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EU labour mobility: an EU that protects?

The responsibilities to provide
perspective for losers

Labour mobility is part of the four freedoms which aim is to achieve economic growth. Concerns in receiving countries regarding mobility are largely unfounded, yet social dumping occurs in some sectors and brain drain is an issue in several sending countries. Contrary to calls for protective measures which could hinder competitiveness and convergence, it is primarily up to the national governments to have effective and flexible welfare states to deal with its winners and losers of change. Specific targeted emergency breaks for receiving countries, and supplementary European investment in skill intensive sectors in sending countries, could be considered however.

I. Introduction: one of the four freedoms in the balance?

Following the victory of Trump, the Brexit referendum and the election of Macron, calls for forms of protectionism and an 'EU that protects' have received more attention. These calls have, among others, led to proposals that touches upon EU mobility, ranging from European unemployment schemes and an 'emergency break'¹ to recent proposals to regulate wage competition in transportation² and a revision of rights of posted workers.³ This policy paper weighs the economic and the political dilemmas of EU mobility. The core question is: should the European rules on mobility be modified to address existing concerns? Section 2 frames the debate concerning EU (labour) mobility. Section 3 addresses to what extent sending and receiving countries face dilemma's by looking at trends and legislation. Section 4 analyses the need and feasibility to revise current legislation in relation to existing concerns, followed by conclusions and recommendations in Section 5.

1 For a discussion see, Weiss, Stefani and Steven Blockmans, 'The EU deal to avoid Brexit: Take it or leave,' *CEPS Special Report No. 131* (February 2016) pp 8-11.

2 'Controversial EU labour rules tackle truck drivers' pay and working conditions', *Euractiv* (31 May 2017).

3 European Commission, 'The Commission presents reform of posting of workers – towards a fair and truly European Labour Market' (March 8, 2016).

II. The debate on EU mobility

EU labour mobility provides job opportunities, additional income and/or experience for individual EU citizens, while it provides European companies a larger (specialised) labour force.⁴ Yet, mobility has developed into a political sensitive discussion as the result of structural developments such as liberalisation (globalisation and Europeanisation) and innovation (automatization and digitalisation). With the increasing differences between EU member states, mobility has become part of the growing tensions within the EU.⁵ The tensions result from the package deal that enlargement implied: new member states opened up their markets for western companies and old member states opened up their labour markets.

Mobility creates political dilemmas for sending and receiving European countries alike. Worries exist in receiving countries over ‘social dumping’⁶, loss of national jobs and burdens on public services, while sending countries are concerned about exploitation of EU workers, brain drains and domestic competitiveness.⁷

Painful as the resulting change processes are, the (potential) negative effects associated with EU mobility in public discourse must be seen in the context of the positive contributions of the four freedoms as a whole.⁸ Moreover, labour mobility cannot be seen in isolation: if labour is not mobile, capital might be and *vice versa*. In addition, globalisation and technological innovation⁹ have added to labour market volatility and compounded the political debates. Intra-EU mobility has also to be seen in relation to global competitiveness exigencies.

III. Impact on receiving and sending countries

The available data on EU mobility is incomplete yet some trends are clear. The impact is, with the exception of several sending countries, modest on national and European scale and primarily sector specific.¹⁰

4 European Commission, *2016 Annual Report on intra-EU Labour Mobility* (May 2017).

5 Giandomenico Majone, *Europe as the Would-be World Power: The EU at Fifty*, Cambridge: Cambridge University Press, 2009.

6 In the EU there are wide differences in labour costs (hour cost from 40€ in Belgium to €4 in Bulgaria) and minimum wage (€1.923 in Luxembourg to €184 in Bulgaria. *Eurostat* (1 April 2016) <http://ec.europa.eu/eurostat/documents/2995521/7224742/3-01042016-AP-EN.pdf/453419da-91a5-4529-b6fd-708c2a47dc7f>

7 ‘Emigration and Its Economic Impact on Eastern Europe’, *IMF Staff Discussion Note SDN* (July 2016).

8 Vaccarino, E. and Z. Darvas, ‘“Social dumping” and posted workers: a new clash within the EU,’ *Bruegel* (March 2016).

9 Darvas, Z. and G. B. Wolff, ‘An anatomy of inclusive growth in Europe,’ *Bruegel Blueprint Series 26* (27 October 2016).

10 Please note: in this study cross-border workers (0.6% of total employed in the EU) and retired movers (1.4. million) are not included (at least from a receiving perspective).

Table 1 Overview EU labour mobility

| Category | Amount | Trend | Specifics |
|--|---|---|---|
| Freedom of movement of people | 11.3 million of working age (20-64) in 2015. | Growth from 2.6% of total working age EU population in 2008 to 3.7% in 2015. 5.4 million are recent (moved since 2005). | 37% of recent EU-13 movers feel they are over-qualified for their job, compared to 27% of EU-15 movers. Return mobility was around 60% in 2014. |
| | 8.5 million active labour movers (employed or looking for a job). | 4.4 out of 8.5 million are recent (moved since 2005). | 98% of the 8.5 million reside in the EU-15. Of the recent movers, 33% reside in the UK, 21% in Germany, 9% in both Italy and in Spain. |
| Freedom of movement of services Posted workers | 2 million postings in 2015. | From 1 million in 2010 to 2 million in 2015 (0.4% of EU employment). | Important sectors: construction (36%), services (31%), industry (22%) transport (11%). The EU-15 sends 56%. |
| | 1.5 million 'one country postings' and 500 000 'multiple country postings'. | Multiple country postings share is growing from 18% in 2012 to 25% in 2015. | 42% of one country postings are in construction, 34% of multiple countries postings are in transport. The payment of social levies to the sending country, not host country, has no limit regarding multiple country postings. |
| 'Cabotage'; national transport performed by hauler from another EU country | 29.7 million tonnes-kilometres performed in EU transport. | Share of cabotage in total EU transport rose from 2.1% in 2010 to 3.2% in 2014. ¹² | |

Sources: Eurostat, European Commission, 2016 Annual Report on intra-EU labour mobility, Posting of workers - Report on A1 portable documents issued in 2015.

As far as the free movement of people is concerned, several concerns in public discourse are to a large extent unfounded within the existing legislative framework. The major deficiency exists in the enforcement of rules and, as a result, there are also estimates of a potential large shadow economy.¹²

11 Eurostat, 'Road freight transport statistics – cabotage,' (December 2015). Cabotage penetration rate for hire and reward transport by country in which cabotage takes place, 2010 and 2014 (% based on tkm).

12 Schneider, F., 'The shadow Economy and Work in the Shadow: What Do We (not) Know?', IZA DP No. 6323 (March 2012). The share of the shadow economy in output in high-wage EU countries ranges from 9% (Luxembourg) to the high level of 21% (Belgium). Undeclared work can be more labour intensive than declared work, meaning that the share of undeclared work in employment could be even higher than in output.

