



Why Transitional Rules?

Reflections on the Enlargement and the Free Movement of Persons



Yellow and blue fields are EU's 25 Member States.

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1. Introduction

1.1 Background

The European Union is not a state as we know it, but an entity that came into being through the Maastricht Treaty.¹ It began with six members and after six successful enlargements, the European Union now comprises 25 Member States.² All Member States have transferred some of their sovereignty to European Union institutions. Member States are still considered sovereign States and retain the authority to grant or withhold citizenship within their own borders.

The Maastricht Treaty also grants the individual a second citizenship that is different from that of its Member States, contained in Articles 17-22 of the EC Treaty.³ The Treaty grants the Member States' 450 million nationals European Union citizenship, which includes the right to move and reside freely within the territories of the Member States. Free movement is granted to those engaged in an economic activity. According to Articles 39-55 of the EC Treaty this includes workers, self-employed and service providers. Out of the 450 million EU nationals, 260 million people are in the age group 15-64 years, which defines the EU labour market.⁴ This now forms one of the world's largest single markets in terms of population and may boost the EU economy and create jobs.⁵ Member States were also concerned at the cost of enlargement, over six years (2000-2006) is predicted at 67 billion euros.⁶ As of the year 2000, approximately 2.75⁷ million EU citizens worked in Member States other than their own. This is less than two percent of the EU labour market.⁸ This statistic demonstrates that a

¹ See V. Lippolis, *European Citizenship: What it is and what it could be*, p. 317, see also G. Avery & F. Cameron (1999), *The Enlargement of the European Union*, p. 22

² In 1951, the European Coal and Steel Community were created with six members, Germany, France, Italy, the Netherlands, Belgium and Luxembourg. 1973, United Kingdom, Denmark and Ireland joined what was then called European Economic Community (EEC). 1981, Greece joined. 1986, Spain and Portugal followed. [1990 East Germany joins West Germany and thus joined EU]. 1995, Sweden, Austria and Finland entered what has become known as European Union. 2004, Cyprus, Malta, Hungary, Poland, the Slovak Republic, Latvia, Estonia Lithuania, the Czech Republic and Slovenia joined.

³ See V. Lippolis, *op.cit.*, p. 317

⁴ SOU 2002:116, *EU: s utvidgning och arbetskraftens rörlighet*, p. 37-8

⁵ The north American Free Trade Agreement remains larger in economic might, BBC News 1 May 2004, [<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.com>]

⁶ G. Avery & F. Cameron, *op.cit.*, p. 140, By comparison the cost to reunite Germany was 600 billion euro (1990-1999) – BBC News 1 May 2004

⁷ 300,000 of those employed are from the new Member States. That is less than 0.3 per cent of EU total labour market (SOU 2002:116, *op.cit.*, p. 45)

⁸ Barnard C (2004), *The Substantive Law of the EU-The Four freedoms*, p. 400

majority of EU nationals have not exercised their right of free movement, which is one of four fundamental freedoms.⁹

The free movement of persons could not be accomplished without the principle of non-discrimination on the grounds of nationality as expressed in Article 12 EC Treaty. With regards to workers, this principle arises from Article 39 EC Treaty and subsidiary legislation: Article 7 Regulation 1612/68.¹⁰ This means that a Member State cannot discriminate against a person who has been admitted to the territory with respect to the access to or exercise of a particular trade or profession.

Some critics regard the European Union's sixth enlargement as flawed, citing the cost of accepting poorer¹¹ member nations and the difficulties of reforming Union policies. But there are also the potential benefits as the internal market widens to include more than 75 million fresh consumers with rising incomes.¹²

The European Union's 2004 enlargement in Central and Eastern Europe and the Mediterranean raised questions regarding the free movement of persons (there are already approximately 400,000 legally employed persons from the 10 new Member States residing in the EU prior to 1 May 2004.¹³ Some of the old Member States fear that a large influx of workers might price locals out of jobs or result in abuses of the State benefit system. Consequently, some Member States have decided to limit the free movement of persons by adopting the transitional rules set out in the Accession Treaty.

1.2 Purpose and Scope

The aim of this thesis is to consider why the old Member States feel the need to adopt transitional rules against the CEECs. Sweden will be used as a case study by considering the

⁹ Article 3, EC Treaty, is the creation of "an internal market characterized by the abolition, as Member States, of obstacles to the free movement of goods, persons, services and capital".

¹⁰ Guild E., *Immigration Law in the European Community*, page 40-41

¹¹ New Member State average of GDP per head is 40 % of a average level in the old (15) Member States-Source Eurostat

¹² Avery G. and Cameron F. (1999) *op.cit.*, pp. 141 and 176

¹³ *The Economist* Jan. 17th 2004, "Migration in the European Union, The Coming Hordes" pp. 25-6

grounds upon which the Swedish Government has sought to impose transitional rules.¹⁴ This thesis will also explain how free movement of persons will apply to citizens of the 10 new Member States after the enlargement of the European Union in 2004, based on the transitional rules set out in the Accession Treaty signed by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. It is important to note that these transitional arrangements apply only to workers, not to the freedom of providing services or to the freedom of establishment.

This thesis will in turn reflect on the expansions of the European Union with regard to the free movement of persons. It focuses primarily on the provisions under the EC Treaty, secondary legislation and case law regulating movement from one Member State to another. How has the EU through creating Union citizenship facilitated the free movement of persons? What are the conditions necessary for free movement? What are the express derogations¹⁵ laid down by the EC Treaty for free movement of persons? Why do Member States feel a need to protect themselves from the free movement of persons from the Central and Eastern European countries (CEECs) by imposing restrictions on the labour market? To begin with, we will start by considering the enlargement.

1.3 Method and Materials

Much of the literature on EU enlargement is oriented toward issues of political science or economics. The topic evolves very rapidly, so I have tried to focus on the legal dimension of transitional rules, enlargement and the free movement of persons, but even then the political and economic context is never far away. The sources for this thesis include European Community law books, journals and reports. Furthermore, wide ranges of documentary sources were considered, which include policy documents and reports from the European Union and the Swedish government. The material used consists mainly of case law from the European Court of Justice. A substantial part of this case law was obtained from the Website of the European Union. The Internet-based library Rättsbanken was also used for collecting material on the subject, as well as Internet-based newspapers and governmental homepages.

¹⁴ SOU 2002:116, op.cit., Regeringens Skrivelse 2003/04:119, Särskilda regler under en övergångsperiod för arbetstagare från de nya medlemsstaterna enligt anslutningsfördraget

For the purpose of this study, the term “old Member States” refers to the 15 EU Member States prior 1 May 2004. The term “new Member States” refers to the ten new Member States that joined the EU through the enlargement on 1 May 2004.

2 Considering the EU Sixth Enlargement

2.1 Background on the Sixth Enlargement

When EU enlarged to include the South European countries of Greece (1981), Spain and Portugal (1986), it was predicted that a large migration of labour from the poorer countries in the South would arrive in the richer in the North.¹⁶ That did not happen. But there are differences between South European Enlargement and the sixth enlargement, which make it difficult to compare. The economic gap between the new Member States and the old is wider than the gap was between the two previous South European enlargements. Another factor to consider is that the new Member States are not geographically distant from the EU’s richer countries, which may have stemmed the flow of short-term workers. The third difference is that integration and cooperation in EU have developed since the South European countries joined EU. However there is no doubt that the enlargement will involve rapid social change in the CEEC’s and boost the CEEC’s economy. This phenomenon was demonstrated after the South European nations joined the EU, when the South European nations economy strengthened, their living standards improved and their spending power rose.

The European Union celebrated an historic enlargement when Cyprus, Malta, Hungary, Poland, the Slovak Republic, Latvia, Estonia Lithuania, the Czech Republic and Slovenia joined on 1 May 2004. The moved united Europe after decades of separation into East and West. The new Member States have aimed to develop their economies¹⁷, societies and social system along the lines of the old Member States.¹⁸ The new Member States have all accepted the “*acquis communautaire*”, which is the body of laws and rules that have developed over the

¹⁵ Derogation: “The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force”-Garner (2000), *Black’s Law Dictionary*, 7th eds, p. 360

¹⁶ See SOU 2002:116, *op.cit.*, p. 45-6

¹⁷ Over the next 20 years their economies have a potential to expand by 6-7 per cent annually. This will benefit Sweden and may create opportunities for trade and business- Regeringskansliet, 12 May 2004 ‘EU enlargement’, [www.sweden.gov.se]

¹⁸ COM (2000) 379 final, Communication from the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions-Social Policy Agenda (28 June 2000)

years in EU.¹⁹ Supporters of enlargement say that this creates the opportunity to extend democracy and prosperity for EU citizens, making Europe a safer place.²⁰ A similar reasoning followed when the former dictatorships Greece, Portugal and Spain joined.²¹

Since 1961, every extension of the free movement of persons within EU has raised the same fears. Each time, the fear of a flood of migration has been proved wrong. At the time of the entry of Portugal and Spain, transitional rules were shortened because the feared influx of migrants did not materialize.²² No one really knows how the sixth enlargement will change Europe, or how many people from the East will want to come and work in the West. The forecasted numbers vary widely. The populations of the new Member States are about 60 million people. According to BBC there is predicted 220,000 migrants out of the total population of 60 million people from the new Member States will spread out per year among the old Member States.²³ That figure is based on full free movement. But the fact is that many old Member States have enforced transitional rules, as will be discussed below.

In conclusion, over the past fifteen years, the new Member States have undertaken economic and political reforms on a massive scale and have accomplished a social transformation that will prepare their countries well to take on the responsibilities of membership in the EU. Let us now turn to consider Sweden's motives for an enlarged Union.

