

TALLINN UNIVERSITY OF TECHNOLOGY

Faculty of Social Sciences

Department of Law

Shafi Murad Jafri

The impact on free movement of workers after Brexit

Master Thesis

Supervisor: Lehte Roots, PhD

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I hereby declare that I am the sole author
of this Master Thesis and it has
not been presented to any other
university of examination.

Shafi Murad Jafri

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The Master Thesis meets the established requirements

Supervisor Lehte Roots, PhD

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ABBREVIATIONS

CAP	Common Agricultural Policy
CJEU	Court of Justice of the European Union
EC	European Commission
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EMS	European Monetary System
EMU	Economic and Monetary Union
ERM	European Rate Mechanism
EU	European Union
FTAs	Free trade agreements
EFTA	European Free Trade Association
GDP	Gross Domestic Product
NHS	National Health Service
SEA	Single European Act
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the Union
UK	United Kingdom
USA	United States of America
WTO	World Trade Organization

Introduction

The term 'Brexit' was originated from the combination of the two words 'British' and 'exit'. It was coined following the analogy of 'Grexit', which refers to a hypothetical withdrawal of Greece from the Eurozone¹. The term 'Brexit' is used to refer to the incident of withdrawal of the Great Britain from the European Union. The decision of leaving the EU was made through a public referendum in June, 2016, the UK government has started the withdrawal process on 29 March, 2017, meaning the UK will not be a part of EU after April, 2019 at latest². However, after the British decision to leave the EU, one of the most prominent questions has arisen about the impact of Brexit and the future of UK's participation in the European "single market". The contradictions between the rights of EU citizen (free movements) and the intention of the UK government to control its own borders was a leading reason for Brexit. The British EU referendum is a result of the British people's dissatisfaction with the EU. The single market is one of Europe's greatest economic achievements. In another word, it can be said the Single Market is at the heart of the European project. The EU has constructed a single market through a homogenized arrangement of laws that are valid for every member of states. The 'free movement of workers' is one of the four founding principles of the EU and the construction of the single market, of goods, capital, service sand workers, enabling citizens of the member states of the EU to reside and work throughout the EU. Therefore, EU is always rigid to uphold the right of free movement of its citizens.

The UK is leaving EU but they wanted access to the single market without accepting free movement of workers³. Although it was dismissed by European leaders at their first post-Brexit meeting on 27 June 2016, where they asserted that, "access to the Single Market requires acceptance of all four freedoms."⁴ Moreover, the future relationship between the UK and EU remains open for discussion, it may be legally possible for some migration controls to be compatible with the concept of free movement of workers. Hence, it is necessary to analyse the legal aspect, possibility, and consequence of the UK's demand to get preferential market access to the EU after Brexit.

¹ Brexit, Wikipedia, the free encyclopedia. <https://en.wikipedia.org/wiki/Brexit> (15.04.2017).

² Ibid.

³ Brexit – velvet divorce or messy breakup? Economic Outlook. Oxford Economics 2016, 40(4), p 5.

⁴ Informal meeting on 27 Brussels, 29 June 2016 Statement, European Council. <http://www.consilium.europa.eu/en/meetings/european-council/2016/09/16-informal-meeting/> (16.04.2017).

At present, British citizens can easily move to another EU country, same as citizens of EU countries equally free to move to the UK. According to the April-June 2014 Labour Force Survey, currently, 1.73 million EU nationals living in the UK, 79 % of whom are in employment. British consular authorities estimate that 2.2 million Britons live in the EU countries, among them 400,000 are British pensioners, and 1,000,000 of the total live in Spain alone.⁵ The EU migrant workers in the UK make up more than 30% of all workers in the manufacture of food products.⁶ Hence definitely, there would be a big impact of Brexit on the citizens of the UK who are currently living in the other EU countries. It would be the same to the other EU citizens who currently living in the UK as well. This is because leaving the EU would mean that UK citizens will lose the right to move freely, work and do business in the other EU countries. Although, joining the EU raised the UK GDP, leaving the EU would probably have negative implications on the UK GDP. The EU leaders have already made it clear that the UK cannot be a member of the single market without accepting the free movement of EU workers⁷. In this regard, the UK needs to find a solution that addresses the concerns of their people about free movement while getting the best possible deal on trade in goods and services.

The research hypothesis in this paper is: **Britain keeping the access to the single market, while introducing tougher immigration controls, is contrary to the principles of EU law.** This research mainly analyses the impacts of Brexit in relation to controlling the right of free movement of the workers. The primary purpose of this research is to analyse the impact of Brexit on the UK and the EU, concentrating on the single market strategy. This study would analyse the description of the single market and four freedoms, the post-Brexit situation, the legality and effect of fulfilling the demand of UK to get free access to EU single market. There is also a secondary goal to answer the question, whether the four freedoms of the single market are indivisible or not.

The thesis is based on several approaches, where descriptive, qualitative and analytical approaches have been used simultaneously. The simultaneous use of these three approaches is very important for analysing thesis hypothesis. In the descriptive approach, the historical background of the single market, UK position in EU, Brexit alternative options for the UK will be described, which is very useful for analysis and deeply connected to this right of free movement of workers. The analytical

⁵ King, C. What the 'Brexit' Could Mean For European Workers. Journal by Job spotting 2016.

<https://jobspotting.com/en/journal/what-the-brexit-could-mean-for-european-workers/> (13.04.17).

⁶ Sheffield, H. Brexit: the industries that will be hit hardest if EU migrants are forced to leave the UK. Independent news 2016. <http://www.independent.co.uk/news/business/news/brexit-latest-immigration-migrants-freedom-of-movement-labour-industries-trade-hit-hardest-a7118856.html> (14.04.2017).

⁷ European Council informal meeting statement (2016), *supra* nota 3, p 2.

approach is the foundation of research, while important legal concepts, definitions, and doctrines could be clarified in a manner for giving background information and a better understanding of the basis of EU single market: free movement of worker. However, the author analyses the impacts of Brexit on free movement of workers through using the analytical, descriptive and qualitative approaches. In order to analyse the hypothesis successfully, the materials used for this study is taken from science books and articles, EU legal acts, case law and other sources.

The three aforementioned process tracing steps are to be considered as the core structure of the thesis. Additionally, to satisfy the research and thesis guidelines, this thesis will expand these three steps and mould those into structured thesis with six related and distinctive parts. First part presents introductory remarks, research hypothesis, and methodology setting. The second part is focused on outlining the EU single market, the four 'fundamental freedoms' set out in the EU Treaties since the Union's foundation and to answer research question this thesis will present theoretical framework of EU single market. This research is about the impact on the free movement of workers after Brexit from the EU. Hence, this study would like to focus on EU treaty about exit from the EU. The next section looks at the reasons behind Brexit, why free movement of workers became such a fundamental issue in the UK referendum on EU membership, focusing on the issues of jobs, worker standards and welfare, pre-Brexit and post-Brexit positions. This is followed by an analysis of the free movement of worker rights and Brexit's impact on these. This thesis goes on to describe possible alternatives for the UK's relationship with the EU, post-Brexit, in terms of free movement of person rights. In the concluding section, the findings of the research are discussed and some recommendations that could be suitable for the UK were made.

Chapter-1 Single market and free movement

This chapter presents and analyses the creation of the single European market, the historical background of the single market and its four freedoms, explains the treaty provision on free movement and procedure of withdrawal of a member state from the EU and the UK's constitutional provisions for leaving the EU. It also analyses thesis hypothesis and the chapter ends with a description of UK's position in the EU.

1.1 Historical background of the single market

The single market allows EU citizens to move and trade freely to work and run businesses across EU, EEA, and Switzerland. Initially, it was open to 345 million people in 1992, which can be accessed by approximately 500 million people in 28 EU member states now⁸. The single market is the central and principal economic rationale of the EU.⁹ The creation of single market is one of the fundamental goals of the EU. This is because it describes the EU project to create free trade within the EU and to mould the EU into a single economy. It has been developing ever since the EU was founded in 1957. It is also called the internal market because the single market refers to the EU as one territory without any internal borders and obstacles¹⁰. To understand better the Single Market, the study should look at the history of free movement that seems a very common activity within the EU today. Looking back of this concept, one can better understand why this was necessary and important for the EU, what were the steps needed to took to achieve this goal. This also considered as one of the EU's greatest achievements.

The need of a common market has been long discussed from 1957, since the Treaty of Rome which created the European Community, which came into force in 1958.¹¹ The main objective of proposal was to take integration and to have free movement of goods, services, capital, and

⁸ 20 years of the European Single Market: together for new growth: main achievements, Luxembourg: Publications Office of the European Union 2012, p 7.

⁹ Craig, P., Burca, G. EU Law, Text, cases and materials, 6th ed. Oxford: Oxford University press 2015, p 607.

¹⁰ Emmerson, P., Johnson, C., Mitchell, I. The EU Single Market: The Value of Membership versus Access to the UK. London: The Institute for Fiscal Studies 2016, p 1.

¹¹ Review of the Balance of Competences between the United Kingdom and the European Union, the single market. HM Government July 2013, p 13.

persons, therefore a common market. It was an absolutely necessary step since one cannot build a common Europe without having a common market and it became truth with the removal of border barrier. Unfortunately, at the middle of 1968 customs duties on goods going in the EU member states were removed, there remained “non-tariff barriers” requirements of safety and packaging of different member states administrative procedures and didn’t allow the manufacturers to market the same goods in different European countries.¹² It took until 1985 for the EU leaders to decide come back to the understanding of this single market because the economy of the EEC began to fail to keep up with one's competitors with the rest of the developed world. The Single European Act added new provision with the aim establishing the internal market, it defined as an area without internal borders in which four freedoms (goods, persons, services and capital) is ensured, should be adopted over the period in 1992¹³. An important development was the signing by the then 12 Member States of the Single European Act (SEA) and a white paper issued by the commission in 1985.¹⁴ The Single European Act 1985 repackaged the four freedoms into the renamed “internal or single market.”¹⁵ Which argued for a new dynamic strategy based on mutual recognition and legislative harmonization because many barriers existed to the achievement of the single internal market. The EU adopted 280 pieces legislation¹⁶ and this essentially set the agenda for the single market as we know it today. The Single European Act, signed in 1986, set a deadline of 1992 for the single market to be up and it was launched on 1 January 1993¹⁷. The original Treaty provided for the free movement of economic active persons and their family, it changed over the years and, the Treaty of Maastricht introduced the freedom of movement as a fundamental right of EU citizens¹⁸.

In short, it can be said that common market was one of the essential cornerstones and backbones of economic integration of the European Union. Achieving this aim there were some complimentary ways. Such as opening up the internal borders, allowing people, goods, services and capital to move around freely within the community. Besides that, one most important thing is organizing mobilisation among the member states by setting up common policies and financial

¹² History of the EU Single Market Economics Essay. UK essays 2015.

https://www.ukessays.com/essays/economics/history-of-the-eu-single-market-economics-essay.php?essayad=carousel&utm_expid=309629-42.KXZ6CCs5RRCgVDyVYVWeng.1#ftn1 (13.04.2017).

¹³ Weatherill, S. The Internal Market as a Legal Concept. United Kingdom, Oxford University Press 2017, p 27.

¹⁴ Steiner, J., Woods, L. Textbook on EC Law, Eight Edition. Oxford, Oxford university press 2003, p 5.

¹⁵ Barnard, C. The substantive law of the EU, Fourth Edition. United Kingdom, Oxford university press 2013, p 11.

¹⁶ 20 years of the European Single Market (2012), *supra* nota 8, p 7.

¹⁷ Horspool, M. European Union Law. New York, Oxford University Press Inc., 2005, p 16.

¹⁸ Horváth, Z. Handbook on the European Union, First Edition. Budapest, Reference Press 2002, p 215.

instruments. The common market has been from the beginning constantly developing and facing many political and technical challenges. The inter-relation among the freedoms are analysed in the following sub-chapters.

1.2 The four freedoms

The free movement rights originate from the economic common market and established with the 1958 treaty of Establishing the European Economic Community or the so-called Treaty of Rome.¹⁹ The term single market was introduced by the Single European Act 1985²⁰. Already mentioned above that it treated as synonymous with the common market. The free movement of persons, services, goods, and capital are the basis of the single market, known collectively as the “four freedoms”²¹. The purpose was to provide freedom to move and reside freely within the European Union for all EU citizens and their families according to the principle of citizenship, not on the principle of economic activity of persons. The charter of fundamental rights contains the same provisions as TFEU itself. Free movement as a right of EU law is also a fundamental right in the Charter. Every citizen has the right to move and reside freely within the EU territory.²²

Common market was the fundamental objective of the Treaty of Rome. Article 9 of the Treaty of Rome stated that “The Community shall be based upon a customs union; also, a substantial section of the Treaty was devoted to the free movement of persons, services, and capital (now Article 45-66 TFEU)”²³. Swann says, “...EU was based on the concept of a common market rather than just simply a customs union. That mean there should be free movement of factors of production such as capital, labour and enterprise as well as goods. Not only that, but there should be freedom to supply services across frontiers as well as goods”²⁴. Moreover, Article 2 of the Treaty of Rome stated that, “...the community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member states, to promote throughout the community a harmonious development of economic activities, a continuous and balanced

¹⁹ Kasper, K. Free movement of students in the EU. Berlin, Springer 2014, p 146.

²⁰ Horspool (2005), *supra* nota 17, p 15.

²¹ Barnard, C., Peers, S. European Union Law. Oxford, Oxford University Press 2014, p 2.

²² Joamets, K. Gender as an Impediment of marriage, free movement of citizens, and EU charter of fundamental rights. Berlin, Springer 2014, p 94.

²³ Bache, I., George, S., Bulmer, S. Politics in the European Union, Third Edition. New York, Oxford University Pres Inc., 2011, p 385.

²⁴ Sawann, D. The Economies of the Common Market, Eight Edition. England, Penguin Books 1995, p 6.

expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the states belonging to it”²⁵. The four freedoms were covered by Treaty of Rome, these are not a new thing for EU. It would renege on the Treaty of Rome’s commitment to the free movement of people as one of the four founding freedoms of EU construction if Britain is given access to the single market without them accepting the freedom of movement of persons. Hence, if EU does not want to renege on the Treaty of Rome’s commitment, then four freedoms cannot be separated. It could be said, four freedoms are indivisible, in the sense that they were core principles spelled out in the original 1957 Treaty of Rome.

The creation of single market was based on common market. Free movement of production factors such as worker, capital, and services was as important as liberalising trade among the participating states to create a common market. Besides that, free establishment of people and companies within the member states is of equal significance to exercise their professional or business activities. Hence, in order to speak about a common market, the existence of the four fundamental freedoms among the member states is utterly necessary²⁶.

The treaties have been created for the achievement of the internal market. TFEU does not draw any distinction between the four freedoms. Hence, it can be assumed, for leaving member state of EU, accessing single market without accepting all four freedoms would be contrary to EU Treaty because TFEU ensured the four freedoms. According to Article 26(2) TFEU “The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties”²⁷. It makes clear that the internal market does not only comprise the free movement of goods, service, and capital but also the free movement of persons. Under Article 2 of TEU, EU is based on the values of freedom, democracy, equality, law enforcement and respect for human rights and dignity²⁸. Moreover, Article 3 of TEU says, Union's aim is to promote peace, its values and the well-being of its people. Union’s mission is to establish an area of freedom, security, and justice without internal borders, in which the free movement of persons is ensured. And developing an internal market where competition is free, within the framework of a social economy market whose aim is

²⁵ Sjäfjell, B. *Towards a Sustainable European Company Law: A Normative Analysis of the Objectives of EU law, with the Takeover Directive as a Test Case*. Netherlands, Kluwer Law International 2009, p 191.

²⁶ Moussis, N. *Access to European Union: law, economics, policies*, Nineteen Edition. Rixensart, Euroconfidentiel 2011, p 86.

²⁷ OJ C 326, 26.10.2012, art 26, p 59.

²⁸ OJ C 326, 26.10.2012, art 2, p 17.

full employment. It also stated that its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens²⁹. Therefore, free movement of persons has an individual connection with EU citizens. It is the individual rights of EU citizens. Security and welfare issues need to be considered with great importance when dealing with free movement of people, which makes it a more sensitive area than the other freedoms. The fundamental rights of human dignity and individual personality are closely tied with person than goods³⁰. Hence, it should be preserved along with other rights considering the importance of public interests, human dignity, fundamental rights of citizens, ethical issues etc.

A key ingredient of European integration is the free movement of people. It is equally important from both functional and political point of view. It is very difficult to get the best output from the other freedoms, particularly the freedom of movement of services, without having the free movement of people in action. It is politically important in that, many consider it as a founding right of EU citizenship. Donald Tusk, President of the European Council says “Freedom of movement is non-negotiable if Britain wants access to single market”³¹. The French and German leaders also made clear that the freedom of movement of EU citizens is non-negotiable. “European Union leaders have warned that the UK must honour the principle of free movement of people if it wants to retain access to the single market after it leaves the bloc”³². It might be harmful for EU construction in the future if one Member state or, a non-Member state which is allowed to participate in the Single Market, is offered the option of not applying its free movement obligations.