Box 1 Existing legislation of freedom of movement of people¹³

| | |
|--|--|
| Preventing social dumping | By EU law, European citizens work under the same local regulations as national workers. |
| Preventing welfare tourism | The right of residence is connected to sufficient means or economic activity. The European Court of Justice has set (additional) safeguards from 2014 onwards. |
| Preventing pressure on public services | Bressol case law has established the principle that general limitations of access by EU-citizens to public services can be accepted to prevent overburden. |

Nonetheless, the existing regulations under the freedom of services make it possible to use EU labour which deviates from national minimum wage standards (mainly cabotage) and/or social levies (mainly posted workers). As the trends demonstrate, while practices under these regulations are still small, they are growing (fast) in construction, transport and industry.

Box 2 Implications posted workers and cabotage regulations

| | |
|----------------|--|
| Posted workers | National governments can, on an individual basis, opt for national or collective wage agreements being applied to posted workers (mandatory in the construction sector). Social levies of posted workers are however paid in the sending country. This possibility to compete on social levies ceases as a European rule after two years for one country postings (it then has to be paid in the host country) but there is no limit regarding postings in multiple countries. ¹⁴ |
| Cabotage | European regulation limits transport activity in another EU country to 3 operations within 7 days after the initial international haulage. This still allows for wage competition in the countries <i>en route</i> . ¹⁵ |

Receiving countries perspective

Member states are not overwhelmed by EU movement. Although annual inflows of EU working age movers under the freedom of movement of people increased between 2009 and 2014 in for example the United Kingdom, Germany, Austria and the Netherlands (both in total numbers and as shares of the total population),¹⁶ the share of EU citizens in the national population remains small in many member states. The employment rates for recent EU movers are similar or higher compared to nationals in most member states. On the whole, EU migrants are net contributors to welfare systems.¹⁷ While unemployment rates for EU-movers are also slightly higher in most member states (as EU-movers are to a larger extent active

13 See annex for more information.

14 European Commission, 'Posted workers', <http://ec.europa.eu/social/main.jsp?catId=471>.

15 European Commission, 'Cabotage', https://ec.europa.eu/transport/modes/road/haulage/cabotage_en.

16 European Commission, *2016 Annual Report on intra-EU Labour Mobility*, Figure 2, Figure 3 and Table 6, pp 29-30, 32. See annex Table 4.

17 E.g. in 2013 more than 60% of all intra-EU migrants work, 79% of non-active EU migrants live in economically active households. In many member States over 70% of retired EU-movers have arrived before the age of 40 and thus worked in the country. Ibid., p 14, Outlook on International Migration, OECD, (19 September 2016), Aussilloux, V. A. Bénassy-Quéré, Fuest and Wolff, 'Making the Best of EU's Single Market', Les notes du conseil d'analyse économique No 38 (February 2017), p 10.

jobseekers compared to nationals), since 2010 there are increasing prospects of employment for EU movers.¹⁸

Table 2 Share of EU working age movers (20-64) in total working age population of a member state¹⁹

| Member state | Share of EU movers | Absolute amount | Member state | Share of EU movers | Absolute amount |
|---------------|--------------------|-----------------|-----------------|--------------------|-----------------|
| 1. Luxembourg | 43,3% | 155 000 | 8. Spain | 5,0% | 1 400 000 |
| 2. Cyprus | 14,8% | 79 000 | 9. Denmark | 4,2% | 140 000 |
| 3. Ireland | 10,2% | 278 000 | 10. Malta | 3,8% | 10 000 |
| 4. Belgium | 8,9% | 592 000 | 11. Sweden | 3,7% | 210 000 |
| 5. Austria | 8,0% | 427 000 | 12. Netherlands | 3,4% | 341 000 |
| 6. UK | 5,7% | 2 200 000 | 13. France | 2,5% | 938 000 |
| 7. Germany | 5,5% | 2 700 000 | 14. Czech Rep. | 2,4% | 158 000 |

Source: European Commission, 2016 Annual Report on intra-EU Labour Mobility.

Germany (419 000) and France (178 000) receive the largest absolute amount of ‘one country postings’ but these represent 1.1% and 0.7% of the respective national labour market. 56% of all European postings originates from EU-15 member states and more than half of the postings are to a neighbouring member state, indicating that postings relate to various factors, including specialised services, and not just social dumping (e.g. services make up 31% of all postings).²⁰

However, some political concerns exist. When leaving out outlier Luxembourg, countries hosting relatively large shares of EU workers are Ireland (10,2%), Belgium (8,9%) and Austria (8,0%). The employment rates for recent EU movers are slightly lower than nationals in important receiving countries like France, Spain and Germany (around 4% less) as well as Estonia, Finland, Malta, Sweden, Denmark and Slovenia (1%-10% less). Practical problems can occur due to the extent to which the host country has not adjusted public services to migration, see e.g. the United Kingdom situation.²¹ Belgium and Austria receive the largest share of one country postings in relation to their national labour market (3.5% and 2.7% respectively; leaving out outlier Luxembourg), particularly in a social dumping sensitive sector as construction (Belgium 24,8% and Austria 17%).

Unfortunately, data is lacking to analyse the impact on receiving national labour markets concerning ‘multiple country postings’ (511 000 postings). The largest share of these postings (34%) seem to take place in transport. While postings do not necessarily represent the actual number of individual workers (a worker can be posted several times a year), issues with undeclared work exist too.²² National transport sectors are also impacted by EU labour through ‘cabotage’ (national transport performed by a hauler from another EU country). Cabotage operations have nearly doubled between 2010 and 2014 in Austria, Germany as well

18 Ibid., p 12. In addition, EU labour mobility follows economic logic to a large extent, Djankov, S., ‘Migration in Europe: the story of the East’, World Economic Forum (29 November 2016).

19 Stocks of working age (20-64) foreigners, as shares of the total population in countries of residence, by broad groups of citizenship, 2015. Ibid, ibid., European Commission, 2016 Annual Report on intra-EU Labour Mobility, pp 148-150.