¹⁹ Avery G. and Cameron F. (1999) *op.cit.*, pp. 32-3. See also Case C-302/94 *R v HM Treasury ex p British Telecommunications PLC* [1996] ECR I-1631 Community law has supremacy over national law and therefore the Member States are bound to apply them. This position is confirmed in Case 6/64 *Costa v ENEL*: "By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which on entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply. By creating a Community of unlimited duration, having powers stemming from limitation of sovereignty, or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves." If a Member State fails to comply with or to implement correctly Community law, an individual can enforce his rights and claim damage.

²⁰ BBC news, 1 May 2004 [<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.com>], 'EU enlargement', Regeringskansliet, 12 May 2004, 'EU enlargement', [www.sweden.gov.se], Regeringskansliet (1998), 'Ett utvidgat EU- möjlighet och problem', p. 33

²¹ Regeringskansliet (1998), 'Ett utvidgat EU- möjlighet och problem', p. 34

²² H.G. Schermers et al., eds., (1993), *Free Movement of Persons in Europe*, p. 392

²³ BBC news 1 May 2004, 'EU enlargement', [www.bbc.co.uk]

2.2 Swedish Aspects of the Enlargement²⁴

2.2.1 Introduction

Why is the enlargement important for Sweden? Laila Freivalds, Sweden's Minister of Foreign Affairs, says it is good for Sweden because it creates closer ties with our neighbors, better cooperation on common problems such as the environment, cross-border crime and it will increase trade opportunities.²⁵ This section aims to explain that even though Sweden has been a driving force behind this enlargement, the government has expressed concern about opening its labour market to the new Member States and suggested that Parliament restrict free movement for workers from the new Member States. Sweden would require workers from the CEECs to obtain work permits for the first two years and reasons that transitional rules would be good for all concerned. Why? If the enlargement is managed well it the potential to bring increased growth and economic development throughout Europe, by averting social tension and disturbances on the labour market. Swedish Prime Minister Göran Persson said that workers from the new Member States would, "once inside our country, have access to the entire social security safety net, unless we protect ourselves."²⁶ Berit Rollén submitted a report on the EU enlargement and the movement of labour (SOU series 2002:116) and pointed out that abuse of the social security system may occur. To prevent this Sweden could impose transitional rules and thereby apply Swedish law for up to seven years after the enlargement. The adjustment period would be required to make the enlargement function as well as possible.

How did the government come to this conclusion? After considering many factors, ranging from the vulnerability of individual workers to concern for the social security and the importance of a stable labour market, the government proposed a transitional period to the Riksdag. The Swedish Parliament decided that Sweden would not apply a transitional period with respect to the free movement of workers from the ten new Member States, as will be further discussed. However, let us first examine the proposed arguments presented by the Government.

²⁴ Unless otherwise stated this section is rewritten from SOU 2002:116, op.cit.

²⁵ [<http://www.sweden.gov.se/sb/d/3094/a/22388>]

²⁶ *The Economist* Feb. 7th 2004, "Those Roamin' Roma", p. 37-8

2.2.2 The Swedish GOVERNMENT'S Proposal

There is a fundamental principle in Article 39 EC Treaty that all EU citizens must have the same rights and responsibilities as the citizens of the country in which they work. According to the Swedish Government, the domestic laws of the country can not guarantee equal treatment for persons from other EU countries.²⁷ Citizens from the new Member States would risk ending up in a vulnerable situation in the Swedish labour market, where they could be exploited in a way that would risk wage dumping, weakening the terms of employment for all.

Secondly, the government was concerned about the difference in pay levels and social security between Sweden and the new Member States. This gap could strain the Swedish system. For example, a person could come and work, thus qualifying as a 'worker' and obtaining access to Sweden's entire welfare system which is out of scope of this thesis.²⁸

The government proposed a transitional period to allow time to prepare a smooth integration of the labour market in an enlarged EU. Workers from all the new Member States should be entitled to come to Sweden and work. However, the employment should be a proper one with remuneration meeting the terms of a collective agreement and housing should be arranged. If there is a doubt about the legitimacy of the employer, a standard check of tax payments and social security contributions should be possible. This would aim to prevent workers from exploitation in the labour market. The transitional period would also allow time to adopt changes in national legislation, in the arenas of both labour and welfare.

2.2.3 Labour Migration from the New Member States to Sweden

Can Sweden expect a large migration of workers from the new Member States? We can only look at how workers behaved during previous EU enlargements. However, since conditions in the new Member States are essentially different than in past enlargement, it is impossible to predict how workers will behave.

²⁷ Regeringskansliet, 15 March 2004, [www.sweden.gov.se], 'Transitional rules good for all concerned'

²⁸ Sweden's child allowance for three children exceeds the average income in most of the ten new Member States. This could therefore tempt people to take jobs at a very low pay and receive social benefits that far exceed the income they could earn in their country of origin, SOU 2002:116, op.cit.

Until 1945, Sweden was a unusually homogeneous country with a small aboriginal community: The Sami.²⁹ Between 1945 and 1972, the Swedish Government encouraged labour migration.³⁰ Castles & Miller,³¹ point out that Sweden has a multicultural governmental policy, which defines the nation as a political community based on a constitution and laws. Sweden admits newcomers to the community if they adhere to the law and accept cultural differences. This model is a combination of social policies to respond to the needs of for example labour migrants and openness towards cultural diversity. In 2003, almost 9,300 persons from EU/EEA received residence permits in Sweden and in addition almost 10,300 had come to work and obtained residence permits for what is called labour-market reasons.³²

Let us now examine why a person from the new Member State would be inclined to move to Sweden. Of Sweden's population (8,947,800 million, 2002³³) about 1 percent (91,428) were born or have parents who were born in the new Member States. That may create a potential for people from the new Member States to search for a better life in Sweden, because they already have a network in place. And, because the Swedish government did not impose transitional rules people from the new Member States also have access to the labour market.

The potential for labour migration from the new Member States may also lead to tougher competition for jobs, in a way that could risk wage dumping.³⁴ Who might be affected by wage dumping? Less educated people with fewer job skills, such as cleaners and nannies. The effect would be to widen the income gap in our society.³⁵ Another factor is the labour unions. They have historically been stronger in Sweden, where 85 percent of the labour force is unionized, than in other EU countries. Collective agreements regulate the wages of many employees. It should also be noted that a collective agreement at a workplace applies also to those employees who are not members of a union, protecting the labour migrants from being exploited on the Swedish labour market.³⁶

²⁹ Castles S. & Miller J.M. (1998), *The Age of Migration*, p. 248

³⁰ Castles S. & Miller J.M., *op. cit.*, p. 236

³¹ Castles S. & Miller M.J., *op. cit.*, p 43

³² Between 1994-2001 46,465 residence permits were issued about 35 per cent of those for employment reasons. [www.migrationsverket.se]

³³ Statistical Yearbook of Sweden 2004, (2003), p. 59

³⁴ Regeringskansliet, 15 March 2004, *op.cit.*

³⁵ Regeringskansliet (1998), '*Ett utvidgat EU- möjlighet och problem*', pp.17-9

³⁶ O'Reilly J. (edn), (2004), *Regulating Working-time Transitions in Europe*, p. 52

Reasons why people would not consider moving to Sweden include the language barrier, cultural differences and distance from the home country. It is hard for a migrant worker to get a foothold on the Swedish labour market due to the requirement of education and language skills.³⁷ However, Sweden has an active policy to improve the job skills of minority migrants through language courses, basic education, vocational training and anti-discriminating legislation.³⁸

2.2.4 Does Sweden Need Labour Migration?

Swedish demographics reflect reduced population growth and an ageing population. Labour migrants might provide the labour for elder care and other services, as well as the construction industry. According to a recent TCO report³⁹, Sweden's labour market faces dramatic changes in the coming years. Within seven to eight years, an increase of skilled labour will be needed but, not for unskilled migrant labour. After this manpower shortage projected for the years 2010-12, Sweden can expect a large group of young students to enter the labour market. The report points out that this may lead to young skilled labour being hired. And lower skilled or long-term unemployed persons and migrant workers being left outside the labour market. Sweden will always have some per cent of lower-skilled migrants because they enter Sweden through family reunion which is in accordance with EU's secondary legislation.⁴⁰ This may lead to a struggle to provide adequate employment for existing populations of low-skilled Swedes and low-skilled EU migrant workers. Labour migration also needs to be conducted in an organized manner, matching the needs of jobseeker and employers. In the long term, Sweden needs labour migration through certain periods of labour shortages.

2.2.5 Conclusion

The Swedish people have supported the enlargement and consider an enlarged EU a means toward peace and security in Europe. This result in political, economic and environmental advantages for all countries involved according to the general opinion of the old Member

³⁷ The Swedish Integration Board, Sweden pocket Guide (2001), pp. 92-107

³⁸ Castles S. and Miller J.M., *op. cit.*, p. 217

³⁹ Mörtvik R. and R. Spånt, Värdeskapande tillväxt Nr 3 2004, 'Utmaningar – i framtidens arbetsliv', [www.tco.se]

⁴⁰ Castles S. & Miller J.M., *op. cit.*, p. 217

States. However, there is concern about opening the Swedish labour market to the free movement of persons due to the possible abuse of the social-security systems and the exploitation of workers on the labour market in a way that could risk wage dumping. On the other hand, those who are likely to move from the new EU Member States seem to be young singles who will work and pay taxes in Sweden and are less likely to burden the social-insurance system, with the possible effect of improving the Swedish State's economy.⁴¹ Nevertheless, the unwanted arrival of low-skilled migrants is often used to heighten public fears of a massive influx. Despite this, the Swedish parliament has decided that Sweden will not apply for any special transitional arrangements with respect to the new EU Member States. However, some of the other Member States did, which will be considered next.

