



People – the forgotten chapter? From the EU’s neighbourhood policy to post-Brexit Ireland (north and south) – and lasting damage to the integrative capacity of the EU Internal Market project[†]

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ABSTRACT

Following distorted perceptions of the role of people movement in the European Union (EU), the Trade and Cooperation Agreement between the EU and the United Kingdom does not enable people movement to the same extent as other Association Agreements between the EU and its other neighbouring states. Even the much discussed Ireland/Northern Ireland Protocol (also Windsor Framework) largely ignores people movement, whose protection on the island of Ireland remains weak as a result. This note argues that forgetting the people matters, not only on grounds of the principles, but also for practical relations on the island of Ireland.

Keywords: free movement; people; Internal Market; Brexit; EU neighbourhood.

INTRODUCTION

Movement of people has been presented as contributing to ‘Brexit’ throughout and beyond United Kingdom (UK) academia,¹ culminating in the suggestion that the founders of the European Economic Community (EEC) never truly supported free movement of workers as integral to the Common Market.² That scepticism against

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1 See, for example, Susanne K Schmidt, Micheal Blauburger and Dorte Sindbjerg Martinsen, ‘Free movement and equal treatment in an unequal union’ (2018) 25 *Journal of European Public Policy* 1391, and other articles in that special issue.

2 Catherine Barnard and Sarah Fraser Butlin, ‘Free movement vs fair movement: Brexit and managed migration’ (2021) 55 *Common Market Law Review* 203–226.

movement of people is also mirrored in UK-based textbooks, which teach the Internal Market and free movement of people separately.³ Post-Brexit, socio-legal studies emphasise that European Union (EU) free movement rights for workers systematically destabilised poor neighbourhoods in Norfolk (England) and mainly led to the free movers being depreciated,⁴ explicitly contradicting studies highlighting the opportunities of free movement,⁵ and underlining the earlier suggestion for the EU to replace free movement by ‘fair movement’.⁶ The same ideal of an Internal Market without people also informed the draft for a continental partnership with the UK by a group of German and UK authors.⁷ The Trade and Cooperation Agreement (TCA) with the UK as well as the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland (also Windsor Framework) mirror this vision, containing at best weak references to people movement on the island of Ireland as a result.

This note argues that forgetting the people matters, not only on grounds of the principles, but also for practical relations on the island of Ireland. The island of Ireland accordingly presents an astute case-study for the inherent problems of economic relationships between states which deprioritise person movements. It will start with summarising the principled relevance of free movement of persons, contextualise the state of affairs on the island of Ireland with the EU’s general approach to trade agreements beyond and within its neighbourhood, highlight the complexity of the state of affairs and illustrate its shortcomings through two current examples.

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- 3 Most radically, Iyiola Solanke, in *EU Law* 2nd edn (Cambridge University Press 2022) pt III, presents ‘Citizenship and migrant workers’ under ‘Rights of Movement and Residence in the EU’, while the Internal Market in pt IV is taught without free movement of workers. Similarly, free movement of workers and EU citizenship are mixed into one chapter by Catherine Barnard, ‘Free movement of natural persons and citizens’ in Catherine Barnard and Steve Peers (eds), *European Union Law* 4th edn (Oxford University Press 2023) ch 13. At the other end of the spectrum, the Internal Market is taught as the TFEU presents it (goods, workers, establishment, services), and EU citizenship added as a separate chapter, in Paul Craig and Gráinne de Búrca, *European Union Law: Text, Cases and Materials* 6th edn (Oxford University Press 2020).
 - 4 Catherine Barnard and Fiona Costello, ‘When (EU) migration came to Great Yarmouth’ (2023) 18 *Contemporary Social Science* 150.
 - 5 The article refers to older publications by Adrian Favell, who with collaborators maintains an optimistic perspective: Roxana Barbulescu and Adrian Favell, ‘Commentary: a citizenship without social rights? EU freedom of movement and changing access to welfare rights’ (2020) 58 *International Migration* 151; Ettore Recchi and Adrian Favell, *Everyday Europe: Social Transnationalism in an Unsettled Continent* (Polity Press 2019).
 - 6 Barnard and Fraser Butlin (n 2 above).
 - 7 Jean Pisani-Ferry, Andre Sapir, Guntram B Wolff, Norbert Roettgen and Paul Tucker, *Europe after Brexit: A Proposal for a Continental Partnership* (Bruegel 2016).