20 See annex.

21 Full Fact, ‘Impact of migration on local public services’ (6 May 2016).

22 The number of actual individual posted workers is estimated to amount to roughly 54% of the one country postings and 84% of the postings in two or more Member States (multiple country postings).

as in France (increase of around 30%).²³ Based on total tonne-kilometres performed in the country, cabotage occurs the most in Belgium and Austria (around 8%), followed by France (6%), Germany (5%) and Sweden (3%). Several low cost Central and Eastern European member states²⁴ have recorded almost consistent year-on-year growth in cabotage from 2010 onwards, while several Northwestern European countries²⁵ have seen an overall decline.²⁶

Sending countries perspective

Of the EU working age movers since 2005 (5.4 million), the largest groups come from Romania and Poland (around 1 million each), followed by movers from Italy, Portugal and Bulgaria (around 250,000 each).²⁷ In relation to their total domestic national population, and as far as the official registrations are reliable, at least six Central Eastern European countries and Portugal have large relative shares of citizens (more than 7%) residing in another EU country (on average 72% are of working age). This also includes considerable pre-2004 movement however.²⁸

Table 3 National citizens of a member state residing in another EU country (2015)

| Member state | Relative share of population | Amount of citizens | In North West EU ²⁹ | In France | In Germany | In the UK |
|----------------|------------------------------|--------------------|--------------------------------|-----------|------------|-----------|
| 1. Romania | 14,7% | 2 950 000 | 33% | 3% | 20% | 3% |
| 2. Ireland | 12,5% | 586 000 | 94% | 2% | 2% | 88% |
| 3. Portugal | 11,3% | 1 200 000 | 90% | 60% | 8% | 8% |
| 4. Lithuania | 11,0% | 331 000 | 72% | 1% | 13% | 35% |
| 5. Luxembourg | 10,0% | 55 000 | 80% | 24% | 38% | 4% |
| 6. Poland | 9,1% | 3 470 000 | 93% | 3% | 56% | 20% |
| 7. Malta | 8,7% | 37 000 | 93% | 1% | 2% | 85% |
| 8. Croatia | 8,5% | 362 000 | 77% | 3% | 58% | 2% |
| 9. Latvia | 7,9% | 160 000 | 88% | 2% | 19% | 41% |
| 10. Czech Rep. | 7,3% | 786 000 | 84% | 1% | 69% | 5% |
| 11. Bulgaria | 5,5% | 547 000 | 46% | 3% | 19% | 9% |
| 12. Slovakia | 5,4% | 297 000 | 56% | 2% | 14% | 23% |
| 13. Slovenia | 4,5% | 93 000 | 71% | 3% | 43% | 2% |
| 14. Austria | 4,3% | 368 000 | 85% | 3% | 70% | 6% |
| 15. Finland | 4,2% | 230 000 | 91% | 1% | 7% | 6% |
| 16. Hungary | 3,9% | 388 000 | 86% | 3% | 45% | 14% |

Source: UN data 2015.

23 In absolute terms Germany (41%) and France (26%) receive by far the most European cabotage operations (percentage of tonne-kilometres performed). Particularly France's transport position is affected as the country is twenty times more 'cabotaged' than it is engaged. Richard, S., 'The implementing directive on posted workers; and what now?' *Fondation Robert Schuman, European Issues no 383* (1 March 2016), p 3.

24 Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Lithuania.

25 Netherlands, Germany, Austria, Belgium, France, Luxembourg, Ireland, Sweden, and the United Kingdom plus Italy and Greece.

26 Eurostat, 'Cabotage'. When measured in tonnes carried rather than tonne-kilometres the picture is relatively similar.

27 European Commission, *2016 Annual Report on intra-EU Labour Mobility*, p 52.

28 'Eastern Europe has the largest population loss in modern history', *Financial Times* (May 27, 2016). The UN average of working age migrants is 72%.

29 Excluding the Baltic States.

While remittances contribute considerably to the GDP in some of these countries³⁰, a drain of blue collar workers as well as a brain drain in the field of medicine, science & research and IT occurred in Central Eastern Europe.³¹ Southern member states also suffer from brain drain.³² For most of these southern countries, annual outflows of national citizens have in general steadily increased from 2006/2008 to 2015, while return mobility has consistently been lower.³³ The mobility trends of several Central Eastern European countries are more irregular and/or return mobility relatively follows outflows to a larger extent.³⁴

Poland, which sends the most absolute amount of postings (668 000 out of a European total of 2 million), has made posted workers into an important national business sector in transport (more than a 9% share of the Polish transport sector)³⁵ and construction (more than 10%). This is also the case for the construction and industry sector in Luxembourg, Slovenia and Slovakia. As for transport cabotage operations, Poland (28%), the Netherlands (8%), Spain (7%), Luxembourg and Germany (both 6%) are the largest supplier in terms of tonne-kilometres performed in 2014.³⁶

Table 4 Share of posted workers in national (sectorial) employment

| Sending country | Construction | Industry | Services | Total national employment |
|-----------------|--------------|----------|----------|---------------------------|
| Luxembourg | 143.7% | 36.5% | 12.7% | 19.8% |
| Slovenia | 120.2% | 10.4% | 7.0% | 14.0% |
| Slovakia | 17.1% | 4.2% | 1.1% | 3.3% |
| Croatia | 14.1% | 4.8% | 0.3% | 2.1% |
| Lithuania | 9.0% | 1.9% | 0.9% | 1.6% |
| Poland | 10.5% | 1.2% | 0.9% | 1.6% |
| Portugal | 12.7% | 1.8% | 0.5% | 1.5% |
| Hungary | 9.1% | 2.3% | 0.5% | 1.4% |
| Austria | 4.0% | 0.8% | 0.2% | 1.4% |

Source: European, Commission, Posting of workers - Report on A1 portable documents issued in 2015.

30 'Is migration good for the economy', *OECD Migration Policy Debates* (May 2014). Policy Network/Open Britain, *Reform or Reject? Freedom of Movement and the Single Market* (March 2017) p19. In 2015, EU workers from the Visegrad, Baltics and Slovenia living in Germany and the UK sent home a total of £7 billion. For Latvia, Lithuania and Hungary, remittances from family members living abroad (EU and non-EU) represented between 3-6 per of GDP.

31 Nedeljkovic, V., Brain Drain in the European Union: Facts & Figures, Rethink Education Working Paper, No. 4.

32 Spain's brain drain 'worst in Western Europe', *The Local*. E.g. the proportion of highly educated migrants from Spain, Italy, Greece and Portugal to the rest of Europe increased from 23 percent in 2005-2006 to 51 percent in 2011-2012).

33 See annex Graphs 1-2. From 22.000 in 2006 to 94 000 in 2015 in Spain, 19.000 in 2008 to 65 000/56 000 in 2012/2015 in Greece, 53 000 in 2008 to 102 000 in 2015 in Italy.

34 See annex Graphs 3-6. In Hungary the last three years the net result was that nearly 100% of the amount that had left was compensated by returning Hungarians, in Romania this was around 75% and in Lithuania and Bulgaria around 50%. The past seven years in Poland this was well over 50% in most years. When comparing return mobility in 2014/2015 with pre-crisis levels (2004-2007), bilateral flows between Germany, the UK and several countries of origin (EU-13 Member States, Spain and Italy) show that return mobility, in particular to the EU-13 Member States has increased, European Commission, *2016 Annual Report on intra-EU Labour Mobility*, p 14, pp 88-89.

35 European Parliament, *Posting of Workers Directive- current situation and challenges. Study for EMPL Committee* (June 2016), p 19.