3 Transitional Rules

3.1 Introduction to Transitional Rules

In the 2004 EU enlargement, the old Member States fear that the free movement of persons will cause a huge labour migration from the new Members to the old, with the possible effect of pricing the locals out of jobs or abuses from new EU nationals claiming state benefits.⁴² Thus the old Member States want to protect their labour market by transition rules. This section will describe the transitional rules for the free movement of workers to, from and between the new Member States.⁴³ Transition rules have been agreed on for all acceding countries except Malta and Cyprus, as set out in the Accession Treaty.⁴⁴ During the transitional period relating to the free movement of workers, a person cannot move freely from the ten new Member States to the old Member States. Upon signature of the Accession Treaty, a standstill clause came into effect, whereby new or old Member States alike cannot restrict their labour markets more than prevailed at the time of signature. Transitional rules are limited in time and scope and may differ from one Member State to another.⁴⁵

Briefly the common position regarding transitions rules is divided into three steps.

⁴¹ Regeringskansliet (1998), '*Ett utvidgat EU- möjlighet och problem*', p. 20

⁴² Regeringskansliet, 15 March 2004, [op.cit.](#)

⁴³ The new Members States are: Cyprus, Malta, Hungary, Poland, the Slovak Republic, Latvia, Estonia, Lithuania, the Czech Republic and Slovenia

⁴⁴ [http://europa.eu.int/comm/enlargement/negotiations/pdf/negotiations_report_to_ep.pdf]

⁴⁵ [<http://europa.eu.int/eures/main.jsp?lang=en&acro=free&step=0>]

1. During the first two years after enlargement, national legislation may be applied in all Member States, as well as bilateral agreements they may have with the new Member States or they may result in full labour-market access. Countries, which apply restrictions, will then be free to open their border for workers, or to retain existing restrictions. Before the two years are up, a review will be made of how it has been working, based on reports from the European Commission to the Council of Ministers.
2. Following this period, the Member States may then practice the free movement of workers, in accordance with Community law, but with safeguards clauses that allow restrictions if there is a great disturbance on its labour market. The Member States may retain national restrictions for another three years.
3. At the end of a five-year period, the Member States that are still applying national restrictions may extend the transitional rules for two more years, if they can prove serious disturbances on its labour market.

By 2011, at the latest, there will be complete freedom of movement for workers of the new Member States.

3.2 Which Countries Apply Transitional Rules?

Transitional rules are a broad topic and should entail detailed description of the specific rules in each of the old Member States. That is not possible here for reasons of space. Instead, brief summaries of the rules in selected countries Austria, Belgium, Finland, France, Ireland, Netherlands, Portugal, Sweden and United Kingdom will be presented. Who will the transitional rules apply to? The transitional rules will apply to any new Member States national who wants to work in another Member State. Transitional rules do not apply to nationals who reside in a Member State to study or to establish him or her as self-employed.⁴⁶ Neither does it apply to nationals from the CEEC who are already legally resident and employed in the old Member State. The rights of their family members are also taken into account, consistent with the practice in the case of previous accessions. Here follows a selection of transition rules imposed by the old Member States on the new ones:

⁴⁶ There is an exception for self-employed persons providing certain services, e.g. in construction sector in Austria and Germany [<http://www.eubusiness.com/guides/enlargement-free-movement>]

Austria: Workers still need a restricted work permit, for which their employer must apply. After working legally for one year the worker will be free to move within the labour market. Family members who establish themselves and dwell with the worker will receive this right after 18 months. Austria and Germany have a right to apply flanking national measures to address serious disturbances in specific service sectors on their labour markets, which could arise in certain regions from cross-border provisions of services.

Belgium: National legislation on hiring of foreign workers continues to apply. A work permit is required in order to obtain work.

United Kingdom: The government has changed the regulations setting out which benefits migrants from the new Member States can claim. In principle this is a new criterion of habitual residential rules and registering as a worker.⁴⁷

Ireland and Sweden: Do not apply any restrictions on access to its labour market for EU/EEA citizens.

France, Finland, Portugal and Netherlands: During the first two years, a work permit is required for workers from the new Member States. France holds the same common position with the exception for researchers and students.

3.3 Sweden - What Framework Applies Now?

As noted earlier the Swedish parliament has decided that Sweden will not apply for any special transitional arrangements with respect to the new EU Member States. This means that workers and job seekers from the new Member States will be able to seek work in Sweden under the same conditions as workers from other countries in the EU/EEA (including Switzerland). Job seekers from the new Member States will be treated in the same way as people from the old Member States. Job seekers will be entitled to register with labour offices and to receive assistance in seeking work from public-employment services for up to three months in Sweden, but the principle of sufficient funds to

⁴⁷ [<http://news.bbc.co.uk/1/low/uk/3693615.stm>]

support themselves during their stay still applies.⁴⁸ The same availability requirements will apply to people who are entitled to continue to receive unemployment benefit from their country of origin. The effects of EU legislation and which rules apply will be considered in the final analysis.

3.4 Conclusion

The aim of the transitional rules on the free movement of the labour market is to give all the Member States time to prepare a smooth integration of their labour markets in the enlarged EU. This will allow time for national legislatures to improve the control and monitoring of their labour markets so as to avoid the abuse of social-security benefits and to discover disturbances that threaten employment in a specific region or industry. It will also allow time to prevent people from being exploited on the labour market by illegitimate employers through evading national rules. Imposing work permits for the new EU citizens regulates the labour migration. In considering which Member States apply transitional rules it seems that countries with extended borders near the new Member States are more inclined to impose restrictions on their labour market. One reason for this may be that cross-border mobility from the new Member States to the old Member States in border regions may increase. Frontier workers face a range of problems due to different national legislation in terms of for example social security and social advantages, which will not be further discussed.⁴⁹ Next to be presented is which rules apply to the free movement of persons and which requirements must be fulfilled before a person can exercise free movement as worker.

4 Free Movement of Persons

4.1 Introduction

The free movement of persons is confined to workers and has existed since the foundation of the European Community in 1951. In 1976, the European Court of Justice granted the right of free movement for economic purposes.

“Articles 48 [now Article 39] to 66 [now Article 55] of the Treaty and the measures adopted by the Community in application thereof implement a fundamental principle of the Treaty,

⁴⁸ Juridik Idag, EG-domstolen, Case C-138/02 *Collins*, dom 2004-03-23, [Rättsbanken, 2004-03-26]

⁴⁹ Neal A.C. (2002) , *European Labour Law and Social Policy*, p. 301

confer on persons whom they concern individual rights which the national courts must protect and take precedence over any national rule which might conflict with them.”⁵⁰

By this, the Community removed from the Member State authorities to decide whom to admit, if a person is considered a worker, that person has a right to free movement and according to the Courts case law, as we shall see, a Member State must issue a residence permit. Under the Single European Act, the ‘common market’ was renamed the ‘internal market’ with the aim of increasing wealth and bringing together the economies of the Member State. It was essential to have a flexible, well-trained and mobile workforce. An underlying factor was integration of the European people.⁵¹ The basic principle of free movement is given to workers, establishments and service providers.⁵² Community immigration law developed and by 1990, an extension was agreed to the right to residence to anyone who didn’t burden the social system of that state. In 1991, the right to free movement transformed from being based on an individual’s right as a worker into a right based on citizenship in the Union.

4.2 European Citizenship

This section will consider Union citizenship and the rights conferred upon EU citizens. It will give only the essential arguments and conclusion. The concept of the EU Citizenship developed with the aim of creating a closer union among the people of Europe.⁵³ Any person who holds the nationality of an EU Member State is automatically a citizen of the EU as defined in Article 17: “Every person holding the nationality of a Member State shall be a citizen of the Union”. The national citizenship is the primary status, whereas the European citizenship is a secondary citizenship. These two are interlinked and not separable. The question of whether an individual possesses the nationality of a Member State is settled solely by reference to the national law of the Member State concerned. Thus it is for each Member State to lay down the conditions for the acquisition and loss of nationality.⁵⁴ In case of loss of national citizenship, one loses the citizenship of the Union as well. National citizenship

⁵⁰ Case 118/75 *Watson & Belmann* [1976] ECR 1185

⁵¹ Craig P. and De Búrca G., (1998), *EU LAW - Text, Cases and Materials*, p. 665

⁵² The right for people to circulate freely within the European Community are enshrined in Article 3 (c) EC Treaty. Workers protection in Articles 136-45, principle of equal pay for equal work in Article 141

⁵³ [http://europa.eu.int/comm/justice_home/fsj/citizenship/wai/fsj_citizenship_intro_en.htm]

⁵⁴ Case C-192/99 *Kaur* [2001] ECR I-1237, paragraph 19

expresses the relationship between the person and the state, a political bond, which give rise to certain rights and duties.

