal. Thirdly, Britain is still a big player in defence, foreign policy and security, and it will be beneficial for all sides if political cooperation with Europe continues beyond Brexit.
- An urgent change of approach is required and specific actions should now be taken by the UK Government. Hostility towards the UK Government is growing on the continent and a change in tone is urgently required if any reforms are to be achieved without seriously hindering market access. This would include acknowledging the EU27’s discrete interests, being clearer about our negotiation objectives, and being realistic about our obligations and inevitable trade-offs. The Government must also undertake gestures of goodwill such as granting permanent residency to all EU citizens living in the UK who qualify for it; accepting more refugees from northern France and elsewhere; signalling openness to the principle of ‘flexible solidarity’ put forward by central and eastern European member states; and not obstructing Western European member states on the revision of the Posted Workers Directive.
- The UK should commit to a positive, preferential stance on EU migration. Britain should, as a point of principle, treat EU migrants on a preferential basis, valuing labour mobility and arguing for wider European reforms on migration and not just a special deal for Britain.

Recommendations to help achieve reforms to movement from within the Single Market

- **Adopt ‘special status’ negotiation policies on an EU-wide basis**
The Government could seek to return to some of the policies within David Cameron’s ‘special status’ agreement, specifically an emergency brake to limit full access to in-work benefits, limits to unemployment benefits to job-seeking EU nationals and reductions to child benefit. This should be approached as an EU-wide reform package.

- Prioritise local workers**

The UK could adopt the principles of the current Swiss proposals and mandate employers in certain sectors to advertise vacancies to residents locally for a period before opening up advertisements more widely. If the UK were to adopt such a measure it would go further than current arrangements, which only apply to employment agencies.
- Propose Sector-specific emergency brakes**

The UK could argue that free movement should be restricted in specific circumstances of economic stress, which could be one or a combination of: the total number of EU migrants in any given year exceeding a certain threshold; an increase in UK unemployment; downward pressure on wages caused by migration; significant strains on public services. If the conditions were met, the Government could impose restrictions on the rights of EU nationals to work in the UK – for example by barring them from working in specific sectors until the situation has been resolved. This could be determined by a body comprised of UK, EU and independent experts.
- Combine extra control with business needs**

Such an arrangement would give a significant degree of control to correct negative labour market outcomes, should they arise. This appears possible to negotiate within existing EU structures and could allow UK to maintain its full participation within the Single Market. This would still allow for a liberal flow of migrants into the UK at most times, thereby meeting the needs of businesses and the economy, and would allow UK nationals to continue exercising their free movement rights to other EU member states - though similar safeguards could be applied against them under a reciprocal arrangement.

Domestic reform: Wage and Training Councils

- Key sectors of the UK economy have become structurally reliant on low skill labour, in particular construction, social care, hospitality and food processing. The Government should consider the creation of statutory Wage and Training Councils in these problematic sectors with a remit to raise skills and productivity, enforce wage standards and offer new employment opportunities to young people whom our school system has failed or whose parents live in areas where decent jobs are sparse.
- The target should be the third of our school leavers who still fail to secure five decent GCSEs. This will require the Councils to be in a financial position to offer additional support to employers for young people whose basic educational standards need to be brought up to scratch. The Councils should also have targets to recruit young people from parts of the country with fewer job opportunities and lower labour market participation.

Evolution of the UK's negotiating position on Brexit

At the Conservative Party Conference in October the Prime Minister offered the first signs of clarity on her approach to Brexit. The Government would complete its preparations in time for Article 50 to be invoked by the end of March 2017 and the Prime Minister then signalled that we would be leaving the EU's primary economic architecture, the Single Market and Customs Union, in exchange for control over migration policy and to be free from the jurisdiction of the European Court of Justice (ECJ).

Since then, this timetable has received the consent of the House of Commons and, after the Supreme Court ruling that the invocation of Article 50 requires Parliamentary approval, an Act of Parliament will shortly pass to allow the Government to make this happen.

Furthermore, in her Lancaster House speech in January and the subsequent White Paper in February, the Prime Minister confirmed that the UK will seek a Comprehensive Free Trade Agreement (FTA). This again confirmed that the UK would "bring an end" to the jurisdiction of the ECJ, despite saying that the UK "Parliament has remained sovereign throughout our membership of the EU". It went further to say that we would "have control over the number of EU nationals coming to the UK", but with no policy detail over how this would be achieved.

Both red lines supposedly preclude membership of the Single Market and Customs Union, which the Prime Minister proactively ruled out.

However, it would not necessarily preclude full UK participation in the Single Market as members of the European Economic Area (EEA), the so-called 'Norway option'. Norway accepts the jurisdiction of the EFTA Court, not the ECJ. Indeed, the Government's announcement that the UK will be part of the EU's Unified Patent Court and desire to retain the same degree of co-operation over Justice and Home Affairs matters suggests there will be more flexibility in its position regarding the ECJ than the Prime Minister has suggested. Furthermore, as this paper will argue, there could be some flexibility over the application of the free movement of people within the EEA.

The Prime Minister's decision to end British membership of the EU Customs Union, which means British-made goods and agricultural products avoid EU tariffs and 'rules of origin', is driven by the desire for greater autonomy to pursue bilateral trade agreements rather than concerns over the ECJ or migration. This is based more on political showmanship than economic reasoning. The consequences of this move can already be seen in Nissan's shifting position, whose long-term commitments to the UK have now become conditional on the nature of the deal delivered and will depend on the nature of the customs co-operation agreement that is secured.

The Government's position, while on the surface and in tone reasonable, is characterised by extremes. On the one hand the Secretary of State for Exiting the EU has said that a FTA will deliver the "exact same benefits" as being in the Single Market, which is an extremely high bar given no EU Agreement with a third party affords comparable market access to being in the EEA. On the other hand, the same Secretary of State tells us that we must be prepared to leave the EU with no deal, voluntarily embracing an extreme degree of economic risk for which there is no precedent.

Eschewing any semblance of expectation management is likely to come to be seen as the Government's biggest strategic error, on both sides of the Channel.

Our EU partners have hardened their opposition to any special concessions to Britain in the negotiations. Rhetorically there is much insistence on the indivisibility of the 'four freedoms' of

the Single Market. This was summed up in the statement by Donald Tusk, the Anglophile Polish President of the European Council, who said that “the only alternative to a Hard Brexit is No Brexit.” The cumulative impact of Conservative rhetoric on immigration; dismissal of the interconnectedness of the four freedoms; and claims to have the upper hand over the EU (including due to the volume of Prosecco sales) has led some within the EU to stop seeing the Article 50 talks as a negotiation of partners to find a mutually beneficial solution. Instead many now see it as a more straight-forward issue of managing the fallout for the British and maximising opportunity for Europe.

Many on the British side interpret European tough talk as political posturing and take the optimistic view that ‘once politics are out of the way’, the strong mutual benefits in maintaining the closest possible trading relationship between Britain and the EU will prevail. It is true that many Continental business interests will have a strong wish not to disrupt UK trading ties, though others will consider the potential for gaining competitive advantage at the expense of their UK rivals.

More questionable though is the tacit assumption ‘political considerations’ will somehow fade in significance. 2017 is an election year in several key member states and political leaders in these and other member states do not want to give any hint to their populist opponents that an anti-EU policy can enable their populations “to have their cake and eat it”, in Boris Johnson’s classic but myopic and counter-productive statement of UK negotiating objectives. For our EU partners, the foremost political priority is to maintain the political integrity of the EU and they want to discourage domestic political opponents from arguing for special terms of membership at the expense of unravelling the ‘acquis’ of the EU as a whole. Just as the UK insists that it cannot ignore the assumed popular will of the June 23rd referendum on the question of EU migration, politics on the EU side will also take precedence.

Mrs May has three reasonably good cards when approaching negotiations, not least in trying to persuade our EU partners of the wisdom of concurrent discussions. What can the UK argue to strengthen our hand?

