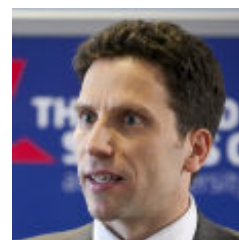


Emergency brakes on migration: neither novel nor effective

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*The 'emergency brake' is not the first time member states have tried to restrict freedom of movement within the EU. Indeed, after the enlargements in 2004 and 2007, most countries – though not Britain – did not give eastern European workers free access to their labour markets. But ultimately, write **Eiko Thielemann** (left) and **Daniel Schade**, the only reliable way to deter labour migrants is to ensure the economy is too weak to offer them worthwhile job opportunities.*



The proposed “alert and safeguard mechanism” on immigration is perhaps the most discussed component of the reform package that was agreed at the European Council summit on 18 and 19 February. The issue of the so called ‘emergency brake’—not to be confused with the proposed parliamentary ‘red card’—has risen to prominence given the ever-increasing concern about migration levels among the British electorate.



Ever since the election of the coalition government in 2010, the issue of migration has been ranked in the top three most significant issues facing the country in opinion polls, often coming in first place.

Additionally, in a [recent YouGov poll](#) respondents mentioned the issues of greater border control and immigration, as well as limits on benefit payments as the most important elements to be renegotiated. It should therefore not come as a surprise that the emergency brake proposal, which aims to reduce EU migrants’ access to welfare payments, is at the heart of the current debate.

The EU’s migration exceptions

The idea of brake mechanisms related to the EU’s freedom of movement is not entirely novel. There have been a number of occasions in which the EU has introduced exceptions to the rights of movement associated with EU citizenship.

When the EU’s citizenship provisions were first created with the Treaty of Maastricht, one of the associated rights meant that Europeans would be able to take part in municipal elections as voters or candidates. Nonetheless, an exception was created for countries with a proportion of resident EU citizens exceeding 20% of the electorate—thus establishing very clear conditions under which it would apply. Luxembourg, where these conditions are present, was hence able to restrict EU citizens’ rights to vote, currently requiring a minimum of five years’ residency before allowing European citizens to take part in such elections.

While the case above relates to an exception introduced at a critical juncture in the evolution of freedom of movement rules, there are also a number of examples of emergency brakes designed to exclusively deal with unforeseen circumstances.

When concerns over Greece and Italy’s handling of a sudden migrant influx of migrants from Northern Africa arose in 2012, other member states were looking for ways to police their borders despite the existence of the EU’s border-free Schengen area. As a consequence, changes to the functioning of the Schengen area were introduced at the end of 2013 that would allow individual member states and groups of those to temporarily re-introduce border controls when other member states are unable to fulfil their Schengen requirements. This represented an important extension to very narrow previous suspension possibilities.

The current rules make it clear that the ultimate responsibility for such measures resides with the individual member

states. This has, for instance, allowed France to rapidly introduce border checks after last November's terrorist attacks in Paris.



Directly related to concerns over high levels of EU internal migration are provisions that restricted the freedom of movement for the EU's new member states after the 2004 and 2007 enlargement rounds. At the time, member states were given the right to limit the freedom of movement for certain kinds of workers from those new member states for a transitory period, thus attempting to alleviate concerns over a rapid rise in East-West migration. Crucially—unlike a majority of member states—the UK at the time decided not to make use of its right to introduce such restrictions.

So there is precedent for restricting the EU's freedom of movement provisions, which shows that the kind of flexibility that the EU has demonstrated in response to the UK's reform demands is not entirely novel either.

The UK's 'emergency brake'

According to its proponents, the 'emergency brake' agreed to at the February European Council meeting is meant to tackle the same issues that led to the 2004 and 2007 restrictions. Since the possibility for similar unilateral measures has elapsed, the focus of the deal with the UK was on welfare restrictions, rather than issues directly related to labour market access.

As agreed to by all 28 states, the mechanism would allow any EU country whose welfare system has come under strain, as the result of an influx of EU migrants of 'an exceptional magnitude', to restrict access to certain kinds of welfare benefits.

Drafted to address the UK's concern that its in-work benefits system attracts a large proportion of EU migrants to the country, the proposed mechanism—while theoretically universally applicable—is very much tailored to the concerns of this one member state. Once triggered, it will allow the country to restrict access to such in-work benefits for new immigrants until they have contributed to the welfare system for up to four years (with a gradual phase-out), and it would be applicable for a period of seven years in total.

Unlike in the case of the Schengen exceptions, the ultimate decision on the emergency brake would reside with the Council, and thus with all of the EU's member states.

Remaining issues

The agreed mechanism is hence relatively straightforward. Nonetheless, three crucial issues remain. The first