The aim of the single market is “increasing economic prosperity and contributing to ‘an ever closer union among the peoples of Europe’”³³. Single market without free movement of persons is simply an agreement where each country agrees not to impose any import tariffs on the others. It would be contrary to the single market’s objective. At least, from a legal perspective, the separation between the four freedoms is not desirable, it might destroy the unity of the market. It could be said, EU four freedoms are inseparable for the leaving state because that was agreed by all

²⁹ OJ C 326, 26.10.2012, art 3, p 17.

³⁰ Barnard (2013), *supra* nota 15, p 231.

³¹ Cowburn, A. Donald Tusk: Freedom of movement is non-negotiable if Britain wants access to single market. Independent 2016. <http://www.independent.co.uk/news/uk/politics/donald-tusk-says-access-to-the-single-market-means-britain-must-accept-eu-four-freedoms-a7120191.html> (25.04.17).

³² Brexit: EU says no compromise on freedom of movement. BBC 2016. <http://www.bbc.com/news/world-europe-36659900> (25.04.17).

³³ Maciejewski, M., Dancourt, L. The internal market: general principles. Fact Sheets on the European Union 2016. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_3.1.1.html (25.04.17).

members from the beginning. The unity of ‘four freedom’ is unquestionable. The fact is, EU gains the right to sign deals of any kind with a third country through the EU treaties, which means it can offer the UK a deal to do free trade with EU without accepting free movement. But, the concern of the ‘EU Elites’ is that this special ‘three freedoms’ deal – free movement of capital, services, and goods, might make the other EU/EEA countries and Switzerland to demand for a similar kind of deal³⁴. For example, in 2014, Swiss narrowly voted in favour of a referendum for their government to renegotiate the country’s bilateral accord with the EU. They were demanding immigration quotas but EU insisted on free movement of people as a condition for non-EU Switzerland having access to the single market³⁵.

To sum up, it can be said, single market’s rules require the free movement of goods, people, services and capital from one Member State to another Member State. Free movement of workers is the key element in the single market package. Four freedoms in the single market are connected with each other. It is a core principle, enshrined in the EU treaties. For establishing single market, EU removed barriers to trade and harmonized national rules at EU level. According to Article 26 TFEU, the internal market does not only comprise the free movement of goods, services, and capital but also the free movement of persons. Free movement of person right was given for the purpose of employment but this has become the right of EU citizens now. It is a prerequisite of economic growth³⁶. Guaranteeing the single market and the four freedoms was of crucial importance in relation to the development of European integration, it is the backbone of *acquis communautaire*³⁷. As Single Market is based on the four fundamental freedoms. Hence, if EU separate four freedoms for the leaving state, that would be contrary to EU principles. However, if the UK wants full access to the Single Market and enjoys economic benefit of the single market, it must accept all four freedoms. These four fundamental principles come together, it is undesirable to separate those and make customised package based on the demand of the withdrawing state. Figure 1 summarizes detail provisions covering four freedoms laid out in Articles 28 to 66 of the TFEU.

³⁴ Robinson, G. Free trade deals do not have to involve free movement of people. Brexit central 2016.

<http://brexitcentral.com/gary-robinson-free-trade-deals-not-involve-free-movement-people/> (25.04.17).

³⁵ Patnaik, P. EU, Switzerland stuck on immigration. Politico 2016. <http://www.politico.eu/article/eu-switzerland-stuck-on-immigration-free-movement-single-market-europe-migration/> (25.04.14).

³⁶ Barnes, I., Barnes, P. The Enlarged European Union. England, Longman 1995, p 108.

³⁷ Horváth, Z. Handbook on the European Union, First Edition. Budapest, Reference Press 2002.

Figure 1: EU Treaty provisions relating to the Four Freedoms

The Four Freedoms	Goods	Customs Duties Arts. 28–30 TFEU	Internal Taxation Art. 110 TFEU	Free movement of imports Art. 34 TFEU	Free movement of exports Art. 35 TFEU
	Persons	Freedom of establishment Art. 49 TFEU	Free movement of citizens Art. 20–21 TFEU	Free movement of workers Art. 45 TFEU	
	Services			Freedom to provide, receive services Art. 56 TFEU	
	Capital	Free movement of Capital Art. 63(1) TFEU	Free movement of payments Art. 63(2) TFEU		

Source: Review of the Balance of Competences between the United Kingdom and the European Union: the single market, HM government, p 20.

1.2.1 Free movement of goods

The abstract of the notion of a single market is the single economic area, functioning similarly to a national market and the free movement of goods is the first of the four fundamental freedoms of the single market. It is one of the successful things about the EU project.³⁸ Even though one of the primary reasons of remain and join the EU is to take the opportunity of access for its goods to single, community-wide market. This is because the larger market would increase economic efficiency, when consumer choice, and enhance the community's competitiveness in the world. Whatever, goods are defined as products which can be valued in money³⁹ and it could be industrial or agricultural products whether originating in a member state or coming from the third country. Since 1 January 1992, the Community is allowed to eliminate physical barriers (border checks and customs formalities) in the EU member states. The free movement of goods is closely tied with the other freedoms. The development of the interstate movement of persons, services, and capital is indirectly contributed by the customs union being covering all trade in goods which provides an optimum division of labour throughout the EU. Furthermore, the increasing demand of labour and

³⁸ Maciejewski, M. Free movement of goods. EU Fact Sheets. European Parliament 2016.

³⁹ Barnard (2013), *supra* nota 15, p 34.

capital, production factors that cannot be ignored in a market that, according to the CJEU, “the concept of a common market involves the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market as it was discussed in Case 15/81, *Gaston Schul*⁴⁰.

1.2.2 Free movement of people

All EU citizens have the right to move freely to any member state in the EU and remain there for three months without any condition. It comprises three stages, move to another member state, to live there and access the job market in the host member state. To be able to freely move and reside in any EU member state is the first right of European citizenship. Free movement is the most popular among the European Union’s achievements with 57% of people utilising this and a majority also believing that it is good for their own country⁴¹. For the young generation, Europe as a space of freedom stretching from Edinburgh to Zagreb, Lisbon to Tallinn is taken for granted. The freedom of movement for workers is a fundamental pillar of European integration. Surprisingly, free movement of workers is one of the most important factors in Britain leaving the EU. Barnard says, “The idea is that the liberalization of factors of production allows for the optimum allocation of labour and capital. If production factors are missing from a place where production would be most economical, entrepreneurs in a common market can shift their capital from places of low return to places which are more promising. Similarly, labour can move from areas of high unemployment to areas of high employment. Ultimately this should lead to the equalization of prices”⁴². Whatever, this research will explain broadly about free movement of workers in chapter 3.

⁴⁰ Saydé, A. *Abuse of EU Law and Regulation of the Internal Market*, United Kingdom, Hart Publishing Ltd 2014, p 238.

⁴¹ Tony, V. *Free movement of people within the European Union under threat*. Brussels, European Economic and Social Committee 2015, p 2.

⁴² Barnard, C. *The substantive law of the EU: the four freedoms*, First Edition. Oxford, Oxford University Press 2004, p 10.

1.2.3 Free movement of services

The principle of free movement of services means self-employed persons and professionals or legal persons able to establish themselves in another EU member state and provide services as well. This is because the single market is the market within the EU, a market is not based simply on the individual member states but across all member states. Within the meaning of Article 56 of the treaty, for example, a German citizen can move to Finland to work for an Estonian service provider which provides service to a Finnish company. Article 49 TFEU guarantees individuals and companies the right to take up and pursue activities in other member states without discrimination. Free movement of service prohibits restriction on the freedom of establishment of nationals of a member state in the territory of another member state.⁴³ The free movement of service must be preserved along with other freedoms, because the distribution of goods is linked to related service for example transport and the free movement of capital also involve service for example financial service and obviously self-employed persons are closely connected in providing services⁴⁴.

1.2.3 Free movement of capital

The fourth fundamental freedom is the free movement of capital. It is another vital element for the functioning of the EU single market. The movement of capital was not liberalized at the same rate as others, like goods and workers, but the free movement of capital and payments is now expressly laid down in the Treaty on the functioning of the EU. Within the meaning of Article 63 of the TFEU (ex-Article 56 TEC), all restrictions on the movement of capital between the Member States and on payments between the Member States and third countries are prohibited. Moreover, Article 66 of the TFEU (ex-Article 59 TEC) provides that, temporary safeguard measures to be taken where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of the economic and monetary union. In addition, Article 65 of the TFEU (ex-Article 58 TEC) provides the Member States to take all requisite measures to prevent infringements of national law and regulations, in particular in the

⁴³ Barnard (2003), *supra* nota 15, p 304.

⁴⁴ Horváth (2002), *supra* nota 37, p 222.

field of taxation and the prudential supervision of financial institutions.⁴⁵ It is also needed for proper functioning of the single market. The free movement of goods, services, and persons would not have made much sense without free movement of capital⁴⁶.

1.3 Treaty provisions on free movement and leaving the Union

Treaty Provisions on Free Movement, which set out the competences of the EU, namely- The treaty on the European Union (TEU) and the treaty on the functioning of the European Union (TFEU). Both treaties are one of two primary treaties of the European Union and form the basis of the EU law as well. The EU principle of free movement of persons has evolved over time as reflected in subsequent Treaties. At one level the Treaty establishing the European Community secures the free movement of workers but its implications are beyond common market integration – it concerns human beings. It identifies people as the beneficiaries of the Treaty in a more direct sense than any other area of Community law.⁴⁷ Whatever, the competence of the EU in relation to the free movement of persons and associated provisions on social security and welfare provision in cross-border situations are:

Article 18 TFEU on non-discrimination;

Articles 20 and 21 TFEU which deal with Union citizenship and free movement rights;

Articles 45-48 TFEU on the free movement of workers and social security co-ordination;
and

Articles 49-53 TFEU as they relate to the freedom of establishment of self-employed persons.⁴⁸

The Maastricht Treaty was a turning point. The Maastricht Treaty introduced the concept of Union citizenship, together with a number of associated rights, such as the right to move and reside freely in all Member States.⁴⁹ The Lisbon Treaty recognized the free movement of persons among the

⁴⁵ Moussis, N. Access to the European Union: Law, Economics, Policies, Twenty two Edition. Belgium, Intersentia 2016, p 156.

⁴⁶ Horváth, Z (2002), *supra* nota 37, p 228.

⁴⁷ Weatherill, S. Cases and Materials on EU Law, Eight Edition. Oxford, Oxford University Press 2007, p 423.

⁴⁸ HR government. Single Market: Free Movement of Persons, Review of the Balance of Competences between the United Kingdom and the European Union 2014, p 17.

⁴⁹ Marzocchi, O. Free movement of persons. European Parliament: Fact Sheets on the European Union 2017.

objectives of the European Union in 2009.⁵⁰ Article 21 of TFEU establishes that every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and to the measures adopted to give effect to that right. Moreover, Article 45 of the Charter of Fundamental Rights of the European Union also guarantees the right of every EU citizen to move and reside freely within the territory of the Member States. The Charter is legally binding and applicable to the EU since the Lisbon Treaty entered into force in 2009. The provisions of the Treaties are given further detail by secondary legislation. The Free Movement Directive-One creates rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States.⁵¹ Although this Directive replaced most of the previous European legislation. It also conferred rights on migrant EU citizens and family members who accompany or join them, irrespective of the latter's nationality. The following Directives were adopted in 1990: Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity, Council Directive 90/366/EEC on the right of residence for students, and Council Directive 90/364/EEC on the right of residence for nationals of Member States who do not hold this right under other provisions of Community law, together with the members of their families.⁵²

Directive 2004/38/EC was subsequently adopted to take account of the large body of case law linked to the free movement of persons and establish the right of entry and residence in the EU Member States for EU citizens and their family members as well as providing some safeguards against refusals of residence and expulsions.⁵³ Whatever, the legal definition of European citizenship can be found in Article 17 of the TEC: 'every person holding the nationality of a Member State shall be a citizen of the Union'. Citizenship of the Union shall complement and not replace national citizenship. It means that any person who holds the nationality of an EU Member State is automatically a European citizen. Literally, he or she can move anywhere in the EU.

⁵⁰ OJ C 326, 26.10.2012, p 13.

⁵¹ OJ L 158, 30.4.2004, p 78.

⁵² Obstacles to the right of free movement and residence for EU citizens and their families- Comparative analysis. European Union: Policy Department C: Citizens' Rights and Constitutional Affairs 2016, p 17.

⁵³ Ibid.

1.3.1 Withdrawal of a Member State from the EU

The right of a Member State to withdraw from the European Union was introduced by the Lisbon Treaty⁵⁴. The possibility of withdrawal was controversial before Lisbon Treaty. Before Lisbon Treaty, there was uncertainty as to whether a Member State had a right to withdraw. Under the international law, have a unilateral right to withdraw, the terms of withdrawal or course being governed by the Vienna Convention⁵⁵. Greenland withdrew from the EU in 1985 but it was not a Member State rather it was a part of Denmark. Its departure change in the territorial scope of EU law⁵⁶. Article 50 TEU provides an exclusive withdrawal procedure. Article 50 TEU does not set down substantive conditions rather include only procedural requirements. It provides for the negotiation of a withdrawal agreement for the future relationship between the EU and the withdrawing state and it provides two years. Membership will end automatically if no agreement is concluded within two years but the EU and withdrawing state can extend this period jointly.⁵⁷ It is important to mention here, relevant international law provisions cannot be applied for the procedure of withdrawal from the EU. Giuliano Amato, a former Italian Prime Minister, had inserted the withdrawal clause. He told a conference in Rome, Article 50 was designed that it should be a classic safety valve that was there but never used. "...It inserted specifically to prevent the British from complaining that there was no clear-cut, an official way for them to bail out of the Union"⁵⁸.

1.3.2 Article 50 of Treaty on European Union

Article 50(1) TEU provides that any Member State can withdraw from the EU in accordance with its own constitutional rules. This research will discuss below the withdrawal procedure in the UK constitution⁵⁹.

⁵⁴ Poptcheva, E. Article 50 TEU: Withdrawal of a Member State from the EU. European Parliament, EPRS | European Parliamentary Research Service 2016, p 1.

⁵⁵ Tridimas, T. Article 50: An Endgame without an End? King's Law Journal 2016, 27(3), pp 297-313.

⁵⁶ Ibid, p 300.

⁵⁷ Poptcheva (2016), *supra* nota 54, p 1.

⁵⁸ O'Brien, Z. Article 50 was designed 'NEVER to be used' - says the man who wrote the EU divorce clause. Express news 2016. <http://www.express.co.uk/news/world/692065/Article-50-NEVER-to-be-used-Europe-Brexit-Italy-Prime-Minister> (14.04.2017).

⁵⁹ OJ C 326, 26.10.2012, p 43.

Article 50(2) is the important part of the Article 50 of TEU which states that a Member State which decides to withdraw shall notify the European Council of its intention⁶⁰. According to this sub-article, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

Article 50(3) TEU then sets out the timing of withdrawal. It gives two years after the notification referred to in Article 50(2) unless European council in agreement with the member state concerned and decides to extend this period⁶¹. So, the UK would cease to be an EU Member State either at the date of entry into force of the withdrawal agreement or, ‘failing that’, two years after the notification of its intention to withdraw from the EU, unless the European Council and the UK unanimously agree to extend that period.

According to Article 50(4), the UK is leaving the EU, so the UK wouldn’t able to participate in discussions concerning it in some EU institutions, namely the European Council and the Council, which comprises Member States’ ministers. A ‘qualified majority’ vote would be recalculated without the UK⁶².

Finally, Article 50(5) says that withdrawal state could re-join EU again but this would be the same rules applying to any other country which asks to join the EU⁶³. So, the UK could re-join the EU again after its withdrawal and the same rules applying to any other country which asks to join the EU. For example, if they want to re-join they would have to take EURO instead of POUND. Whatever, basically, the procedure of withdrawal from the EU are a formal notice of intention from withdrawing state (the UK) to the EU. After that, the commission recommends to the council of Minister to open negotiations to the withdrawing member state (the UK). Then, council asks the EU parliament for its consent. Council will conclude an agreement with withdrawing state (the UK) by qualified majority. Ratification of Treaty changes by remaining 27 Member states.

⁶⁰ Ibid.

⁶¹ Ibid, p 44.

⁶² Ibid.

⁶³ Ibid.

1.3.3 Withdrawal procedure in the UK constitution

On the basis of above discussion, it can be said, Article 50 of the Treaty on the European Union says about withdrawal procedure from the EU and it makes clear that it is the leaving state's national constitutional traditions which determine how and when to trigger Article 50 to process the leave of European Union. Hence, leaving the EU is one of the most prominent issues was the UK constitutional controversy whether the UK's Prime Minister could notify pursuant to Article 50 TEU the European Council of the intention of the UK to withdraw from the EU without obtaining prior approval by the UK Parliament. This issue was turned to the English High Court, with the potential for the point of law to go all the way to the Supreme Court. This is because once notice is given to the EU under Article 50, some rights such as the right to free movement which they currently benefit under EU law by the 1972 Act, the Act would inevitably be lost once the withdrawal from the EU process is completed⁶⁴. Besides that, the most fundamental rule of the UK's constitution is that Parliament is sovereign. Whatever, the UK's court decided that the UK government does not have the power to give notice pursuant to Article 50 from the UK to withdraw from the EU. UK government needs approval by the UK parliament.⁶⁵ It means Parliament must vote on whether the UK government can start the withdrawal process of leaving the EU. Although, British government thought MPs do not need to vote. British government's thought was unconstitutional. Whatever, British MPs respected the decision of the British people for the exit from the European Union. MPs have voted by a majority of 384⁶⁶ to allow UK government to get Brexit negotiations. The British prime minister has set a deadline of 31 March for invoking Article 50 of the Lisbon Treaty, getting official talks with the EU started⁶⁷.