- First, given the close financial ties between the UK and the EU, a ‘hard Brexit’ is on balance ‘lose-lose’ all round and not just for Britain, not least because of EU economies’ reliance on UK capital markets.
- Secondly, the EU budget will face a significant gap on Brexit. If Britain offers a reasonable deal on winding up its obligations and continues to contribute its share of the EU budget during the transition stage of our withdrawal, and potentially beyond, this would ease the path to a deal. Britain could offer more permanent commitments to secure market access equivalent to the Single Market and persuade East and South East European member states that UK curbs on the migration of their citizens to Britain could be in their domestic interests. Such continuing budgetary contributions would be embarrassing for the Brexiteers who in the referendum famously promised the NHS £350million a week as a result of stopping EU contributions. This is not Mrs May’s personal problem, though it may still cause great difficulty with some Conservative backbenchers and the more prominent Brexiteers in the Cabinet.
- Thirdly, Britain is still a big player in defence, foreign policy and security, and it will be beneficial for all sides if political cooperation with Europe continues beyond Brexit. The offer of friendship and practical day-to-day cooperation, possibly in some new institutional settings, could give Britain added economic leverage. This means seriously working with our European friends and allies both in NATO and through a strong relationship directly with the EU, maximising our ‘security surplus’. It will not be helped if Britain’s top foreign policy priority becomes building a ‘special relationship’ with President Trump.

Timing is of course a major problem. The formal Brexit separation has to be delivered by spring 2019. It cannot make sense for a Brexit Britain to take part in the 2019 European Parliament elections. However, most experts believe that the kind of comprehensive trade deal Mrs May envisages cannot be negotiated in less than five to seven years. Even if its negotiation could by some miracle of negotiating flexibility and political will be achieved by 2019, its ratification could still take several years. For, while the Brexit treaty only requires European Council assent, the trade deal with the EU will almost certainly be 'mixed' and require ratification in each member state according to its own constitutional procedures. So there will be much speculation about Irish referenda and delayed ratifications in the Wallonian Parliament. A comprehensive new deal for Britain's relationship with the EU cannot avoid this.

This makes it essential that an interim economic and trade deal is agreed by 2019. If such an interim deal cannot be agreed, it becomes inevitable that Britain will be staring over the much-feared 'cliff edge' of a 'hard' Brexit and could end up trading with the EU on nothing better than WTO terms. This would represent, on the best possible interpretation, a severe economic shock. To avoid this eventuality in the run up to the 2020 General Election, the British Government would in all likelihood have to agree to continuing membership of the Single Market or something pretty near the present basis. A question of central relevance to the political feasibility of such a transitional arrangement is what reforms of free movement Mrs May might succeed in putting alongside an acceptable 'transition'.

The migration question in Britain

The Prime Minister insists that she remains committed to the Conservative manifesto goal of reducing net migration to the UK to the tens of thousands. This commitment includes migration from both the EU and outside the EU, and comprises all three of the main channels of motivation that drive inward migration to this country – to find work, join the rest of one’s family and to study – in addition of course to those who are refugees from persecution, tyranny and war.

Because of the EU referendum, the immigration debate in Britain has focused disproportionately on EU migration. Yet this is only a part of the migration question. It is worth first recalling the facts as set out in a June 2016 paper by David Metcalf, the Chair of the Government’s own Migration Advisory Committee¹

The proportion of the UK working age population that were born abroad doubled between 1997 (8%) and 2015 (16%). The 8 million people born abroad comprise 3.3 million from the EEA and 4.6 million from non-EEA, but over half this latter group are now UK citizens.

Before 1990 the inflow of migrants was always below 300,000. Since then it has doubled. The outflow has also risen but much more modestly. The upshot is that net migration which was mostly negative in the 1964-82 period, has since then climbed to 333,000 in 2015. The 333,000 figure comprises very similar numbers from outside the EU (188,000) and inside the EU (184,000). The major change over the last decade is the growth in the relative fraction of EU migrants.

The composition and absolute numbers of non-EU migrants has altered markedly over the past four decades. In the early 1990s the most common reason for non-EU migration was family reunification. Since 1997 work-related migration has consistently been larger than family related migration. But the most striking component is study. Between 2000 and 2010 migrants entering formal study trebled.... {though this} has fallen back a little since then and in 2015 totalled 112,000. By contrast work inflows dominate EU migration.

The purpose of this paper is not to carry out a detailed analysis of the immigration issue in Britain. But certain truths are evident from this plain statement of the facts.

First, immigration has not been an issue **caused** by our membership of the EU. The majority of the increase in non-British born people living in the UK is a result of immigration from outside the EU. And this has been true even in recent years when EU flows of migration have been at their largest since enlargement. It may well be that a majority of the public mistakenly believes that all of the sharp rise in immigration since the turn of the century is due to our membership of the EU. The public may imagine that it is only because of our EU membership that the UK is prevented from taking effective measures to control the entirety of migration to the United Kingdom. People may think that simply as a result of leaving the EU Britain can “take back control”. These would be misperceptions. But they would not be surprising given the way the media and now successive governments have addressed the issue of immigration.

Secondly, much of the immigration we have experienced in recent times is because of what most people would regard as “good things” about Britain. For one thing, we can boast universities and colleges that students from all over the world want to come and study at. The financial health of our university sector depends to a great extent on fee income from overseas students. The benefits are not just a question of money. In the higher education sector as well as the cultural, creative, digital and highly skilled sectors of the economy Britain excels because of the flows of talent from all over the world that we presently allow. High skill migration brings clear national benefits to the economy

1. Work Immigration and the Labour Market. David Metcalf, Chair Migration Advisory Committee and London School of Economics, June 2016

and the public finances: we would only be able to afford worse public services without it. But labour mobility is an essential component of a market economy at all levels, not just those classed 'high skill'. EU labour is also vital in our agricultural, care, hospitality, manufacturing and construction sectors, as Ministers themselves have recognised.

In the wider economy we now enjoy historically very high levels of employment. Migrants come here because there is a ready availability of jobs. There is no evidence to suggest they put native workers out of work, though they may have an impact on employer willingness to invest in upskilling a native workforce. Many companies and institutions have adopted business models that depend on a ready supply of migrant labour.

Who would fill these jobs if the Conservative Government attempted to fulfil its manifesto pledge to cut net migration to the tens of thousands? There would clearly be many tens of thousands of job vacancies and existing skills shortages – at all skills levels – would be exacerbated. Crops would rot unharvested; the building sites for the new housing and infrastructure Britain so desperately needs would be undermanned; NHS waiting lists would extend and the social care crisis be magnified. In many different sectors of the economy, presently-profitable businesses would not be able to recruit the staff they need. It should be plain to anyone of common sense that the Government should gather up the courage to abandon its “tens of thousands” pledge.

But this is not to endorse the view of those who claim that large scale migration is entirely unproblematic, especially of the low skilled. David Metcalf summed up the conclusions of all the academic work on **low skilled migration from both the EU and non-EU** in the following measured way:

The main benefits go to labour intensive-employers who often cannot get an adequate supply of UK-born labour. Migrants also gain via the higher UK income compared with that in their own country. Costs, often focussed in particular locations and sectors, include:

- *Rapidly changing populations with possible implications for cohesion and integration*
- *Congestion – extra pressure on housing, education, health and transport services*
- *A small negative impact on wages of low paid workers*
- *Serious exploitation of some migrants – it is difficult to estimate true numbers – because of inadequate enforcement of minimum labour standards.*

Low skilled migrants have a neutral impact on UK-born employment rates, fiscal contribution, GDP per head and productivity.

In other words, thousands of businesses will be in some difficulty if they cannot access a ready supply of low skilled migrant labour, and negative consequence that do arise are complex and often localised, and rarely solved by rapidly reducing numbers. Metcalf's analysis suggests the need for a wide-ranging domestic policy agenda of its own. The problem in the UK is not just EU rules on free movement, but the fact that successive governments have adopted a largely “laissez faire” approach to the migration question. Like so many of the issues that defined the EU referendum debate, the solution has its heart in domestic UK policy, covering the provision of public services, incentives to train and enforcement against exploitation.