“European citizenship seems to be evolving on the basis of free movement, almost as an extension or projection of the same.”⁵⁵ Article 18 (1) gives “every citizen of the Union ... the right to move and reside freely within the territory of the Member States.” Union citizenship is a necessary condition for the free movement of persons. This confers on every Union citizen a fundamental and personal right to move and reside freely without reference to an economic activity. The Community has extended the right of residence in another Member State to persons who are not engaged in a professional occupation, provided they have sufficient resources and health insurance and thus facilitate free movement of persons.⁵⁶ With the Maastricht Treaty came additional voting rights, and the right to petition to the Ombudsman and European Parliament.⁵⁷

4.2.1 European Citizenship Creates Equality between Nationals

The Treaty of Amsterdam, signed in 1997, extended citizens’ rights by introducing a new anti-discrimination clause on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Amsterdam also reinforced the free movement of people by integrating the Schengen Convention into the Treaty. The European Court of Justice confirmed that: “Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.”⁵⁸ The Court noted that if a person is solely discriminated on the ground of nationality and is a citizen in one of the Member States, that person enjoys the status of the Union citizenship, which is taking over to create equality between nationals.⁵⁹

⁵⁵ V. Lippolis, *op. cit.*, p. 321

⁵⁶ see for example Directive 93/96 on Students, Directive 90/365 on Pensioners and Directive 90/364 on anyone else who is economically inactive but self-sufficient

⁵⁷ Steiner J. and Woods L., *Textbook on EC LAW*, 6th Edition, p. 266

⁵⁸ Case C-184/99 *Grzelcyk* [2001] ECR I-6193 paragraph 31

⁵⁹ This view was later confirmed in Case C-224/99 *D’Hoop* [2002] ECR I-6191, paragraph 28

4.2.2 Duties for European Citizen

The EC Treaty does not refer to any specific duties of a European citizen with the exception of a general clause in Article 18.1b: “subject to the limitations and conditions laid down in this Treaty”. Barnard reasons that duties we owe to the Member State are to pay taxes, do military service, and obey the law, work and vote. In turn the Member State will use national taxpayers’ money to finance the cost of the rights.⁶⁰

The EC Treaty does not refer to any social rights of the European citizen, which include the right to receive social security.⁶¹ The ECJ will give a preliminary ruling in Case C-456/02 *Trojani*⁶². The Case concerns whether holding a Union citizenship gives a common right to freedom of movement and to reside in another Member State. And if so an automatic right to social assistance in the host State, if the person does not have sufficient resources.

4.2.3 Exclusion of Non-EU Citizens

Another characteristic of national citizenship is that of exclusion. Citizenship is a proof that a person belongs to specific state. On the other hand, it excludes non-citizens from enjoying the same status. The citizenship of the European Union works in a similar way. The rights of a citizen of the Union are not granted to States outside of the European Union; even if a third country national (TCN) has their legal residence within the territory of the European Union. The rights for a citizen of the Union are not granted to a TCN. The rights of TCN who legally reside in the EU are beyond the scope of this thesis.⁶³

⁶⁰ Barnard C. (2004), *op. cit.*, p. 405

⁶¹ V. Lippolis, *op. cit.*, p. 319

⁶² Case C-456/02 *Trojani* [Official Journal of the European Union C-44, p 13-14, 22/02/2003]

⁶³ See for example, Muiznieks N. and Kehris I. B. (2003), ‘The European Union, democratisation, and minorities in Latvia’ in Kubicek P. J. (eds), *The European Union and Democratization*, pp. 30-51; 201-3, regarding Latvia: Even if citizenship issues are domestic concerns, EU was concerned as Latvia had such a “large number of non-citizens, who by 2002 still constituted 22 percent of the population, continued to present a problem.” Their former citizenship had ceased when the Soviet Union no longer existed and Latvian citizenship was not accessible. 1998 Latvia complied with international standards concerning national citizenship legislation. However naturalization became an unforeseen slow process.

4.2.4 Conclusion

A concluding remark on this section is that the idea of European citizenship has progressively expanded. But it needs to keep doing so. “Only thus will it become a *factor* capable of fostering the European Union’s development and not merely a *consequence* of it.”⁶⁴

4.3 Free Movement of Persons - the Nordic Experience⁶⁵

The right of free movement and residence within the Nordic countries⁶⁶ has existed since World War II. The Convention abolishing the need to carry a passport at the common Nordic borders [the Nordic Passport Control Agreement] and the Convention on a free labour market are the two legal bases for establishing a Nordic ‘internal market’ with the right to free movement for all Nordic citizens. The right to free movement embraces workers, job seekers and all others, irrespective of whether they can support themselves economically.

During the last 50 years, about one million Nordic citizens have used their right to move and reside in another Nordic country. Others have used their right to move on a temporary basis (e.g. tourism, business). During this period, there has been no need for them to show a passport or apply for a residence or work permit. This mobility has improved the Nordic countries’ economic development and strengthens the unity among Nordic people without damaging their sense of national independence. This has been achieved without introducing Nordic citizenship. The Nordic experience is that to stimulate people to move to improve their living conditions, more is involved than extensive legal reform.

The Nordic experience gives an example that when these five Nordic States open their border entirely, there is cause for concern⁶⁷, but people are not inclined to move away from their home State. The conclusion one might draw from the Nordic experience is that if the EU

⁶⁴ V. Lippolis, *op. cit.*, p. 325

⁶⁵ Based on H.G. Schermers et al., eds. (1993), *op. cit.*, pp. 61-9 and *Thirty years of free movement of workers in Europe*, Kruse A. (2000), “What Will Be the Concrete meaning of Citizenship? The Nordic Experience”, Office for Official Publications of the European Communities, Luxembourg, pp. 287-290

⁶⁶ Denmark, Finland, Iceland, Norway and Sweden

⁶⁷ Iceland concern was that they would be drained on skilled workers, which did not happen. Finland’s concern was that young, skilled workers would move to a more prosperous Sweden, thus making it difficult to rebuild Finland after the war. This has been partly true. However today it is a more mutual mobility movement.

removed obstacles to free movement, that in itself would not encourage people to leave their native country for another. There are many more factors involved. The Nordic citizens have no special Nordic citizenship and the cooperation still works. The EU citizens have been granted a European citizenship but do not enjoy the same rights as seen in the Nordic cooperation. Should not the aim for European citizenship be that a person should be able to move and reside freely over the whole European Union area without any requirements such as being classified under the term worker? The European citizenship must have a concrete meaning.⁶⁸ This in turn will contribute to strengthening and uniting the single market and to the economic prosperity of Europe.

5 Free Movement of Workers

5.1 Introduction

Article 39, provides for free movement of workers⁶⁹. It cannot apply to a worker who has not moved within the Community.⁷⁰ A worker has the right in the host Member State to be free from any discrimination on the grounds of nationality. Exception from the non-discrimination principle is provided for in the Article 39 (4) “employment in the public service.”⁷¹ Rights of entry and residence are subject to derogations on the grounds of public policy, public security and public health.

The free movement of workers may not have been accomplished without the abolition of discrimination on the basis of nationality endowed in Article 39 (2) and Article 3(c). Non-discrimination in general requires that similar situations be not treated differently unless that differentiation is objectively justified.⁷² The Court has acknowledged the existence of ‘objective discrimination’. Such conditions may be contrary to Community law if they constitute an obstacle to free movement, if the objective discrimination is no longer proportionate.

⁶⁸ *Thirty years of free movement of workers in Europe*, Kruse A. (2000), “What Will Be the Concrete meaning of Citizenship? The Nordic Experience”, p. 287

⁶⁹ A similar line of framework of rights apply for the self-employed and providers of services

⁷⁰ Case C-332/90 *Steen I* [1992] ECR I-341

⁷¹ By this provision the Member State can protect their public service and who get access to work in it. It’s an occupation limitation. In Case 152/73 *Sotgiu*, (paragraph 11); the Court held that a Member State couldn’t treat a non-national worse if you already have given them the job. In Case 149/79 *Commission v Belgium*, the Court considered the purpose of Article 39 (4), and found that Member State has to justify why a non-national will not get the job. It is true that a Member State can reserve some posts for the safeguard of the general interest of the State solely to nationals but some post must be open for all.

Article 39, has direct effect, which applies vertically⁷³ between state and individual but also horizontally⁷⁴ between individuals. Community law has supremacy over national law. Consequently a Member State is bound to apply them. To give more substance to the above principle, secondary legislation has been introduced in for example Directive 68/360⁷⁵, on the rights on residence and entry, Directive 64/221⁷⁶, on the Member States right to limit free movement on the ground of public policy, public security or public health. Regulation 1612/68⁷⁷, gives the right to access to and the conditions of employment also for the workers family.⁷⁸

This section will examine who is a worker according to EU legislation and the rights enjoyed by workers and their families. It will also determine the essential characteristics of an employment relationship. Free movement of persons is a fundamental Community right. These transitional rules do not apply to the free provision of services nor to the freedom of establishment, thus will those not fall within the scope of this thesis.⁷⁹

⁷² Guild E. (2001), *op. cit.*, p. 46

⁷³ Tillotson J. and Foster N.(2003), *European Union Law*, p. 313, vertical direct effect refers to C-167/73 *Commission v France*, and confirmed by case C-41/74 *Van Duyn v Home Office* and also confirmed in 36/74 *Walrave* (1974) ECR 1405; Case 6/64 *Costa v ENEL*-supremacy of comm.-law. Damages in Case- C-302/94 *R v HM Treasury ex p British Telecommunications PLC* (1996) ECR I-1631

⁷⁴ Case C-234/97 *Bobadilla* [1999] ECR I-7555, (§ 19), in which Article 39 was upheld in a case brought by an Spanish national seeking to practice her profession in Spain against a the Prado Museum in Madrid. The Court gave an indication of the breadth which may apply: "The Court has already held that a Member State may leave the implementation of the objectives pursued by Community directives to social partners through collective agreements, but the State is still responsible for fulfilling its obligation to ensure that the directives are fully implemented by adopting such provisions as may be appropriate."

⁷⁵ Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families

⁷⁶ Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health

⁷⁷ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement within the Community

⁷⁸ Steiner J. and Woods L. (1998), *op. cit.*, pp. 276-7

⁷⁹ Article 43 (freedom of establishment) The ECJ gives a definition on establishment in: C-221/89 *R v Secretary of State for Transport ex p Factortame Ltd* [1991] ECR I-3905, paragraph 20. In the Case C-107/94 *Asscher*, paragraph 26-30, 33, the Court holds: the essential difference is he is not subordinated and he is therefore not a worker and the Court holds it as. In the Case C-55/94 *Gebhard*, the Court found that service providers (Article 49) are defined by reference to the transient nature of their economic activity. Mr. Gebhard had provided services on a long-term basis as a lawyer both in Germany as well as in Italy, it was held to be an establishment.