1.4 UK position in European Union

The UK joined the EU in 1973 with the treaty of accession under a conservative government led by Edward Heath.⁶⁸ Although, incorporation of the Treaties into UK law was achieved by the European Communities Act 1972. Here this study going to analyse the long relationship between

⁶⁴ Barnard, C. Law and Brexit. Oxford University Press 2017, 33(s1), p s5.

⁶⁵ Ibid.

⁶⁶ Brexit: MPs overwhelmingly back Article 50 bill. BBC 2017. <http://www.bbc.com/news/uk-politics-38833883> (15.04.2017).

⁶⁷ Ibid.

⁶⁸ Steiner (2003), *supra* nota 14, p 4.

the United Kingdom and the European Union. This is because we can easily understand why the UK has always had a special position in the EU. Britain was the first EU's enlargement and unfortunately, Britain is the first member state who is leaving the EU.

1959 UK joins the (EFTA) European Free Trade Association. EFTA was not such a success for the UK. 1961 UK apply to join the EEC (European Economic Community), during the 1950s the economic situation wasn't favourable to the UK and political relations with the Commonwealth came loose. At that time France and Germany posting a strong post-war recovery and also forming a powerful alliance. For that reasons, Britain applied to join the EEC in 1961⁶⁹.

1963 and 1967 EEC membership, Britain attempts to join the Common Market but is vetoed by French former president Charles de Gaulle. France president's veto can be explained by two factors. First of all, author of the thesis states that above Britain wished to retain its special relationship with the USA. Besides that, the USA supported the idea of the British in the EEC and De Gaulle perceived it as a threatening "foreign federation"⁷⁰. Secondly, "Britain was invited to the negotiations on agricultural products in 1962 and tried to question the fundamental rules of the Common Agricultural Policy (CAP) and this was not acceptable for De Gaulle"⁷¹. De Gaulle was straightaway against enlargement to the UK in a time of European economic stagnation and while the UK was facing difficult monetary and economic situation. Even though the Commission statement was in favour of an enlargement once economic difficulties would be overcome, but France remained to its position⁷².

1969 Third and successful UK application because De Gaulle resigned and it became possible for the UK to have a proper negotiation with the EEC⁷³. In 1970, conservative won the election led by Edward Heath. There were three principles lead the negotiation: EEC achieved had to maintained, Hague agreement and monetary union could not be put into question, transitory measures could not modify existing treaties⁷⁴. It seems negotiations were hard.

⁶⁹ Wilson, S. Britain and the EU: A long and rocky relationship. BBC 2014. <http://www.bbc.com/news/uk-politics-26515129> (15.04.2017).

⁷⁰ Fabre, C. The UK and the EU: more than 40 years of relationships unfolded. The new federalist 2013. <https://www.thenewfederalist.eu/The-UK-and-the-EU-more-than-40-years-of-relationships-unfolded,05776> (13.04.2017).

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

In 1971, an agreement was reached. In 1973 the UK joined the European Economic Community together with Ireland and Denmark. 1974-75 after agreement it was not the end of an uneven relationship across the Channel. A referendum in favour of membership conducted in 1975 under the government of the Labour party the UK's membership was finally confirmed. The Exchange Rate Mechanism is launched and the first elections to the European Parliament are held in 1979. Behind this, the aim was to harmonise exchange rates across the EEC, in preparation for the adoption of a single currency⁷⁵. The UK did not participate. Margaret Thatcher became Prime Minister in 1979 and expressed negative attitude towards the EEC. Demanding the UK contributing much more to the European budget than the other countries. She was against complete economic, political and social integration⁷⁶. Later on, in 1984 Margaret Thatcher's governments negotiate a rebate on Britain's contribution to the EC budget and received some of its money back because the EC budget is spent on the Common agricultural policy and farming does not represent major sector in the UK economy. Britain felt that it benefited much less than other countries⁷⁷.

The Single European Act was signed in 1987, SEA creates an internal market, which eventually becomes the largest free trade area in the world (free movement of goods, person, service, and capital). In 1990, internal border checks have been abolished by Schengen treaty, but the UK and Ireland didn't participate in Schengen treaty. Perisic, B. says in her case study, "...Margaret Thatcher was particularly reluctant to adapt to revolutionary changes, such as the collapse of communism in Europe and the fall of the Berlin Wall, that took place on the world political scene in 1989 and 1990, and this was the main reason for her downfall"⁷⁸. In 1991 The Maastricht Treaty introduced the concept of union citizenship in the EC treaty, which was signed in 1992. It creates a single European currency together with a number of associated rights including the right to move and reside freely in Member states⁷⁹. Margaret Thatcher was replaced by John Major whose government has given formal consent to the Maastricht Treaty in 1992⁸⁰ but didn't take single currency. The Single European Act, signed in 1986, set a deadline of 1992 for the single market to be up and it was launched on 1 January 1993. In 1999, Introduction of the EU single currency because adopting the single currency is the third stage of Economic and Monetary Union (EMU).

⁷⁵ A history of the UK's EU membership. The UK in a changing Europe. <http://ukandeu.ac.uk/explainers/factsheet-on-timeline/> (15.04.2017)

⁷⁶ Perisic, B. Britain and Europe: a History of Difficult Relations. Berlin: Institute for Cultural Diplomacy 2010, p 7. <http://www.culturaldiplomacy.org/pdf/case-studies/cs-bojana-perisic> (15.04.2017)

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ HM Government (2014), *supra* nota 48, p 14.

⁸⁰ Perisic (2010), *supra* nota 76, p 7.

Euro was introduced in 2002. Denmark and the United Kingdom joined the EU before EMU was established but remain outside the euro area for reasons of economic sovereignty. Sweden didn't join the euro because Swedish people voted against joining the euro in a national referendum in 2003⁸¹. In 2004, the largest enlargement of the EU history. EU sees ten new members: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Ascension of ten new member states. Contrary to other member states, UK decided not to safeguard its labour market to the new member countries. In 2007, ascension Romania, Bulgaria and in 2013 ascension of Croatia. The UK put transitional clauses to protect its labour market⁸². 2016 Renegotiation of the terms of UK membership within EU and it was a failed package of changes to the UK's terms of membership to the EU and changes to EU rules which was proposed by the prime minister of the UK. In 2016, a referendum to decide whether the UK should leave or remain in the European Union whereby British citizens voted to leave the EU by 51.9% to 48.1%⁸³. Under Article 50 of TEU, Britain is going to notify their intention to leave the EU in 2017. As previously noted, Article 50(3) TEU sets out the timing of withdrawal. It gives two years after the notification referred to in Article 50(2) unless European council in agreement with the member state concerned and decides to extend this period. So, the UK would cease to be an EU Member State either at the date of entry into force of the withdrawal agreement or, 'failing that', two years after the notification of its intention to withdraw from the EU, unless the European Council and the UK unanimously agree to extend that period.

To sum up, the long relationship between the UK and EU is a difficult one. There were many reasons that drive the UK to remain outside the community. It could be assumed that the UK finds it particularly difficult to adjust and narrow its political interest only to Europe. The UK wasn't willingly loosened its existing ties with the commonwealth, wished to retain its special relationship with the USA, suspicious that membership of the EEC would be the result of the unacceptable loss of sovereignty, the UK preferred the looser ties of the European Free Trade Association. When the UK did seek to join the EEC, persuaded by its economic success, its entry was blocked for some years due to the effort of the France president. Even after accession, public opinion was divided about the UK. A referendum in favour of membership conducted in 1975 under the government

⁸¹ Szczepański, M. Adopting the euro Convergence criteria and state of play. European Parliament, EPRS | European Parliamentary Research Service 2015, p 9.

⁸² Miller, V. The UK in the European Union: in brief. UK, House of Commons Library 2014, p 6.

⁸³ Douglas-Scott, S. Brexit, Article 50 and the Contested British Constitution. The Modern Law Review 2016. 79(6), p 1019.

of the Labour party the UK's membership was finally confirmed.⁸⁴ The UK has always been one of the most Eurosceptic countries of the EU. Nowadays, most of the EU citizens want to know what happens regarding the UK's participation in the European "single market-free movement of workers" as a result of the UK's decision to leave the EU. As it mentioned above, under Article 45 of TFEU, the free movement of "workers" is an aspect of the EU single market. This wasn't controversial at the time when the UK joined the EU and in the other Member States did not withdraw too far. It has become controversial since the developing member of states workers migrating into the developed member states including the UK. Although, before joining the EU Britain was a member of a free trade area in EU, that time it was known as the common market. That time countries can trade with each other without paying tariffs but now it's not possible for a single market because member state does not have to merge their economies together.⁸⁵

Whatever, if it comes to talk about the single market then the UK has been a strong champion of the single market, of structural reform and of free trade, putting it in a position to provide a counterbalance to French institutional and ideological influence inside the EU. On the other hand, the European Union is the destination for about half of all British goods exports. The trading links are bigger if we include the countries that the United Kingdom trades freely with because they have a free trade agreement with the European Union. These agreements mean that 63% of Britain's goods exports are linked to European Union membership.⁸⁶ The EU is easily the UK's largest trading partner. Services are a key part of the UK economy, and exports of services have grown significantly as a proportion of the UK's exports in the last 15 years. For this, the UK wants to keep access to the single market without free movement of worker. This is because service exports are substantially bigger than service imports, creating a sizeable trade surplus in services equivalent to some 5% of GDP.⁸⁷ Being part of the EU single market, the UK businesses unfettered access to 500⁸⁸ million customers in all states within it and in turn allows UK consumers and companies to purchase goods and services from across the continent.

The European Union single market allows the free movement workers within the European Union, as it is a single country. The single market of the EU is greatest achievements, one of the reasons

⁸⁴ Steiner (2003), *supra* nota 14, p 4.

⁸⁵ Hunt, A., Wheeler, B. Brexit: All you need to know about the UK leaving the EU. BBC news 2017. <http://www.bbc.com/news/uk-politics-32810887> (13.04.2017).

⁸⁶ The economic impact of 'Brexit'. England, Capital Economics Limited 2015, p 2.

⁸⁷ Emmerson (2016), *supra* nota 10, p 8-9.

⁸⁸ 20 years of the European Single Market (2012), *supra* nota 8, p 7.

is the single market reduces the costs of trade within the EU such as transport costs, border taxes, customs checks, reduces non-tariff barriers (licensing and other regulatory barriers to trade). Membership of the EU Single Market avoids almost all of these costs and increased trade has significant economic benefits. All this leads to higher incomes and living standards. The Single Market has focused increasingly on smoothing trade in services in the last two decades. For UK service exports, the EU is by far the largest market accounting for almost 40%, whereas emerging economies such as Brazil, Russia, India, and China together account for less than 5%.⁸⁹For this reason, the UK wants to access to the single market without accepting free movement of workers but it is completely contrary to the principle of EU. That is because access to the single market requires acceptance of all four freedoms.

⁸⁹ Emmerson (2016), *supra* nota 10, p 10.

Chapter-2 Brexit

This research is mainly about Brexit impact on free movement of workers. In this chapter, an analysis of the meaning of Brexit, the reasons and main factors behind Brexit, pre-Brexit and post-Brexit position of free movement. A brief discussion of the background of Brexit is important to understand the impacts of Brexit.

2.1 Brexit

Brexit, it can be compared with a divorce. A person married to someone for more than four decades who has now decided to live separately. Leaving a long-term relationship is complicated. Divorce comes with the uncertainty of future unless new rules are agreed upon. Making the decision to split is one thing, separating is another thing. It is more complex. Brexit means an exit for Great Britain from the EU, which refers to the June 23, 2016, referendum to decide whether the UK should leave or remain in the European Union whereby British citizens voted to leave the EU by 51.9% to 48.1%⁹⁰. Leave campaign won the majority of the votes in England and Wales, while every council in Scotland saw Remain majorities. After referendum result, British Prime Minister David Cameron had resigned on July 13, 2016⁹¹. He supported the UK remain campaign. After his resignation, home secretary Theresa May became Prime Minister⁹². Although Theresa May was against leaving the EU but she respects their citizen's decision, she said “Brexit means Brexit”⁹³. It is easy to say Brexit means Brexit. In reality, Brexit means a lot of things. Brexit is going to create a lot of legal problems for the UK’s legal system because many EU regulations that are directly applicable now, will not be applicable after Brexit. Unless there is a special decree made what will keep EU regulations as valid in the UK. Brexit means uncoupling domestic law from EU law because Article 50.3 says “the Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement”. It means EU law ceases to apply to in the UK. Hence, it goes Brexit means an exit from the EU and along with all EU law is simply removed by the repeal of the European Communities Act 1972, the statute that gives domestic

⁹⁰ Douglas-Scott (2016), *supra* nota 83, p 1019.

⁹¹ Menon, A., Fowler, B. Hard or Soft? The Politics of Brexit. National Institute Economic Review 2016, 238(1), p R8.

⁹² *Ibid.*

⁹³ Adams, R. What does Brexit mean for the pigments industry? Focus on Pigments 2016, 2016(8), p 1.

effect to EU law in the UK⁹⁴. As we know that EU law has operated directly in the UK through the EU doctrine of direct effect or the EU doctrine of direct applicability. Both doctrines operate directly in the UK without the need for implementing legislation.⁹⁵

Following Brexit, all directly applicable and effective provisions of EU law would cease to apply. UK is different from other EU countries which have continental civil law system where everything is regulated by rules and laws. UK has common law system which had been altered during the membership of the EU. This also makes difference when EU regulations or directives are not applicable in the UK. Brexit also means the doctrine of the supremacy of EU law itself would be questionable in the UK. Brexit will create challenges for the UK courts such as how the UK courts deal with cases and interpret the EU law that remains after Brexit. Brexit, be some difficulty in identifying the continuing status of EU law. “The EU citizenship right to free movement is incorporated into UK law by the European Communities Act 1972 and is transposed by domestic secondary legislation”⁹⁶. The EU citizenship rights would be directly effective. EU free movement of worker rights do not go on to the logic of domestic immigration law and most importantly EU free movement of worker rights are in a far stronger position than the workers from non-EU states in the UK. Brexit seems all EU law would be repealed or much of it might be retained but constitutional difficulties could arise.

From the above discussion (chapter 1) it is clear that, for the UK to leave the EU, it has to invoke an agreement called Article 50⁹⁷ which gives the two sides (EU & UK) two years to agree on the terms of the split. Although the British Prime Minister has triggered article 50 in March 2017, after triggering Article 50, they have now two years to negotiate its withdrawal. Therefore, it can be assumed that the UK is leaving the EU by the middle of 2019, depending on the negotiations. Unless there is a special decree made what from EU regulations rests as a regulation also in the UK, domestic immigration law would apply to EU citizens in the UK and British citizens in the EU. Whatever. Article 50 was created in 2009 and the UK going to use it first time in the EU history. However, there would be a great impact of Brexit on the UK and the EU, especially on the single market. The free movement of workers around the European Union will end up with Brexit. Though, Brexit will take time because of unpicking 43 years of treaties and agreements

⁹⁴ Gordon, R., Moffatt, R. Brexit: The Immediate Legal Consequences. London, The Constitution Society 2016, p 19.

⁹⁵ Ibid, p 20.

⁹⁶ Ibid, p 10.

⁹⁷ Ibid, Article 50.

covering thousands of different subjects was never going to be an easy task. Most importantly, as it mentioned in this study that the UK is the first country that leaving the EU. The post-Brexit trade deal would be a complex part of negotiation because it needs the approval of more than 30 nations.⁹⁸ There could be “soft or hard” Brexit. A hard Brexit could involve the UK refusing to compromise on an issue like free movement of workers, on the other hand, EU refusing UK’s access to the single market. As a result, British or European Union citizens would no longer be entitled to benefit from the free movement of workers. There also could be soft Brexit, it is alternative to hard Brexit. The UK would continue to participate in the single market (free movement of workers, capital, goods, and services) but for this, the UK would have to compromise on free movement of workers. Soft Brexit would be the similar path of Norway, which is not an EU member but can access to the European single market by accepting the free movement of workers.⁹⁹

Being a member of the EU, the UK getting benefits from membership of full participation in the single market and the EU customs union. For the customs union, common external customs tariff on imported goods, enabling the EU to enter into trade agreements with other countries outside the customs union. For example, imported goods from Turkey, Norway etc. Hence, it is very clear that a hard Brexit means not only leaving the EU but also leaving the single market and the customs union.