36 In terms of tonnage carried, Poland and the Netherlands are also the largest suppliers, followed by Germany.

IV. A need for revising European legislation?

EU mobility has caused heated political debates in several member states and resulted in calls for protection. When looking at the current trends and legislation, several concerns regarding EU mobility are unfounded. Provided that member states take more assertive legal action, any existing concerns could potentially be addressed within current legislation and practices as well.

Box 3 Making potentially more use of the existing framework³⁷

| | |
|--|--|
| Preventing national unemployment | Parallel to Swiss and Austrian policy debates, prioritise local workers: mandate employers, not only employment agencies, to advertise locally for a period of time before opening up more widely. In academic legal debates emergency breaks are a possibility to invoke in case of a surge of national unemployment. |
| Preventing pressure on public services | Legal scholars have argued that limitations regarding access could be extended to active EU workers. |

Nonetheless, the existing regulations under the freedom of services imply the use of EU labour which deviates from national minimum wage standards (mainly cabotage) and/or social levies (mainly posted workers). As the trends demonstrate, practices under these regulations including construction, transport and industry are growing (fast). As a consequence, revisions of EU legislation have been put forward to offer more protection in the receiving countries.

Box 4 Proposals for revision

| | |
|---------------------------------------|---|
| Revising the Posted Workers Directive | The European Commission has proposed to revise the Posted Workers Directive with a principle of 'equal pay for equal work at the same work place' and a limitation of the duration of the posted workers practice of two years. French president Emmanuel Macron has indicated he would like to see a more ambitious revision, including a 12 month limit. ³⁸ |
| Revising cabotage regulations | For international transport the Commission has proposed that drivers are considered as posted workers if they spend at least 3 days in a given calendar month on the territory of a Member State. All cabotage operations (i.e. deliveries within a Member State) will be considered as posting of workers from day 1 – regardless of their duration. The new rules will allow for unlimited cabotage operations within 5 days of the international delivery. ³⁹ |

Nevertheless, the extent to which protection is possible, and feasible, is limited. In case of revision, jobs in construction and transport could be more protected but jobs in industry can move to lower wage countries. In addition, current losers from labour mobility in receiving countries are to an extent bound to be affected by innovation such as automatization.⁴⁰ Moreover, the current proposals will not address 'social dumping' concerns completely:

³⁷ See annex for more information.

³⁸ 'Macron's proposals wreak havoc on posted workers negotiations', *Euractiv* (15 June 2017).

³⁹ European Commission, 'Europe on the Move: Questions & Answers on the initiatives for clean, competitive and connected mobility' (13 May 2017).

⁴⁰ Demertzis, M., A. Sapir and G. Wolff, 'Europe in a new world order', *Policy Brief Bruegel Issue 2* (February 2017). See graph page 3.

competition on social levies in the transport and construction sector would still remain for the duration of two years (Commission's proposal revising the posted workers directive) or one year (Macron's proposal). The Commission's revision of cabotage rules in which the cabotage limit is being lifted, could even increase competition in transport.

More important however, actual protective measures might hinder the EU's competitiveness and convergence: companies can now be more cost-efficient while EU movers from low wage countries have prospects of jobs and/or higher wages. As experience with migration shows, while some national workers could lose their job in the short term, new positions (including affiliated sectors) open up both directly and in the longer term as a consequence of growth.⁴¹ If a surge of EU-movers in a member state causes institutional overburden or if it takes place in a context of high sectorial or regional unemployment, specifically targeted emergency breaks might be a more adequate policy response.

Furthermore, a specific dynamic that has attracted little attention concerns the European 'backdoor' of cheap labour and posted workers entering e.g. the Polish and Czech markets from outside the EU. The longer-term economic benefits of the four freedoms include economic adaptations and its price and wage mechanisms. But if the backdoor is open, wages will not increase and thus lead to continued pressure on sectors in Western-Europe, prevent returns (because wages remain low) and allow a continued drain of the working age population.⁴² Problems related to high educated brain drain requires domestic institutional reform and investment in innovative sectors.⁴³ In case of an alarming brain drain, supplementary European investment could be considered to that end.

V. Conclusions and policy recommendations

Labour mobility is, inevitably, a topic that produces losers of change. As part of the four freedoms, mobility of labour contributes to economic growth and it forces economic adaptations in sending and receiving countries. Labour mobility is, on the whole, beneficial. Despite creating political pressures in all countries concerned, fears over social dumping and pressures on public services are overstated, even though there are differences per sector and region. Transport and construction are evident sectors where social pressures have been mounting. The core problem in labour mobility concerns the possibility of posted workers to undercut social levies up to two years (and in some cases unlimited where it concerns multiple country postings, particularly in transport) and the practice of 'cabotage' to undercut national minimum wages. As all forms of mobility of labour and services create opportunities, reduce costs and are on the whole beneficial for the European economy, care should however be taken where the flexibility of mobility is at stake. This implies that making EU rules more restrictive is, in general, disadvantageous.

This of course does not imply that governments (national or 'European') are not responsible for the winners and losers of the four freedoms. Given the advantages of mobility, the responsibility for the 'losers of change' lies first of all with the national welfare states and relates to education opportunities, shifts in taxation away from levies on labour, etc. Measures to be explored further at EU level include rules to combat undeclared work

41 Constant, A.F., 'Do migrants take the jobs of native workers?', IZA World of Labor.

42 Official UN data (2015) mentions over 200 000 Ukrainians in Poland and nearly 100 000 in Czech Republic. Several reports i.a. The Economist speaks of 400 000 Ukrainians already however. 'Eastern Europe's workers are emigrating, but its pensioners are staying', The Economist (January 19, 2017). Filipino's are also posted in the Czech Republic and Slovakia. While labour from outside the EU could be beneficial in the short term, it complicates convergence mechanisms in the EU in the long term.

43 'Emigration and Its Economic Impact on Eastern Europe', *IMF Staff Discussion Note SDN* (July 2016), p 15.

(among others through better EU coordination of national labour inspectorates) and a European digital clearance platform for posted workers forms to avoid illegal practices. In addition, because labour mobility can be disruptive in the short run and produce high social and political costs in specific regions or sectors, a temporary restriction on mobility should be possible, such as the one agreed in the Cameron-Tusk deal. Brain drain in sending countries requires primarily domestic reform while complementary European investment could be considered. Finally, a specific problem that has attracted little attention concerns the European ‘backdoor’ of cheap labour entering for example the Polish market from the East, preventing returns and distorting price wage mechanisms.

