



The Future of the Free Movement of People after the Brexit Referendum

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The freedom of movement of people will be a key element of the negotiations on the future relations between the UK and the EU. Achieving compromise on the issue of the relationship may take years. One reason for that is that the British side does not want the quick trigger of Article 50 (TEU). The most likely scenario is to guarantee Britain “special” status in its relationship with the Union. As a result, EU citizens would have limited access to the British labour market. It’s worth considering, however, to avoid future restrictions on the right of free movement within the EU.

The debate on restrictions on the free movement of people, a key EU right, started long before the Brexit referendum and had a decisive influence on its result. A new phase in this debate has started now, together with discussions on the shape of the future UK-EU relations. In this debate two trends will show up. On the one hand, the remaining Member States will try to raise the “price” of the British withdrawal from the European Union to avoid the risk of similar referendums. On the other hand, they will stress the importance of close economic relations with the UK because it benefits all sides. In relation to free movement, there is a conflict between the stance of all four EU freedoms (movement, capital, goods, services) or none and preferential treatment for the UK compared to other non-EU countries. European leaders may also seek a solution that would keep the UK in the European Union.

Achieving compromise on the issue of the relationship may take years. One reason for that is that the British side does not want the quick trigger of Article 50 (TEU), the formal mechanism for a Member State to leave the European Union. National elections in France and Germany will also affect the negotiation process.

UK Remains in the European Economic Area (EEA). In one scenario, is a Norway-style relationship based on the EEA and this has often been considered the model for UK-EU relations post-Brexit. EEA countries agree to respect the four freedoms of the internal EU market, including movement. This means they cannot restrict EU citizens’ access to their labour markets. The EEA does grant its members the ability to enact safeguards in the event of “serious economic, societal or environmental difficulties.” These measures may include restrictions on the free movement of people. The use of the safeguard clause triggers a negotiation between the partners (there is an exception to prior examination for measures requiring immediate action as long as the country concerned applies protections strictly necessary to remedy the situation). The safeguard measures are subject to systematic evaluation after their adoption. If they create an imbalance in the single market, the EU can use retaliatory “proportionate rebalancing measures.” Norway has never used the safeguard clause because, in response, the EU could restrict the import of goods and services from the country. A more permanent special arrangement has been made for Liechtenstein. Because of the country’s size and high number of foreigners in its labour market, Liechtenstein has been allowed to restrict free movement by imposing quotas (set annually) on the number of citizens from the EU, Norway and Iceland who can live and work in the country.

Britain Gains Special Status with the EU. In a second scenario, unilateral concessions from the EU could be possible based on a bilateral agreement. The British government would seek a solution that enabled the UK to introduce quotas on the number of migrants from EU Member States while securing British access to the single market.

However, the Swiss case¹ shows that this kind of arrangement wouldn't be acceptable to EU institutions. If the UK wants to keep full access to the single market, the EU would offer the country only limited concessions on migration. The UK-EU political deal of February 2016 is a reference point, but after the referendum, the EU is likely to limit concessions to keep EU membership attractive. The February deal was struck but never implemented and was withdrawn after the Brexit referendum. It guaranteed an option to index child benefits to living costs in the migrant recipients' home country. That deal also aimed to set up a so-called "emergency brake" (in place for a maximum of seven years), which would have allowed the UK to exclude EU migrant workers from in-work benefits for the first four years they were in the country. In a new EU27-UK deal, the indexation of child benefit payments might be maintained but the period for use of the "emergency brake" would likely be shortened. Other special benefits would have to come from mutual concessions in specific sectors. In the end, Britain would have more control over immigration and a bit less access to the single market than it does now.

Recalibration of Free Movement. The third scenario foresees that the Brexit referendum is impulse for wider freedom-of-movement reform. In it, Member States would gain more flexibility in managing the movement of migrant workers. The reform would include closer cooperation to control abuse of welfare systems and indexation of social benefits (not only child benefits but other exportable benefits such as old-age pensions). This recalibration could provide an option to restrict EU migrants' access to certain benefits. It could even allow for the introduction of temporary immigration quotas in case there is a major risk of labour market destabilisation. Legislative changes aimed to achieve upward social convergence and safeguards against so-called "social dumping" (richer states accuse poorer countries of encouraging low-skilled workers to go abroad) might be part of this reform. These changes were reflected in the European Commission's March 2016 proposal to revise the Posting of Workers Directive. The project aims to guarantee that all of the rules on remuneration applied generally to local workers will also be granted to posted workers (not only the minimum wage). Complex reform of freedom of movement could defuse Eurosceptic arguments and encourage the British government to hold a second EU referendum. This would improve the chances of a positive referendum outcome.

Conclusions. The EEA scenario is favoured by the European Union. However, it wouldn't allow the British to regain control of migration from EU Member States. Although restrictions on the free movement of people would be possible to some extent, the EU also would limit Britain's access to the single market. Liechtenstein's "single market minus" option is not very likely because Liechtenstein's geographical situation is much different than the UK's. EU and EEA leaders are unlikely to allow Britain to follow Liechtenstein's example.

The second scenario is the more likely. Some EU Member States, with Germany at the forefront, are interested in keeping close economic ties with the UK. They would try to persuade their EU partners to support the special status solution, which would seek balance between free movement restrictions and single market access. However, significant unilateral concessions from the EU may convince some it is better to be outside the Union than inside. That would encourage other European countries to hold similar exit referendums.

Comprehensive reform of the freedom of movement would be deemed unfavourable for the citizens of Central and Eastern Europe working in richer EU countries. The arguments that freedom of movement stimulates "migration of poverty" and "benefit tourism," arguments that seem to have determined the British referendum, are not uncommon in other countries of Western Europe. A new arrangement along those lines, though, would be welcomed in Germany, Austria and the Netherlands. The third scenario, then, results in conflict between Eastern and Western Europe. It also likely would not guarantee a compromise sufficient for the British to stay in the EU. Thus, this scenario is unlikely because of the risk of deepening divisions in Europe and the threat of another referendum fiasco.

In the negotiations between the EU and the UK, Poland can opt for granting Britain a special status. Close economic and political ties with the UK are important for Poland. The Polish government will probably try to maximally protect the rights of Polish citizens already working in the UK, but the agreement may be unfavourable for those who follow. Consent to limit access to the UK labour market also would be politically controversial. However, it is a cost that should be considered in order to prevent the introduction of restrictions on the free movement of people across the EU.

¹ See: K. Borońska-Hryniewiecka, E. Kaca, S. Płóciennik, P. Toporowski, *Probable EU-UK Relationship after Brexit: Perspectives of Germany, France, Italy, Spain and Poland*, PISM Report, May 2016, p. 18–19, www.pism.pl/Publications/PISM_Report/Probable_EU-UK_Relationship_after_Brexit.