The challenge for policy-makers is over-coming the trade-off inherent to the decision over the UK's relationship with the Single Market and the stringency of migration controls. British Future has shown that voters' attitudes to reducing the numbers of migrants is mixed. They have found that only a fifth of people want to cut immigration of skilled workers: more people would prefer the numbers of migrant doctors, engineers and scientists to increase. And while two-thirds of people

would like fewer low-skilled workers in future, that is not the case across the board: only one in four would cut the number coming to work in care homes, for example.²

Most people want both increased control and a continuation of the levels of free trade we have today, which may or may not be achievable depending in their interpretation of which controls or restrictions are necessary.³ Recent polling has shown, however, that when given a choice between full control of borders, people would still choose access to the Single Market.^{4/5} And there is some evidence to show that if people are given a stark choice between maintaining access to the single market or restricting free movement, people choose the Single Market.⁶ In one, 66% of respondents said the Government's priority should be to maintain UK access to the Single Market during Brexit negotiations, whilst 31% said they should prioritise restricting freedom of movement.⁷

Managing this tension makes it vital that the Government does all it can to maximise the chances of flexibility amongst our EU partners with whom we will be negotiating.

2. <http://www.britishfuture.org/wp-content/uploads/2016/10/Britains-immigration-offer-to-Europe.pdf>

3. <http://whatukthinks.org/eu/questions/is-full-access-to-the-single-market-or-freedom-of-movement-of-people-across-europe-more-important-to-you/>

4. <http://www.independent.co.uk/news/uk/politics/brexit-bmg-poll-hard-soft-theresa-may-david-cameron-eu-referendum-a7340641.html>

5. http://www.open-britain.co.uk/new_poll_reveals_public_support_for_single_market_membership

6. <http://whatukthinks.org/eu/questions/should-the-british-government-prioritise-maintaining-access-to-the-single-market-or-restricting-the-freedom-of-movement-when-negotiating-the-uks-withdrawal-from-the-eu/>

7. <http://www.comresglobal.com/polls/bbc-news-brexit-expectations-poll/>

Attitudes in other EU member states towards migration and free movement

It is repeatedly asserted that the UK will not be allowed to remain a member of the Single Market if it reneges on the Treaty of Rome's commitment to free movement of people as one of the four founding freedoms of the EU construction. The main rationale goes as such: free movement of people is both a functional and political key ingredient of European integration. It is functional in that it is impossible to envisage the utility of the other freedoms, particularly freedom of movement of services, without it; political in that many see it as a founding right of EU citizenship. To offer one Member State – or even one non-Member State that is still allowed to participate in the Single Market – the option to dis-apply its free movement obligations could lead to the eventual unravelling of the EU construction.

However, the position is more complex and potentially flexible as none of these freedoms are absolute. Free movement of goods within the Single Market is governed by the most complex set of rules and regulations that any economic system has yet managed to devise, which is why it works. As for free movement of capital, there are distinct limits because of the lack of progress on the harmonisation of tax rules and retail financial regulation. Free movement of services is still qualified as many member states have as yet fully to transpose and implement the 2006 Services Directive.

The debate on immigration is far from being an isolated British phenomenon. Opinion polls suggest Britons are the most lukewarm towards free movement among EU citizens, while they are, on average, more open to non-EU immigration than Europeans (see data in Annex 1). Nonetheless, immigration in one shape or another, be it asylum seekers, EU posted workers or permanent migrants is a huge political issue in many Member States. Tensions over migrants' access to welfare benefits exist everywhere in one form or another (refugees in Central Europe, posted workers in France, Romanian jobseekers in Germany). And these are not just minor technical policy questions. Concern about immigration and a reaction against the presence of foreigners in home communities is the driving force of populism everywhere: from the Northern League in Italy and Golden Dawn in Greece, through to the National Front in France and the AFD in Germany, to the Progress Party in Austria, the Dutch Freedom Party in the Netherlands, the Danish People's Party and the Swedish Democrats. Populism takes different forms – from fear of Islam to tales of migrant benefit scrounging – but it is a huge issue that threatens the whole future of integration across Europe.

The wave of populist forces will have an impact on EU Member States' governments' attitudes towards migration, which presents both risk and opportunity for the UK. On the one hand the EU27, without an answer to quell anti-establishment discontent, will rally around the status quo and will reject any suggestion of the EU ceasing to apply the four freedoms equally to all who participate in them. 'Cherry-picking' will remain very much an anathema in order to dissuade any of those who may perceive there to be benefits outside the bloc's structures.

However, the desire to be seen to have a response to popular concern over the social consequences of largescale migration will grow. For the reasons above, any agreeable solution would likely have to be applicable to the bloc as a whole – or all those who apply the four freedoms, for example those within the EEA – without exception. The desire for a response to intensifying public concern, therefore, raises the possibility of EU-wide reforms that are within the spirit of the freedoms as they stand. So while significant structural change is unlikely, reforms to the practical application of the freedoms could be considered. The proposed changes to the Posted Workers Directive or recent moves to tighten access to social security⁸ can be seen in this light. There may not, at this stage, be shared specific policy proposals, but rather there may be a recognition that there should be a greater degree of national discretion within the application of the freedoms.

8. <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2699&furtherNews=yes>

The 'special status' agreement reached by the UK can also be seen in this light, and for this reason was seen as significant on the Continent. In this agreement, the EU agreed that it is legitimate to take measures where an exceptional inflow of workers from elsewhere in the EU is causing serious problems to a Member State's welfare system, labour market or public services.⁹ This demonstrates that national discretion in the application of EU rules can be permitted.

Examples of support for such an approach can also be seen in, for example, the Dutch Deputy Prime Minister recently saying, "support for free movement is crumbling when people see that it turns out to be so unfair" and Britain leaving the EU "gives a unique opportunity to do this in a very different way".¹⁰ Other senior European figures, including former Danish Prime Minister Helle Thorning-Schmidt and former Finnish Prime Minister Alexander Stubb, have called for debates on the application of the free movement principle.¹¹

The European Commission has recently tightened up its rules on access to social security, saying that Member States may decide not to grant social benefits to mobile citizens who are economically inactive, meaning those who are not working nor actively looking for a job, and do not have the legal right of residence on their territory.¹² The EU Commission's Vice-President Jyrki Katainen has talked of understanding the "unwanted consequences" of freedom of movement: "To avoid misuse we must find a balanced solution which maximises the benefits and minimise the unwanted consequences. The Commission is looking into different alternatives, where social benefit issues play one part ... The freedom of movement of labour must be built on understandable and clear-cut rules. We must clarify how the social advantages emerge, and how we can take them with us."¹³

Furthermore, the Social Democrat Austrian Chancellor, Christian Kern, has called for the EU to reconsider freedom of movement rules and in particular consider discrimination in favour indigenous job-seekers. He has proposed a system whereby "only if there is no suitable unemployed person in the country can [a job] be given to new arrivals without restriction".¹⁴ He has also made clear, however, that any changes would apply across the bloc, rather than to the UK uniquely.¹⁵

Paul Nyrup Rasmussen, the former Social Democrat Prime Minister of Denmark (and the principal author of Denmark's highly praised 'flexicurity' policy) believes that free movement is being used in exactly the opposite way to the way its supporters in the early days of the Union envisaged. In his view the motivating principle behind the concept of free movement was that a worker, forced by economic distress to leave home to find work in another member state, should not be treated in a less favourable way than the citizens of that member state. Now free movement is being used by unscrupulous employers and businesses to legitimate the undercutting of wages and conditions by foreign workers.

What is extraordinary about the Cameron renegotiation and the current challenge Theresa May faces over Brexit is the inability of successive UK Prime Ministers to turn a British political problem into the search for a common European political solution. Somehow or other, Britain's own sense of its exceptionalism prevents the UK from leading a common European debate on a question that is central to our and their national concerns and interests.

It may be too late for the British government to use this widespread climate of concern about migration in order to lead a debate that change is needed in the common EU rules implementing free movement principles. On the other hand, pressure from populist parties to change the status quo has never been higher and is likely to have an impact on national policies after elections in the Netherlands, France, and Germany.

Below is an overview of the attitudes in Germany, France, the Netherlands and Nordic countries, and the Visegrád countries in the free movement debate. For each country or groups of countries, we

9. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/502291/54284_EU_Series_No1_Web_Accessible.pdf

10. <http://www.thetimes.co.uk/article/chancellor-to-banish-gloom-for-trade-tour-q3fkjn3h5>

11. ECFR's World in 30 Minutes: Brexit - Views from Europe, 28 June 2016

12. 13 December 2016, <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2699&furtherNews=yes>

13. Nordic Labour Journal, 15 December 2016, <http://www.nordiclabourjournal.org/artikler/insikt-og-analyse/insight-and-analysis-2016/article.2016-12-14.0704033123>

14. <https://euobserver.com/justice/136513>

15. <https://www.bloomberg.com/news/articles/2016-09-04/austria-spells-out-immigration-curb-as-red-line-in-brexit-talks>

look first at the general attitude towards reforming free movement, then at specific problems which have a political bearing.