Box 5 National policy recommendations

| Receiving countries | Sending countries |
|---|--|
| <p>National governments need to anticipate the strains that migration can pose on housing and public services and provide smooth transitions for the losers of change with the relevant and suitable powers in welfare distribution and education.</p> <p>Rebalancing government revenues away from labour taxes towards corporate taxes, potentially more progressive consumption taxes and inheritance taxes could to that end be considered.</p> | <p>In order for sending countries who suffer from brain drain to retain their working age population or/and facilitate return mobility, improvement of institutions, deregulation of professions, investment in innovative sectors and the creation of diasporas programmes is desirable in several member states.</p> <p>Activating labour market policies, flexible labour arrangements and investment in the participation of women is particularly an (unused) option for Central and Eastern European member states with regards to a sustainable domestic working age population.⁴⁴</p> |

Box 6 EU policy options

| |
|---|
| <p>Combat undeclared work and protect social rights via a European work inspectorate (coordination of national labour inspectorates) and a European digital clearance platform for posted workers forms, pensions and social entitlements.⁴⁵</p> |
| <p>Implement a framework for specific emergency breaks in case of a surge of local unemployment or overburden in sectors and regions.</p> |
| <p>Repeal the Interest and Royalties Directive (2003/49/EC) to allow countries to levy source taxes and prevent an erosion of the tax base.</p> |
| <p>(Re-)allocate EU funds towards skill intensive sectors in sending countries to help retain skilled workers in case of a serious and persistent brain drain.</p> |

44 ‘Emigration and Its Economic Impact on Eastern Europe’, *IMF Staff Discussion Note SDN* (July 2016), p 15. ‘Migration in Europe. The story of the East’, World Economic Forum (29 November 2016).

45 Rinaldi, D., *A new start for social Europe*, Jacques Delors Institute (February 2016).

VI. Annex

Table 5 Inflows of movers of working age (20-64) from Eastern and Southern EU countries to main Northern and Western countries of destination, 2009-2014. Source: 2016 Annual Report on intra-EU Labour Mobility, p 32.

| | Eastern countries | | | | | | Δ | Southern countries | | | | | | Δ |
|-------|-------------------|---------|---------|---------|---------|---------|------|--------------------|--------|--------|---------|---------|---------|------|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | |
| BE* | : | 12,987 | 14,700 | 16,652 | 14,175 | 17,458 | 34% | : | 13,958 | 14,926 | 17,233 | 18,731 | 17,686 | 27% |
| DE** | 261,875 | 302,578 | 408,489 | 465,498 | 502,896 | 577,180 | 120% | 62,335 | 70,100 | 95,874 | 131,937 | 155,110 | 159,200 | 155% |
| NL | 19,555 | 22,015 | 25,287 | 24,277 | 24,492 | 28,757 | 47% | 10,808 | 10,991 | 12,805 | 13,903 | 14,108 | 13,983 | 29% |
| AT | : | : | 26,596 | 30,327 | : | 40,616 | 53% | : | : | 3,853 | 5,462 | : | 6,333 | 64% |
| SE | 11,861 | 10,734 | 10,777 | 10,718 | 10,827 | 11,617 | -2% | 3,938 | 3,998 | 4,948 | 6,627 | 7,391 | 6,833 | 74% |
| UK*** | 43,647 | 38,666 | 44,860 | 38,181 | 45,466 | 71,667 | 64% | 32,479 | 26,803 | 28,719 | 39,803 | 52,010 | 50,912 | 57% |

Δ This column indicates the relative change in numbers of inflows between the first year of the series and 2014.

Inflows from eastern and southern european countries to BE, DE, NL, AT, SE and UK, all age groups.

Figures for BE exclude migration from Poland.

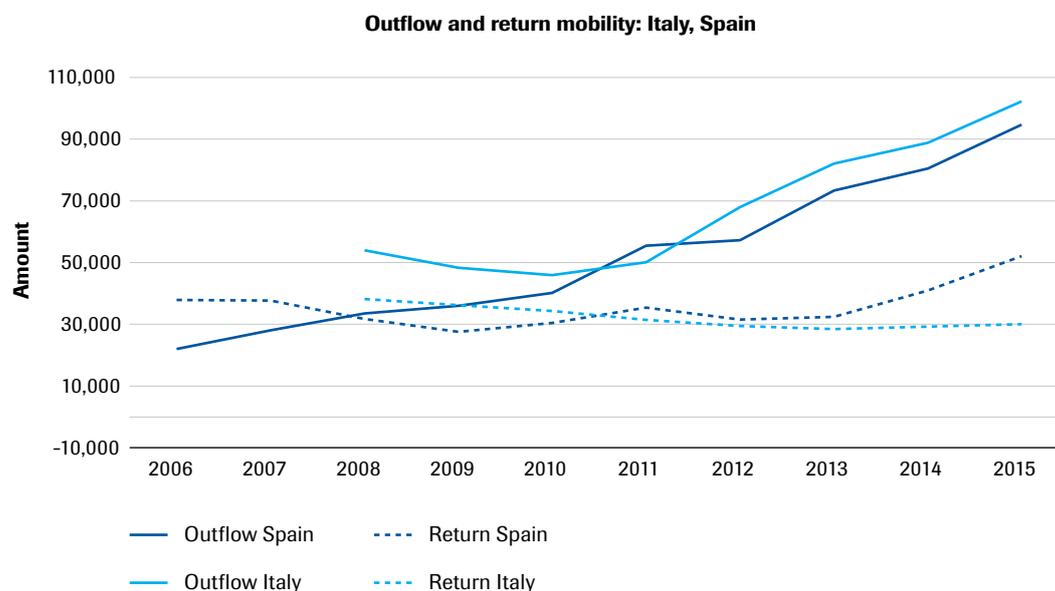
Figures for DE are based on national data and refer to all age groups.

Figures for the UK only include immigration from ro and pl and from it and es, respectively.

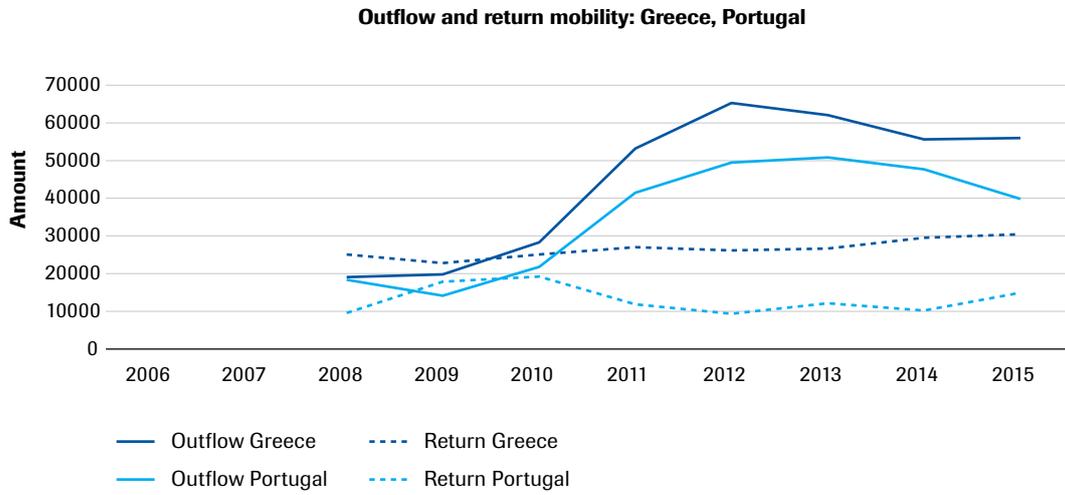
Figures for AT and UK use age definition 'age completed in years'.

