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**Norwegian Blue:
The Referendum Pledge to
Avoid the Single Market**

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Introduction

In a separate paper, we reviewed how recent proposals to establish a form of Brexit based on some form of Customs Union run contrary to what was actually pledged during the referendum itself.

Here, we turn to another set of proposals: the idea, supported in particular by certain prominent Remainers, that the UK should adopt a measure of membership of the Single Market.¹

What readily becomes apparent is that the 'Norway option', of the UK adopting a full or even modified form of EEA membership, cannot be considered as delivering on a 'Leave' vote.

That includes the hybrid model, covering goods regulations, being floated by *Open Europe*.²

Background

The European Commission defines the Single Market in terms of making the EU "as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services."³ In practical terms, this is today associated with the "Four Freedoms", which the Commission sees as indivisible;

*"The internal market of the European Union (EU) is a single market in which the free movement of goods, services, capital and persons is assured, and in which citizens are free to live, work, study and do business."*⁴

Changes to the Single Market since it was created in 1993 are treated as part of the *acquis*, and are consequently viewed as sacrosanct by the Commission, which is a self-interested guarantor of the rules - and of its own power that arises from overseeing them.

The EEA Agreement brings three of the four EFTA states (excluding Switzerland, which instead has its own EU bilateral) into the Single Market under a separate joint judicial and oversight process. It does include the Four Freedoms (of goods, services, capital and people), but excludes a range of other elements including the CAP, CFP, Customs Union (thus there are border posts), CFSP, JHA, and EMU.

¹ http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/uncustomary_zeal.pdf

² The OE position is that "Giving up some control – or sovereignty – over goods regulation, is a price worth paying for strong market access." We consider that assessment to be in serious error. But in this paper we focus on what has been promised, and what the electorate expects.

<https://openeurope.org.uk/intelligence/britain-and-the-eu/striking-a-balance-a-blueprint-for-the-future-uk-eu-economic-partnership/>

³ https://ec.europa.eu/growth/single-market_en

⁴ https://eur-lex.europa.eu/summary/chapter/internal_market.html?root_default=SUM_1_CODED%3D24

Norwegian Eurosceptics oppose EEA membership, a detail which ought to serve as a useful pointer. We might usefully here recap an observation made in a previous piece for The Red Cell, by one of the leaders of the Norwegian Eurosceptic movement;

“Instead of the EEA agreement serving as an agreement between equal parties, we have an agreement where one party sets all the premises and may even go so far as to prohibit the other party's negotiating basis, as the EU did in gas negotiations.

“The undesired adaptations Norway has made at the request of the EU has not led to milder negotiations by the EU subsequently; on the contrary, we have ended up in a relationship of unbalanced power in which the EU requires Norway to make even more extensive adaptations, including in areas that do not really fall under the purview of the EEA.”

The argument has been made in some circles that the EEA might serve at least as a bridge towards transitioning towards a future FTA. This too though carries huge hazards of its own;

“Some will see the EEA as a possible bridge to transition for a UK, especially for a UK that starts fully compliant with EEA rules. But EEA membership carries costs and risks, especially for a country steeped in administrative buy-in by an honest civil service, trained to rigidly comply with the EU system and rules. For any country that has the impetus and momentum the UK now has, the EEA risks being a mire rather than a springboard. Our view here is that we would welcome you to the EEA as a travelling guest. But we would welcome you to the freedom and opportunities offered by the option of ‘just EFTA’ much more.”⁵

The lessons are set out as a set of suggested guidelines, that have been learned the hard way;

“We would counsel against wandering into the EEA without looking at the small print of what the EEA does;

- *We would warn you that EEA membership is subject to the same tidal pull of European integrationism as EU membership is;*
- *We would underline the safeguards that do lie within the system, but remind you that they are only as robust as the foot upon the brake (and track record for both our countries shows that's rarely robust enough);*
- *We would alert you to the costs of the EEA terms, direct and indirect, especially when compared with looser and better forms of trade deal;*
- *We would point to the limits on your ability to fully benefit from the potential you now have won from deciding to leave the EU;*
- *We would flag up the other options for a looser trade association, which is no longer as problematic or unprecedented as it was when both our countries started looking at the EEC as an attractive option to associate around.*

“The EEA might work as a parking spot, but only at best for a short time, and the spot is pretty muddy and you might not get out. So it's perhaps better to work on a distinct EFTA angle instead.”