PEOPLE IN THE EEC COMMON MARKET AND THE EU INTERNAL MARKET – BETWEEN POSITIVE VISION AND LIMITING REALPOLITIK

There is a normative case for indivisibility of people and products in an internal market, which liberalises economic collaboration through free movement. Free movement in the EU entails the right to demand absence of barriers of movement, be these discriminatory or not. Free movement of goods and freedom of establishment and services enable producers to trade freely across the Internal Market, and thus to optimise allocation of production, which also results in reallocation. For example, agricultural production will follow adequate weather conditions, industrial production will follow concentration of capital, and production requiring highly qualified workers will follow concentration of those.⁸ If economic freedoms are not matched by free movement of people, those depending on employment or sole self-employed work are then denied the right to follow the economic moves and demand equal treatment with locals at their destination. Such regimes can be criticised as ‘favouring capital over labour’,⁹ because they reinforce imbalances between those producing based on owning capital and those labouring individually for remuneration.

In a progressive interpretation, the EU Internal Market can be read as a counter-model to such one-sided liberalisation. The Treaty on the Functioning of the European Union (TFEU) lists persons, services, goods and capital as equally relevant elements of the Internal Market (article 26 TFEU), thus guaranteeing free movement of products (goods and services) and production factors (labour and capital, factor mobility). The four economic freedoms include individual rights to move across borders and be treated equally with the resident population if participating in economic activities. This supports the normative vision that creating the Internal or Common Market should serve labour as well as capital, which also explains slightly less generous provisions for those moving outside market activities.¹⁰ There is also the hope that

8 In summary, Dagmar Schiek, Liz Oliver, Christopher Forde and Gabriella Alberti, *EU Social and Labour Rights and EU Internal Market Law* (European Parliament 2015) 20–24; and full textbook coverage by Richard Baldwin and Charles Wyplosz, *The Economics of European Integration* 7th edn (McGrawHill 2022) 234–255.

9 Jukka Snell, ‘The Internal Market and the philosophies of market integration’ in Catherine Barnard and Steve Peers (eds), *European Union Law* 6th edn (Oxford University Press 2023) 336–365, referring to the ‘home country control model’ of the Internal Market.

10 Niamh Nic Shuibhne, ‘Reconnecting free movement of workers and equal treatment in an unequal Europe’ (2018) 43 *European Law Review* 477; Dagmar Schiek, ‘Towards more resilience for a social EU – the constitutionally conditioned Internal Market’ (2019) 13 *European Constitutional Law Review* 611.

movement of people potentially integrates societies, especially if the regime facilitates reverse and multiple movement as opposed to mere one-off migration. While empirical research on integrating people movement signals nuanced optimism,¹¹ EU free movement is flawed both by excluding non-EU denizens¹² and neglecting adjustment of social structures in order to avoid disadvantage for those who stay in place.¹³ Nevertheless, the positive vision retains its appeal. Accordingly, the idea that ‘the four freedoms of the Single Market are indivisible’¹⁴ also became a core pillar of the initial Brexit negotiations.

Yet, the EEC’s and EU’s position on people movement has not been universally supportive of the ideal. The Spaak Report, of 21 April 1956¹⁵ envisaged a Common Market for goods and services, with the perspective of including capital. It remained reluctant to integrate labour markets, only recommending incremental increase of movement of workers under the control of member states. The Conference of Messina went beyond the Spaak Report, reflecting the conditionality of openness to international trade by social-democratic parties in post-war Western Europe.¹⁶ That openness did not embrace a common market for capitalists only.¹⁷ This political orientation was also reflected in the dialogue of management and labour at Val