Source: eurostat data on immigration by five-year age group, sex and country of previous residence [migr_imm5prv], milieu calculations.

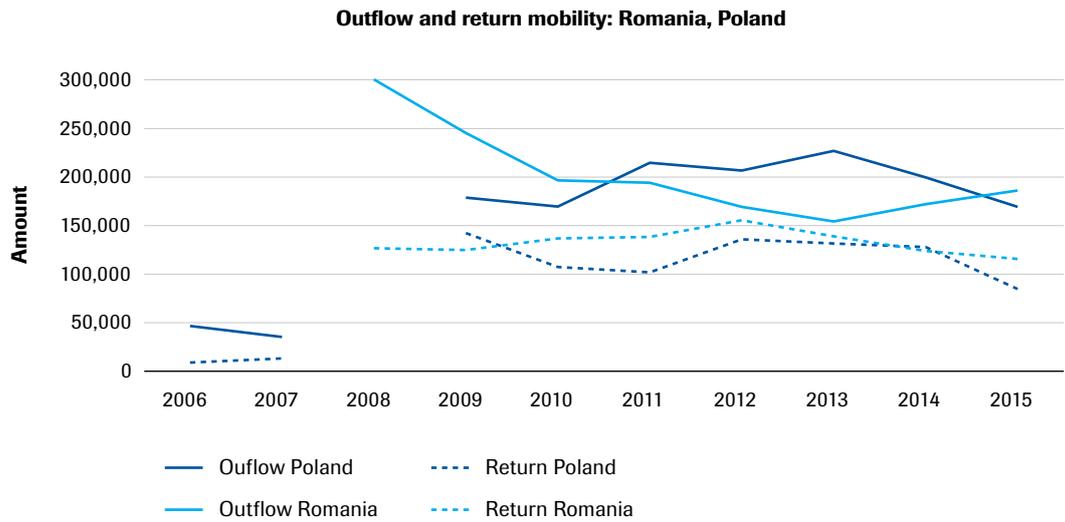
Graph 1



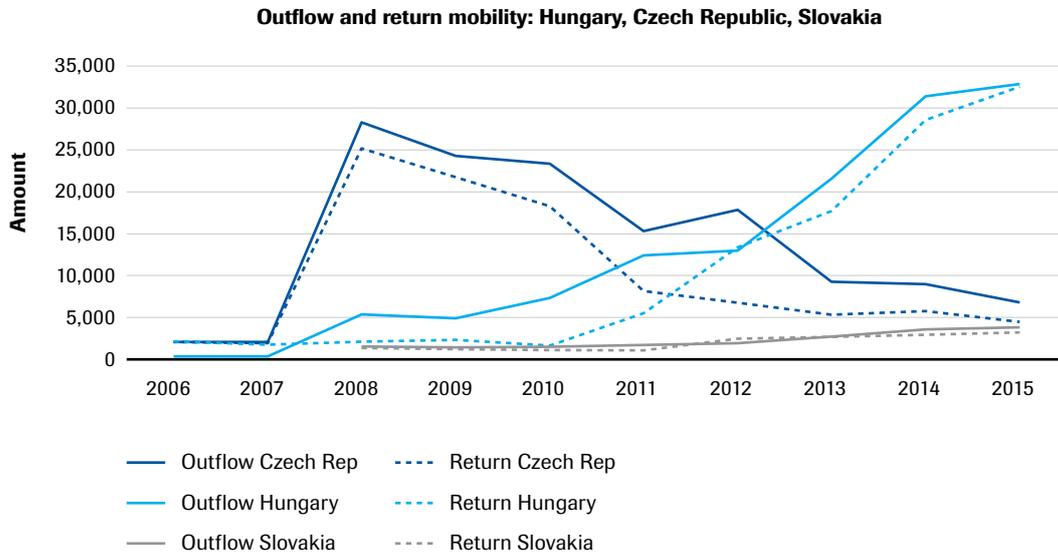
Graph 2



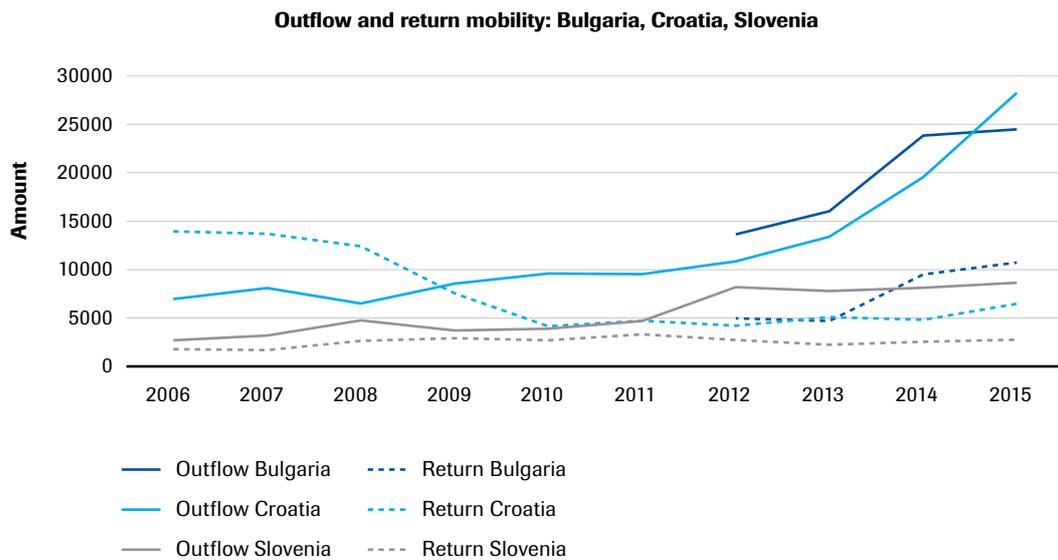
Graph 3



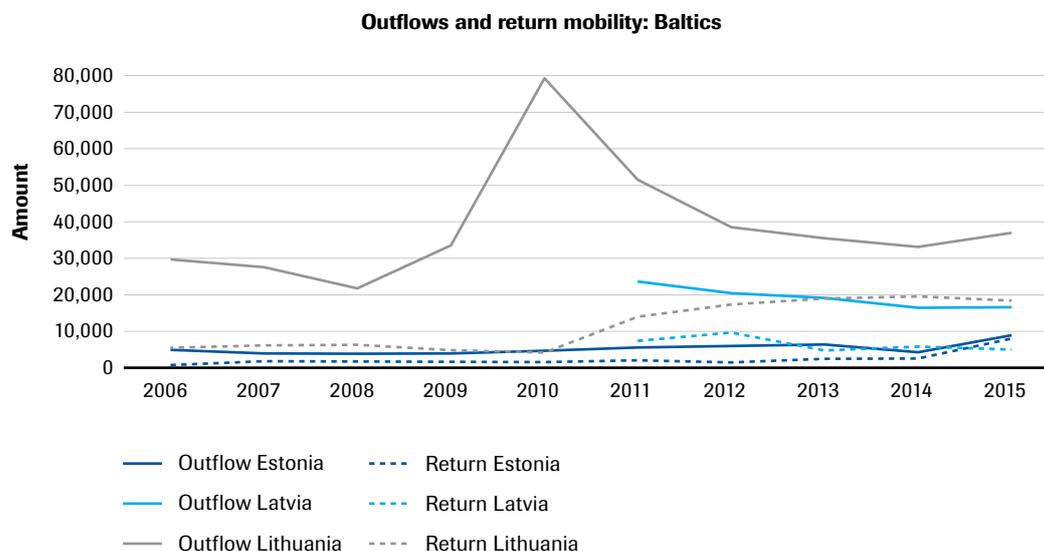
Graph 4



Graph 5



Graph 6



Posted Workers

Postings can be divided into two main categories: postings in one individual country ('Article 12 postings') and postings in which the posted worker is active in two or more countries ('Article 13 postings'). For postings in two or more countries considerable data is lacking to analyse the impact on receiving national labour markets. It is estimated that when leaving aside outlier Luxembourg, only in Estonia and Poland more than 1% of the employed population is active as posted worker in two or more Member States.

Table 6 Posted workers

| Description | Amount |
|---|--|
| Posted workers forms issued in 2015 | 2.05 million |
| Average estimate of actual individual workers | 1.1 million |
| Postings in one country | Est. 803.000 workers / 1.5 million forms (73%) |
| Postings in two or more countries | Est. 297.000 workers / 511.000 forms (27%) |
| Other | 40.000 |

Table 7 Postings in one country: top 10 sending and receiving countries

| Sending country | Punt A | Receiving country | Punt C |
|-----------------|---------|-------------------|---------|
| Poland | 463.174 | Germany | 418.908 |
| Germany | 240.862 | France | 177.674 |
| France | 139.040 | Belgium | 156.556 |
| Slovenia | 126.902 | Austria | 108.627 |
| Spain | 125.711 | Netherlands | 89.411 |
| Slovakia | 98.383 | Italy | 59.095 |
| Netherlands | 95.017 | UK | 54.344 |
| Italy | 91.740 | Spain | 54.037 |
| Belgium | 86.218 | Sweden | 37.373 |