5.2 Definition of a Worker

In Case 75/63 *Hoekstra*⁸⁰, the Court considered the lack of definition of the term ‘worker’ in the EC Treaty. Some Member States argued that the term must be understood in the context of national law. If a Member State could modify the concept of who is defined as a ‘migrant worker,’ that would deprive the effect and protection afforded by Articles 39-42 [48-51] EC Treaty. The Court states “the said Articles does not therefore relate to national law, but to Community law.” The ECJ has continued insisted that term ‘worker’ has a Community meaning to make sure of the consistent interpretation in all Member States.⁸¹

In the Case 66/85 *Lawrie-Blum v Land of Baden-Württemberg*, the Court held that the term ‘worker’ must be defined by three objective criteria. Mrs. Lawrie-Blum, a British national, was discriminated against by German rules because of her nationality in the preparatory-service stage leading up to her becoming a teacher. The preparatory-service stage was essential and necessary for her to obtain a diploma. To be considered a worker, the Court held: “The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.” The Court regarded Mrs. Lawrie-Blum as a worker within the meaning of Article 39(1) EC Treaty. Community law does not provide for any additional conditions in order to be considered a worker. It is, for example, not necessary for the employer to be an undertaking; all that is required is the intention to create an employment relationship (See C-415/93 *Bosman*⁸²).

In Case 53/81 *Levin* the Court reflects on if a person who only works to a limited extent (i.e. part-time) can be considered as a ‘worker’. The Court found that part-time work is employment and provides an income even if a part-time worker receives a lower pay. However the Court circumscribed this judgment to cover a narrow group, only those who pursue a genuine and effective economic activity. Hence, work can be characterized as economic activity.

⁸⁰ Case 75/63 *Hoekstra*[1964] ECR 177

⁸¹ See Case 53/81 *Levin* [1982] ECR 1035, paragraph 11-12, Case 66/85 *Lawrie- Blum* [1986] ECR 2121, paragraph 16, Case 139/85 *Kempf* [1986] ECR 1741, paragraph 15

Article 39, covers only the genuine and effective character of work. What does that mean? It excludes activities that are considered purely marginal and ancillary.⁸³ Also covered are persons who pursue part-time work (e.g. *Levin*) and receive remuneration lower than the minimum remuneration in the sector concerned. The Court recognized those who have only a marginal connection with the labour market in Case 171/88 *Rinner-Kühn*⁸⁴, who was working for only 10 hours a week and was regarded as worker. In Case 139/85 *Kempf*⁸⁵, the Court held that a music teacher who worked 12 hours a week was to be regarded as a worker and be able to claim financial assistance payable out of public funds.

To uphold the *Levin* criteria, low productivity is not a bar. In the *Steymann* case, the Court found that a member of a religious community who undertakes menial work, such as plumbing, could meet the criteria. If such a worker participates in the external economic activities of the community, receives remuneration in the form of pocket money and can satisfy his basic material needs, then his work constitutes economic activity. And this “may be regarded as the indirect quid pro quo for genuine and effective work”. The Court found that Mr. Steymann’s work was genuine and effective within the meaning of the Treaty. Consequently, he qualifies as a worker. On the other hand, in the *Bettray*⁸⁶ case, the Court held that paid activity provided by the State did not fill the criteria of genuine and effective work because it was tailored to fit a person’s need to reintegrate into the labour market.⁸⁷

According to the *Lawrie-Blum* criteria the service must be performed for a certain time on behalf of another person and under his direction. This also covers the undertaking of work where a person stands under the direction of a third person. How has this employment relationship been clarified by the Court? The national court must find whether a subordinate exist. In the *Asscher*⁸⁸ case, the Court found that he was not subordinate and was therefore not considered a worker.⁸⁹ The third criterion is that a person receives remuneration. As has been illustrated in the *Steymann* case, that remuneration can be in kind of indirect payment of services provided, like a persons material needs satisfied (food, clothing, housing etc.).

⁸² Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 74

⁸³ Case C- 357/89 *Raulin v Netherlands Ministry of Education and Science* [1992] ECR 2121, paragraph 14

⁸⁴ Case 171/88 *Rinner-Kühn v FWW Spezial-Gebäudereinigung GmbH Co*

⁸⁵ Case 139/85 *Kempf* [1986] ECR 1741

⁸⁶ Case 344/87 *Bettray* [1989] ECR1621

⁸⁷ Barnard C. (2004), *op. cit.*, p. 265

⁸⁸ Case C-107/94 *Asscher* [1996] ECR I-3089, (§§26-30,33)

⁸⁹ More examples are given in: Barnard C. (2004), *op. cit.*, p. 265; and in Martin D. and Guild E. (1996), *Free Movement of Persons in the European Union*, pp. 24-5

The Court also stated in Case C-357/89 *Raulin*⁹⁰, that it is up to a national court that is reviewing the genuine and effective criteria to decide who is a ‘worker’. The national court may take into account the irregular and limited duration of the service actually performed under a contract for occasional employment. It may also take account on that a person must remain available to work if called upon to do so by an employer. Barnard point out that this line of reasoning is summarized in Case C-188/00 *Kurz*⁹¹: “...neither the *sui generis* nature of the employment relationship under national law, nor the level of productivity of the person concerned, the origin of the funds for which the remuneration is paid or the limited amount of remuneration can have any consequence in regard to whether or not the person is a worker.”⁹² To be able to qualify as a worker under the provisions of EC Treaty a person must be a citizen of one the Member States in the EU. He shall also have moved to another Member State than that of his origin and there undertaken an employment for a period of time, under the control of another person and in return receive remuneration. The work must be considered genuine and effective within the meaning of the EC Treaty.

5.3 The Rights of a Job Seeker

The Court has accepted the right of a EU citizens seeking work in a Member State other than that of his State of origin exists for a reasonable period of time. This has not been expressively written in any Community legislation but seems to be enshrined in Article 39.⁹³ The time limits a person may stay are not fixed. In Case C-292/89 *Antonissen*⁹⁴, the Court extended its three-month rule⁹⁵ to six months, which seemed to be a reasonable time compatible with Community law and to national legislation. A person “may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has a genuine chance of being engaged.” So it seems that a Member State can deport a job-seeking person after six month without breach of Community provisions if it is not a genuine chance for that person to take up employment any time soon.

⁹⁰ Case C-357/89 *Raulin* [1992] ECR 2121

⁹¹ Case C-188/00 *Kurz* [2002] ECR I-10691, paragraph 32

⁹² Barnard C. (2004), *op. cit.*, p. 266

⁹³ Opinion General Advocate C-292/89 [1991] ECR I-0745

⁹⁴ Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex p Antonissen* [1991] ECR I-0745

⁹⁵ Svenska Dagbladet, 1 April 2004, ‘Vilseledande debatt om övergångsregler’, [www.svd.se]

5.4 The Rights Conferred by EC Law

Article 39, has been given flesh by secondary legislation and was the basis for Directive 68/360, on the right of entry and residence⁹⁶ and Regulation No 1612/68, on the free movement of workers. As in the case of most Community legislation, the Member States are allowed to make exceptions from these provisions on grounds of public policy, public security and public health in Directive 64/221. Next we will briefly consider that secondary legislation.

5.4.1 Directive 68/360

The provisions of Directive 68/360, are intended to facilitate the freedom of movement and the abolition of obstacles for workers and extend to their family⁹⁷ members. It clarifies a State's formal requirement relating to the right of entry⁹⁸ and residence⁹⁹ of non-nationals. Secondly it specifies what document an EC worker must produce to enter another Member State. Thirdly it provides for issuing residence permits to workers and their families. Article 7¹⁰⁰, deals with unemployment and Article 10, recognizes derogations on grounds of public policy, public security and public health.¹⁰¹

⁹⁶ In 1990 the Council adopted laws on the right of residence for EC nationals Directive 90/364/EEC, pensioners Directive 90/365/EEC, and students Directive 90/366/EEC

⁹⁷ As provided for in Article 10, Regulation no 1612/68

⁹⁸ When a national leaves a Member State in order to enter another one the control may extend only to i.e. identity cards or passports, unless one of the family members are non EU Citizens. Case 157/79 *Pieck* [1980] ECR 2171

⁹⁹ Case 48/75 *Royer* [1976] ECR 497- a residence permit only has a probative value. Case 118/75 *Watson and Belmann* [1976] ECR 1185- a worker can start working before all formalities is completed for obtaining a residence permit

¹⁰⁰ See (Craig and De Búrca (1998), *op. cit.*) comments on the *Antonissen* judgment (C-292/89) He was unemployed yet actively seeking work. A Member State could no deport a non-national who has not found a job until after a certain period of time. The Council intended this period to be 3 months.

¹⁰¹ For further reading on Directive 68/360 see Craig and De Búrca (1998), *op. cit.*, pp. 691-7 and Barnard C. (2004), *op. cit.*, pp. 268-271, Martin D. and Guild E. (1996), *op. cit.*, pp. 152-181

5.4.2 Introduction to Regulation No 1612/68

Next we will consider Regulation No 1612/68¹⁰², which aims to facilitate and protect the free movement of workers and their families and to ensure their integration into the society of the host State. The regulation does not create any new rights for persons protected by the Community law. It only provides for the scope and details of the rules for exercising those rights. It is important to note that Member States that have restricted their labour markets through transitional rules may restrict the rights conveyed in Articles 1-6, and may also diverge from rules provided for in Directive 68/360.¹⁰³ They will instead comply with national legislation until the transition period ends.¹⁰⁴ The regulation is divided into three parts: Articles 1-6, consider eligibility for employment, Articles 7-9, provides for equal treatment while employed and Articles 10-12, supply the rights of family members.