⁵ http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/a_warning_from_norway.pdf

Those looking for a second opinion might turn to another paper that was written by one of the key figures from the Eurosceptic movement of Iceland, another EEA member state.⁶

That paper underlines that the EEA was built as a transit route to joining, not leaving, the EU. It picks apart the consequences of the CJEU's relationship with the 'EFTA' (actually: EEA) Court. It highlights the limits on free trade that EEA membership has brought to Iceland in terms of its trade with the US.

And, importantly, it demolishes the idea that the EEA deal allows any substantial safety valve limiting the free movement of people, which is one of the core commitments arising from the Leave vote. The Liechtenstein case in 1995 did not, in fact, set a precedent that could be cited by the UK from the very wording of the Council document, a point reinforced by a separate ruling by the EFTA Court in 2011.

Joining the EEA could not, correspondingly, mean "taking back control" of the UK's borders.

What was said

But let's consider rather what was said in the course of the referendum campaign itself; what was pledged; and what was ruled out.

The nearest thing to a 'Leave Manifesto' was what was set out on the website of Vote Leave. Vote Leave was recognised as the official campaign of the Leave argument. There was a specific section of the website that was highly prominent, which could be immediately found by anyone looking online, was well-signposted, and clearly expressed. This was the section titled "**Leave Looks Like**".

The contents of this section were unambiguous. They savaged the Single Market as overhyped and damaging to business and consumers alike.

Vote Leave tackled the subject head on;

"What about the so-called 'Single Market'? The 'Single Market' is almost universally misunderstood and is nowhere defined in the EU Treaties. It was created in the 1980s by Jacques Delors in order to impose qualified majority voting in a vast range of areas beyond international trade such as the free movement of people, how we build schools or aircraft carriers, and thousands of things like the energy requirements of hoovers and the maximum size of containers in which two people sell olive oil to each other in the Shetland Islands (five litres). The Foreign Office and CBI like to claim that the Single Market was about 'free trade' but this is historical nonsense. Delors' goal was explicitly political - as he said, 'we're not here just to make a Single Market, that doesn't interest me, but to make a political union.'"

The EU's approach carried too much unacceptable baggage. The website continued,

⁶ http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/the_eea_is_not_the_way.pdf

“The Single Market causes big problems. For example, the Clinical Trials Directive has hampered the testing of vital cancer drugs for years causing unnecessary deaths. Single Market rules add complexity, time, and billions to government procurement programmes. Economists have tried and failed for twenty years to identify clear general gains from the Single Market. Even the Commission’s own, obviously optimistic, figures show that the supposed gains for the UK are smaller than reasonable estimates of the regulatory costs. Most businesses have said for over a decade that the Single Market does more harm than good but this debate has been distorted by a small number of large multinationals that lobby Brussels to use regulations to crush entrepreneurial competition. Big businesses are often the enemy of the public interest.”

The model that the Single Market encapsulated was one of conformity rather than simple mutual recognition of equivalent standards, which was more in the mould of Free Trade Agreements. The Vote Leave position continued to explain how things would only get worse for EU members;

“These problems will grow. The next EU Treaty is intended to harmonise another vast range of things including areas such as company law and ‘property rights’. Harmonising regulations is often good for countries like Greece but is often disastrous for Britain which wins more of the world’s investment in Europe than any other European country precisely because much of our legal system is not yet harmonised with Europe.”

The Remain argument on ‘Single Market access’ meanwhile was disingenuous;

“The EU’s supporters say ‘we must have access to the Single Market’. Britain will have access to the Single Market after we vote leave. British businesses that want to sell to the EU will obey EU rules just as American, Swiss, or Chinese businesses do. Only about one in twenty British businesses export to the EU but every business is subject to every EU law. There is no need for Britain to impose all EU rules on all UK businesses as we do now, any more than Australia or Canada or India imposes all EU rules on their businesses. British businesses that wish to follow Single Market rules should be able to without creating obligations on everybody else to follow them. The vast majority of British businesses that do not sell to the EU will benefit from the much greater flexibility we will have.