Summary: Britain is not isolated in thinking that free movement should be better regulated. There is a real opportunity to generate a wider European debate for change and reform. This should go along however with a conciliatory approach to the concept of free movement; a calibrated acceptance of the ‘package logic’ of the four freedoms; and an understanding of the difficulty of reform proposals that could be rejected in light of populist pressures on our partners.

Hostility towards the UK Government is growing on the continent and a change in tone is urgently required if any reforms are to be achieved without seriously hindering market access. This would include acknowledging the EU27’s discrete interests, being clearer about our negotiation objectives, and being realistic about our obligations and inevitable trade-offs that will have to be confronted. There are also concrete actions that should be taken.

The UK Government should prioritise gestures of goodwill such as granting permanent residency to all EU citizens living in the UK who qualify for it; accepting more refugees from Northern France and elsewhere; signalling openness to the principle of ‘flexible solidarity’ put forward by Central and Eastern European member states; and not obstructing Western European member states on the revision of the Posted Workers Directive.

In the mid-term, as the Brexit negotiations unfold and economic interests come to the fore, pragmatism might prevail if Britain offers to treat EU migrants on a preferential basis and an agreement is set in the context of wider European reforms on migration and not just a special deal for Britain.

Germany

As the country the most worried about the unravelling of the EU-27, Germany is a staunch defender of free movement. Angela Merkel firmly resisted David Cameron’s plea to give the UK an ‘emergency brake’ on the number of EU migrants (the mechanism included in the February 2016 agreement limited the access to in-work benefits only). In October, the German Chancellor stressed that if the UK did not want to implement free movement of people, it would not be granted “full access to the Single Market.”¹⁶ This signals the difficulty for the UK to negotiate an ambitious free trade agreement if it does not accept labour mobility. This stance is largely shared in the ranks of its main coalition partner. SPD leader and Vice-chancellor Sigmar Gabriel said in August that the UK would need to pay the price for exiting the EU since EU stability was at stake.¹⁷ On the other hand, Gabriel is deeply conscious of the risk that the Social Democrats are losing their working class support to the AfD – and the main reason is migration.

The right-wing populist Alternative for Germany (AFD) is the only openly anti-migrant party in Germany. Nonetheless, though initially set up as an anti-euro party, its success is based on the anger at Angela Merkel’s welcoming policy towards asylum seekers from Syria, rather than on anti-EU migrant sentiments. AFD leaders hailed Brexit, but the party’s ratings dropped after the British referendum.

16. <http://uk.reuters.com/article/uk-britain-eu-germany-merkel-idUKKBN12F0DU>

17. <https://www.theguardian.com/politics/2016/aug/29/uk-must-pay-for-brexit-or-eu-is-in-deep-trouble-says-german-minister>

The integration of more than one million migrants who arrived in 2015 is the main policy challenge faced by Germany in the field of migration. Germany has three major priorities at EU level. First, the creation of the EU's Border and Coast Guards agency represents a major step towards securing the EU's external borders. Second, the German Government stands firm behind the EU-Turkey deal on refugees despite deteriorating relations after the failed coup attempt against the Turkish President Erdoğan in July 2016. This position has become precarious since several EU leaders now openly denounce Merkel's agreement to reopen Turkey's EU accession negotiations. Third, the revision of the Dublin regulation to help member states who are the first point of arrival for asylum seekers and the setting-up of a fair distribution mechanism across the EU remains a priority at EU level. In the short-term, the German Government has signalled its willingness to deport migrants who do not qualify for asylum.¹⁸

When it comes to EU internal migration rules, Germany supports the revision of the Posted Workers Directive. But the most spectacular move by the Government has been a draft bill in October, which dramatically toughens conditions in which EU migrants can access out-of-work benefits. EU jobless workers would not be able to access benefits before five years of residence, unless they are entitled to benefits from their previous employment (i.e. unless they have paid into the system). This bill would overrule a German Federal Services Court ruling from December 2015 according to which jobless EU migrants were entitled to some social benefits after six months.¹⁹ The draft new bill is deemed to be compatible with EU law based on Dano and Cuevas cases (2014, 2012). Politically, it corresponds to a long-time demand of the Bavarian right-wing CSU, a key coalition partner for Angela Merkel.

France

French President François Hollande is probably the most vocal EU leader in favour of a firm attitude towards Britain over Brexit. The Front National's pressure goes a long way in explaining why the French Government is taking a hard stance. President Hollande fears that any hint of compromise would fuel Front National claims that there is a life outside the EU. At the core of Marine Le Pen's programme is the pledge to renegotiate EU treaties to transform the EU into a purely intergovernmental organisation. Member states would recover their sovereignty and border controls would be re-established on a permanent basis.

In substance, however, Hollande's declarations amount to pretty much the same as Angela Merkel's ones: there cannot be Single Market participation à la carte; the EU's fundamental principles must be respected; and the UK cannot get a more favourable status outside the EU. On free movement, France was open to discussing issues such as welfare tourism, posted workers and arranged marriages during the British renegotiation of 2015-2016. It feared above all the prospect of treaty change and therefore flatly rejected any deviation from the non-discrimination principles enshrined in the Treaty on the Functioning of the European Union (Article 45). After Brexit, the French government keep pushing for the tightening of the posted workers regime and for better social security coordination (see chapter 2).

The Socialist Party parliamentary majority, in line with traditional approach to EU affairs on the French left, has been particularly vocal against social dumping in recent months. Guillaume Balas MEP and Philip Cordery MP tabled reports demanding in particular a European minimum wage rule and the creation of a body of cross-border labour inspectors to carry out on-the-spot checks in suspected cases of social dumping.²⁰ The European Pillar of Social Rights announced by the European Commission for 2017 is seen as an opportunity to advance such an agenda.

18. <https://www.rt.com/news/362924-merkel-rejected-migrants-deportation/>

19. <https://www.ft.com/content/25bec884-0d52-11e6-9cd4-2be898308be3>

20. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BCOMPARL%2BPE-571.622%2B01%2BDOC%2BPDF%2BV0%2F%2FEN> and <http://www.assemblee-nationale.fr/14/europe/rap-info/i3856.asp>

Nicolas Sarkozy was probably the Presidential candidate most sympathetic to Theresa May's tough stance on immigration. Of the current mainstream contenders, Emmanuel Macron has been very firm that there will be an economic cost to leaving the Single Market, going as far as to directly invite UK-based companies to relocate to France; and Francis Fillon's rhetoric is close to François Hollande's, that the top priority must be the integrity of the EU-27.²¹

A highly corrosive issue which weighs heavily on French leaders' attitude towards Britain is the situation in Calais and Northern France. The sentiment that British media and politicians keep lecturing the French but refuse to take their fair share of the burden is widespread in Paris. Under extreme pressure from the right-wing opposition and the Front National, the Government recently dismantled the Calais jungle but it has so far refused to demand the renegotiation of the 2003 Touquet agreement establishing juxtaposed controls on each side of the Channel. Such a demand has been repeatedly aired by politicians on the right of French politics.

Calais is a separate issue from the Brexit negotiations. However, there is no doubt a constructive British attitude on helping the French find a sustainable solution to the problem could score points. The willingness to take child migrants who have family in the UK is a first positive step, but there is certainly scope for more significant gestures.

The Netherlands and Nordic countries

The Netherlands and Nordic countries are without any doubt the most affected by Brexit and remain London's best friends. They carry significant weight in discussions in Brussels. It would be natural for the British Government to seek sympathy in The Hague, Copenhagen, Stockholm and Helsinki. But by doing so, it should avoid giving the impression that Britain is trying to split the EU-27.