5.4.2.1 Articles 1-5, Regulation No 1612/68

Let us quickly examine the first part. This starts by guaranteeing the right to free access to a job and to exercise that right under the same conditions as a national worker (Article 1). Conditions to be in the scope of provision are that the worker has used his right to free movement.¹⁰⁵ Workers are entitled to conclude and perform contracts of employment in accordance with national laws of the host State (Article 2). Articles 3 and 4, ban provisions that directly¹⁰⁶ or indirectly¹⁰⁷ discriminate against nationals with the exception of genuine linguistic requirement.¹⁰⁸ The Court examines whether discrimination can be objectively justified or justified by express derogations (public policy, public security and public health)

¹⁰² This section on Regulation 1612 /68 are based on unless otherwise stated: Craig and De Búrca (1998), *op. cit.*, pp. 697-719 and Barnard C. (2004), *op. cit.*, pp. 271-289, Martin D. and Guild E. (1996), *op. cit.*, pp 126-152

¹⁰³ Skr. 2003/04:199, *op. cit.*, pp. 8- 9

¹⁰⁴ It is not this thesis aim to compare the different national legislation of Member States since it is a complex issue but to reflect on the EU laws. For further details on transitional rules for a specific country see e.g. [<http://www.eubusiness.com/guides/enlargement-free-movement>]

¹⁰⁵ Case C-206/91 *Poirrez* [1992] ECR I-6685

¹⁰⁶ Case 131/85 *Gül* [1986] ECR 1573, considers if a migrant worker is treated less favorable than a national worker.

¹⁰⁷ Focuses on the effect of a measure see Case C-419/94 *Scholtz* [1994] ECR I-505 paragraph 11

¹⁰⁸ Has only been referred once to the Court in Case 379/87 *Groener* [1989] ECR 3967

and proportionality. If the Court finds no obstacle, the measure is lawful.¹⁰⁹ A Member State may not limit either in numbers or in percentages the jobs available to foreign nationals.¹¹⁰ Article 5, provides the same national treatment of assistance as nationals have from employment offices. The last provision bans vocational, medical or other criteria for recruitment and appointment, which discriminates on the grounds of nationality.

5.4.2.2 Articles 7-9, Regulation No 1612/68

In part two of the regulation, Article 7, fleshes out Article 39 (2) EC Treaty and provides for equal treatment¹¹¹ with respect to the terms and conditions of employment and to equal access to vocational training. The provision operates only in benefit of workers and does not apply to jobseekers, as was made clear by the Court in Case 316/85 *Lebon*.¹¹² Article 7(2), provides that a worker will enjoy the same social and tax¹¹³ advantages as national workers. The concept of ‘social advantages’ is of interest since it gives advantages to be provided on a non-discriminatory basis to include all benefits. In Case 207/78 *Even*¹¹⁴, three factors are mentioned to determine if a worker is entitled to a benefit in a host Member State. First, the person must have the status as a worker. Second, the worker must reside in the national territory. Third, the extent to which a worker of another Member State seems qualified for the relevant benefits within the Community. This information is of importance for this thesis, as regulation lays down a general rule in Article 7(2), which imposes on each Member State as regards to each worker who is a non-national and established on its territory in regard to equal treatment with a national worker. What has the Court considered as social advantages? There are a long list of rights and benefits already recognized by the Court such as benefits for childbirth and maternity allowances,¹¹⁵ the possibility for a migrant worker to obtain

¹⁰⁹ Case C-33/99 *Fahimi and cerdeiro-Pinedo Amado* [2001] ECR I-2415, paragraph 43

¹¹⁰ For example two cases regarding employment of seamen: Case C-73/93 *Commission v Belgium* [1993] ECR I-6295 and Case 167/73 *Commission v France* [1974] ECR 359

¹¹¹ Case C-187/96 *Commission v Greece* [1998] ECR I-1095, Court held that the Greek authorities had discriminated indirectly a Greek national since they excluded his years of employment in another Member State when determining seniority increment and salary grading, on the sole ground that the past employment was not performed in Greece which breached Article 7(1)

¹¹² Case 316/85 *Lebon* [1987] ECR 2811 “qualify for equal treatment only as regards access to employment in accordance with Article 48 [now Article 39] of the ECC treaty and Articles 2 and 5 of Regulation No 1612/68.”

¹¹³ Direct taxation falls in the competence of each Member State, however it must be exercised in the consistence of Community law. Case C-279/93 *Schumacker* [1995] ECR I-0225 concerns a Belgian national residing in Belgium but worked in Germany. He was taxed as a non resident with the affect of being denied certain relief’s enjoyed by national workers. The Court ruled that it was a tax advantage within the scope of Article 7(2)

¹¹⁴ Case 207/78 *Even* [1979] ECR 2019, paragraph 22

¹¹⁵ Case C-111/91 *Commission v Luxembourg* [1993] ECR I-817, child birth and maternity allowances

permission for his unmarried companion to reside with him,¹¹⁶ and tuition aid granted by a Member State to the children of workers where the worker continues to support the child.¹¹⁷ It also covers a wide range of benefits such as fare-reduction cards, language rights, death benefits etc.¹¹⁸ The Court has a broad interpretation of social advantages. However the provision can only be invoked if it has some direct or indirect benefit to the worker and not just to a family member.¹¹⁹

There are limits to Article 7(2). In Case *Leclere*¹²⁰, the Court points out that as a former worker, Mr. Leclere retained his status as a worker regarding disability pension which was linked to his former work and in that respect protected against discrimination affecting that right. However, since he was no longer a worker, he could not claim new rights (child-birth allowance), which had no links to his former employment.

Social advantages in a Member State can be subject to restrictive conditions e.g. residence or duration of residence on national territory.¹²¹ That is lawful as long as the same condition applies to the Member States own nationals. However, the Court regards it as discriminatory if the condition is more difficult for a migrant worker to fulfil than the Member States own national.¹²² A worker can benefit from social advantages on the basis of objective evidence that he is a worker and has entered the host State with the intention to work. If a person migrates to another Member State and after a short period of working activity wants to benefit from the host States student assistance system, it should be observed that the Court gives a Member State a right to transparency to question that person's purpose for working to check if the domestic benefits might be abused.¹²³ The Court added: "A migrant worker who voluntarily ceases employment in order to devote himself, after the elapse of a certain period of time, to full-time studies in the country of which he is a national, retains his status as a worker on condition that there is a relationship between his previous occupational activity and

¹¹⁶ Case 59/85 *Reed* [1986] ECR 1283

¹¹⁷ Case 390/87 *Echternach* [1989] ECR 723

¹¹⁸ Case 32/75 *Cristini* [1975] ECR 1085, Case 137/84 *Mutsch* [1985] ECR 2681 (criminal proceedings in his own language), Case C-237/94 *O'Flynn* [1996] ECR I-2617 (social security payment to assist in the cost of burying a family member)

¹¹⁹ Case 316/85 *Lebon* [1987] ECR 2811, paragraph 12

¹²⁰ Case C-43/99 *Leclere* [2001] ECR I-4265

¹²¹ Case 138/02 *Collins* [2004] ECR 000

¹²² Case 326/90 *Commission v Belgium* [1992] ECR I-5517

¹²³ Case 39/86 *Lair* [1988] ECR 3161

the studies pursued.”¹²⁴ Article 9, expresses the principle of non-discrimination of workers in regard to ownership of the housing a worker may need.

5.4.2.4 Articles 10-12, Regulation No 1612/68, Family Rights

Part three of the regulation, examines the worker’s families’ rights, which are dependent on the rights of the worker. Article 10 (1), lists the workers spouse, the descendants¹²⁵ and the dependent relatives¹²⁶ (irrespective of nationality; it can be a TCN’s) as persons who have a right to come and join the migrant worker in another Member State. To benefit from provision a person is not required to have exercised the free movement right on his or her own. It also extends to that that person’s family and children.¹²⁷ With respect to TCN, the Court held in Case C-109/01 *Akrich*¹²⁸, that “a national of a non-Member State married to a citizen of the Union must be lawfully resident in a Member State when he moves to another Member State to which the citizen of the Union is migrating or has migrated.” Article 10, will not apply if “the national of a Member State and the national of a non-Member State have entered into a marriage of convenience in order to circumvent the provisions relating to entry and residence of nationals of Non-Member State.”

The term ‘spouse’ has been defined by the Court as persons who have formally contracted a civil marriage as recognized by law. The definition does not refer to cohabiters¹²⁹ unless otherwise provided by national law¹³⁰. It is not necessary that spouses live together under the same roof.¹³¹ A marital relationship is not dissolved until terminated by competent authority even when the spouses have separated and intend to divorce.

The Court considers the housing requirement in Case 249/86 *Commission v Germany*¹³². The requirement to have available housing, considered as normal for national workers, gives a

¹²⁴ Case C-3/90 *Bernini* [1992] ECR I-1071

¹²⁵ Covers children related by blood, adopted and grandchildren that are under the age of 21 years or dependent

¹²⁶ Includes all relatives in ascending line

¹²⁷ See for example, Case 285/87 *Matteucci* [1988] ECR 5589

¹²⁸ Case C-109/01 *Akrich* [2003] ECR 0000

¹²⁹ Case 59/85 *Reed* [1986] ECR 1283

¹³⁰ According to Swedish national law this provision apply to cohabite as well as registered partners, those will have a right to install themselves together with the worker

¹³¹ Case 267/83 *Diatta v Land Berlin* [1985] ECR 0567: ” the members of a migrant worker’s family...are not necessarily required to live permanently with him in order to qualify for a right of residence under that provision and Article 11 of the same Regulation does not establish a right of residence independent of that provided for in Article 10.”

right for a migrant family to install themselves with the worker and dwell together in the host Member State. The Court held: “that by adopting and retaining provisions in its national legislation which make renewal of the residence permit of member of the family of Community migrant workers conditional on their living in appropriate housing, not only at the time when they install themselves with the migrant worker concerned but for the entire duration of their residence” constitute a breach of obligations under Article 10(3).