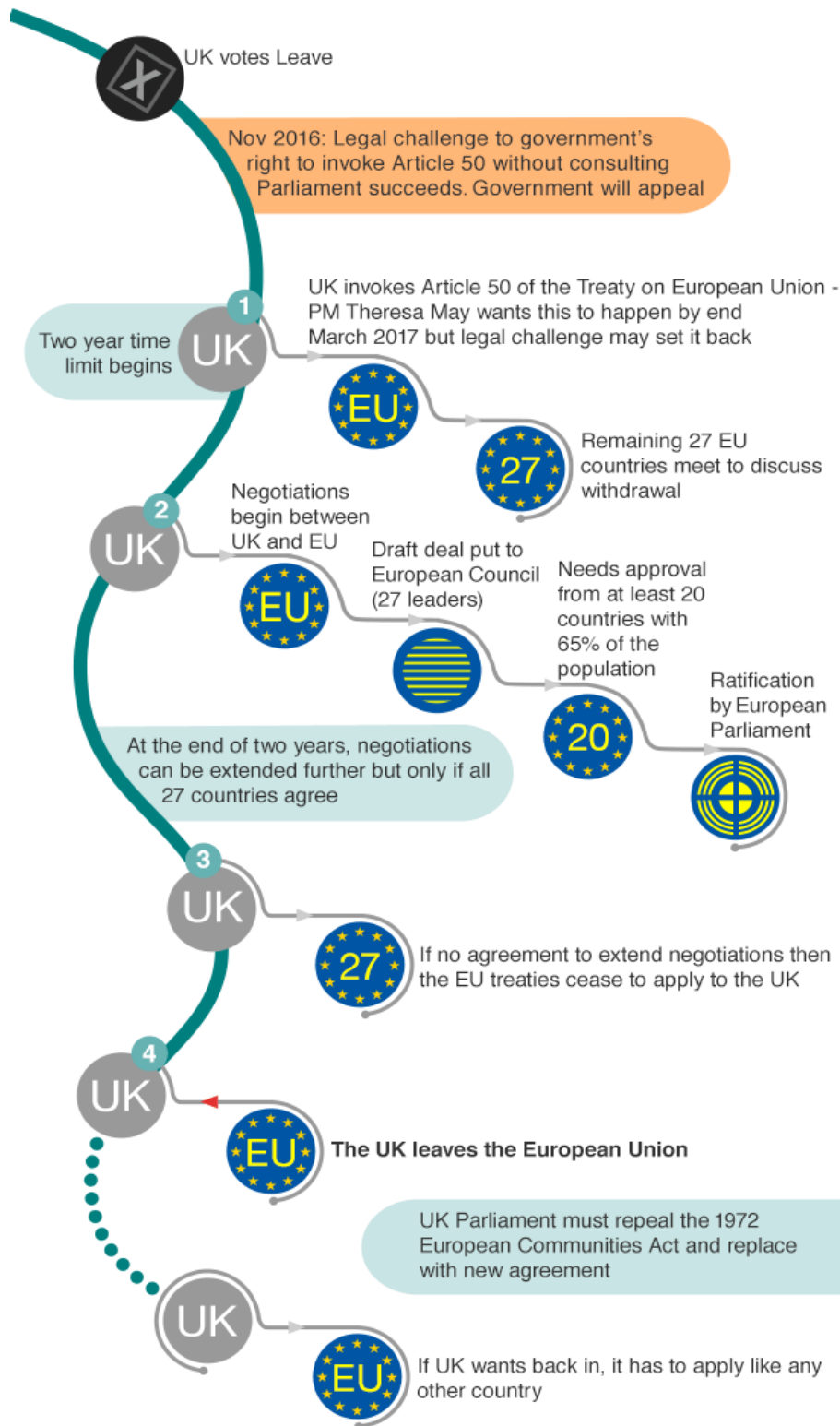
Tridimas, says “...the legal issues arising from Brexit could be classified into four categories: the management of the withdrawal process; the future relationship between Britain and the EU; the implications of the withdrawal for the EU integration paradigm; and its implications for the UK legal system”¹⁰⁰. It can be assumed; Brexit discussions would be very complex on the issue of citizens of the remaining member states living in the UK and UK citizens living in the European Union. This study mentioned above, the treaty about exit from the EU. Here, this research presents Brexit follow chat from BBC news for understanding of withdrawal procedures of Article 50.

⁹⁸ Hunt (2017), *supra* nota 85.

⁹⁹ *Ibid*

¹⁰⁰ Tridimas (2016), *supra* nota 55, p 297.

Figure 2: Steps to the UK leaving the European Union



Source: BBC¹⁰¹

¹⁰¹ Hunt (2017), *supra* nota 85.

2.2 Why Brexit?

This chapter of the study pursued to outline broader, why Brexit? What were the main factors behind Brexit? The UK has voted to leave the EU and we know that Brexit was about “taking back controls a way to tackle immigration and bring UK’s money back. For example, no UK budget contribution, no EU subsidies.

Analyse why Brexit was about “taking back control”. Immigration (free movement of workers) was the most obvious reason to the UK people that inspired them to vote to leave the EU. Portes says, “If the UK’s vote to leave the European Union was a vote against anything, it was a vote against free movement of workers within the EU – a vote to take back control over immigration policy”.¹⁰² Immigration featured heavily in the Brexit campaign, areas with the most migrants. The population of the UK has been growing in recent years. In the second half of the 2000s, net migration to the UK fluctuated between 300,000 and 400,000 per year, reaching a peak of over 400,000 just before the onset of the 2008 financial crisis.¹⁰³In 2015, 270,000 citizens from other EU countries immigrated to the UK, and 85,000 emigrated abroad. EU net migration was approximately 185,000 and that was the highest recorded level.¹⁰⁴ Immigration does have a small effect on wages. For lower-paid occupations, a 10% rise in the ratio of immigrant workers to UK born workers was associated with a near 2 % reduction in pay.¹⁰⁵When immigration is too high and pace of change is too fast, it’s quite impossible to build cohesive society because it’s really hard for schools, hospitals, housing and transport to cope.

At the 2015 conservative party conference, current Prime Minister Theresa May stated that: they need to build 210,000 new homes every year to deal with rising demand and they need to find 900,000 new school places by 2024. Thousands of people unable to find a job.¹⁰⁶ During the visits

¹⁰² Portes, J. Immigration – the way forward. London, CEPR Press 2016, p 105.

¹⁰³ Gietel-Basten, S. Why Brexit? The Toxic Mix of Immigration and Austerity. Population and Development Review 2016, 42(4), p 674.

¹⁰⁴ Wright, O. EU referendum: 40 facts about Britain and the EU to help you decide how to vote. Independent News 2016. <http://www.independent.co.uk/news/uk/politics/eu-referendum-facts-brexite-immigration-trade-economy-fishing-leave-remain-what-will-happen-a7095046.html> (15.04.2017).

¹⁰⁵ Ibid.

¹⁰⁶ Theresa May’s speech to the Conservative Party Conference – in full. London: The Independent. London 2016 <http://www.independent.co.uk/news/uk/politics/theresa-may-s-speech-to-the-conservative-party-conference-in-full-a6681901.html> (13.04.2017).

to the UK in August 2016 and January 2017, Author of the thesis has asked author's relatives why they voted for leave as they knew that the UK had to pay for it. They replied they were fed up for EU immigrants because house rent was increasing rapidly, to get an appointment at hospitals took a long time, schools were full, EU low-skilled workers were doing the job with a low salary for this they were also getting low salary and so on. Leave voters to believe five million extra EU migrants could come to Britain by 2030.¹⁰⁷ It seems that Brexit means the end of free movement of workers to the UK. Hence, it is clear that British citizens wanted that the UK decides who come into their country. The UK wants to control free movement of works right, taking back control as a way to tackle immigration because the UK being the EU member must allow all EU citizens to enter their country and work without restrictions. The "right of free movement of workers" has allowed hundreds of thousands of Europeans to live and work in Britain.

One of the main factors of leaving the EU was, get the UK money back. This is because being part of the EU, the UK giving £20bn a year or £350m a week to Brussels.¹⁰⁸ The UK thinks it is rising and will increase if they stay. In cash terms, Britain is the second biggest contributor to the EU budget after Germany. Treasury figures put the gross payment at £18.2bn in the 2014-15 financial year, and the rebate worth £4.8bn.¹⁰⁹ The UK taxes go the EU but some of that money comes back to the UK in subsidies to farmers, grants to universities and so on. In 2015, the UK's gross contribution was approximately £18 billion, but a budget "rebate" won my Margaret Thatcher in 1984 reduced that to £13 billion, around £200 per person in Britain. The Treasury says around £6 billion comes back to the UK in subsidies and grants, that means the UK's net EU payments are over £100 per head.¹¹⁰ British citizens voted for leave because there will not be UK budget contribution, no EU subsidies.

There was one more important factor sovereignty. This is because since 1999 the UK has voted against a law passed in Brussels 56 times but that represents 2% of the total EU votes during that time. There is no way of accurately measuring how many UK laws originate from or are influenced by Brussels. They voted to leave because they could make their own laws again. The UK courts

¹⁰⁷ Guild, E. BREXIT and its Consequences for UK and EU Citizenship or Monstrous Citizenship, Netherlands, Brill Nijhoff 2016, p 69.

¹⁰⁸ Grice, A. EU referendum: Will Brexit save taxpayers money and mean more money for the NHS? The Independent 2016. <http://www.independent.co.uk/news/uk/politics/will-brexite-save-taxpayers-money-nhs-eu-referendum-vote-leave-a7049501.html> (13.04.2017).

¹⁰⁹ Ibid.

¹¹⁰ 20 reasons you should vote to leave the European Union. The Telegraph 2016. <http://www.telegraph.co.uk/news/2016/06/22/20-reasons-you-should-vote-to-leave-the-european-union/> (15.04.2017).

would have the final say over those laws. When Britain joined the EU, EU law has primacy over UK law. The Lisbon Treaty gave it power over 135 areas of criminal justice policy; Britain has opted out of all but 35 of those measures but participates in the European Arrest Warrant scheme, which gives the court the right to order EU nationals be extradited to face trial elsewhere in the EU.¹¹¹

However, the vote to leave was presented as a vote for liberty and the independence of Britain from the EU law.¹¹² There were many factors for leave but those which mentioned above were most important factors. Mainly Brexit was about “taking back control” voters showing their disdain simultaneously for Brussels and Westminster and, with gleeful transferred malice, for the City of London and Wall Street. Since the UK referendum on EU membership, discussions have intensified on the UK’s relationship with the EU, with free movement of workers and immigration being two topics at or near the top of the agenda. As it mentioned above that, the importance to the UK of retaining some level of access to the Single Market for goods and services has also been highlighted.

2.3 The pre-Brexit position

The pre-Brexit position of free movement, the UK is unable to impose limits on immigration from within the EU, as the free movement of workers, one of the four fundamental principles of the EU, entitles citizens of the Member States and their families to reside and work anywhere in the EU. The provisions on “free movement of persons” within the EU are set out in Article 45 of the TFEU. Free movement right also applies to citizens of non-EU, EEA States (Iceland, Norway, and Liechtenstein) and Switzerland.¹¹³ More clearly, it can say that anyone who has the nationality of an EU Member State is also an EU citizen and as such, has free movement rights in the EU. It is granted by the EU law.¹¹⁴ As long as the UK remains a Member State of the EU, it is subject to EU free movement of people laws. Under the EU law, withdrawal procedure takes two years after

¹¹¹ Ibid.

¹¹² Guild (2016), *supra* nota 107, p 2.

¹¹³ The EEA includes EU countries and also Iceland, Liechtenstein and Norway. It allows them to be part of the EU’s single market. Switzerland is neither an EU nor EEA member but is part of the single market. GOV.UK at <https://www.gov.uk/eu-eea> (16.04.2017).

¹¹⁴ OJ L 158, 30.4.2004, p 78.

the notification of its intention to withdraw from the EU. During that period the EU and the UK citizen can move freely across in the EU.

According to Article 45 of the TFEU, free movement is a right which protects against discrimination on the grounds of nationality for employment. In practice, free movement law means that the EU nationals do not require a visa in order to come to the UK, and no time limit may be placed on their stay. Even the UK citizen has the same right. All the EU nationals have an 'initial right to reside' in another Member State for up to three months for any purpose (Directive 2004/38/EC). They have a right to reside for longer than three months if they qualify as a worker, job-seeker, student, or self-employed or self-sufficient person (or a family member of one of those), and are not subject to knowledge of English requirements. A 'right of permanent residence' is acquired after five continuous years with a right to reside in the host Member State.¹¹⁵ These rights are subject to limitations justified on grounds of public policy, public security or public health. The EU case of Antonissen¹¹⁶ states that the above rights are not exhaustive and that, in the context of free movement of workers, freedom entails rights of job seekers to move freely and stay for the purposes of seeking employment.¹¹⁷ Leaving the EU will affect the legal status and entitlements of British citizens living in the other EU Member States and EU nationals living in the UK.

As it stated in the first chapter of this research, free movement of workers is often defined as a significant element of the *acquis* of the freedom of movement for persons. There is no definition of the term of a worker in the treaty but the court makes clear that where union nationals are under control of the employer they are workers. The court stated that in *Lawrie-Blum*¹¹⁸ case, employment relationship is that "if a person performs service for a certain period under the direction of other and receives remuneration for that and it's called worker. There is no requirement for the work to be full time, hours and a minimum level of remuneration as well."¹¹⁹

¹¹⁵ Miller, V. Brexit: impact across policy areas. Briefing Paper Number 07213. UK: House of Commons library 2016, p 104.

¹¹⁶ HCJ, Queen's Bench Division – UK. 26.02.1991, Case C292/89 *R. v Immigration Appeal Tribunal*, ex parte Antonissen [1991] ECR I-745.

¹¹⁷ Ibid, p 13.

¹¹⁸ Fairhurst, J. *Law of the European Union*. 5th ed. England: Pearson Education Limited 2006, p 297.

¹¹⁹ Ibid.

2.4 Post-Brexit position

The uncertainty surrounding the exit of the United Kingdom (UK) from the European Union (EU) remains high. As it mentioned above after triggering Article 50, it takes two years to leave the EU and the UK is the first member state who is leaving the UK. It can be assumed that withdrawal agreement might take more than two years because as author mentioned above of unpicking 43 years of treaties and agreements covering thousands of different subjects will be a complexed issue.

However, one of the main principles of EU membership is "free movement", which means you don't need to get a visa to go and live in another EU country. After Brexit, British citizens will cease to be citizens of the European Union while rest of the EU members will continue this status.¹²⁰ The EU's 27 member states will continue the right of free movement of workers. The UK wouldn't need to follow the EU law. It means the UK will not abide by the EU law. Therefore, questions arise that what will happen to EU citizens living in the UK and the UK citizen who working in the EU also? And how about the EU nationals who want to work in the UK and same the UK citizens who want to work in the EU. The UK government has declined to give a strong guarantee about the status of EU nationals currently living in the UK on a permanent basis, says it will depend on negotiations between the EU and UK.¹²¹ Under UK law who is living for five years (Section 6 British Nationality Act 1981), he or she will be able to stay in the UK. It means the EU citizens and their family members already in the UK, those who already possess the right to permanent residence could stay in the UK or be switched to indefinite leave to remain. Indefinite leave offers protections against deportation than permanent residence and this would raise because of human rights and domestic law in the event of an attempt to deport. Besides that, here might some complexity arise, for example- the UK has no population register as like Estonia and does not record movements of EU citizens comprehensively. Therefore, determining who qualified for permanent residence rights would be hugely complex, both legally and administratively. Hence, it can be said that interpretation of free movement rights would continue to be relevant for many years following exit because of their legislative or jurisprudential evolution.

Literally, after Brexit, the UK wouldn't bound to follow the EU law. Consequently, EU nationals who are living in the UK now may have to get back to the EU because free movement of workers

¹²⁰ Guild (2016), *supra* nota 107, p 1.

¹²¹ Hunt (2017), *supra* nota 85.

right would not exist. On the other hand, the UK citizens who are working in the EU will get back their country. Actually, it depends on the kind of deal the UK agrees with the EU. If the UK upholds the free movement of workers right, then the EU and UK citizens can move and work in any member states of the EU and the UK as well. Otherwise, the UK and EU workers would have to apply for visas to work. Although, the UK government has thinking to introduce a work permit system, which is currently applied to non-EU citizens, limiting entry to skilled workers in professions where there are shortages.¹²² Moreover, Brexit Secretary David Davis has suggested EU nationals who come to the UK on the basis of free movement rights as Brexit nears may not be given the right to stay. He has said there might have to be a cut-off point if there was a "surge" in new arrivals.¹²³ Therefore, the post-Brexit position of free movement, the UK would be able to impose limits on immigration from within the EU, as the free movement of workers one of the four fundamental principles of the EU, entitles citizens of the Member States and their families to reside and work anywhere in the EU. Meanwhile, the UK could entitle to an emergency brake on free movement of workers in the Brexit negotiations.

¹²² Hunt (2017), *supra* nota 85.

¹²³ Hunt (2017), *supra* nota 85.