“The idea that our trade will suffer because we stop imposing terrible rules such as the Clinical Trial Directive is silly. The idea that ‘access to the Single Market’ is a binary condition and one must accept all Single Market rules is already nonsense - the Schengen system is ‘Single Market’ and we are not part of that. After we vote to leave, we will expand the number of damaging Single Market rules that we no longer impose and we will behave like the vast majority of countries around the world, trading with the EU but, crucially, without accepting the supremacy of EU law.”

But divergence was a force for good. History gave clear examples of where the Single Market way of doing business would end up;

“Regulatory diversity is good in many ways. One of the great advantages of post-Renaissance Europe over China was regulatory diversity. This meant Europe experimented and reinforced success (which often meant copying Britain) while China stagnated.

Hamilton's competitive federalism between the different states in America brought similar gains. Now the EU's 1950s bureaucratic centralism, reinforced by the Charter of Fundamental Rights that gives the European Court greater power over EU members than the Supreme Court has over US states, increasingly mimics 16th century China in preventing experiments and crushing diversity."

The reality of global trade now meant global standards in many areas. Signing up to regional standards merely meant handing over power to a regional regulatory body (the European Commission) to act as an intermediary negotiating on your behalf, whereas non-EU members were able to fight their own corner. In essence, the UK had handed over its veto at EU level, only for the Commission to wield it at a higher level where other individual states still kept their own. This was madness;

"This bureaucracy over which we have so little influence now supplants Britain in many global bodies. Many supposed 'EU rules' now actually transpose rules agreed in these global bodies where Britain has given away its representation to the EU. Our new deal will therefore also include Britain retaking our seats on all these bodies, such as the World Trade Organization. If Canada has adopted the same rules as Norway or Luxembourg over car safety glass, and can export windscreens to Britain or Ukraine, it is because the relevant standards have been agreed at a higher level than the EU. A leave vote means the opposite of isolation - it means regaining a voice in global bodies that will be increasingly important as the EU shrinks in importance."

Subsequent pledges by Government

In several keynote speeches after the referendum, the May Government gradually set out the outline of what it was trying to achieve from the negotiations.

The UK wanted to trade with the economies of the Single Market, but from the outside.

It would expressly not join the EEA, since the Norway Option is a bad fit - it limits Parliamentary Sovereignty, and doesn't address the failure to manage immigration.

Instead, the UK should rather focus on working on and around global trading standards. If both the EU and the UK accepted that both their regulatory systems had the interests of the consumer at heart, and started from a point of commonality, then mechanisms for mutual recognition ought to be deliverable. Where there was divergence, it would be done gradually and in good faith.

We might consider the speech by the Prime Minister at Conservative Party Conference, on 2 October 2016.⁷ Mrs May talked in terms of mutual access. She began,

"I want it to involve free trade, in goods and services. I want it to give British companies the

⁷ The key elements from the speeches have been set down in http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/ex_cathedra.pdf and ordered by area. Several of these other areas also, separately, indirectly also rule out the Single Market model by clear implication.

maximum freedom to trade with and operate in the Single Market – and let European businesses do the same here.”

Ambiguities were soon removed;

“When the Great Repeal Bill is given Royal Assent, Parliament will be free – subject to international agreements and treaties with other countries and the EU on matters such as trade – to amend, repeal and improve any law it chooses.”

Such an approach cannot be followed if one remains a member of the Single Market. EEA rules would restrict UK Sovereignty;

“We are going to be a fully-independent, sovereign country, a country that is no longer part of a political union with supranational institutions that can override national parliaments and courts. And that means we are going, once more, to have the freedom to make our own decisions on a whole host of different matters, from how we label our food to the way in which we choose to control immigration.”

And, to remove any prospect of lingering ambiguity, she added;

“It is not, therefore, a negotiation to establish a relationship anything like the one we have had for the last forty years or more. So it is not going to be a ‘Norway model’. It’s not going to be a ‘Switzerland model’. It is going to be an agreement between an independent, sovereign United Kingdom and the European Union.”

We might then turn to the speech by the Prime Minister at Lancaster House, on 17 January 2017. The reasons why Single Market membership was a no-go route was explained more fully.

“What I am proposing cannot mean membership of the single market.