According to *Article 11*, the right for a spouse or family member to take up an activity as employed person in the host Member State is linked to the right of the worker. If the worker’s right ceases to exist, the family members’ rights do as well. The requirement is that the worker has been employed for a minimum of one year. A TCN spouse or family member who has installed themselves with the worker in the host Member State before 1 May 2004 has a right to take up employment. After that date, this right may have been restricted by transitional rules.

Another feature is that children have a right to receive education. *Article 12*, provides that a worker’s child has a right to general educational courses “under the same conditions as nationals of that State”. In joint Cases 389 and 390/87 *Echternach and Moritz*¹³³, the Court held: Regulation “extends to all form of education, whether vocational or general, including university courses in economics and advanced vocational training at a technical college.” This right persists even if the worker’s family has returned home and the child remains in the host Member State to complete his education. In the Case 285/87 *Matteucci*¹³⁴, the Court extended this right to higher education.

5.4.3 Directive 64/221

The EC Treaty makes exceptions to the free movement of persons (Article 39) on the grounds of public policy, public security and public health in Directive 64/221. Derogations apply to justify a decision of refused entry, residence¹³⁵ and expulsion¹³⁶. In Case 30/77

¹³² Case 249/86 *Commission v Germany* [1989] ECR 1263

¹³³ Case 389 and 390/87 *Echternach and Moritz* [1989] ECR 0723

¹³⁴ Case 285/87 *Matteucci* [1988] ECR 5589

¹³⁵ Case C-100/01 *Olazabal* [2002] ECR I-10981

¹³⁶ Case C-348/96 *Calfa* [1999] ECR I-0011, paragraph 20-27, Ms Calfa an Italian national was convicted of a criminal offence while staying as a tourist in Crete and expelled for life from Greece for possession and use of

*Bouchereau*¹³⁷, the Court held that if a serious threat of public society is affecting one of the fundamental interest of society then the concept of public policy can be relied on.¹³⁸ Public interest may justify measures applied, which constitute of non-discriminatory obstacle to freedom of movement for workers, which result from rules of the home State (see *Bosman* case) or rules of the host State (see *Gebhard* case).

When the new European Union Constitution enters in to force a proposed Directive (COM (2001) 257 final), it will consolidate among others: Directives 64/221/EEC, 68/360/EEC, 73/148/EEC, 93/96/EEC and Regulation (EEC) No 1612/68, which will be implemented into the Constitution. According to Guild¹³⁹ there will be some few changes but the basic structure will remain the same.

5.5 Conclusion

To summarize this section, Case C-138/02 *Collins*¹⁴⁰, will be used as it ties together different aspects of the freedom of movement for persons. Mr. Collins has both an American and an Irish citizenship (thus also a Union citizenship). He moved to the United Kingdom and claimed a jobseeker allowance. The Court found that Mr. Collins had worked for 10 months in the United Kingdom in 1981. However, the Court could not establish a link “between that activity and the search for another job more than 17 years after it came to an end.” Consequently he could not be defined as a worker and come under the scope of Regulation No 1612/68.

On the other hand, jobseekers have a right to enter another Member States territory to search for a job during a reasonable time period. A Member State has a right to lay down restrictions in movement and residence for jobseekers. Mr. Collins cannot rely on Directive 68/360, which only addressed to nationals already in employment. “Persons seeking employment are

drugs. A persons conduct needs to constitute a continues, serious threat and be based on the account of the individual person. A criminal conviction is not enough to constitute a serious threat and expel that person. The Court seems to hold a high threshold position or in other words a strict interpretation

¹³⁷ Case 30/77 *Bouchereau* [1977] ECR 1999

¹³⁸ For details regarding Directive 64/221 see e.g. Barnard C. (2004), *op. cit.*, pp. 374-399, Martin D. and Guild E. (1996), *op. cit.*, pp. 105-123

¹³⁹ Prof. Elspeth Guild, Katholieke Universiteit Nijmegen

¹⁴⁰ Case C-138/02 *Collins* [2004] ECR 000

excluded.” As a result, a person in Mr. Collins circumstances doesn’t “have a right to reside in the United Kingdom solely on the basis of Directive 68/360.”

The third question referred to the Court was if Mr. Collins claim of a jobseekers allowance depended on whether he could be considered as habitually resident in the United Kingdom. People moving to search for work qualify for equal treatment when it comes to access to employment, but not with regard to social and tax advantages. The jobseekers allowance is to be considered a social advantage in the scope of Article 7(2) of Regulation No 1612/68. The Court held that it’s allowed for a Member State “to require a connection between persons who claim entitlement to such allowance and its employment market.” Consequently, it’s allowed for the United Kingdom to have national legislation that makes entitlement to a jobseekers allowance dependent on a habitual-residence requirement. That is, as long as that requirement is justified by objective considerations and independent of a person’s nationality as well as proportionate. A jobseeker has therefore no automatic right to claim financial assistance payable out of public funds. That right is restricted to workers.

6 Analysis

6.1 Relationship between Labour Migration and Citizenship

A citizen of one of the EU Member States is entitled to EU citizenship. The EU grants a form of quasi-citizenship, giving certain rights such as free movement to those who are for the most part financially self-sufficient. Sweden does not have any transitional rules regarding the free movement of workers towards the new Member States. This results in full labour-market access for old and new EU citizens. Anyone who is a citizen of an EU/EES country is entitled to stay in Sweden to work (Articles 18 and 39). Such a person does not need a work permit but a residence permit¹⁴¹ is required if he intends to stay in Sweden for longer than three months. A person can start working even if they do not have a residence permit yet (see Case 118/75 *Watson and Belmann*).

¹⁴¹ A residence permit can be obtained at the Migration Boards Offices in Sweden or at the Swedish Embassy or Consulate.

An EU citizen who is a jobseeker is entitled to settle in Sweden. The requirement is that the jobseeker is able to support him or her self financially.¹⁴² The *Collins* case confirmed that a jobseeker has no automatic right to claim financial assistance payable out of public funds; that right is restricted to workers. To be able to enter Sweden, an EU/EES citizen needs a valid passport or an identity card showing their country of citizenship (see Article 3, Directive 68/360). However, an EU citizen living in another Member State does not have the right to have access to public employment, which is generally restricted to nationals. EU citizenship also excludes a majority of migrants who come from outside EU. Can a democratic country in EU such as Sweden successfully operate with a population differentiated into full-nation citizens, EU citizens and foreigners? The point with this question is to prove that the meaning of citizenship must change and expand its contents (see Lippolis). Maybe a solution would be to grant full citizenship to all permanent residents.

Labour migration is likely to lead to permanent settlement of at least a proportion of the migrants. This settlement may lead to the formation of ethnic groups, which have their own social networks. Sweden has tried to combat the effect of isolation and separateness by granting migrants dual citizenship. Migration and settlement are closely related to other cultural, economic and political linkages between countries in an accelerating process of globalisation. To me, it seems that Sweden is a front-runner in acknowledging that EU enlargement and globalisation is leading to multiple identities and trans-national belonging by allowing dual citizenship.

6.2 Transitional Rules and the Enlargement

The EU has used the enlargement as an instrument of Union Policy, designed to stabilize and restructure Europe.¹⁴³ The enlargement will offer both the new Member States and the old Member States new prospects for economic growth and general well being.

Transitional rules have been taken into account by most old Member States because there is much uncertainty as to the actual outcome of introducing the free movement towards the CEEC. The transitional period has three advantages. First, it reduces uncertainty about the

¹⁴² A person must prove that he can support himself via e.g. bank statements etc., without having to receive welfare benefits.

size of actual migration. Second, it reduces the migration pressure after the end of transitional period because the CEEC have had time to catch up to a level similar living standard as to that of the old Member States and people are not inclined to migrate if they live a good life their State of origin. This allows for a smooth transition. Third, it can affect the composition of migrants by using quota system to take in labour migration only where the State has labour shortages which is usually in the high skilled area.

6.3 Relationship between Free Movement and Transitional Rules

During the transitional period relating to the free movement of workers, a person cannot move freely from the new Member States to another EU Member State. Because the Acts of Accession of the ten new Member States contain transitional periods relating to the free movement of persons, several questions were brought into focus regarding whether there is a need for old Member States to have transition rules towards the new Member States. And if not, why are Member States so eager to keep restrictions on their internal labour market? The reality in each country is much more complex and contradictory than my brief account on the matter shows. Nonetheless, economic, social and political transformations are linked to population movements. The creation of EU's internal market (free-trade areas) will cause movement of labour whether or not that is intended by the governments concerned. People migrate as for example manual or low-skilled workers, high-skilled workers, and as family members of previous migrants seeking to improve their lives by moving to the West. Castles and Miller (page 6) show that it is not just Western Europe that receives migration. Several CEEC states are becoming receivers of labour migration.

It is inappropriate to talk about migration as an isolated phenomenon since it is a facet of social change and global development. Labour migration can be an option for an EU citizen to improve his or her lives. Many skilled Eastern European workers do not intend to leave their homeland for good. They leave to improve their lives and are attracted by Western salaries. When they make money, they are likely to return to their native country. When a skilled worker returns home, he has improved his skills and the initial loss for the CEEC may have

¹⁴³ Cremona M. (2003), *The Enlargement of the European Union*, p. 5

proven a gain in the long run.¹⁴⁴ So migration can be useful to both old and new Member States, thus benefiting the whole EU.

In 2002, the current flow of migrant workers from the CEEC to the EU was around 0.3 to 0.4 million. The prediction shows that we can expect about 220,000 migrants from the CEEC moving to the old Member States, mostly to Germany.¹⁴⁵ Why Germany? The income per capita in CEEC is much lower than in Germany. On the other hand, the culture is similar to Germany. This combination leads to a higher inclination towards moving to Germany. Consequently, Germany has full restrictions of their labour market towards CEEC nationals.