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- 11 Recently from macro-economic perspectives, see Beata Farkas, Andor Mate and Tamas Racz, ‘A contested foundation of European integration: the free movement of labour’ (2022) 44 *Society and Economy* 310; from sociological perspectives: optimistic Barbulescu and Favell (n 5 above) and Recchi and Favell (n 5 above); more sceptical Franziska Buttler, ‘Does the Europeanization of daily life increase the life-satisfaction of Europeans?’ in Martin Heidenreich (ed), *Exploring Inequalities in Europe* (Edward Elgar 2016) 195; Martin Heidenreich, ‘Social cohesion in Europe. between Europe-wide convergence and social and territorial inequalities’ in Martin Heidenreich (ed), *Territorial and Social Inequality in Europe* (Springer 2022) 313.
 - 12 Cristina Juverdeanu, ‘The different gears of EU citizenship’, (2021) 47 *Journal of Ethnic and Migration Studies* 1596.
 - 13 This can be viewed as the legitimate element in the critique by Barnard and Costello of free movement of workers (n 4 above).
 - 14 European Council (Article 50) [Guidelines on Brexit Negotiations of 29 April 2017](#), EUCO XT 20004/17.
 - 15 The full text of 169 pages is only available in [French](#). A 20-page summary of the most important points in English is also [available](#).
 - 16 Brian Shaev, ‘Liberalising regional trade: socialists and European economic integration’ (2018) 27 *Contemporary European History* 258.
 - 17 A contemporary caricature captures the rejection of only capitalists profiting from the Internal Market while keeping their workers firmly behind national borders. Cartoon by Nitro on ‘[Employers and the European Common Market](#)’ (24 January 1957).

Duchesse, which accompanied the conference of Messina.¹⁸ As a consequence, the Common Market as agreed at Messina encompassed factor mobility, with free movement of workers to be realised by the end of the transition period (1965), while free movement of capital was further postponed. Today's EU Treaties are more expansive on free movement of goods than on any other freedom. After Denmark, Ireland and the UK acceded to the EEC (1973), all further enlargements were accompanied by restrictions of free movement of workers.¹⁹ This indicates that the unease over this particular freedom at times infects the integration process. Accordingly, the Brexit process was accompanied by political demands for reducing free movement of people within the EU, and early versions of the draft Ireland/Northern Ireland Protocol already offered to Northern Ireland access to markets in goods only, this being portrayed as the main aspect necessary to overcome physical border controls.²⁰ The EU has rightly been criticised for betraying the principle of indivisibility of the Internal Market in relation to Northern Ireland.²¹

PEOPLE IN THE EU'S EXTERNAL RELATIONS

In the EU's external relations, a preference for trade over people becomes a normative principle, mirroring the state of affairs in international trade law. Under the law of the World Trade Organization (WTO), rules on trade in goods and tariffs related thereto are elaborated with a long tradition in the GATT (General Agreement on Trade and Tariffs, subsequently supplemented by agreements on Sanitary and Phytosanitary matters and Technical Barriers to Trade), while people movement is merely comprised as far as necessary under the

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- 18 See the historical documents available from the [Luxembourg Centre for Contemporary and Digital History](#) under 'Historical events in the European integration process (1945–2009)'.
- 19 The accession Treaty with Greece (OJ L 291 of 19 November 1979) was the first to 'phase in' free movement of workers, by withholding the right to free movement from Greek workers for a period of six years (art 45). The motivation of this was the fear of high numbers of workers from Spain and Portugal, whose accession was negotiated in parallel, into the EEC. (Arts 55 and 216 Accession Treaties with Spain and Portugal – OJ L302 of 15 November 1985 – contained the same limitation.) The mechanism to post workers relying on the employers' freedom to provide services, while denying them equal treatment, was created in the 1980s after Spanish and Portuguese construction companies became active in the EEC.
- 20 Sylvia de Mars and Colin Murray, 'With or without EU? The Common Travel Area after Brexit' (2020) 21 *German Law Journal* 815, 837.
- 21 Anand Menon, 'The EU and Britain are playing a high-stakes game of chicken' *The Guardian* (London 28 February 2018).

GATS (General Agreement on Trade in Services).²² In short, article 1 GATS recognises the ‘presence of persons ... e.g. non-nationals on consultancy or construction tasks’ as one mode (mode 4) of service provision, alongside the presence of managers and specialists as part of a commercial presence (mode 3). An annex specifies that members have maximum liberty as to which persons they recognise, as long as no integration into the labour market in the host country is aspired. From this it follows that – in contrast to free movement under EU law – persons moving under WTO GATS mode 4 or 3 have no claim to equal treatment or access to social infrastructure in the host state. They also lack any individual right to move, as people are moved as an accessory to service provision (including goods delivery). Person movement rarely enjoys more comprehensive coverage²³ beyond regional trade agreements, such as that comprised by the EU Treaties.²⁴