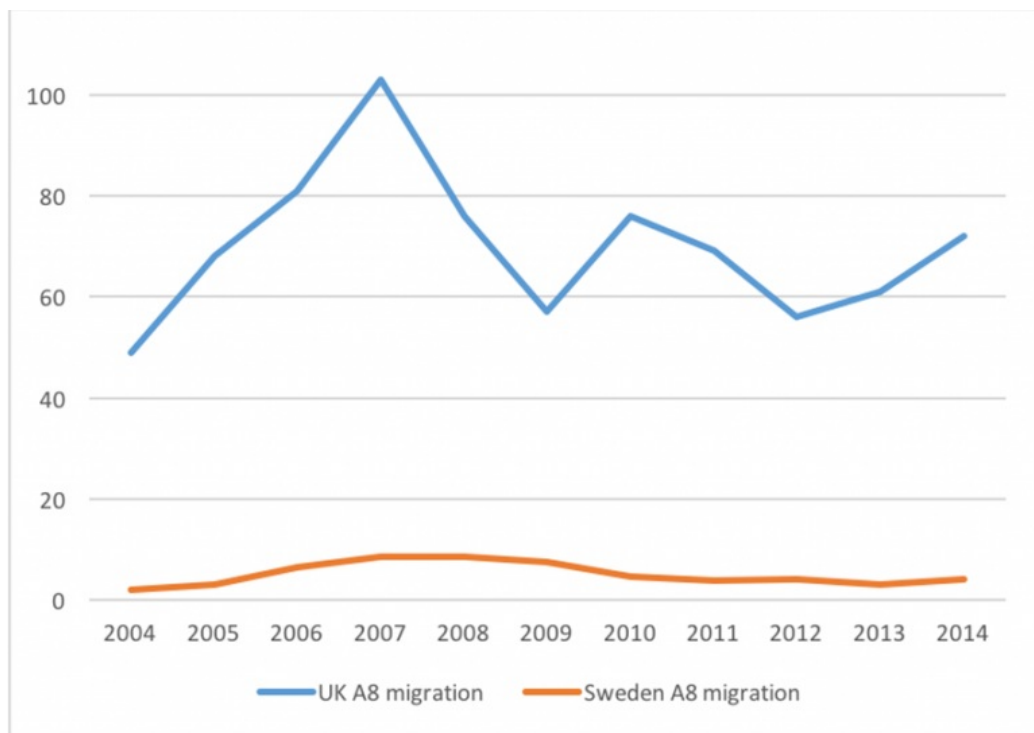
relates to what actually constitutes such an emergency, the second relates to its effectiveness, while the third considers its implementation prospects.

The introduction of an ‘emergency brake’ relies heavily on the definition as to what constitutes an ‘emergency’. One would expect any measure with an impact on one of the EU’s four fundamental freedoms to carefully identify what can trigger its use. However, the agreed deal does not do that. Rather, it simply states that the UK finds itself in such an emergency situation, shirking the key question about what constitutes an emergency altogether. Whereas in the municipal elections example above a clear threshold was established, [the current deal](#) mentions as criteria an “inflow of workers from other Member States of an exceptional magnitude over an extended period of time”, affecting “essential aspects of its [a member states’] social security system” or public services.

While the deal simply states that this is currently the case for the UK, the lack of clear criteria risks setting a precedent for other country wanting to introduce similar limitations to the freedom of movement in the future. It is possible that the reason for this is that reaching the Council’s approval provides a sufficiently high threshold to prevent frequent application. Nonetheless, Germany is already witnessing very similar patterns of EU migration, accompanied by an even larger influx of refugees. Additionally, demonstrating a link between migration and a strain on social security systems is particularly difficult, as one would have to be able to disaggregate migration-induced effects and those caused by other factors such as an ageing population, or changes in budget allocations.

Secondly, the ability of a welfare-based ‘emergency brake’ to achieve its stated goal of significantly reducing intra-EU immigration to the UK is unlikely. Different EU countries have varying degrees of economic attractiveness. In-work benefits are only a very small factor of a large variety of so called ‘pull’ factors that render the UK an attractive destination for migrants.

When comparing the UK and Sweden, the two main countries that did not make use of restrictions for so called A8 migrants from Eastern Europe after the 2004 enlargement round, it becomes clear that the UK—for a variety of reasons—has been a more attractive destination country than Sweden. Even when considering the country’s different sizes (population size is a powerful pull factor in itself), the UK has attracted significantly higher levels of migrants from those countries.



Graph 1: A8 net migration in thousands (Source: Office for National Statistics, Statistics Sweden)

Furthermore, the 'emergency brake' can be expected to only have [a very small effects on the income](#) of EU migrants in the UK.

Thirdly, a number of stepping stones remain until a potential implementation of the 'emergency brake'. First of all, the necessary changes to the EU's secondary legislation would only be introduced after the UK decides to remain a part of the European Union. Even then, the measure will have to pass the European Parliament first. Lastly, as Steve Peers has cautioned [in his legal analysis](#) of the free movement provisions of the deal, the emergency brake mechanism is likely to be challenged in the Court of Justice of the European Union.

While the idea for an emergency brake related to imbalances related to the EU's freedom of movement is hence not a completely novel idea, it ultimately raises more questions than it resolves. Crucially, no change to the EU's freedom of movement rules, or the UK's migration policy more generally is likely to override the strength of numerous important pull factors that make the UK an attractive destination for migrants: its language; the high demand for labour in an open economy running at close to full employment; relatively high wage levels, etc.

All of these are factors that ultimately limit the effectiveness of migration policy decisions (we elaborate on this argument in more detail in an article in the forthcoming special issue 'Up for grabs? Key issues in the negotiations about Britain's membership in the EU' of the journal '[The Political Quarterly](#)'). Rather, the only solution would be, in the words of one of the participants of the [LSE's Commission on the Future of Britain in Europe](#) hearing on the free movement of people: 'For free market economies the only effective way to reduce immigration is to wreck your economy and throw it into recession'. (The meeting was held under Chatham House rules on January 21 2016).

This post represents the views of the authors and not those of the BrexitVote blog, nor of the LSE.

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