Chapter-3 Free movement of persons

This chapter presents and analyses the impact of Brexit on free movement. Although, it is very clear that the UK and the EU are trying hard to reach a mutual solution to this problem, but it might not be that easy. Therefore, more difficult might arise if both sides could not reach a win-win solution. This chapter analysis the free movement of worker rights, the non-working citizens' rights and which Treaty Articles are applicable to them. This analysis began with ideas of other authors about free movement of persons. Then, the legal rights of free movement of workers were analysed followed by the impact of Brexit on their rights.

3.1 Free movement of workers in EU

According to Brynjólfsson, "...The free movement of persons is one of the core rights guaranteed in the European Economic Area (EEA), the extended Internal Market which unites all the EU Member States and three EEA EFTA States – Iceland, Liechtenstein and Norway. It is perhaps the most important right for individuals, as it gives citizens of the 31 EEA countries the opportunity to live, work, establish business and study in any of these countries"¹²⁴.

Fairhurst says that "...The free movement of workers is a great economic and social importance to the community. Although the right to move to other Member States in an employed capacity was originally seen as no more than an economic function whereby a surplus of labour and skills in one part of the community could meet a shortage in another, the worker was soon recognised in the community's legislation"¹²⁵. Fairhurst says more "the right to move now what is now Article 39 EC Treaty was a seen as 'a fundamental right' which was to be 'exercised in freedom and dignity'¹²⁶. The advocate general of case 7/75 stated that "The migrant worker is not to be viewed as a mere source of worker, but as a human being"¹²⁷.

Doherty says that "...the four freedoms have been seen as the cornerstones of the European Union since its foundation. The Union's core aim, since the Treaty of Rome, has been to ensure that the Member States create a single trading entity, a 'common market', and remove obstacles to free trade. In the context of current debates on the future of the EU, it is on the core principle of free

¹²⁴ Brynjólfsson, T. Free Movement of Persons. EFTA. <http://www.efta.int/eea/policy-areas/persons> (27.04.2017).

¹²⁵ Fairhurst (2006), *supra* nota 118, p 293.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

movement of workers that most attention has centered; it is this principle that, arguably, had the greatest impact on the decision of the UK electorate to vote to exit the Union”¹²⁸.

Teague says that “Free movement of workers is a touchstone of the European integration project. Economically, it is regarded as desirable, for at once it helps resolve the unemployment problem in labor surplus regions and ease labor market tightening in labor deficit areas”¹²⁹. Sodha says about the origin of the idea of free movement of people, “The idea was that allowing people to move across the continent from countries where there were no jobs to countries where there were labour shortages - would not only boost European growth but would help prevent war by getting people to mix more across borders”¹³⁰. This author says more, "the founding fathers of the European Community wanted it to be a construct that also had a political integration and for that, you needed people to move because the minute people crossed boundaries and borders, you had deeper integration. So, it was both a social as well as an economic aim. "If you wish to create a structure which would stop Germany and France ever going to war again, which was at the heart of the original principle," says Gisela Stuart, the Bavarian-born Labour MP for Birmingham Egbaston, "you did require a movement of the people in that area which would simply mean brother would never take up arms against brother again. And that has been achieved." ”¹³¹.

In the past, free movement right was first given to workers who could contribute to creating a common market. Only a few people took the advantages of this opportunity because of social (workers did not want to move without their family), economic (fear of losing benefits from their home state), cultural (comfort with their own states), and linguistic (language barrier).¹³² Besides that, there were secondary law instruments obstacles to free movement. In the late 1960s and early 1970s, the EU helped to remove some of these obstacles.¹³³ Freedom of movement and residence for persons in the EU is the cornerstone of Union citizenship, which was established by the Treaty of Maastricht in 1992 with the abolishment of further legal and technical barriers in the community and it became effective from 1993. The free movement rights were still restricted. Later in 2004, Directive 2004/38/ EC replaced a number of previous directives and codified CJEU case law in the area of free movement.¹³⁴

¹²⁸ Doherty, M. Through the Looking Glass: Brexit, Free Movement and the Future. *King's Law Journal* 2016, 27(3), p 376.

¹²⁹ Teague, P. 1992 and the Free Movement of Workers. *International Journal of Manpower*. MCB UP Limited 1991, 12(2), pp 26 – 36.

¹³⁰ Sodha, S. Why is EU free movement so important? BBC news, 27 July 2015. <http://www.bbc.com/news/world-europe-33655318> (15.04.2017)

¹³¹ Ibid.

¹³² Barnard (2013), *supra* nota 15, p 230.

¹³³ Ibid.

¹³⁴ Kasper (2014), *supra* nota 19, p 146, 147.

The aim of free movement of workers was to remove all obstacles to assure the same rights to the nationals of all the EU member states. Practically, it helps to increase the EU economy. After Brexit, rest of the 27 member states can enjoy free movement of worker rights, as well as in the EEA and Switzerland. Although the principle of free movement is controversial and as mentioned earlier, it was a key issue in Britain's referendum and now it's very critical part of Brexit negotiations (especially for Britain). EU leaders have made it clear that, if the UK wants to keep access to the single market then the freedom of EU citizens to migrate to Britain is non-negotiable¹³⁵. It is one of the four basic freedoms of the single market. European Council President Donald Tusk said, "the UK could not pick and choose"¹³⁶. The French and German leaders also made clear that "the freedom of movement of EU citizens was non-negotiable"¹³⁷. It can be said that access to the single market without free movement of workers is contrary to the principles of EU. Before starting to analyse the Brexit impact on free movement of workers, it is important to analyse that how it works, what the scope is, why it is important, and who workers are.

3.2 The legal rights on free movement of workers

The rights of free movement of workers granted under Article 45 (ex-Article 39 TEC) and the secondary legislation implementing it are granted to workers and also their families. In accordance with Article 45, free movement of workers are secured in the EU. Moreover, Article 20 of the TFEU, established the "Union Citizenship". It says, "every person holding the nationality of a Member State shall be a citizen of the Union" and Union citizens enjoy rights and are subject to duties provided for under the TFEU and the Treaty on the European Union (TEU) (together, the EU Treaties). Article 21 TFEU provides rights include the right to move and reside freely within the territory of any EU member state. Figure 3 summarizes the residence according to the Directive 2004/38/EC along with articles from the Touzenis, articles-"...After Directive 2004/38/EC the right of free movement is not a right of workers but of EU citizens in general"¹³⁸

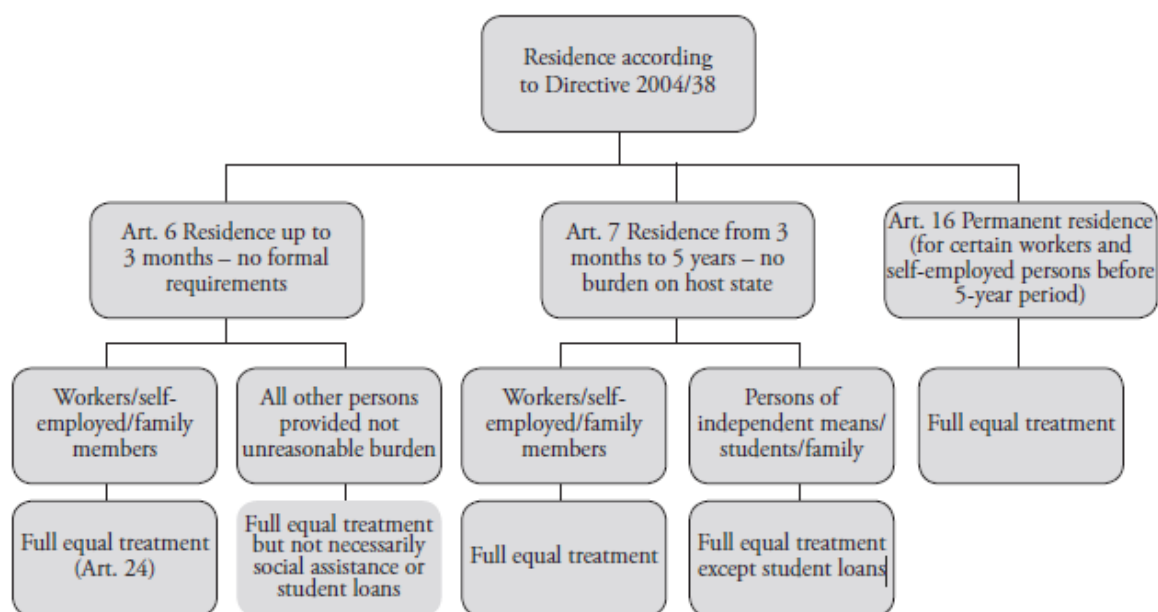
¹³⁵ Hutt, R. The free movement of people: what it is and why it matters, world economic forum 2016. <https://www.weforum.org/agenda/2016/09/free-movement-of-people-explainer/> (16.04.2017).

¹³⁶ Brexit: EU says no compromise on freedom of movement, BBC news 2016. <http://www.bbc.com/news/world-europe-36659900> (17.04.2017).

¹³⁷ Ibid.

¹³⁸ Touzenis, K. Free Movement of Persons in the European Union and Economic Community of West African States, France, UNESCO 2012, p 33.

Figure 3: residence according to Directive 2004/38/EC



Source: Barnard (2007, p. 424).

Article 3 of Directive 2004/38/EC gives rights to the citizens of the Union and their family members to move and reside freely within the territory of the Member States¹³⁹. Directive 2004/38/EC states that family member means spouse, registered partner, and direct descendants under the age of 21 or direct relatives in the ascending line¹⁴⁰. Directive 2004/38/EC gives union citizens right of residence in another EU member state for a period of up to three months without any condition, even though union citizens have right of residence for more than three months with their family if they are worker or self-employed persons along with other conditions (Article 7). It also gives right to live permanently in the host state. Union citizens and their family members who have resided legally for a continuous period of five years in the host member state acquire the right of permanent residence. Host member state is obliged to treat them equally as its nationals.¹⁴¹

According to EU legislation, all EU citizens have right to move freely to any member state in the EU and remain in a member state for three months without any conditions. It removes disadvantage like discrimination based on nationality between workers of the member states with respect to employment, remuneration and so on, but it's not applicable to employment in the public service.¹⁴²

¹³⁹ OJ L 158, 30.4.2004, p 88.

¹⁴⁰ Ibid.

¹⁴¹ Ibid, p 93.

¹⁴² Foster, N. Blackstone's EU Treaties & Legislation 2014-2015, Twenty five Edition. Oxford, Oxford University press 2014, p 31.

Dorethy says in her article, “The establishment of the general principle in 1958, practical implementation of this free movement right was slow, and it was only with the passing of Regulation 1612/682 that the details were fleshed out. The Regulation required that Member States established equal rights to social and tax benefits as between workers moving from another Member State and host State workers; and that family members of such workers were also allowed to reside and work in the host State. The ability of family members to move with the worker, and be entitled to equal treatment in the host State, meant that it was not only economically active citizens that would move, but also, for example, children and elderly relatives; the presence of the latter groups on the territory of the host State had obvious implications for social services in the fields of education, healthcare, and so on.”¹⁴³

Moreover, for residence longer than three months, they will be treated differently according to their status in that country. Status could be self-employed, worker, family member, jobseeker, student. For families, he or she must be a citizen of the EU. Nationality is determined according to the domestic law of the EU member states. A non-EU national may not rely on the free movement rights unless he or she is a member of a migrant worker’s family¹⁴⁴ and it was also a reason for British citizens to vote to leave the EU. According to the British law, it is not easy (i.e. salary, language requirement, tax issues) to bring non-EU national’s spouse to the UK. On the other hand, an EU citizen can easily bring non-EU national’s spouse to the UK.

It is important to clarify the term ‘worker’ to understand the impact of Brexit on their free movement rights. There is no definition of the term of a worker in the treaty but the court made it clear that, if the union nationals are under the control of an employer, they must be considered as workers. Generally, workers are economically active persons. In *Lawrie-Blum v Land Baden* (Case 66/85) the court said that “worker is a person who is obliged to provide services for another in return for monetary reward and who is subject to the direction and control of the other person as regards the way in which the work is to be done”¹⁴⁵ In *Levin v Staatssecretaris van Justitie* (Case 53/81) court said that, “part-time work was not only valuable contribution to the economy of the Member states but it also contributed to the raising of living standards for the individuals employees concerned”¹⁴⁶. So, it can be said that a worker is a person who performs under the direction of other and receives remuneration for that. There is no requirement for the work to be full time, hours and a minimum level of remuneration as well as no special rules for job-seekers

¹⁴³ Doherty (2016), *supra* nota 128, p 375.

¹⁴⁴ Steiner (2003), *supra* nota 14, p 301.

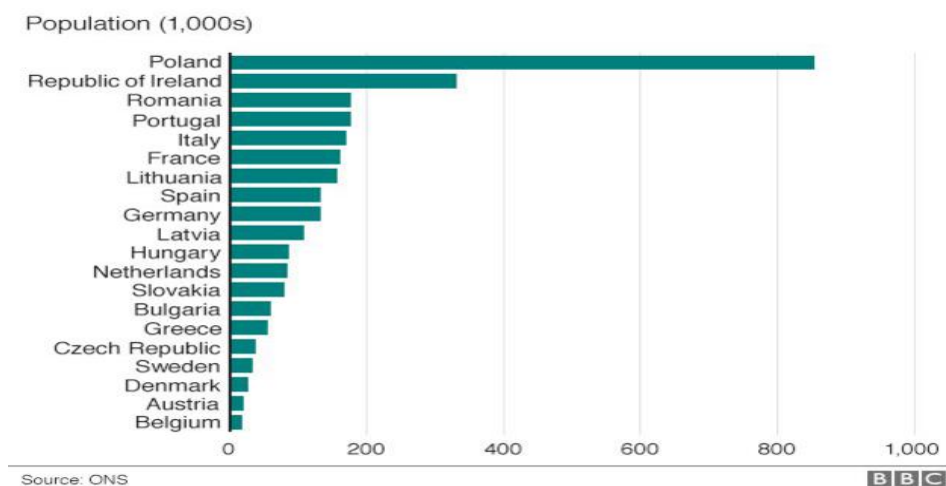
¹⁴⁵ Fairhurst (2006), *supra* nota 118, p 297.

¹⁴⁶ *Ibid.*

who are coming from the other member states of the EU. The general rules of host states are applicable to job-seekers.

Any member state has the right to hire a worker from other member states. The worker may conclude and perform contracts of employment by the laws of the host country. Discrimination against foreign nationals from getting work is not permissible. The employer should treat worker equally, can't treat differently in respect of the condition of employment, remuneration, dismissal, re-employment etc.¹⁴⁷ Workers also will enjoy the same social and tax advantages as national workers. Life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in one Member State, whereas no such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States contravene Articles 39, 43, 49 and 50 EC.¹⁴⁸ Migrating workers and members of their families shall enjoy equal treatment with nationals of the host state. Migrant workers also enjoy equality of treatment with nationals in respect of trade union membership and exercise right related to trade, the right to vote or to be eligible for the administration or management posts of a trade union.¹⁴⁹ Moreover, migrated workers enjoy all the rights and benefits same as national workers in respect of housing, ownership of property, child benefits¹⁵⁰ etc. Figure 4 shows that most of the EU nationals living in the UK are from the economically weak EU member states.

Figure 4: EU nationals living in the UK in 2004



¹⁴⁷ Barnard (2013), *supra* nota 15, p 282.

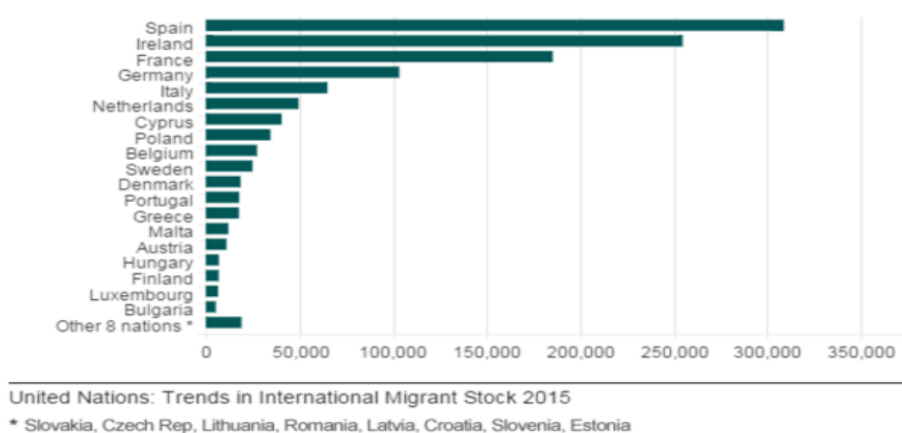
¹⁴⁸ Edström, Ö. REPORT on the Free Movement of Workers in Sweden in 2008-2009, Umeå University 2009, p 14 ec.europa.eu/social/BlobServlet?docId=5054&langId=en (16.04.2017).

¹⁴⁹ Barnard (2013), *supra* nota 15, p 292.