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

“It would to all intents and purposes mean not leaving the EU at all.

“And that is why both sides in the referendum campaign made it clear that a vote to leave the EU would be a vote to leave the single market.

“So we do not seek membership of the single market.”

And again, subsequently,

“our objectives include a proposed free trade agreement between Britain and the European Union, and explicitly rule out membership of the EU’s single market. Because when the EU’s leaders say they believe the 4 freedoms of the single market are indivisible, we respect that position.”

Then there was the speech by the Prime Minister at Florence, on 22 September 2017. The message continued to be an unambiguous rejection of staying in the Single Market, because it was unacceptable to the EU but also unacceptable for the UK.

She began by saying,

“The United Kingdom is leaving the European Union. We will no longer be members of its single market or its customs union. For we understand that the single market’s four freedoms are indivisible for our European friends.”

Adding,

“We recognise that the single market is built on a balance of rights and obligations. And we do not pretend that you can have all the benefits of membership of the single market without its obligations.”

The price from the UK perspective was too high to be compatible with ‘taking back control’;

“European Economic Area membership would mean the UK having to adopt at home – automatically and in their entirety - new EU rules. Rules over which, in future, we will have little influence and no vote.

“Such a loss of democratic control could not work for the British people. I fear it would inevitably lead to friction and then a damaging re-opening of the nature of our relationship in the near future: the very last thing that anyone on either side of the Channel wants.”

We might then consider the speech by the Foreign Secretary at Policy Exchange on 14 February 2018. This back-referenced Mrs May’s previous pledges;

“As the PM said at Lancaster House remaining within the single market ‘would to all intents and purposes mean not leaving the EU at all.’

“The British people should not have new laws affecting their everyday lives imposed from abroad, when they have no power to elect or remove those who make those laws. And there is no need for us to find ourselves in any such position.”

Returning to the theme we have already encountered on the Vote Leave website, explaining how so many trade standards are really set globally, the Foreign Secretary observed,

“In a world that demands flexibility and agility, we should be thinking not of EU standards but of global standards, and a regulatory framework to suit the particular needs of the UK, a country that already exports a higher share of its GDP outside the EU than any other EU country.”

Strikingly, and exceptionally for a member of the party that had so dogmatically bought into the initial push for the Single Market in the 80s and 90s, he accepted that the modern image of the Single Market had been overplayed,

“Of course we will need to comply with EU regulation in so far as we are exporting to the EU. (Though we should realise that the single market is not quite the Eden of uniformity that it is cracked up to be [...])”

Following this, there came the speech by the Prime Minister at Mansion House on 2 March 2018. This expressly again ruled out the EEA route;

“the Norway model, where we would stay in the single market, would mean having to implement new EU legislation automatically and in its entirety – and would also mean continued free movement.”

There was absolutely no possibility of the UK remaining in the Single Market in any form. This would have administrative and trading consequences for both sides;

“We are leaving the single market. Life is going to be different. In certain ways, our access to each other’s markets will be less than it is now. How could the EU’s structure of rights and obligations be sustained, if the UK - or any country - were allowed to enjoy all the benefits without all of the obligations?”

The Treasury has bought into this view. In a speech by the Chancellor at Canary Wharf on 7 March 2018, Mr Hammond categorically stated,

“The PM was clear in her speech that after we have left the EU, we’ll be outside the Single Market and the Customs Union.”

Conclusion

The lessons that can be drawn from this paper can be summarised quite plainly.

There was from Vote Leave a clear ‘manifesto commitment’ to leave the Single Market.

Government has subsequently and consistently committed itself to pursuing this aim.

Adopting a Norway Option as the end objective for the UK’s relationship would be a retreat from previous pledges.

We might also usefully remind ourselves of the relevant commitment from the Conservative Party's manifesto at the last election. This ran as follows;

“As we leave the EU, we will no longer be members of the single market or customs union but we will seek a deep and special partnership including a comprehensive free trade and customs agreement.”⁸

Consequently, any attempt to generate a Brexit deal that leaves the UK partially or wholly in either a Customs Union or in Single Market membership, with the regulatory alignment that follows for the entire UK economy, would be an act of bad faith and a promise broken.

⁸ <https://www.conservatives.com/manifesto>, p 36