| Portugal | 64.970 | Luxembourg | 21.749 |

Table 8 Share of one country postings in national employment, by sector of economic activity (receiving perspective)

| Receiving country | Agriculture | Construction | Industry (excl. construction) | Services | Total |
|-------------------|-------------|--------------|-------------------------------|----------|-------|
| Belgium | 1.4% | 24,8% | 5.1% | 1.4% | 3.5% |
| Bulgaria | 0.0% | 0.5% | 0.1% | 0.1% | 0.1% |
| Czech Republic | 0.0% | 1.3% | 0.6% | 0.2% | 0.4% |
| Denmark | 0.1% | 3.1% | 1.3% | 0.2% | 0.5% |
| Germany | 1.0% | 7.0% | 1.3% | 0.5% | 1.1% |
| Estonia | 0.0% | 1.7% | 0.3% | 0.2% | 0.4% |
| Ireland | 0.0% | 0.5% | 0.6% | 0.2% | 0.2% |
| Greece | 0.0% | 0.4% | 0.3% | 0.2% | 0.2% |
| Spain | 0.1% | 1.4% | 0.7% | 0.2% | 0.3% |
| France | 0.1% | 4.2% | 0.8% | 0.5% | 0.7% |
| Croatia | 0.0% | 2.9% | 0.3% | 0.3% | 0.5% |
| Italy | 0.0% | 0.9% | 0.4% | 0.2% | 0.3% |
| Cyprus | 0.0% | 0.4% | 0.3% | 0.2% | 0.2% |
| Latvia | 0.0% | 0.9% | 0.2% | 0.1% | 0.2% |
| Lithuania | 0.0% | 1.1% | 0.1% | 0.1% | 0.2% |
| Luxembourg | 5.7% | 72.8% | 22.5% | 4.8% | 8.5% |
| Hungary | 0.1% | 0.5% | 0.4% | 0.2% | 0.2% |
| Malta | 0.0% | 1.0% | 0.5% | 1.0% | 0.8% |
| Netherlands | 2.5% | 6.6% | 2.9% | 0.6% | 1.1% |
| Austria | 0.2% | 17.0% | 3.1% | 1.1% | 2.7% |
| Poland | 0.0% | 0.3% | 0.2% | 0.1% | 0.1% |
| Portugal | 0.1% | 0.2% | 0.7% | 0.4% | 0.4% |
| Romania | 0.0% | 0.3% | 0.2% | 0.1% | 0.1% |
| Slovenia | 0.2% | 4.7% | 0.6% | 0.4% | 0.6% |
| Slovakia | 0.0% | 1.1% | 0.3% | 0.3% | 0.3% |
| Finland | 0.6% | 5.8% | 1.4% | 0.2% | 0.8% |
| Sweden | 1.3% | 7.0% | 1.4% | 0.2% | 0.8% |
| United Kingdom | 0.0% | 0.6% | 0.5% | 0.1% | 0.2% |

Table 9 Share of one country postings in national employment, by sector of economic activity (sending perspective)