¹⁵⁰ *Ibid.*

EU citizens who are from developing states want to migrate to the UK for British social benefits. Author knows about some originally non-EU nationals who moved to the UK, after getting the citizenship from another EU country by living and working (mostly low-skilled work) there, because of the social benefits, language advantage (English is an international language), and multi-cultural society that the UK has to offer. This is because EU citizen can enjoy equal treatment with nationals of the host state, hence British government is bound to give them housing benefits along with other benefits.

Figure 5: UK nationals living in other EU nations



Source: BBC¹⁵¹

Figure 5 shows how many EU nationals live in the UK and UK nationals live in the EU. This figure shows most of the British expats live in Spain, Ireland, France, and Germany. Next part of this chapter analyses the consequence to EU and to Britain if these people are forced to leave. The UK has a population of 63.7 million, of which 5.3 million (8%) are non-British, and just over half of those - 2.9 million (5%) - are from Europe. Just under 1.2 million UK nationals live elsewhere in the EU. Of those 2.9 million EU nationals living in the UK, about 2.15 million are working.¹⁵² Immigration does have a small effect on wages. For lower-paid jobs, a 10% rise in the ratio of immigrant workers to UK born workers was associated with a near 2 % reduction in pay¹⁵³. When immigration is too high and pace of change is too fast, it is quite impossible to build cohesive society because it is really hard for schools, hospitals, housing and transport to cope with the rapid change. The UK has voted to leave and immigration (free movement) issue was certainly an important reason behind this decision. It can be said, British vote was against free movement of workers, a vote to take back control over immigration policies.

¹⁵¹ Reality Check: How many EU nationals live in the UK? BBC news 2016. <http://www.bbc.com/news/uk-politics-uk-leaves-the-eu-36745584> (14.04.2017).

¹⁵² Ibid.

¹⁵³ Gietel-Basten (2016), *supra* nota 103.

3.3 Impact of Brexit on EU single market: free movement of workers

Since the UK voted in a referendum to leave the EU, there has been legal uncertainty in several areas. Free movement of workers' rights is one of the top agendas such as the impact of Brexit on employers, employees, and trustees. At present, most employment rights in the UK are guaranteed by the EU laws. The rights include protection against discrimination in the work sphere, health and safety regulations, dismissal and transferring of employees, working hour rights; protection of workers who are on transfer and in insolvency etc.¹⁵⁴ Hence, Brexit will have a huge impact on free movement of workers, EU employment, taxes, social security, and pension. After Brexit, EU/UK citizens who would like to work or reside in the EU/UK may need to have a work or residence permit in the future. A distinction would have to be made between EU worker who have already been a resident of the UK for a period longer than 5 years and those with less than 5 years of residence. This is because, the EU nationals who have already lived in the UK for more than 5 years¹⁵⁵, can apply for the permanent residence permit in the UK. On the other hand, whose current stay is less than 5 years, a British employer has to submit a separate work permit on that person's behalf, or he/she has to go back to his/her own state. For low paid or low skill workers, it could be difficult to get a permission to work in the UK or EU.

Following Brexit, there might have an effect on pension related rules and regulations. Cross-border pensions might become an issue. As per current EU law in respect of pension, an EU citizen can apply for state pension in his/her last country of employment within EU and pension offices of all the EU member states will then exchange information on the basis of applicant's employment history within the EU and calculate applicant's full pension based on this combined data¹⁵⁶. It is uncertain whether those options will remain or not Britain leaves EU.

Brexit will have an impact on access to healthcare services. UK's National Health Service (NHS) is expecting to face a shortage around 16000 physicians and nurse 100000 by 2020 to 2022¹⁵⁷. Currently, UK filling the gap by recruiting from the EU and other foreign countries and around 144,000¹⁵⁸ EU citizens working in social and health care services in the UK. If Brexit

¹⁵⁴ QC, M. The Effect of Brexit on Workers' Rights. King's Law Journal 2016, 27(3), p 399.

¹⁵⁵ OJ L 158, 30.4.2004. p 105.

¹⁵⁶ The EU provisions on social security — your rights when moving within the European Union, Luxembourg, Publications Office of the European Union 2011, p 28.

¹⁵⁷ Das, R. What Does Brexit Mean For The UK's NHS And Healthcare In Europe? Forbes JUN 27, 2016 <https://www.forbes.com/sites/reenitadas/2016/06/27/what-does-brexit-mean-for-uks-nhs-and-healthcare-in-europe/> (15.04.2017).

¹⁵⁸ Simpkin, V., Mossialos, E. Brexit and the NHS: Challenges, uncertainties and opportunities. Health policy, Elsevier 2017, 121(4), p 1.

agreement doesn't cover free movement of worker rights, all of the workers from the health services would have to leave the UK. UK healthcare services will struggle in recruiting physicians and nurse from the EU. Moreover, healthcare within the EU works on a reciprocal basis. Under EU law, people can move around the EU and take their social security, pension and healthcare entitlements with them¹⁵⁹. All the British citizens residing in some other EU member states are entitled to the local health care system based on this law. For example, in Spain, there are more than 100,000¹⁶⁰ British pensioners have been moved and living there using the free movement rights and trusting that the entitlements of EU law, and the administrative simplicity that follows, will remain in place. They simply need to fill one form called *SI Form* and submit it to the *Sistema Nacional de Salud*, the Spanish NHS, to get all the health care benefits as Spanish citizens get¹⁶¹. But After Brexit, these UK nationals would be entitled to receive medical care as 'foreigners authorised to reside in Spain' under the Spanish law on healthcare 2003¹⁶². But to fall under this law, they will have to show their residency entitlement. It means, they will need to get a work permit, the only possible way to acquire Spanish residence permit for them. As most of the pensioners are not very wealthy and will find it difficult to work because of their age, they are afraid that they might need to return to the UK if the Brexit will be sealed with no-deal. It will put a lot of pressure on the British health care system and they better be prepared for this. Even though after Brexit the UK will lose access to the EU health research funding, talented scientists and researchers from the EU. Currently, the UK has been a net beneficiary of EU health research funds.

Definitely, Brexit would highly affect the lives of the two million British citizens living in EU countries. After Brexit, they may not be able to enjoy the benefits of EU free movement and workers' rights. So, it would not be possible for them to retain the advantages of EU citizenship. Free movement of worker rights says that one must hold the nationality of a member-state/EEA in order to be a citizen of the Union. These are the EU laws that grant nationals of non-EU countries, i.e. EU citizen's non-EU spouse or children, some specific rights in the UK who otherwise would not get those benefits following the British law. These people may suffer some big problems. Brexit may have an impact on regarding social security for EU citizens or British citizens or non-British who have worked or lived in another member state. EU system is designed to ensure that anyone, who is exercising free movement rights, would not need to worry about the social

¹⁵⁹ What a 'no deal' Brexit would mean for healthcare of British pensioners in Spain. The Conversation 2017. <https://theconversation.com/what-a-no-deal-brexit-would-mean-for-healthcare-of-british-pensioners-in-spain-74327> (15.04.2017).

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

security¹⁶³. In contrast, British social security system is designed to exclude all foreigners from almost all social benefits for substantial periods of time and very few number of contributory social security benefits are available to foreigners¹⁶⁴. It can be said, there is no principle of equal treatment in British law for foreigners.

After Brexit, if the UK or EU workers would be forced to leave, then there would be the huge economic impact on intra-EU worker migration for both the EU and the UK. UK wages may be held down by EU immigration, particularly in lower income unskilled sectors. EU migrants in the UK work in both the high and low skilled job sector. Brexit would impact on unskilled and lower skilled sectors' jobs such as agriculture, retail, hospitality, healthcare, construction and horticultural sectors. This is because, in the absence of EU migrants, worker costs for the low-skilled sector would be increased. UK would need cheap workers for such works from the EU or outside the EU. If it increases employer costs which would make the UK manufacturers less competitive at home and abroad, as a result of increased prices, leading to inflation and lead to a decrease in the standard of living in the UK¹⁶⁵. "...Indeed, every "rich" nation relies on cheap migrant labour (legal or illegal) to undertake such work"¹⁶⁶. Even though, according to Home Office's own list of shortage occupations, the UK has shortages in many areas of skilled workers such as in engineering, healthcare, and the arts¹⁶⁷. It seems after Brexit, the UK would be a shortfall in doctors, nurses, and dentists. Moreover, many international large companies are based in the UK, which are providing services to other EU member states, there is a possibility that those companies might relocate to other EU member states after Brexit. Most of the working EU citizens in the UK are young and paying more taxes. Brexit will reduce the number of immigrants in the UK but immigration is highly needed for its economic growth. On the other hand, one of the biggest parts of the UK expats is aging people. After Brexit, unemployment might rise in the EU because of the EU workers who will be forced to leave the UK.

After the UK decision to leave the EU, EU nationals are feeling insecure about their future in the UK because of the huge and complicated paperwork process they need to go through to apply for permanent residency in the UK. Thousands of European nationals are struggling and often failing to negotiate the bureaucracy that decides whether they can stay in Britain after Brexit.

¹⁶³ Guild, E. Brexit and Social Security in the EU. Brussels, Centre for European Policy Studies 2016, p 5.

¹⁶⁴ Ibid.

¹⁶⁵ Davies, J., Hotson, N., Stone, N. Free trade and controlling free movement – can the UK and the EU square the circle? UK, Lewis Silkin 2017, p 7.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

For proving their last five years of residence in the UK, EU nationals must complete an 85¹⁶⁸ page application form along with supporting documents from tax returns in details. Besides this, they also need to hand over their original passports to the authorities for months. It is turning out to be a very difficult and expensive task to prove their last five years of residence in the UK. A German national, who is a professor of psychology at the University of Warwick in central England, has said, he had to submit every tiny detail about his employment and travel history of last five years in and from the UK. He keeps travelling a lot for business purposes and it is very difficult to gather all the detail information about all the trips. He literally needed to go through his diary to find out the exact dates of the trips. After doing all of this, his permanent residency application was rejected just because he did not submit his original passport with the application. Submitting a lawyer certified copy did not work. He complained that it was impossible for him to submit the passport as he needs to travel both within and outside of the EU to attend numerous conferences.¹⁶⁹

EU citizens who are from developing states working in the UK are worried about their future status in the UK because of the Brexit. As previously noted, under the EU laws, the employers should treat workers equally regardless of nationality or any other conditions. They also fear not to be treated as same as the nationals of developed EU countries in the post-Brexit UK. Florina Tudose, of the East European Resource Centre, states that "...People are worried that at the end of Brexit negotiations they won't have the same deal as countries such as France, Germany, and Spain"¹⁷⁰. In the past, there has been a sense of some kind of second class citizens and having experienced sorts of restrictions on free movement such as having to apply for a work permit and workers initially had to apply for a workers' registration scheme¹⁷¹.

Therefore, after the Brexit, companies, and individuals, from both the UK and other member states, would no longer benefit from free movement of rights established by Britain's EU membership. Probably, they would be in a new legal situation depending on the EU-UK negotiations. Those who don't have a right to permanent residence could be forced to leave the EU or UK, according to applicable national rules on immigration. Brexit could impact on wage, tax and social security. Indeed, after Brexit, the EU Social Security Regulations will not apply to the UK and its citizens. As a result, the applicable social security legislation may have to be determined by using bilateral treaties or by using national social security laws.

¹⁶⁸ Holden, M. Stay or go? EU nationals struggle with UK residency rules as Brexit looms. Reuters 2017. <http://www.reuters.com/article/us-britain-eu-residency-idUSKBN16R111> (16.04.2017).

¹⁶⁹ Ibid.

¹⁷⁰ Eastern Europeans fear second class future with Brexit. Sky news, 20 March 2017. <http://news.sky.com/story/eastern-europeans-fear-second-class-future-with-brexit-10808477> (16.04.2017).

¹⁷¹ Ibid.

Brexit would have an impact on the higher study and business. Nowadays, EU citizens including the UK they can receive their education from any member states, as a result they can gain knowledge in special fields. Students can go easily for exchange programs because of free movement of person. After Brexit, they would be in a new legal situation. Indeed, the higher education market in the UK is one of the big businesses. In 2015, UK universities contributed around 39.9 billion to the GDP in 2011-12, which amounts to 2.8% of the GDP, 4 times that of agriculture.¹⁷² Now there is free movement of EU students within the UK. EU students who are studying in the UK pay the level of fees and access to the same services as the UK students, including loans and grants. EU citizens currently make up 15% of the academic workforce and 5% of the student body. It is obviously noted that EU students make a huge contribution to the UK economy. In 2011 to 2012, they generated £3.7 billion for the economy.¹⁷³ After Brexit, fewer EU students will go to the UK to train. So, there will be a significant reduction in the availability of teaching staff and obviously, the UK students may not have the opportunity to travel with ease to European countries to train. It could be the effect on the economy. The worse thing is the UK plans to end rights given under freedom of movement rules when UK triggers Article 50, as they are assuming that half of Romania and Bulgaria might come to the UK before Brexit¹⁷⁴. It can be assumed, that would be the primary impact on free movement of worker rights. If the British government do so that would be a breach of the EU treaties that guarantee freedom of movement. Although, the EU has argued that the cut-off date should be the same date as the day the UK actually leaves the EU.¹⁷⁵

Brexit might have an impact on travel and tourism industry in the UK. Tourism from the EU is more than double than the rest of the world to the UK¹⁷⁶. Behind this, might be one reason is EU free movement rights because Article 6 of Directive 2004/38/EC gives union citizens right of residence in another EU member state for a period of up to three months without any condition. After Brexit, free movement rights will be ceased, so EU/UK citizens might have required to get visa to enter to the UK/EU. For getting a visa, EU/UK citizen has to pay visa fee, have to managed hotel booking, flight booking, travel insurance, along other documents have to go embassy and

¹⁷² Furley, J. Brexit: What will be the effect on Dentistry? Linked in 2016. <https://www.linkedin.com/pulse/brexit-what-effect-dentistry-julia-furley> (13.04.2017).

¹⁷³ Ibid.

¹⁷⁴ Johnston, L. Theresa May to end EU citizens' rights to live in UK after fear 'half of Romania and Bulgaria' will come. Independent news 2017. <http://www.independent.co.uk/news/uk/politics/brexit-theresa-may-eu-citizens-live-in-uk-freedom-of-movement-european-union-a7601051.html> (13.04.2017).

¹⁷⁵ Ibid.

¹⁷⁶ What could Brexit mean for the UK's travel and tourism industry? The guardian 2016. <https://www.theguardian.com/small-business-network/2016/may/11/what-brexit-uk-travel-tourism-industry-visas> (15.04.17).

obviously it will take time for visa processing. On the other hand, EU citizens have easier and attractive option, even without any hassle can travel rest of EU member states. Barnard, C. says that "...Brexit may create a significant disincentive to travel to and from the UK. Hence, if a France family is looking to go on holiday either to Spain (no visas, no hassle, no extra cost) or to the UK (visas, hassle, and cost), their choice is pretty clear"¹⁷⁷.

Moreover, Article 267 TEU allows only member state request, ECJ to give preliminary rulings on EU law is restricted to reference from the court or tribunal of member state.¹⁷⁸ So, it could create an impact because the UK appellate courts have ever given a social Directive a wide interpretation in favour of workers without the guidance from the ECJ.¹⁷⁹ In the absence of the assistance of guidance from the ECJ, the domestic appellate courts would return to their default position. EU citizenship is dependent on a worker holding the nationality of any EU member state, after Brexit the UK would be 3rd country, so a British citizen cannot exercise the EU citizenship rights. EU rules are strict on sanctioning employers for recruiting 3rd country nationals who do not have lawful residence. After Brexit, British citizen wouldn't be able to exercise free movement of worker rights, then if any British citizen who wishes to work in the EU must be fulfilled same requirements and will need a relevant work and residence permit before starting the work.

¹⁷⁷ Ibid.

¹⁷⁸ QC (2016), *supra* nota 154, p 404.

¹⁷⁹ Ibid, p 405.

Chapter-4 Alternative options for UK relationship with EU

In this chapter, the alternative options for the UK to maintain a relationship with the EU are being analysed. The chapter starts with a description of the alternative options followed by the analysis of the options from the perspective of the UK. It provides examples of countries that are not members of the EU but have other arrangements with it, specifically Norway and Switzerland. At the end of the chapter, the findings of this research work are explained.

4.1 Brexit alternatives case of (Norway, Switzerland, WTO)

After British decision of leaving the EU, there are two prominent questions arisen about UK-EU relationship, one is, how the relationship would look like having free movement of workers in place and the other one is about the conditions of the relationship of which free movement would not be a part of but still give the UK access to the single market. Even though EU leaders are determined that the UK cannot be part of the single market without accepting the free movement of workers and on the other hand, it is one of the top issues behind British leaving the EU. It can be assumed that free movement of worker rights is going to be the top of the agenda of negotiation between the EU and UK. Moreover, Scotland planning for a new Scottish independence referendum before Brexit as they voted for remain in the EU, Scotland wants to keep access to the single market. British prime minister said, now is not time, you should know the Brexit deal first. She said more, the focus should be on getting the best Brexit deal for the whole of the UK¹⁸⁰. The UK would face difficult choices. As a country, UK needs to weigh up the value of freedom to act alone against the benefits of acting in coordination with the EU. Whatever, let's see after Brexit what alternative options British have. The UK's withdrawal from the EU would open up some alternatives for the UK, namely- "Norwegian model, Swiss model and World Trade Organisation (WTO). After Brexit, those could be work for the UK and there could be negotiated a special deal from scratch under a new free trade agreement.