The EU’s association agreements with its neighbouring states are a little more generous, thus classed as deep trade agreements in a recent WTO publication.²⁵ They all contain WTO-type clauses allowing entrepreneurs and their workers to move into the EU in the context of service provision. In addition, they typically also contain subsections on visa agreements and people movement. These are particularly pronounced in those association agreements with countries which are to become candidates for EU membership. But even in those which were conceived as mere neighbourhood agreements, equal treatment of movers is ensured. For example, the Ukraine/EU association agreement²⁶ provides for equal treatment of Ukrainian workers in the

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- 22 Peter van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization. Text, Cases and Materials* 5th edn (Cambridge University Press 2022) ch 7, 4.4.1; on the political demand for a ‘general agreement on movements of people’ at the time when the WTO was negotiated, see Thomas Straubhaar, ‘Why do we need a General Agreement on Movements of People (GAMP)?’ in Bimal Gosh (ed), *Managing Migration: Time for a New International System?* (Oxford University Press 2000) 105.
- 23 On some examples of person movement in bilateral trade agreements, see Asa Odin Ekman and Samuel Engblom, ‘Expanding the movement of natural persons through free trade agreements: a review of CETA, TTP and ChAFTA’ (2019) 35 *International Journal of Comparative Labour Law and Industrial Relations* 163.
- 24 On difficulties agreeing on free movement of people, see Clayton Hazvinei Vhumbuni and Joseph Rujema Rudigi, ‘Facilitating regional integration through free movement of people in Africa: progress, challenges and prospects’ (2020) 9 *Journal of African Union Studies* 43.
- 25 Aaaditya Mattoo, Nadia Rocha and Michele Ruta, *Handbook of Deep Trade Agreements* (International Bank for Reconstruction and Development 2020).
- 26 Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part; OJ L 161, 29.5.2014, p 3-2137, lastly amended by decision No 1/2023 of the EU–Ukraine Association Committee in Trade Configuration of 24 April 2023, OJ L 123 of 8 May 2023, consolidated version.

EU and EU citizens in Ukraine (article 17), while the volume of person movement remains strictly under national control (articles 18–19).

The TCA with the UK is exceptional²⁷ in that it does not contain any specific chapter on person movement beyond the protection of some rights for those who had actively used their movement rights prior to Brexit. Beyond that, provisions on person movement are mainly limited to the WTO GATS mode 4 model,²⁸ though movement of beneficiaries of EU programmes to which the UK may accede in the future are also provided. Even in relation to Northern Ireland the EU has, in contrast to early declarations, agreed to divide its Internal Market into goods on the one hand – now covered by articles 5–11 of the Ireland/Northern Ireland Protocol (from March 2023 referred to as the Windsor Framework)²⁹ – and all other freedoms on the other hand.

PEOPLE ON THE ISLAND OF IRELAND POST BREXIT – THE EU REGIMES

The situation of the island of Ireland after Brexit constitutes an interesting case study on asymmetric participation in the people-dimension of the EU integration project.

The case study is intriguingly complex, even if only focusing on EU law and EU agreements, while disregarding the Common Travel Area due to its hybrid character between law and politics.³⁰ Movement of people onto and off the island of Ireland as well as between its parts is governed by at least three overlapping legal

27 Tobias Lock, 'Citizenship beyond Irish and British' in Christopher McCrudden (ed), *The Law and Practice of the Ireland – Northern Ireland Protocol* (Cambridge University Press 2022) 247, mentioning the EU's more far-reaching proposals at 248 with fn 7.

28 On this Catherine Barnard and Emilija Leinarte, 'Mobility of persons' in Federico Fabbrini (ed), *The Law and Politics of Brexit – Volume 3: The Framework of the New EU–UK Relationship* (Oxford University Press 2021) 134.

29 The Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p 7-187) allows adaptation of the Protocol Ireland/Northern Ireland by decision of the Joint Committee (art 5(2)), which was the basis of adding specifications to arts 6 and 13 and also stating that the Protocol will be referred to as 'Windsor Framework' (Decision No 1/2023 of the Joint Committee Established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, OJL 102/61 of 17.4. 2023). An updated consolidated version of the Withdrawal Agreement is available on [EURLEX](#).