| Sending country | Agriculture | Construction | Industry (rest) | Services | Total |
|-----------------|-------------|--------------|-----------------|----------|-------|
| Belgium | 0.8% | 4.1% | 1.7% | 1.1% | 1.4% |
| Bulgaria | - | - | - | - | 0.5% |
| Czech Republic | 0.1% | 1.3% | 0.1% | 0.1% | 0.2% |
| Denmark | - | - | - | - | 0.3% |
| Germany | - | - | - | - | 0.6% |
| Estonia | 1.6% | 5.0% | 0.9% | 0.2% | 0.9% |
| Ireland | - | - | - | - | 0.2% |
| Greece | - | - | - | - | 0.1% |
| Spain | - | - | - | - | 0.5% |
| France | 0.0% | 0.3% | 1.0% | 0.2% | 0.5% |
| Croatia | 0.0% | 14.1% | 4.8% | 0.3% | 2.1% |
| Italy | - | - | - | - | 0.4% |
| Cyprus | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| Latvia | 0.0% | 1.1% | 0.2% | 0.1% | 0.2% |
| Lithuania | 0.1% | 9.0% | 1.9% | 0.9% | 1.6% |
| Luxembourg | 2.0% | 143.7% | 36.5% | 12.7% | 19.8% |
| Hungary | 0.0% | 9.1% | 2.3% | 0.5% | 1.4% |
| Malta | 0.0% | 0.0% | 0.0% | 0.1% | 0.1% |
| Netherlands | 0.1% | 0.8% | 0.5% | 0.3% | 0.3% |
| Austria | 0.2% | 4.0% | 0.8% | 0.2% | 1.4% |
| Poland | 0.3% | 10.5% | 1.2% | 0.9% | 1.6% |
| Portugal | 0.1% | 12.7% | 1.8% | 0.5% | 1.5% |
| Romania | 0.1% | 3.0% | 1.0% | 0.2% | 0.6% |
| Slovenia | 0.4% | 120.2% | 10.4% | 7.0% | 14.0% |
| Slovakia | 1.3% | 17.1% | 4.2% | 1.1% | 3.3% |
| Finland | 0.0% | 0.3% | 0.2% | 0.1% | 0.2% |
| Sweden | - | - | - | - | 0.1% |
| United Kingdom | - | - | - | - | 0.1% |

Table 10 Concentrations of postings (PDs A1 forms) of both ‘one country postings’ (Art. 12) and ‘two or more country postings’ (Art. 13).
Source: Posting of workers - Report on A1 portable documents issued in 2015, p 43.

| In absolute terms | | | | | | | |
|---|------------------------|-------------------------------|-------------------------|---|-----------------------|---|------------------------|
| | Art. 12 | | | | Art. 13 | | Total |
| | Poland as sending MS | EU-15 as receiving MSs | Germany as receiving MS | Construction sector | Poland as sending MS | Transport | Poland as sending MS |
| Share in total number of PDs A1 issued/ received on the basis of Article 12 or 13 BR | 17% | 85% | 28% | 42% | 41% | 34% | 23% |
| In relative terms (as % in total employment) | | | | | | | |
| | Art. 12 | | | | Art. 13 | | Total |
| | Slovenia as sending MS | Slovenian construction sector | Belgium as receiving MS | Belgian construction sector as receiving MS | Estonia as sending MS | The Polish transport sector as sending MS | Slovenia as sending MS |
| Total number of PDs A1 issued/ received on the basis of Article 12 or 13 BR as % of total employed population | 14% | More than 100% | 3.5% | 25% | 1.5% | 9.2% | 14% |
| Number of individual workers on the basis of Article 12 or 13 BR as % of total employed population | 4.7% | 41% | | | 1.2% | | |

Source: Administrative data PD A1 Questionnaire 2016 and Eurostat.

Extra information Box 1:

The Citizenship Directive and case law, such as *Dano* and *Garcia-Nieto*, grant that within five years of residence claims to social assistance can negatively affect the residence status of EU citizens. The latest Court judgment (*UK vs Commission*) provides the legal space to deviate from equal treatment of EU-citizens by assessing whether the EU-citizen had a legitimate right of residence in the first place, which is based on whether the EU-citizen entered the host country with sufficient economic means and the necessary requirements (e.g. health insurance). The first 3 months, EU citizens (other than workers) can be excluded from social assistance. When it concerns residence of more than 3 months, economically inactive citizens need to possess sufficient resources, while workers (and self-employed) enjoy equal treatment with respect to social benefits. If they become unemployed after having worked for more than a year they can retain their status as worker and, hence, their lawful residence.

Case law *Alimanovic* watered down the requirement of the need for an extensive individual assessment (whether an EU-citizen/job-seeker is a burden) before refusing rights to a EU citizen who had worked eleven months in its host country (generally a worker needs to work for at least a year in the country and then has rights to in-work benefits). A ‘sufficient degree of integration’ requirement (i.e. employment, 5 years of residence or the national passport) in order to have access to benefits is also well established in case law. E.g. a Dutch rule

that excludes non-working foreigners from study finance the first five years was not found discriminatory.

Extra information Box 2:

In relation Swiss and Austrian practices and debates: Switzerland stretched Article 45(4) TFEU (non-discrimination rules do not apply to ‘public employment’) to all publicly-funded organisations such as public transport, hospitals and care homes to protect jobs. The Canton of Geneva used this derogation extensively. Not only public administrations but all publicly-funded organisations such as public transport, hospitals and care homes do employers have to advertise vacancies through public placement 10 days before using other channels and justify the reason to hire from abroad. The European commission is critical but has not challenged it so far. See: Policy Network/Open Britain, *Reform or Reject? Freedom of Movement and the Single Market* (March 2017), p 23.

The EEA agreement has safeguard provisions attached to the freedom of movement chapter. The agreement allowed Liechtenstein to impose migration controls. Its existence demonstrates that migration posing a threat to the character and economy of an area could legitimately be argued as justifying some form of control to specific regions and sectors, See: Darvas, Z., ‘Brexit: UK-EU movement of people,’ Bruegel (February 2017). For more legal arguments in relation to emergency breaks: Davies, G.T., ‘Brexit and the Free Movement of Workers: A Plea for National Legal Assertiveness,’ *European Law Review*, 2016 (6):937, (draft used).

After five years all lawful residents are entitled to social assistance and access to public services under the Citizenship Directive. However, a restriction period between 2 and 4 years would appear arguable. While court rulings have mentioned several months this far and case law focuses mostly on work-seekers, students, or non-economically active migrants, an application to workers is not excluded in principle (up till now the Court found that those who work are ‘in principle’ integrated enough through their employment). An emergency break might also be possible. See: Davies, G.T., ‘Brexit and the Free Movement of Workers: A Pleam for National Legal Assertiveness,’ *European Law Review*, 2016 (6):937.

EU Labour mobility

Table 11 The residence of EU-28 movers of working age (20-64) in member states

| Member state | Amount | Member state | Amount |
|----------------|-------------|--------------|--------|
| Germany | 2.7 million | Cyprus | 79.000 |
| UK | 2.2 million | Portugal | 73.000 |
| Spain | 1.4 million | Finland | 70.000 |
| Italy | 1.1 million | Hungary | 63.000 |
| France | 938.000 | Slovakia | 38.000 |
| Belgium | 592.000 | Romania | 29.000 |
| Austria | 427.000 | Poland | 22.000 |
| Netherlands | 341.000 | Slovenia | 14.000 |
| Ireland | 278.000 | Malta | 10.000 |
| Sweden | 210.000 | Bulgaria | 9.100 |
| Czech Republic | 158.000 | Croatia | 7.000 |
| Luxembourg | 155.000 | Estonia | 5.800 |
| Greece | 151.000 | Latvia | 5.000 |
| Denmark | 140.000 | Lithuania | 3.200 |

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