Furthermore, despite genuine sorrow and anxiety about an EU without Britain, the Netherlands and Nordic countries have made clear that they would not allow cherry-picking. Backing comments made by Angela Merkel and François Hollande, the Dutch Prime Minister, Mark Rutte, who is facing a difficult election soon, recently said the Single Market was "not a menu to choose from."²² The Danish Prime Minister, Lars Løkke Rasmussen, said he wanted a friendly divorce. Both are confronted with populist parties enjoying high opinion polls, especially the Dutch Freedom Party, which is tipped by some to come first and whose leader, Geert Wilders, has previously said he wants to leave the EU outright.

Sweden has defended freedom of movement firmly, mainly for idealistic reasons. In Stockholm, the understanding of the four freedoms as a package is strong across the political spectrum. The consensus may be less strong in the Netherlands and in Denmark. Both countries have been experiencing a strong anti-immigrant backlash for several years. There was some clear interest in Copenhagen and The Hague in David Cameron's renegotiation demands touching upon EU migrants' access to benefits. On 30 June Danish PM Rasmussen said the British deal "contained a lot of good things championed by Denmark. That's why I'm very much hoping that chapters of Britain's deal will once again be the subject of serious discussion."²³ Likewise, in the Netherlands, a motion tabled by a VVD (centre-right) MP was adopted in March. It invited the Government to implement the provision on child benefit indexation as soon as possible.²⁴ The Dutch Government coalition is pushing very hard for the revision of the Posted Workers Directive. The Dutch MEP Agnes Jungerius (S&D) is co-rapporteur on the text in the European Parliament, and several Dutch MPs took the floor to back the proposal at an inter-parliamentary meeting organised in Brussels on 12 October.

It would not be surprising to see the debate on general free movement rules re-surfacing in either country. Dutch Deputy Prime Minister Lodewijk Asscher is already calling for reforms. However,

21. <http://uk.businessinsider.com/francois-fillon-french-election-candidate-hard-brexit-eu-le-pen-2016-11>

22. <http://www.politico.eu/article/the-netherlands-mark-rutte-tries-to-keep-a-lid-on-nexit-brexit-eu-jan-roos-geert-wilders/>

23. <http://www.bloomberg.com/news/articles/2016-08-08/that-moot-anti-brexit-eu-migrants-plan-is-alive-and-kicking-in-denmark>

24. <https://zoek.officielebekendmakingen.nl/dossier/21501-31/h-tk-20152016-60-14?resultIndex=19&sorttype=1&sortorder=4>

25.

as the influential foreign policy think tank Clingendael noted, Dutch policy-makers may have contradictory instincts: on the one hand they favour free movement restrictions; on the other hand, they much prefer labour-market flexibility and labour mobility to solve Eurozone imbalances rather than resorting to financial transfers.²⁵

Visegrád countries

The Visegrád countries (Poland, Hungary, the Czech Republic and Slovakia) are usually said to be the most reluctant to making concessions on free movement. The freedom to travel and work in the rest of the EU is considered as a vital interest. Over the past 15 years, Single Market competition has substantially transformed Eastern European economies. The emigration valve has allowed countries to keep unemployment at a reasonably low level and salaries to rise. Remittances from nationals working in Western Europe have also contributed to raising living standards at home. In 2015, EU workers from the EU-8 countries (Visegrád countries, Baltic countries and Slovenia) living in Germany and the UK sent home a total of £7 billion. For Latvia, Lithuania and Hungary, remittances from family members living abroad (EU and non-EU) represented between 3 and 6 per cent of GDP.

Nonetheless, imagining the Visegrád countries as an antagonistic block to UK concerns is unjustified. In September, the Slovak Prime Minister Robert Fico made the headlines when he declared that the Visegrád Four stood ready to veto any Brexit deal restricting their citizens' right to work and live in the UK. But this declaration referred to citizens already living in the UK rather than future movers. The Czech Foreign Minister quickly distanced himself from Fico's words by making clear this was not the Visegrád's official position. These post-Brexit declarations have probably been influenced by the rise in hate crimes in Britain against Eastern Europeans. There are also reasons to think that the Visegrád countries will use free movement argument as a negotiating card rather than defend it for the sake of it.

Poland, in particular, wants to keep a good relationship with Britain. The governing Law and Justice party is a close ally of British Conservatives in the European Parliament. Both parties share the same vision of an intergovernmental Europe and distrust EU institutions. The Polish Government also knows that the country would greatly benefit from retaining young, skilled workers. They could be very interested in a financial deal with Britain. Poland and Hungary both have a difficult relationship with Brussels in the wake of constitutional reforms which are deemed to violate EU fundamental rights. They desperately need allies. At stake are also the billions of Euros both countries receive in EU structural funds.

Finally, British policy-makers should keep in mind that two main items preoccupy the Visegrád countries. First, they remain under pressure to accept more refugees and try to find an acceptable solution. Their rejection of the burden-sharing mechanism proposed by the Commission has considerably limited the possibilities to revise the Dublin regulation – an essential priority for border countries such as Greece and Italy. At the Bratislava summit, the Visegrád countries put forward the notion of “flexible solidarity”, under which countries with less experience and resources could help manage the refugee crisis through ad hoc, bilateral contributions rather than by receiving a quota of asylum seekers.²⁶ Angela Merkel welcomes the constructive spirit of the proposal, which chimes well with the idea of a more flexible, less ‘one-size-fits-all’ EU. Britain could take some inspiration from the contributory principle underpinning it.

The second explosive item is the proposed revision of the Posted Workers Directive. By posting about 430,000 workers (2014 figures) to other EU countries, Poland is the country with the highest differential between the number of posted workers sent abroad and those received at home.²⁷ Countries like Latvia, Slovenia, Slovakia, Hungary and Romania also take significant advantage of

25. https://www.clingendael.nl/sites/default/files/The_European_Asscher_agenda_Policy_Brief_Clingendael_nov_2015.pdf

26. <https://www.euractiv.com/section/justice-home-affairs/news/flexible-solidarity-becomes-new-tool-in-response-to-refugee-crisis/>

27. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579001/IPOL_STU\(2016\)579001_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579001/IPOL_STU(2016)579001_EN.pdf)

temporary mobility. Overall, there has been a sharp increase in posted workers across Europe (of 44 per cent) between 2010 and 2014. The Commission has proposed a revision to legislation mandating contractors to remunerate posted workers at a level in line with rules set by law or collective agreements. In May 2016, 14 parliaments from 11 member states sent reasoned opinions claiming that the proposal was in breach of the principle of subsidiarity. The Commission has rejected these claims and maintained its support for EU legislative revision. Negotiations are now starting in the Council and are expected to be tough between Western and Eastern countries.

Conclusion

This brief analysis suggests that there is plenty of scope for a skilful UK government to present its Brexit demands on free movement in the wider context of a happier outcome to the migration question in Europe. The key psychological and strategic shift required is for the UK to change its approach from presenting “demands” to seeking a Brexit where Britain can continue to be an effective partner of the EU in solving its migration problems.

	General attitude towards free movement of people	Main political problems in the field of immigration	Priorities for EU policy agenda	How to arouse sympathy
Germany	Strong defender of the principle, but open to non-discriminatory regulatory measures	Refugees	Fight against welfare abuse and social dumping	Adopt a more constructive attitude towards refugee crisis and towards EU stability
France	Strong defender of the indivisibility of the four freedoms	Refugees (Calais) Posted workers	PW Directive revision Fight against welfare abuse and social dumping	Adopt a constructive stance in discussions on PW Directive Help smooth the situation in Calais and Northern France
Netherlands and Nordics	Strong defender of the principle, but open to non-discriminatory regulatory measures	Refugees Posted workers	PW Directive revision Fight against welfare abuse and social dumping	Support revision of social security coordination regulation (esp. child benefit indexation)
Visegrád countries	Economic interest in the status quo Free movement seen as a main bargaining chip	Refugees	'Flexible solidarity' in the refugee crisis Avoid negative consequences of PW Directive revision	Support 'flexible solidarity' Offer a financial settlement

Possible options for a deal on free movement

If Mrs May is to keep her domestic promises, the complexities of the new UK-EU relationship would involve new controls on EU migration. It is unclear whether the Government will want to operate these controls internally through National Insurance numbers, employers, a new regime of work permits for specific sectors and localities in the UK, or to introduce visa controls for all EU and British citizens as they move across EU/UK borders. It is almost certain that a policy change of the latter type would immediately be reciprocated. While the Brexiteers do not seem to worry about the burden of additional bureaucracy for business that new internal controls on migration are bound to introduce, Ministers may be mindful that they do not want to be blamed for introducing a 'Continental holiday tax' on British visitors abroad.