30 See on this Imelda Maher in the forthcoming special issue.

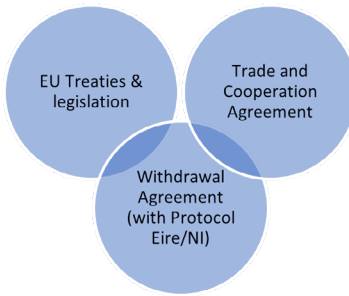


Figure 1: Overlapping regimes on person movements

regimes (Figure 1): first, the EU Treaties remain relevant as far as Ireland is concerned. This also means that Ireland should have to extend advantages offered to non-EU nationals, for example British nationals, to EU nationals as well, in so far as these privileges relate to EU-derived rights, in particular free movement.³¹ Second, for Northern Ireland as part of the UK, two agreements between the EU and the UK are decisive: the Withdrawal Agreement³² with its Ireland/Northern Ireland Protocol (also Windsor Framework) and the TCA between the EU and the UK.³³ The Withdrawal Agreement refers to the EU Treaties, requiring some of its provisions to be interpreted in line with them, or given comparable effects. The TCA is, according to article 50 of the Treaty on European Union, the ultimate successor of the Withdrawal Agreement, whose effects should ultimately dissipate. However, the Protocol (also Windsor Framework) is conceived for unlimited duration, but for the UK's privilege to unilaterally rescind it following a specified process in Northern Ireland (article 18). The TCA dissolves any relationship with the EU Treaties, though from EU perspectives it still qualifies

31 The authority here is the 2002 ruling of the European Court of Justice in *Gottardo* (15 January 2002, C-55/00, ECLI:EU:C:2002:16), where Italy was considered as violating EU Treaty rights for EU citizens by granting non-EU citizens more favourable social security rights. It retains practical relevance (eg Grega Strban, 'Member states' approaches to bilateral social security agreements' (2018) 20 *European Journal of Social Security* 129). Ireland's EU membership means that it must not provide more support for free movement of UK citizens than for that of EU citizens by treating UK citizens more generously than the latter – while UK citizens may of course be granted the same privileges as EU citizens in Ireland, and even more privileges in areas not governed by EU law, such as voting in national elections or immigration control beyond securing free movement rights. Since the Common Travel Area affects social security, access to education and healthcare, its application by Ireland will have to be constantly monitored for EU rights compliance.

32 See n 29 above.

33 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part OJ EU L 144 of 31 December 2020, p 14-2488.

as EU law. This leaves a confusing picture of partially overlapping spheres (see Figure 1).

Yet, those legal instruments collectively do not encompass people movements to the same degree as elsewhere in the EU neighbourhood. In all its complexity, the overall legal framework only provides very limited dents into the fixation of trade on goods, even though the limited size of both Ireland as a state and Northern Ireland as a very small, devolved region of the UK would have suggested more openness towards people movement. This lack of openness for people movement will continue to create a host of practical problems, which international law instruments or gentlemanly agreements, such as the Common Travel Area, are ill-suited to overcome.

Under the main part of the Withdrawal Agreement, people movements are only protected for those who moved as self-employed or employed persons before Brexit. They retain rights to remain in the place where they have moved but lose the right to move to other EU member states if they only have UK citizenship. Those who have moved to provide services are not so protected (Withdrawal Agreement, part 2, in particular titles II and III). The TCA generally allows some service provision (title II), and also person movement in the understanding provided by mode 4 of the WTO GATS (articles 140–145 TCA).³⁴ In addition, any UK participation in EU programmes requiring person movement (for example in research) is conditional on people movement enabled reciprocally for these purposes (article 712 TCA).

The Protocol (also Windsor Framework) only mentions people movement indirectly by allowing the UK and Ireland to maintain the Common Travel Area in so far as it does not conflict with EU law (article 3). That provision does not create any obligations to maintain the Common Travel Area, nor rights for citizens. There may be the faint hope to interpret article 2 as including free movement because this provision refers to rights guaranteed by the Belfast/Good Friday Agreement, which again refers to the right to freely choose one's residence. However, choosing one's residence is only a very limited expression of free movement, and in that Agreement probably relates to sectarian divisions within Northern Ireland more than to choosing residence in Ireland.³⁵ The Protocol (also Windsor Framework)