6.4 Relationship between Transition Rules and Regulation No 1612/68

During the above examination of transition rules and Regulation No 1612/68, Member States who apply transition rules may restrict the rights conveyed in Articles 1-6, which concerns the eligibility for employment. The Member States seem to want to keep a higher threshold than ECJ. As long as a migrant worker pays tax in a host Member State it seems like that person is accepted and welcome. What in those provisions are of concern to a Member State and what threat do those provisions pose to a Member State? Well to me it seems that those provisions give the guarantee for access to a job under the same conditions as a national. It also seems that a Member State wants to control this process and not to leave this to EC legislation and the Court. This right of access to a post on non-discriminatory terms may be significant for a worker who is seeking to move to another Member State to find a job. Without that assistance, a person may find it difficult to find a job and may choose another Member State instead.¹⁴⁶ But, in the end I do not find why these provisions concern a Member State.

However, when qualified as a 'worker' under the conditions set out in the *Lawrie-Blum* and *Levin* case, a person can have access to the social welfare of that State. However a provider of services or establishment can move freely from the new Member States to another EU Member State when necessary for the performance of services. They are not within the scope

¹⁴⁴ Boeri, Hanson & Mc Cormick (eds.) (2002), p. 93

¹⁴⁵ Boeri, Hanson & Mc Cormick (eds.) (2002), *op. cit.*, pp. 99;311, and also *Thirty years of free movement of workers in Europe*, Carlier J-Y & Verwilghen M (ed), p. 238

¹⁴⁶ Craig and De Búrca (1998), *op. cit.*, p. 698

of Article 39, and are therefore not considered as workers. This will exclude them from the benefits entitled to a 'worker' and his family.

In line with Regulation No 1612/68, Sweden has an indirect policy, which includes measures to ensure migrants have equal rights to employment, social services, housing and education.¹⁴⁷ Family members (spouse, registered partner, children under 21, or dependent parents) of a worker can also obtain a residence permit (see Articles 10-12 Regulation No 1612/68).¹⁴⁸ A TCN family member needs to apply for a visa prior to entering Sweden. New migrants also have a right to Swedish instruction with financial assistance.¹⁴⁹ Direct policies include for example voting rights.

6.5 Europe Welcomes High-Skilled Labour Migration, Why?

Due to modern technology, jobs ceased to exist throughout Western Europe. In the mid-1990s, unemployment rates rose and a surplus of low-skilled workers pooled. Sweden, like the rest of Western Europe, favours highly skilled labour migrants but the pool of low-skilled labour migrants will expand in coming years. Sweden and the rest of Western Europe face the challenge of finding gainful employment for the existing low and unskilled workers. Disadvantages in employment, education and housing pose a challenge to Western democratic traditions. This was confirmed by the Swedish Confederation of Professional Employees (TCO) recent report. People with unsteady work, low pay and frequent unemployment characterize this group of low-skilled labour. The outcome for these persons would be exclusion on the Swedish labour market. The root factor behind this is poor education but there are also social issues that lead to exclusion. The point is that this group of people will compete with another group of disadvantaged, low-skilled labour migrants who come from poorer countries in CEEC. These have no local knowledge or networks, they have poor or no language skills and their entry point into the Swedish labour market is likely to be at a low level. Sweden has active policies to improve the labour-market position of national workers and migrants. But there are jobs that nationals are unwilling to take. Consequently, national employers hire unskilled migrants and pay lower wage. Is it not so that this scenario is already

¹⁴⁷ Castles S. and Miller J.M. (1998), *op.cit.*, p. 249

¹⁴⁸ During 2003 almost 24,500 foreign citizens submitted applications to settle in Sweden due to family ties. [www.migrationsverket.se]

¹⁴⁹ Castles S. and Miller M.J. (1998), *op.cit.*, p. 237

a reality in Sweden today? Should not the focus on labour migration be linked to development policies through training and investment measures designed to fill the gap of unemployment shortages in Sweden both on a local and domestic scale?

Why labour migrants from the CEEC are considered a threat to the native population in a Member State? If a citizen of the CEEC is low skilled, their presence in an old Member State could increase unemployment and depress wages. Boeri, Hanson and McCormick, reasons that sometimes these migrants rely on welfare payments and exploit the welfare system of a country.¹⁵⁰ Also, the natives are directly affected by competition from migrant workers who might perform well in the labour market and this might fuel racial prejudice. The natives may be jealous and this might create a hostile attitude towards labour migration. On the other hand, if a country is in need of labour migration, migrants are likely to perform well on the labour market, become integrated quickly and contribute to the development of the economy. The migrants will be complements and the natives will benefit. Maybe the EU needs a European migration policy. After all, can national differences in immigration policies be reconciled with the idea for an internal labour market?

6.6 Labour Migration and the Welfare System

The potential abuse of the EU welfare system in the old Member States is a cause for concern. But the more the public is informed, the more a larger part of the population may cease to confuse labour migrants who pay taxes and can improve the economic condition of a host State with other migrants such as asylum seekers and refugees.

Sweden's social welfare policies may make employment of migrant workers more propitious. Restricting migration more than access to welfare itself has in part solved the problem of access to welfare by migrants. The key to Swedish welfare is to obtain a residence permit. This means that Sweden has offered residence permits only to workers, individuals paying taxes and migrants workers' family. All foreigners who intend to stay longer than three months in Sweden need a residence permit, with the exception of Nordic citizens.¹⁵¹

¹⁵⁰ For an economic analysis of whether migrants take into account the generosity of the welfare state, please turn to: Boeri, Hanson and McCormick, "Immigration Policy and the Welfare System" (2002) chapter three and pp. 105-6)

¹⁵¹ Utlänningslagen 1 kap. 4 §

Residence permits are granted only to workers, migrant workers' family and individuals paying taxes. When a migrant has held a Swedish residence permit for one year, he can qualify for civic registration. As a registered Swedish resident, he in principle has the same rights and obligations as Swedish citizens and qualifies for sickness benefits. To clarify, he has the same access to the social-security system and health-care facilities as everyone else living in Sweden.¹⁵²

Is this consistent with EU rules? The EC Treaty allows EU Member States to deny residence permits to EU foreigners who cannot prove themselves able to finance a living for themselves or their families. The Swedish practice is therefore consistent with EC law.

But should our focus be only to improve welfare in Sweden? Shouldn't it be the joint welfare of Sweden and the enlarged EU? As the economist Blanchard said, "What helps in the West hurts in the East."

6.7 Do Migrant Workers Price Locals Out of a Job in Sweden?

The reactions of Swedish citizens often differ when it comes to migrants from the CEEC. The fear is that masses of people will flow in from the poorer CEEC, taking away jobs, pushing up housing prices and overwhelming social services. Labour migrants are seen as a danger to Swedish living standard and the cause of changing conditions in the Swedish labour market. But if one relies on research, the fears are unfounded. The fact is that migrants hardly affect the status of local workers.¹⁵³

The Swedish government wanted to protect national workers from discrepancies in wages. But the fear that migrant workers would price locals out of a job seems to be irrational. That migrants would take away jobs is not supported by empirical evidence.¹⁵⁴ Also the labour unions have a strong hold on the Swedish labour market and even a non-union migrant worker will be considered equal and receive the same remuneration as an unionised Swedish worker. However, if a Swedish employer took on workers through sub-contract in another EU country it could allow them to pay wages considerably below Swedish rates despite collective

¹⁵² For further details see (www.migrationsverket.se)

¹⁵³ Boeri, Hanson & Mc Cormick (eds.) (2002), *Immigration Policy and the Welfare State*, p.122

agreements. But the self-employed and service providers cannot be stopped by transitional rules as a general rule and are therefore not considered in this thesis.

The Swedish government held that we need transitional rules to protect migrant workers from exploitation in the Swedish labour market. But Castles and Miller, argue that it is not unauthorized immigration and employment that exploits migrants (page 286). EU citizens who enter an EU country illegally are not considered in this thesis.

6.8 The Nordic Experience

The Nordic experience showed that when free movement is given to any Nordic citizen, it is not in itself enough to make a person leave their native country for another. There are reasons for low mobility. According to Anders Kruse, unemployment in a country is not an incentive to move. There also needs to be a demand for the same skill in another labour market. There are also other factors for example language, culture, taxes, housing, family reasons and friends, which constitute as a hold back for a person to leave his home State. If Nordic citizens added up these factors, they often find the loss greater than the gain.

The Nordic migrants are quickly integrated into their new society and are not considered a problem. One reason for this may be that the Nordic countries have a similar standard of living, culture, education and a common background. Skilled migrants are not an issue of public concern, since they are considered to bring economic benefits for the receiving countries without creating a social burden.

7 Concluding Remarks

Future job opportunities in Western Europe will be found in highly skilled sectors where shortages already are apparent. My concluding remark must be that there is no need for old Member States to restrict their labour market unless this country is geographically a border country to one of the new Member States. As long as the old Member States have a high rate of unemployed and a strictly regulated labour market, there will probably not be a mass

¹⁵⁴ Boeri, Hanson & Mc Cormick (eds.,) (2002), *op. cit.*, p. 122

labour migration from the new Member States.¹⁵⁵ Instead, the EU should remove obstacles for the free movement of persons and create incentives with the aim of making it easier for people to move. This may be a way to improve the Union's economic development and a full labour force. All countries that face an ageing population will need to form a policy to attract young, well-educated labour migration to counter temporary shortages instead of trying to control their labour markets by restricting free movement if they want to hold on to our extensive welfare system. And if we look at the CEEC, fertility is low and offers no long-term demographic reserves. Maybe Sweden and other old Member States need to evaluate their EU labour migration policy.

¹⁵⁵ Regeringskansliet (1998), *'Ett utvidgat EU- möjlighet och problem'*, p. 17

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