¹⁸⁰ Scottish independence: referendum demand will be rejected. BBC news 2017. <http://www.bbc.com/news/uk-scotland-39293513> (14.04.2017).

4.1.1 Norwegian model

In this thesis, the Norwegian model has discussed in the framework of Norwegian and EU relationship. Norway is a member of the European Economic Area, but not the EU. One option for the UK is to exit the EU but adopt the Norwegian model to join the EEA. However, EEA agreement was signed in 1992 between the European Community, its 12 member states and 7 states of the EFTA¹⁸¹. It was the result of long maturation in the relationship between the EC and the EFTA states. EFTA was established in 1960 between the EC and those states who did not wish to become members of the EC¹⁸². Because they disagreed with its integrative aim, mostly free trade in industrial goods, institutional framework, classical intergovernmental bodies without legislative powers¹⁸³. After that, Denmark and UK left the EFTA and joined the EC in 1973, remaining the EFTA States signed bilateral free trade agreements (FTAs) with the EEC, which concerned trade in industrial goods, and their scope was similar to that of the Stockholm convention then resumption of harmonious relations of EC-EFTA in 1984¹⁸⁴ and at the same year the Luxembourg Declaration on broader cooperation between the EEC and EFTA was signed.

Blanchet, Piipponen, Clement, are says, “Luxembourg process purpose was to extend co-operation beyond the framework of the free trade agreement in the different fields considered as being of mutual interest. Expert work therefore began on issues such as reduction of technical barriers to trade, in particular, through European standardization, simplification of trade documentation, research, and development, the mobility of qualified workers, intellectual property, social and consumer matters and increased contracts in economic and monetary policy. Things went fairly smoothly but this was still a step-by-step strategy, somewhat lacking a wider underpinning project”¹⁸⁵. They are also saying “as the EC launched its programme for further integration through the completion of its internal market, the EFTA states increasingly felt the need for a closer relationship with their main trade partner. Therefore, they welcomed the proposal by the EC commission to strengthen the relations between the EC and EFTA state through a new form of association”¹⁸⁶.

¹⁸¹ Blanchet, T. Piipponen, R., Clement, M. The agreement on the European Economic Area (EEA), New York, Oxford university press, 1994, p 1.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid, p 2.

¹⁸⁶ Ibid.

The EEA was established in 1994 to extend the EU's provisions on its internal market to the European Free Trade Area (EFTA) countries. Norway, Iceland, and Liechtenstein are parties to the EEA¹⁸⁷. Switzerland is a member of EFTA but does not part of the EEA or EU. They participate in the single market of the EU without being members of the EU and they adopt EU legislation concerning the single market. So, all EEA countries are part of the single market including free movement of workers but are not required to participate in other areas of the EU. Article 28 of EEA secured the rights of workers among the EC Member States and the EFTA States. EEA agreement does not cover EU policies. EEA agreement does not cover area of freedom, justice, and home affairs, economic and monetary union, the customs union, common foreign and security policy, common fisheries policy, common trade policy and common agricultural policy.¹⁸⁸ So it can be said, the objective of the EEA Agreement is to create a free trade area based on common rules that allow Iceland, Norway, and Liechtenstein to participate in the Single Market, without having to commit to integration on areas unconnected to the Single Market. It means they are enjoying single market but they are obliged to accept the free movement of workers.¹⁸⁹

In particular, as it was mentioned earlier the single market of EU allows EU citizens to work and make business, to move and trade freely within the EU without any discrimination and EEA agreements also guarantees the EU single market's four freedoms including free movement of workers as well as non-discrimination and equal rules of competition across the EEA area. The four fundamental freedoms of the EU apply in full to all EEA Member States, as other EU member states have the same functioning of the Single Market, such as the competition and State aid rules and certain rules relating to transport and environment policy¹⁹⁰.

The principle of free movement of goods ensures that products entering into an EEA state freely within the internal market. Any kind of restrictions is prohibited within the EEA on the trade of such goods¹⁹¹. Even though customs and quantitative restrictions are prohibited¹⁹². Through the free movement of workers, all EEA nationals have the right to work in any other EEA state without any discrimination (Article 28 EEA). Students, pensioners, and unemployed people have the right to reside in another EEA state. Under the EEA Agreement, individuals and companies enjoy the freedom of establishment and the right to provide services across the EEA on equal terms

¹⁸⁷ Bahadir, A., Fayos, F. The European Economic Area (EEA), Switzerland and the North. European Parliament, EU Fact Sheets 2016.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ OJ L1, 03.01.1994, art 10, p 10.

¹⁹² OJ L1, 03.01.1994, art 11 and 12, p 30.

(Article 31 & 36 EEA). The principle of free movement of capital, EEA nationals and companies have the right to transfer money between EEA states (Article 40 EEA). “To ensure conformity as between the EEA and the EU, Norway, Iceland, and Liechtenstein do not have right to access to the EU decision-making process. The EEA Agreement is dynamic in that it is continually updated so that the Single Market remains homogenous throughout the EEA: once new EU legislation has been incorporated into the EEA Agreement, each of the EEA Member States is bound by it regardless of whether they also happen to be members of the EU”¹⁹³. EEA member states cannot veto EU rules. The view from Norway “...We [Norway] are fully integrated into the EU single market as members of the EEA, but what we don’t have is the right to vote on those regulations that are incorporated into our law when they are made by the council of ministers.”¹⁹⁴ Vidar Helgesen, Norwegian Minister for Europe. “If you want to run the EU, stay in the EU. If you want to be run by the EU, feel free to join us in the EEA.”¹⁹⁵ Nikolai Astrup, spokesperson on European Affairs for the Norwegian Conservative Party. Whatever, under Norwegian model it can be said, outside the EU would be granted access to the single market but a state obliged to accept the free movement of goods, services, capital and free movement of workers.

Figure 6: The EU Four Freedoms in Norwegian Model.

The Four Freedoms			
The single market is based on four freedoms: the free movement of goods, persons, services and capital.			
Goods	Persons	Services	Capital
Internal taxation	Free movement of citizens	Freedom to provide and receive services	Free movement of capital
Free movement of imports	Free movement of workers		Free movement of payments
Free movement of exports	Free movement of establishment		

Source: EEA agreement

Figure 6 summarizes the four freedoms, the single market is based on those freedoms. Britain already a member of EEA agreements because the EEA consists of the EU, the EU’s Member States, Norway, Iceland, and Liechtenstein. Under Article 127 EEA, contracting parties

¹⁹³ Ibid.

¹⁹⁴ Brexit essentials: Alternatives to EU membership. Slaughter and May 2016.

<https://www.slaughterandmay.com/media/2535258/brexit-essentials-alternatives-to-eu-membership.pdf>

(12.04.2017).

¹⁹⁵ Ibid.

may withdraw from the Agreement. It states that “...Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months’ notice in writing to the other Contracting Parties. Immediately after the notification of the intended withdrawal, the other Contracting Parties shall convene a diplomatic conference in order to envisage the necessary modifications to bring to the Agreement”¹⁹⁶. So, it can be said that any member state can withdraw from the EEA agreement but leaving state has to notify other contracting parties at least 12 months. It doesn’t provide for a negotiation process as like Article 50 of TEU.

4.1.2 Swiss model

In this thesis, the Swiss model has discussed in the framework of Switzerland and EU relationship. EFTA is an abbreviation for the European Free Trade Area and was founded as an alternative to the growing European Economic Community to facilitate trade between its members. Basically, it created to promote free trade and economic integration but Switzerland remains the outside of the EEA and the EU. EFTA gives Switzerland a similar status to EEA countries and including the free movement of workers. “The EU and Switzerland have signed over 120 bilateral agreements, including a free trade agreement in 1972 and two major series of sectoral bilateral agreements that aligned a large portion of Swiss law with that of the EU at the time of signing”¹⁹⁷. Switzerland doesn’t have direct entry into EU’s the single market but Swiss developed its relations with the EU through bilateral agreements and those developed over decades, have been extended step by step¹⁹⁸. The bilateral treaty allows Switzerland to participate in a particular EU programme and also allows the flexibility to choose the EU initiatives in which it wishes to participate. As a member of EFTA, it covers technical barriers to trade and achieved a similar level of goods market integration with the EU as EEA countries.

In the mid-1980s, the European Community and the EFTA states started discussions that aimed to establish a new trade, that make the larger scope of the economy. This eventually became the European Economic Area (EEA) but later on Swiss voted against EEA membership. Norway, Switzerland had no right to access the Single Market. As a result, Switzerland adopted a different approach and negotiated over 120 individual agreements with the EU, covering market access in different sectors. Switzerland was also required to accept the EU principle of four freedom

¹⁹⁶ OJ L1, 03.01.1994, art 127, p 30.

¹⁹⁷ Bahadir (2016), supra nota 187.

¹⁹⁸ Bilateral agreements Switzerland–EU, Integration Office FDFA/FDEA 2009.

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/deea/dv/2203_07/2203_07en.pdf (16.04.2017).

including free movement of workers to gain access to the single market.¹⁹⁹ Bilateral agreements provide right of free movement of persons. It gives employees from the EU/Switzerland the fundamental right to take up residence in Switzerland/EU with pre-condition such as employment contract, self-employed or financial support, and health insurance and then if they are gainfully employed, they are given a residence permit²⁰⁰. Beside this, pensioners and students have the right of entry and residence but they have to have health insurance and sufficient financial resources²⁰¹.

“Bilateral I” include free movement of persons, technical trade barriers, public procurement, agriculture and air and land transport. In addition, a scientific research agreement fully associated Switzerland into the EU’s framework research programmes²⁰². Moreover, “Bilateral II” covering Schengen and Dublin, and agreements on taxation of savings, processed agricultural products, statistics, combating fraud, participation in the EU Media Programme, the Environment Agency, and Swiss financial contributions to economic and social cohesion in the new EU Member States²⁰³. However, controls relating to borders and passports have been removed in EU member states by Schengen agreement²⁰⁴, make it easier for people to travel to other Schengen states, with the outcome that external borders only will be controlled. Ireland and UK didn’t participate in the Schengen agreement. Norway, Liechtenstein, Iceland and Switzerland are not a member of states of the EU but collectively all partake in Schengen co-operation²⁰⁵. Even though non-EU citizen who has Schengen visa or Schengen member states’ residence permit can get this benefit either. Full freedom of movement has been effective in the 15 old EU member states as well as with Cyprus and Malta since 1 June 2007²⁰⁶.

In particularly, to ensure conformity as between the EFTA and the EU, Swiss model is same as Norway model do not have right to access to the EU decision-making process. It seems a State outside the EU would be granted access to the single market but a state obliged to accept the free movement of goods, services, capital and free movement of workers. So, Norway and Switzerland had to accept free movement of workers and had to adopt policies on worker regulation such as the Working Time Directive. “A referendum in 2014 tried to restrict free movement, which triggered a crisis, as the EU refused Switzerland’s request to give legal effect to

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid, p5.

²⁰³ Ibid, p5.

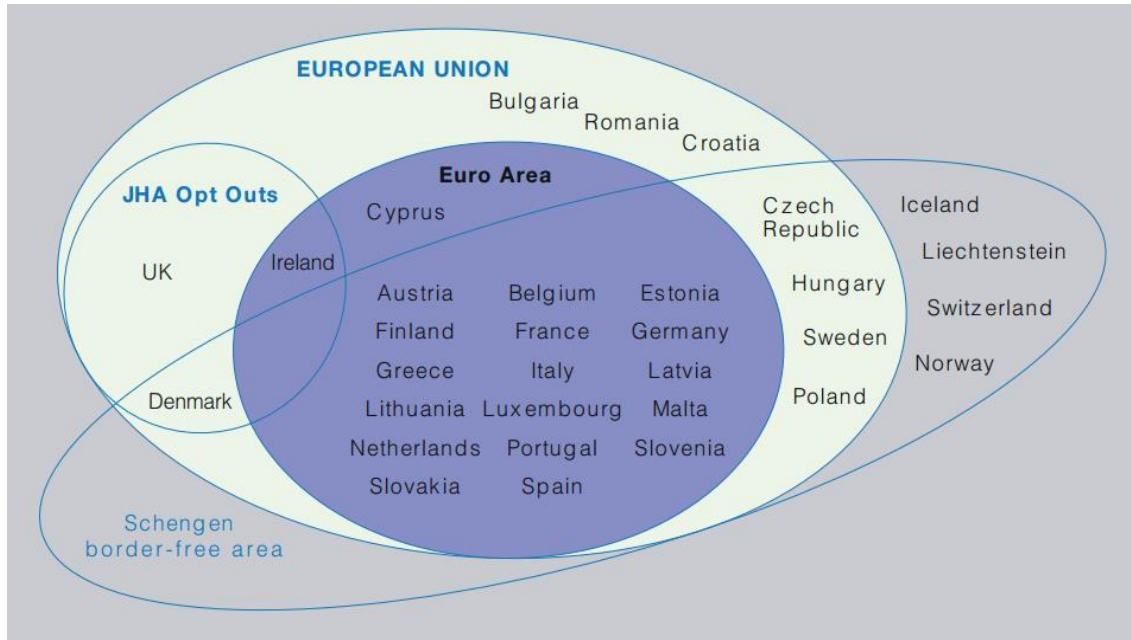
²⁰⁴ Clements, B. Britain outside the European Union. London, The Institute of Economic Affairs 2014, p 32.

²⁰⁵ Ibid.

²⁰⁶ Bilateral agreements Switzerland–EU (2009), *supra* nota 198.

the referendum. The immediate consequence was Switzerland’s suspension from the EU research programme (Horizon 2020). Switzerland was later partially readmitted”²⁰⁷.

Figure 7: EU, EEA and EFTA area



Source: Norway, Iceland, Liechtenstein and the 28 EU Member States comprise the European Economic Area. Switzerland, Norway, Iceland and Liechtenstein are members of the European Free Trade Association (EFTA)²⁰⁸.

Figure 7 showing the European Union area along with Schengen border-free area and Euro currency area. It can be said, EU cares so deeply about the free movement. Single market is at the heart of the European project. The free movement of worker is one of the core rights guaranteed in the EU and also in European Economic Area along with the EFTA. The free movement of workers is the most important right for individuals, as it gives citizens of the 31 EEA countries to enjoy the freedom to live, work, establish business and to study in any of these countries. The free movement of workers is one of the four founding principles of the EU. Britain wishes keeping the access to the single market while introducing tougher immigration control is contrary to the principles of the EU.

²⁰⁷ Keating, M. What Are the UK’s Alternatives to EU Membership? European futures 2016. <http://www.europeanfutures.ed.ac.uk/article-3391> (13.04.17).

²⁰⁸ Alternatives to membership: possible models for the United Kingdom outside the European Union. HR Government 2016, p 11.

4.1.2 WTO alternative

WTO is an abbreviation for World Trade Organisation. WTO has to be mentioned here as a part of a Brexit alternative agreement between the EU and the UK. WTO is different from the EEA or EFTA. It is a total exit from the EU as well as the single market (free movement of workers). WTO sets rules for international trade with EU, which apply to all members. There is no free movement, financial contribution for the EU programme, no obligation to apply EU laws. But trading goods have to meet EU standards and trade in services would be restricted²⁰⁹. WTO allows joining the EU's customs union. Customs union countries operate under a common trade policy, rules of origin and external tariff. The customs union covers all industrial goods but doesn't cover financial services.²¹⁰ If UK adopts WTO agreement, UK will be able to negotiate trade deals independently of the EU. UK is not required to adopt EU economic policies, regulations and contribute to the EU budget.

After Brexit, the UK could adopt a similar model of Norway or Switzerland. The figure from the BBC news, shows the agreements of other countries with the EU, the way they trade with the EU and obviously they are not a member of the European Union. From the figure, the EU relationship with the non-EU countries is easily understandable.

Figure 8: alternative Brexit models.

	EU membership	Norway	Switzerland	Canada	Turkey	WTO
Single market member?	Full	Full	Partial	No	No	No
Tariffs?	None	None	None	Reduced tariffs through free trade deal	None on industrial goods	Yes
Accept free movement?	Yes	Yes	Yes	No	No	No
In the customs union	Yes	No	No	No	Yes	No
Makes EU budget contributions	Yes	Yes	Yes (but smaller than Norway)	No		

Source: BBC News, 15 January 2017.

²⁰⁹ EU and WTO. European Commission. <http://ec.europa.eu/trade/policy/eu-and-wto/> (10.04.2017).

²¹⁰ Ibid.

4.2 Discussion and observations of Brexit in the context of free movement

This thesis analyses the impact on free movement of workers after Brexit from the EU. This study describes possible alternatives that UK could apply to maintain its relationship with the EU. The free movement of workers received the most media attention during the UK referendum and it was a top agenda for voting to leave the EU. The major part of the discussion around Brexit has focused on the free movement of workers. Definitely, free movement of workers will play a big role in Brexit negotiations.