34 See above text accompanying n 27 and n 28 above.

35 Accordingly, even the Northern Ireland Human Rights Commission and the Equality Commission Northern Ireland, who generally promote the widest possible interpretation of art 2, refer to free movement rights as additional to the protections afforded by the Good Friday/Belfast Agreement, which the UK has committed to protect in art 2, Protocol (Windsor Framework); Equality Commission Northern Ireland, Northern Ireland Human Rights Commission, *Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol* (2022) 7.

enables neither movement of workers or self-employed persons nor movement of service providers or the posting of workers by those who provide services into Ireland or the UK. EU Treaties allow Irish citizens resident in the UK, including Northern Ireland, to move back to the EU at large, with the proviso of equal treatment, including equal treatment with UK citizens in Ireland.³⁶

INSTEAD OF A CONCLUSION: PRACTICAL PROBLEMS ILLUSTRATING SHORTCOMINGS

The substantial neglect of person movements across the overall legal frameworks can clearly have negative impacts on continuing socio-economic interactions on the island of Ireland. It will also stymie efforts of continuing all-island integration in cultural and civic arenas. Two recent examples come to mind.

First, the Irish Government, in Summer 2023, announced their intent to fund studies for nursing in Northern Ireland. That offer has since been extended to studying medicine, though it is still being finalised.³⁷ Under EU law, funds to study nursing would have to be extended to EU citizens having moved to Ireland as workers, self-employed or service providers and their families, including children, wishing to study nursing. Thus, under EU law one might question whether Ireland may limit those places to Irish citizens, who have no problem moving to Belfast and taking up work there during their studies or thereafter without violating their Treaty obligations towards other EU citizens.³⁸ On the other hand, Ireland might argue that as long as EU free movers and their children are given equal opportunity to access funded places for studying nursing or medicine, the equal treatment principle is observed. Ireland would thus give the ‘Belfast places’ only to Irish citizens or those who can derive rights to work in the UK from pre-Brexit free movement. While this approach may pass muster under EU law, it is undoubtedly very complex, and distorts the envisaged all-island approach by excluding a large proportion of Irish residents who are otherwise integrated into Irish society as EU citizens.

Recent UK legislation offers a second example: section 75 of the UK Nationality and Borders Act 2022 empowers the Government to issue immigration rules requiring an Electronic Travel Authorisation (ETA)

36 See n 31 above.

37 As recent as 18 January 2024, a debate in the Dáil exposed that the Government hopes for the scheme in medicine to be finalised for September. The answers of Simon Harris seem to indicate that practical parts of the education would be completed in Ireland, limiting the concerns expressed above: [Dáil Debates, Thursday, 18 January 2024](#).

38 See text accompanying n 31 above.

for anyone entering the UK who is neither a UK citizen nor has a right to abode for other reasons. Entering the UK by crossing the border into Northern Ireland is included in the legislation.³⁹ Presently, ‘only’ some non-EU nationals are required to produce the ETA, and permanent exceptions apply by statute for those covered by the Common Travel Area, and enjoying status rights (settled status in UK terminology) resulting from their movement to the UK before Brexit as EU citizens. More exceptions have been promised but not legislated for in favour of those legally resident in Ireland, as well as for travels of less than 24 hours. ETAs will be required of EU citizens who do not fall under the exceptions as announced in the near future. Requiring ETAs for persons requiring a visa to enter the UK will mainly impact on tourism on the island of Ireland, and most specifically on businesses operating out of Ireland. It will become impractical for them to include tours to Northern Ireland outlasting the 24-hour timeframe. Those Northern Irish accommodations booked by Irish providers will suffer alongside their business partners, in the wake disturbing one of the sectors that enjoyed support by all-island initiatives in the past.

These two examples demonstrate that, beyond the principled value of free movement, neglecting persons in the post-Brexit relationships has severe consequences. These will be felt particularly acutely on the island of Ireland. Accordingly, free movement of goods, however relevant, is far from the only area to be safeguarded. Enabling free movement of goods may suffice to avoid physical border infrastructure being required under WTO law.⁴⁰ Yet, in order to enable effective socio-economic cooperation and ensuing societal relations, free movement of people in their own right, beyond an attachment to economic services, and with direct legal effect, remains indispensable.

39 *Nationality and Borders Act 2022*, s 75, amends the *Immigration Act 1971* by introducing a pt 1A entitled ‘Electronic travel authorisation’. This part enables the Government to issue immigration rules requiring an ETA, though never for British or Irish citizens.

40 De Mars and Murray (n 20 above).