This contribution starts from the assumption that keeping the closest relationship possible is, for the UK and for the EU, the most desirable outcome from an economic and geopolitical perspective. If the UK were to garner sufficient goodwill to negotiate reform to the application of free movement, what could technical options be for an immigration policy which would least disrupt both Britain's Continental market access and the British labour market?

Summary: If Britain decided to stay a member of the Single Market, to honour the result of the referendum it would also need to successfully negotiate some concessions on the practical application of free movement. Such reforms would sit within the context of having a system that is preferential for EU nationals and which values labour mobility.

The UK could seek, as an example, to negotiate arrangements along the lines of what Switzerland is trying to negotiate - namely prioritising local residents when advertising vacancies, combined with introducing a sector-specific 'emergency brake' mechanism.

Over time, the argument that the application of free movement exactly as at present is not an economic pre-condition to Single Market participation may gain force and the potential for EU-wide reform could open up.

From an economic perspective, continuing to participate fully within the Single Market is the most desirable outcome of the Brexit negotiations, both for Britain and the EU. Based on the view that the Brexit vote was driven in part by unrestricted migration of EU workers and people into the UK, the British government should try to carve out an arrangement that increases control while preserving the open trade on which we rely.

Alongside specific measures such as those noted above, the UK would need to embrace as a principle preferential arrangements on labour mobility which would establish a distinction between EU and non-EU nationals. Indeed, treating EU nationals on the same footing as non-EU migrants in the context of the UK's general policy would be perceived very negatively in other EU member states and could result in a harsh trade settlement. Geographic interdependence and historical ties give plausibility to the claim that there should be preferential migration terms between the UK and other European countries. Although the UK is a net receiver of EU workers, there are more than 1.2 million UK nationals living in other EU countries.

The British Government's approach should be to stress the strategic importance of close political and economic links between the UK and its European partners. Over time, the UK should stress the absence of a water-tight economic link between market participation and free movement of people as at present.

The Brussels-based think tank Bruegel did controversially lay out the vision of a 'continental partnership' which would offer the UK (and other neighbouring countries) full access or participation to the Single Market and limited exemptions from the freedom of movement in exchange for a contribution to the EU budget and the implementation of EU legislation.²⁸ The paper's authors argue that the four freedoms are the Single Market political constitution, but that they do not constitute an economic necessity. At most, they write, "some degree of labour mobility is an essential counterpart of the free flow of goods, services and capital." Over time, these arguments could gain more weight.

As a starting point, however, the UK Government should do two things.

First, Ministers must communicate the existing curbs that exist and demonstrate that they are being vigilant about how current rules are being applied. Almost all EU citizens have the right to live in another EU country for three months without any conditions or formalities.²⁹ It is incorrect to say we do not have control. The UK can impose exceptions to this right on the grounds of 'public policy, public security or public health'.³⁰ EU nationals seeking work have the right to reside in the UK for six months without restriction. After six months they can stay in the UK as long as they carry on looking for work and have a 'genuine chance' of finding it.³¹ If they want to claim UK benefits during this time they must take a 'genuine prospect of work' test.³² EU nationals who wish to live in the UK for more than three months and are economically inactive (not in work or looking for work) can only do so if they have enough resources not to be a burden on the UK.³³ The UK Government could do much more to enforce these rules and show that they are doing so.

Second, Ministers should return to what David Cameron obtained in February 2016. A significant number of member states are interested in enshrining restrictions on EU nationals' access to benefits into EU law. The Government should therefore seek to return to some of the policies within the 'special status' agreement, specifically:

- an 'emergency brake' to allow the UK to restrict newly arrived EU nationals full access to in-work benefits for up to four years;
- not paying means-tested unemployment benefits to EU nationals who come here as jobseekers;
- cutting Child Benefit for EU nationals whose children live abroad, so payments are at a rate that reflects the conditions – including the standard of living and child benefit paid – of the country where their child lives.

British policy-makers could also observe that countries participating in most or all of the Single Market implement a qualified form of freedom of movement and seek to negotiate a wider reform package.

28. <http://bruegel.org/2016/08/europe-after-brexite-a-proposal-for-a-continental-partnership/>

29. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_3.1.3.html

30. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_3.1.3.html

31. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_3.1.3.html

32. <http://www.itv.com/news/2016-02-03/what-benefits-can-eu-migrants-claim/>

33. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_3.1.3.html

The Swiss deal

According to the EU mobility report 2015, 1 million EU citizens live in Switzerland. This represents 65 per cent of total foreign residents, and 12.5 per cent of the Swiss population. In early 2014, the Swiss voted by a very narrow majority (50.3%) in favour of a popular initiative backed by the right-wing populist Swiss People's Party. The initiative aimed to limit immigration by introducing annual quotas and give Swiss residents priority in recruitment. The EU response to the proposed constitutional change was to stress that the Single Market's four freedoms are "indivisible" (European Council conclusions, December 2014). Because it decided, on the basis of the vote, not to ratify the Protocol extending the free movement of people agreement to Croatia, Switzerland was granted only temporary and partial participation to Horizon 2020 and Erasmus + until December 2016.

In December 2015, the Swiss Federal Council (government) stated that it sought to reach *"a mutually acceptable solution which respects the constitutional provisions while complying with the Agreement on the Free Movement of Persons (AFMP)". In parallel, it worked to "draft a unilateral safeguard clause [...] to allow the independent control of immigration by imposing temporary and targeted restrictions on permits for persons from EU/EFTA states."*³⁴

However, in acknowledgement that Switzerland's access to the Single Market was at risk, the Swiss Parliament adopted an alternative scheme that was welcomed by the European Commission.³⁵ In occupational categories where unemployment is above average, companies would have to notify local job centres of vacancies. Local residents will then be given priority for interview before employers are able to recruit from overseas. While there are exemptions, for example for family firms, companies that violate the law will face fines of up to 40,000 Swiss francs (£31,000).³⁶

If these measures do not work, affected regions can propose other exceptional measures to Parliament, with evidence of economic stress in particular sectors or regions. Such measures would have to be compatible with the agreement on free movement with the EU and would, therefore, need to be approved by the Swiss-EU joint committee on free movement.

As a result of rejecting quotas, Switzerland's trade arrangements with the EU have been preserved and Switzerland has been allowed to re-enter the Horizon 2020 programme and discussions are under way about re-entering Erasmus+.

The Swiss proposals build on existing arrangements. In 2014-2015, during the negotiation of the revamped EURES regulation, the UK Government was instrumental in securing provisions which allowed member states not to publish the vacancies available on the public placement database (Universal Jobmatch in the UK) at European level. This would be possible *"following an objective assessment by the employer of the requirements relating to the job in question, namely specific skills and competences required in order to adequately perform the job duties, on the basis of which the employer justifies not publishing the vacancy for those reasons alone"*.³⁷

Under Article 45(4) TFEU, non-discrimination rules do not apply to public employment. According to European parliament's brief, "this derogation has been interpreted in a very restrictive way by the Court of Justice, according to which only those posts involving the exercise of public authority and of responsibility for safeguarding the general interest of the state concerned (such as its internal or external security) may be restricted to its own nationals".³⁸ The canton of Geneva has nonetheless used this derogation very extensively by putting in place a system of local preference which has inspired the national debate. Not only in public administrations but in all publicly-funded organisations, such as the public transport authority, hospitals and care homes, do employers have to advertise vacancies through the public placement agency 10 days before using any other channel. They also have to justify the reason why they decide to hire from abroad when there are competent

34. <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-59812.html>

35. http://ec.europa.eu/news/2016/12/20161222_en.htm

36. <http://www.thelocal.ch/20161213/swiss-parliament-reaches-agreement-on-eu-immigration>

37. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:107:FULL&from=EN> See also <http://www.telegraph.co.uk/news/uknews/immigration/11300940/British-job-adverts-will-only-be-advertised-for-British-workers-in-new-EU-deal.html> on the British position at the time.

38. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_3.1.3.html

local applicants. As a result, in 2015, 1,829 people have been hired through the public placement agency over 2,835 vacancies.³⁹ The European Commission is said to be critical of the scheme, but have not challenged it so far.⁴⁰

The new Swiss proposal goes further than this, obliging individual employers in occupational categories with an above-average unemployment rate to advertise vacancies locally to Swiss residents – i.e. Swiss nationals and others who had earned residency rights. Employers and local job centres would then be expected to propose domestic candidates, whom the employer would be obliged to interview.

If the UK were to adopt such a measure it would go further than current practices, which only apply to employment agencies, with no specific legal requirement for an employer to advertise vacancies locally. In a UK context, this would mean UK nationals and those with residency rights – i.e. those who had been in the UK for five years or more – being prioritised for vacancies. Such a move could enhance fairness within the system. With opportunities offered first to locals, they could not then argue that EU workers were unduly taking work they themselves would like.

Free movement of labour

Another option would be to argue for free movement being stripped back to something approximating its pre-Maastricht form, more clearly limited to the free movement of labour as opposed to people in general, without the rights associated with European citizenship, i.e. non-discrimination in the area of welfare and access to services. Last year, according to the ONS, ‘only’ 57% of EU migrants arrived with a definite job offer.

Such a position would appear to be in line with the Treaty on the Functioning of the European Union, Article 46(d) of which explicitly states its intention to balance supply and demand within the labour market: ‘by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.’⁴¹

In theory therefore, limiting free movement to such people could not only reduce overall numbers, but also reassure people as to the quality/calibre of migrants arriving. That said, it is not hard to see how loopholes in the system could be exploited, for example EU migrants could arrive here as tourists, find a job and then go home before coming back with their ‘concrete job offer’.

Sector-specific emergency brake

Inherent within the existing Swiss arrangement is the recognition that action can be taken in exceptional measures. Article 14 of the Swiss-EU Agreement says:

‘In the event of serious economic or social difficulties, the Joint Committee shall meet, at the request of either Contracting Party, to examine appropriate measures to remedy the situation. The Joint Committee may decide what measures to take within 60 days of the date of the request. This period may be extended by the Joint Committee. The scope and duration of such measures shall not exceed that which is strictly necessary to remedy the situation. Preference shall be given to measures that least disrupt the working of this Agreement.’

39. <https://www.letemps.ch/economie/2016/10/16/geneve-frontaliers-dont-personne-ne-veut>

40. <https://www.letemps.ch/suisse/2016/05/30/preference-nationale-mode>

41. Treaty on the Functioning of the European Union

This is similar to Article 112 of the EEA Agreement, which says:

'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.

'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. The safeguard measures shall apply with regard to all Contracting Parties.'

Under this model, free movement would continue in broadly its current form but both countries can, in theory, apply restrictions based on criteria which could be one or a combination of: the total number of EU migrants in any given year exceeding a certain threshold; an increase in UK unemployment; downward pressure on wages caused by migration; significant strains on public services.

Should the UK adopt such an arrangement, when conditions were met the government could impose restrictions on the rights of EU nationals to work in the UK, for example by barring them from working in specific (typically low skilled, low wage) sectors until the situation has been resolved. This could be determined by a body comprised of UK, EU and independent experts.

It is important to note in the Swiss plan that activation would need to be agreed by a Swiss-EU joint committee and Switzerland acting unilaterally would trigger retaliation measures from the EU. The UK would have to argue for the ability to use such measures unilaterally, but there would inevitably be a role for the EU in ensuring the outcome was of mutual interest and based on verifiable evidence of economic stress.

Such an arrangement would give a significant degree of control to correct negative labour market outcomes should they arise. This appears one of the easiest alternative arrangements to negotiate within existing EU structures and could allow UK to maintain its full participation within the Single Market. This would still allow for a liberal flow of migrants into the UK at most times, thereby meeting the needs of businesses and the economy, and would allow UK nationals to continue exercising their free movement rights to other EU member states - though similar safeguards could be applied against them under a reciprocal arrangement.

Norway and Iceland have never activated the safeguard provisions attached to the freedom of movement chapter of the EEA agreement, but its existence demonstrates that migration posing a threat to the character and economy of an area could legitimately be argued as justifying some form of control over free movement that was specific to sectors or regions, for example towns like Boston in eastern England that have seen marked, visible and sudden changes in their character and identity as a result of migration.

Options to avoid

Some mistakes should be avoided. Putting in place an aggressive skill-based migration system will not be in the interest of countries wary of further brain drain like Poland. Limiting the portability of benefits could go against the interest of France, Spain and Cyprus, all three being net receivers of UK migrants. British pensioners often contribute to revitalising local economies and public services.⁴² Students should also be exempted from any controls. EU nationals represented 6.4 per cent of students in British universities in 2014-2015 (approximately 125,000 people). This is less than Asian students, but still represents a significant source of revenue for British universities. Participating further in Horizon 2020 and Erasmus + is also highly desirable for the UK.

42. A Migration Watch UK puts it: "Many of the British emigrants to Europe, especially Ireland, Italy, Germany, Cyprus, France and Spain, are self-sufficient retirees so the numbers in employment are fewer than the total number of residents." <https://www.migrationwatchuk.org/briefing-paper/354>

43. According to Higher Education Statistical Analysis: <https://www.hesa.ac.uk/data-and-analysis/students/international-study>

The UK could introduce permits for high-skilled workers only, barring low-skilled workers. While this would potentially initially seem popular, our view is that this would cut the numbers coming in to the country to an economically deleterious level, leading to skills shortages in key sectors such as agriculture, construction and care, increasing borrowing and ultimately limiting economic growth. This would also exacerbate skills shortages that exist at the lower end of the labour market.

Changes in UK domestic policy that could reduce migration

The paradox of the British debate on migration is twofold. It has concentrated almost exclusively on EU migration which represents at half the problem, or the benefit, depending on one's perspective. The focus has been on stopping migrants at the border – not on changes in domestic policy that might in time both reduce employer demand for migrant labour and make its impact more socially and economically acceptable.

A 'hard Brexit' would in one sense contribute to reducing the scale of the problem. Economic growth will be slower than it otherwise would be and there would therefore be fewer jobs available, which are the principal 'pull factor' in migration to the UK. On the other hand, the squeeze on real wages and living standards that this would cause may only intensify the current populist feeling. In the public mind the squeeze on living standards since the 2008 crisis has been associated with the surge in EU migration, even though most economic analysis suggests that the link between migration and wages is small and very limited.

If a 'soft Brexit' is to be attained and become politically acceptable in the UK, domestic action on migration should be a high priority. To respond to the message sent by voters on June 23rd, there can be no business as usual on migration.

The Government has already acknowledged some of the mistakes it made in the last Parliament, for example through the restoration of a Migration Impact Fund, though we wait to see whether this will be properly financed and with the ability to respond quickly to localised economic impacts; and a restitution of some of the earlier cuts in public sector training budgets which have left the NHS scouring for doctors, nurses and other paramedics across the Continent.

Under the Labour, Coalition and Conservative administrations, the inability of central government to identify quickly the strains that migration would pose on housing and public services and act on them has been a Whitehall failure of planning. The Government should have been able to identify where housing shortages were acute, where overcrowding and waiting times in doctors' surgeries, A&E and maternity departments were becoming intolerable, and where teachers needed extra help to cope with children speaking a wider range of languages in their classrooms. Where there should have been coordinated data collection and monitoring by Whitehall as a basis for ministerial action, there has been inertia.

Similarly, enforcement of minimum wages and labour standards has been lacking. There was a step forward with the establishment of the Gangmasters' Authority. But the Wages Inspectorate has lacked the resources to enforce the minimum wage and other basic labour rights. If we are to have laws, they should be obeyed. In the absence of such enforcement, stories of abuse are magnified in the public mind and little is done to ease community tensions. There is still time for these weaknesses to be addressed.

There is however a much bigger point.

Too many business models have become dependent on a ready supply of low skilled labour. It has become too easy for many employers to rely on bright, enthusiastic and 'eager to earn' EU citizens and neglect the training and upskilling of British workers. Too many companies are locked in what economists would call a 'low skill equilibrium'. How can Britain break out of this?