Therefore, it can be said that all EEA and EFTA states are part of the common European labour market and have adopted a large amount of EU legislation linked to the free movement of workers. Free movement of workers is one of the fundamental freedoms guaranteed by Community law. Perhaps, it is the most important right under Community law for European citizens. In all agreements: EEA, EFTA and the EU, everywhere the principle of the free movement of workers' is a fundamental pillar of European integration. EEA and EFTA states had to accept free movement of worker for accessing to the single market. The EU always cares its principles so deeply. For workers, this freedom is laid down in Article 45 TFEU and it entails: the right to look for a job in another Member State, the right to work in another Member State, the right to reside there for that purpose, the right to remain there, the right to be treated equally with respect to access to employment, working conditions and all other advantages which could help to facilitate the worker's integration in the host Member State.

The UK has options to choose such as 'Norway model' or 'Swiss model' or 'WTO model' for its future relationship with the EU. After Brexit, if the UK adopts Norway model or Swiss model except the WTO model (become a party to the EEA or EFTA agreement and in its current format), then the regulations related to the single market will remain unchanged including the free movement of workers. As the EU policies are not covered by the EEA agreement, therefore, some EU rules such as agricultural and fisheries policy, the customs union, common trade policy, or common foreign and security policy would no longer be applicable to the UK and UK would have the freedom to set its own VAT regime. The UK would be free to set its own laws in these areas as Brexiteers wanted, but obviously, the UK would no longer be benefited from EU policies. If the UK join EFTA (but not the EEA), the relationship between the UK and the EU would be governed by bilateral agreements that allow UK to enjoy some limited access to the EU single market. But, at the same time, the UK would lose its place in the European Parliament and the European Council and European policy as well.

Furthermore, if Britain would like to practice anyone of these alternative models, there would be significant obligations and costs for Britain. Additionally, Norway and Switzerland also have the right to veto the UK to join the EEA or EFTA agreement²¹¹. Norway model has considerable access to the EU Single Market but it is not in the agriculture and fisheries. As it does not allow access to the EU's trade deals with non-EU countries and it requires customs checks on goods crossing into the EU. It involves contributing to EU spending, accepting free movement of workers, and taking on EU rules without having a vote on them. If it comes to the Swiss model, bilateral agreements do not provide full access to the EU single market which constitutes approximately 80% of the UK economy. Full access to the single market involve performing EU rules in domestic legislation accepting free movement of workers. If the UK would like to adopt Norway model, the UK would have to acknowledge many of the EU's rules that would be against of Brexiteers wishes and Britain sovereignty/priorities. Unfortunately, Britain would not have the right to vote or veto on the creation of EU's rules. Besides that, if the UK would like to choose any one of these models it needs to accept the right of free movement of workers.

It is not a requirement for an EEA member to pay a membership fee, but if they would like full access to the EU Single Market then it is the requirement to pay a contribution to the EU's programmes and budget. Therefore, the same requirements would be applicable for the UK also. The UK would have to decide whether it would like the full access to the EU single market or not. If the UK would like the full access to the single market, then it would be the requirement for the UK to accept many of the costs and obligations of EU membership, including the free movement of workers and must pay for EU programmes.

During the EU referendum, leave voters supported Brexit idea with a hope that, it will be a great way for taking back UK's control, money, and sovereignty. But the reality is, if the UK would like to maintain a relationship with the EU, there has to be a point of compromising agreement. The UK is the first member state who is leaving the EU which means there could be some new bilateral agreements. And, if the UK succeeds to reach such an agreement like the ones mentioned above, then there could still be possible free movement of workers between the UK and the EU with some restrictions in place. This compromised bilateral agreement can result in acceptance of high-skilled workers than the low-skilled ones irrespective of sectors or any other criteria.

²¹¹ Norway may block UK return to European Free Trade Association. theguardian 2016. <https://www.theguardian.com/world/2016/aug/09/norway-may-block-uk-return-to-european-free-trade-association> (02.05.2017).

Lisbon Treaty was the first to introduce the procedure for a Member State to withdraw itself from the European Union. Article 50 of TEU gives withdrawal rights from the EU. It provides negotiation of withdrawal agreement between the EU and the withdrawing state. It gives a two-year time for negotiation, if no agreement is made within this period of time, then state's membership ends automatically. Therefore, withdrawing state will no longer be able to use the corresponding rights of EU. But Article 50 of TEU does not clarify how the new relationship would work with the respective state.

After the British decision of leaving the EU, some questions have arisen about the leaving procedure. One of the major questions is whether the UK should notify the European Economic Area (EEA) explicitly of its intention to withdraw or not? Article 50 of TEU gives withdrawal rights from the EU but does not clearly state anything about the agreements with the EEA. This is because the EEA consists of the EU's Member States, Norway, Iceland, and Liechtenstein (those countries are not part of the EU). Article 127 of EEA agreement states that each contracting party may withdraw from this Agreement by giving at least twelve months' notice in writing to the other Contracting Parties. Therefore, it is not clear that after Brexit whether UK's membership of EEA would remain unchanged or not. Koutrakos, says that "whilst a party to the EEA, the UK's membership is conditioned by its EU membership. Notification pursuant to Article 126 EEA is a procedural duty which would need to be complied with. Failure to notify, however, would not maintain EEA membership, unless either the EEA Agreement was amended or the UK became an EFTA member. Instead, leaving the EU without having notified the EEA under Article 126 EEA would have consequences for the UK in the public international law sphere. The other EEA members, for instance, would be able to consider Brexit a fundamental change of circumstances (under Article 62 of the Vienna Convention on the Law of Treaties) and terminate the Agreement"²¹². Koutrakos, analysed "...The outcome of the negotiations between the EU and the UK under Article 50 TEU may well entail adjustments of the system set out under the Agreement such adjustments would require an amendment of the Agreement"²¹³.

As obliged by the EU law, the UK had to notify their intention to leave the EU. Under Article 50 (3) of TEU, it is stated that all the treaty rights will be ceased including rights to live, study, work and retire inside the UK. The same is described the rights of a citizen under Directive 2004/58/EC, Article 45 of TFEU, Article 21 of TFEU. Article 50 (3) does not clarify the status of

²¹² Koutrakos, P. Brexit, European Economic Area (EEA) membership, and Article 127 EEA, Monckton Chambers 2016. <https://www.monckton.com/brexit-european-economic-area-eea-membership-article-127-eea/> (03.04.2017).

²¹³ Ibid.

people migrating during this negotiation period from the EU to the UK and vice versa. There is no reference to acquired rights under the EU treaties that a member state leaves the EU.

The free movement of person is one of the core rights guaranteed in the EU, EEA and Switzerland²¹⁴. The free movement of workers is of great economic and social importance to the community. It is a fundamental right of an EU citizen. Free movement of workers is a touchstone of the European integration project²¹⁵. If single market is the heart of EU project then the free movement of workers would be the artery of EU project. This is a right of the citizens of the EU, there is no way it can be used as a bargaining chip for the negotiations. The four freedoms of the single market are indivisible, in the past both EEA and Switzerland had to accept all the four freedoms to access the single market.

Free movement of workers is the key element in the single market package. Four freedoms in the single market are connected with each other. It is a core principle, enshrined in the EU treaties. EU's most positive achievement comes with the single market, ahead of peace in Europe. Four freedoms are inseparable because as they were at the heart of the original Treaty of Rome. The EU was founded on those freedoms. The founders of the EU believed that four freedoms bring economic benefits and it works. Furthermore, the single market is one of the greatest economic achievements of the EU now.

Moving freely within the EU seems obvious today because of only since the Single Market. It is one of the EU's greatest achievements with no more barriers or internal borders in the EU, the common market finally became a reality because of EU's four freedoms. The creation of a common market was the main objective. It was the goal to give Europe a new boost, to have integration stepping forward and to have free movement of goods, capital, services, and people. It was not possible to build a common Europe without having a common market.

Moreover, the four freedoms are very important to promote the development of economic activities, high levels of employment and social protection and to raise the standard of living in the Member States. It also can be said; the four freedoms are necessary to facilitate the operative functioning of the single market. In the past, there were free trade agreement and custom union but there were obstacles such as expert work began on issues on reduction of technical barriers to trade, simplification of trade documentation, research, and development, mobility of qualified workers, intellectual property, social and consumer matters and increased contracts in economic and monetary policy. Single European Act repacked the four freedoms (as it was discussed in chapter 1.1 of this thesis). The term Single Market introduced by the Single European Act (chapter

²¹⁴ Brynjólfsson, *supra* nota 124.

²¹⁵ Teague (1991), *supra* nota 129, p 26.

1.2 of this thesis). The single market is known collectively as the four freedoms. And today single market is central and principal of economic rationale of the EU (this thesis chapter 1.1).

All four freedoms are closely linked to each other. If one of these is not accepted, then others will be affected. For example, if free movement of goods is not accepted then money cannot move freely. It is equally applicable to the person and service. If one right is ignored, then another right will be affected. Most importantly, EU treaties do not provide the right to divide its four freedoms. EU cares deeply about four freedoms. Consequently, as it mentioned earlier that all the EEA states and Switzerland had to accept all four freedoms.

Today, as a European citizen, one can travel across Europe from Tallinn to London without a visa and within Schengen area without being stopped in any border. Currently, EU has 28 member states and each of them has a different culture, language, and customs but being citizens of European Union, make them feeling to live in a single country and it helps Europe to remain united. It also helps to build solidarity between people and government of different countries. Hence, free movement of workers helps to address labour market imbalances. Thus, migrant workers make an important contribution to the labour market. They contribute more in taxes and social contribution but get less individual benefits. Furthermore, free movement of workers is a fundamental pillar of EU integration. It improves the employment situation and efficiency of the economy in the European Union. The four freedoms are a package, like a car's four wheels, removing just one wheel will make the car unable to move. Therefore, if the four freedoms are being split, then it might destroy the single market and the union. The withdrawing member state from the EU should accept all the four freedoms of single market. Otherwise, it would be a contradiction to the principles of EU.

Conclusion

Leave voters supported 'Brexit' idea with a hope that, Britain will have the right to access the EU single market and can restrict immigration, it would be a great way for taking back UK's control, money, and sovereignty. Since the UK referendum on EU membership, discussions have become more intense in the relationship between the UK and EU, with free movement of person because immigration was a key issue during the referendum campaign. EU referendum result was a big surprise followed by bigger questions about what the impact of Brexit would be on free movement of workers and the impact of it regarding UK's participation in the EU Single Market which is the heart of the European Project. The question also arises whether four freedoms of the single market are indivisible?

This thesis analysed the Brexit impact on free movement of workers' rights. Currently, there are many EU citizens living in the UK, as well as many British citizens living in the other EU states, if the UK and EU do not reach a deal then, Brexit would have an impact on the rights of EU citizens, pension, healthcare, study and UK's national healthcare services, travel and tourism industry, labour market etc. After Brexit, all the treaty rights would be ceased including rights to move, live, study, work and retire inside the UK. And also British citizens who are living in the EU countries, they may not be able to enjoy the benefits of free movement and workers' rights. Therefore, it would not be possible for them to retain the advantages of EU citizenship.

Article 50 of TEU gives withdrawal rights from the EU. It provides an opportunity for negotiation of withdrawal agreement between the EU and the withdrawing state within a two-year timeframe. If no agreement is made within this period, then the state's membership ends automatically. Hence, withdrawing state will no longer be able to use the corresponding rights of EU. But Article 50 of TEU does not clarify how the new relationship would work with the respective state.

Moreover, the study analysed thesis hypothesis: keeping the access to the single market, while introducing tougher immigration controls, is contrary to the principles of EU. This thesis also analysed four freedoms and identified the reasons why they were indivisible. As it was discussed in chapter 1.2, the treaties have been created for the achievement of the internal market. TFEU does not draw any distinction between the four. Article 26(2) TFEU makes it clear that the internal market does not only comprise the free movement of goods, service, and capital but also the free

movement of person²¹⁶. Under Article 2 of TEU, EU is based on the values of freedom, democracy, equality, law enforcement and respect for human rights and dignity²¹⁷. Moreover, Article 3 of TEU says, Union's aim is to promote peace, its values and the well-being of its people. Union's mission is to establish an area of freedom, security, and justice without internal borders, in which the free movement of persons is ensured. And developing an internal market where competition is free, within the framework of a social economy market whose aim is full employment. It also stated that its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens²¹⁸. Therefore, free movement of persons has an individual connection with EU citizens. It is the individual rights of EU citizens. Security and welfare issues need to be considered with great importance when dealing with free movement of people, which makes it a more sensitive area than the other freedoms²¹⁹. The fundamental rights of human dignity and individual personality are closely tied with person than goods. Free movement is the most popular among the European Union's achievements with 57% of people utilising this and a majority also believing that it is good for their own country²²⁰. Hence, it should be preserved along with other rights considering the importance of public interests, human dignity, fundamental rights of citizens, ethical issues etc. It can be assumed, for the leaving member state, accessing Single Market without accepting all the four freedoms might be contrary to EU Treaty because TFEU ensured the four freedoms.

As it was discussed in chapter 1.2, single market's rules require the free movement of goods, people, services and capital from one Member State to another Member State. Free movement of workers is the key element in the single market package. Four freedoms in the single market are connected with each other. It is a core principle, the four freedoms were enshrined in the Treaty of Rome. The four freedoms were covered by Treaty of Rome, these are not a new thing for EU. It would renege on the Treaty of Rome's commitment to the free movement of people as one of the four founding freedoms of EU construction if Britain is given access to the single market without them accepting the freedom of movement of person. Hence, if EU does not want to renege on the Treaty of Rome's commitment, then four freedoms cannot be separated. It could be said, four freedoms are indivisible, in the sense that they were core principles spelled out in the original 1957 Treaty of Rome.

²¹⁶ OJ C 326, 26.10.2012, art 26, p 59.

²¹⁷ OJ C 326, 26.10.2012, art 2, p 17.

²¹⁸ OJ C 326, 26.10.2012, art 3, p 17.

²¹⁹ Barnard (2013), *supra* nota 15, p 231.

²²⁰ Tony (2005), *supra* nota 41, p 2.

The unity of ‘four freedom’ is unquestionable. The fact is, EU gains the right to sign deals of any kind with a third country through the EU treaties, which means it can offer the UK a deal to do free trade with EU without accepting free movement. But, the concern of the ‘EU Elites’ is that, this special ‘three freedoms’ deal – free movement of capital, services, and goods, might make the other EU/EEA countries and Switzerland to demand for a similar kind of deal²²¹ and this would be undesirable for those states which joined the EU in 2004 to take advantage of the free movement right²²². Even though in 2014, Swiss narrowly voted in favour of a referendum for their government to renegotiate the country’s bilateral accord with the EU. They were demanding immigration quotas but EU insisted on free movement of people as a condition for non-EU Switzerland having access to the single market²²³.

The thesis hypothesis is partially correct. The four freedoms should not be divisible. If one of these principles is not accepted, then other ones will be affected. For example, if free movement of goods is not accepted then money cannot move freely. The same thing is related to the person and service. If one right is not accepted, then other rights will be affected. If single market is the heart of EU project then free movement of workers would be the artery of EU project. This is a right of the citizens of the EU, there is no way it can be used as a bargaining chip for the negotiations. The four freedoms of the single market are indivisible, four freedoms are interlinked, on the basis of four freedoms, European Treaties, legislation, and policies are build²²⁴. Both EEA and Switzerland had to accept all the four freedoms to access the single market.

EU’s most positive achievement comes with the single market, ahead of peace in Europe. Currently, EU has 28 member states, each having different culture, language, and customs but being citizens of European Union, makes them feeling to live in one country and helps Europe to remain united. Free movement of workers is a fundamental pillar of EU integration. It improves the employment situation and efficiency of the economy in the European Union. Four freedoms are one package, like a car’s four wheels, removing just one wheel will make the car unable to move. Hence, if the four freedoms are being split, then it might destroy the single market and

²²¹ Robinson (2016), *supra* nota 34.

²²² Banard (2013), *supra* nota 15, p 272.

²²³ Patnaik (2016), *supra* nota 35.

²²⁴ Tony (2015), *supra* nota 41, p 2.

union. The withdrawing member state from the EU should access all the four freedoms of single market. Otherwise, it would be a contradiction to the principles of EU.

The thesis discussion on principles of free movement is partly correct and the UK government also has admitted and accepted it in its article 50 notification letter. The UK government mentioned in the article 50 letter “the United Kingdom does not seek membership of the single market: we understand and respect your position that the four freedoms of the single market are indivisible and there can be no cherry picking”²²⁵. Nevertheless, Britain needs to do business with the EU countries and it will be the subject of international law to regulate it. But previously applicable free movement principles might also be accepted in the new agreements.

This research concludes that keeping access to single market, without accepting the free movement of person is contrary to the principles of EU. The four freedoms of the single market is one package, those are indivisible. Leaving state, if wants to keep access to the single market without membership of EU, leaving state may adopt Norwegian model or Swiss model.

²²⁵ Prime Minister’s letter to Donald Tusk triggering Article 50.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf (16.04.2017).

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