Some of the elements of reform are either in place or in conception. The Government has introduced a 'training levy' on employers: this recognises the existence of a crucial market failure that no firm

will invest much in training if its rivals can avoid the costs of training by poaching workers other companies have trained.

But the Government should go further. The worst failings of the British labour market and training system appear to be concentrated in particular sectors: construction, social care, hospitality, food processing. The Government should consider the creation of statutory Wage and Training Councils in these problematic sectors with a remit to raise skills and productivity, enforce wage standards and offer new employment opportunities to young people whom our school system has failed or whose parents live in areas where decent jobs are sparse.

These Councils should contain equal numbers of employer and employee representatives, but like the Low Pay Commission have an independent chair to ensure clear decisions where consensus is impossible to achieve. These new Councils should have statutory authority over wages in their sector and be responsible for supervising training in the sector. They should have the budgetary capacity to ensure employers are offering an adequate number of training places and apprenticeships. Not only would these Councils be responsible for enforcement of minimum wage legislation in their sector; they would also set higher statutory minima for employees who attained recognised skills, giving employees a clear incentive to train and employers a similar incentive to redesign the way work is organised in order to make use of a more productive workforce.

Such a system would not discriminate directly against migrants – but through its control of training budgets it would encourage employers to recruit young people from British schools and create new opportunities for them. The target should be the third of our school leavers who still fail to secure five decent GCSEs. This will require the Councils to be in a financial position to offer additional support to employers for young people whose basic educational standards need to be brought up to scratch. The Councils should also have targets to recruit young people from parts of the country with fewer job opportunities and lower labour market participation.

Britain needs to make this effort on behalf of our own disadvantaged young people if public confidence is to be rebuilt in an open and tolerant society.

Annex 1: General attitudes on immigration and free movement

Britons have, on balance, more favourable views on ethnic or religious diversity than the rest of EU countries⁴⁴, and of immigration from outside the EU. At the same time, they are the ones who support EU freedom movement of people the least.

Figure 1: Support for “the free movement of EU citizens who can live, work, study and do business anywhere in the EU” (%). Source: Eurobarometer Standard 85 (May 2016)

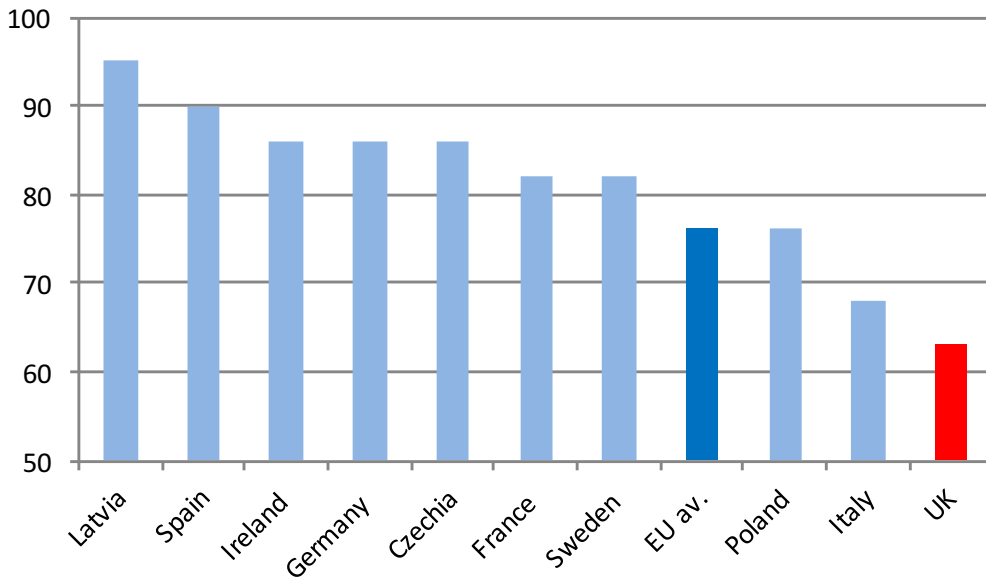
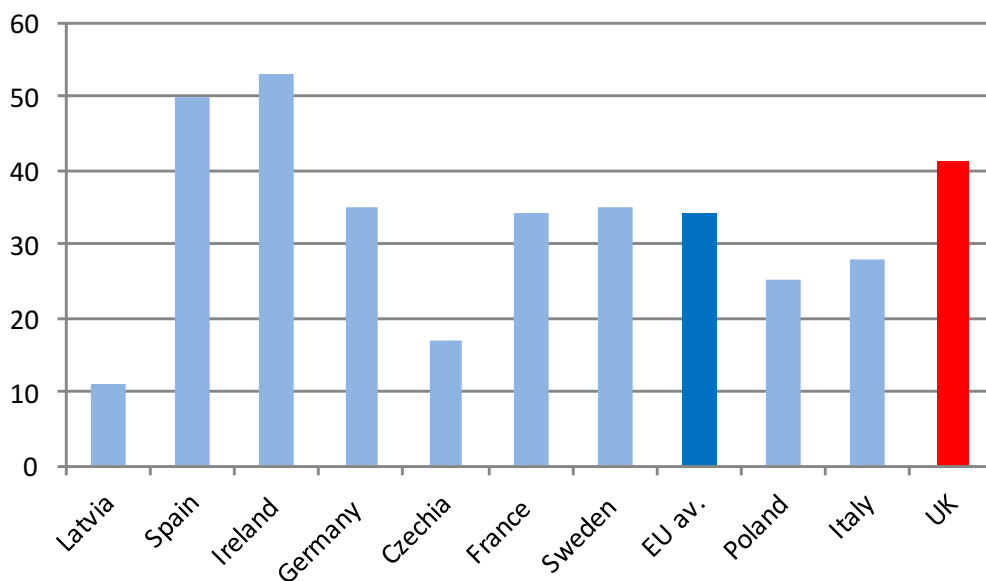


Figure 2: Positive feelings associated with “immigration of people from outside the EU” (%). Source: Eurobarometer Standard 85 (May 2016)



44. See Pew Research Centre: <http://www.pewresearch.org/fact-tank/2016/07/12/in-views-of-diversity-many-europeans-are-less-positive-than-americans/>

Annex 2: Brussels roadmap in the field of labour mobility and social affairs

In its Work programme 2016, the Commission announced a “labour mobility package” which consisted of a communication on labour mobility and two legislative revisions. Implementation was delayed, in part due to the British renegotiation. The communication on labour mobility has not been published yet, and might now not be published at all.

In March, the Commission tabled a revision **Posted Workers Directive** (96/71/EC) which introduces significant changes in the regime of posted workers. Currently, companies posting workers to another country are not obliged to pay them above the minimum wage level of the receiving country and to offer them the same advantages as local workers. The proposal introduces an obligation to remunerate posted workers at a level in line with rules set by law or collective agreements, and to offer them the same advantages (bonuses, allowances, etc). Member states would have the option to apply to posted workers the same rules on remuneration that are binding on the main contractor. These rules would also apply to posted temporary agency workers. Finally, when posting exceeds 24 months, the host country’s labour law (e.g. on dismissal) would apply.

The revision of the regulation on the coordination of social security systems (883/2004) aims at “increasing the fairness and clarity of provisions on social security, better protecting citizens’ social security rights, and improving possibilities to fight abuse”.⁴⁵ Adoption is foreseen for December 2016. However, according to a source close to the dossier, the draft proposal is still being negotiated in the Council. One of the changes which the new regulation could introduce is the possibility to index child benefits to the conditions of the member state where the child resides, something which was included in the February 2016 “New settlement for the UK”.

Another major social initiative expected in 2017 is the **European Pillar of Social Rights**, for which a public consultation had been conducted. Although it does not directly relate to labour mobility, the Pillar intends to set out a “framework of principles to foster a fair playing field” between European economies, with a view of smoothing social divergences. The Commission has proposed to focus on three areas in priority: labour markets, working conditions and sustainable welfare systems. The Pillar should include both “hard rights” building on the EU social acquis, and benchmarks fostering peer review, mutual learning and reform of national institutions.

45. As presented on the Commission staff document “List of planned Commission initiatives – state of play of 01/09/2016” http://ec.europa.eu/atwork/pdf/planned_commission_initiatives_2016.pdf