



REMINDER

ROLE OF EUROPEAN MOBILITY AND ITS IMPACTS
IN NARRATIVES, DEBATES AND EU REFORMS

Free Movement in the European Union: An Audit

POLICY ANALYSIS

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Free Movement in the European Union: An Audit

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Executive Summary

The right to move, live, retire and study in other European countries is one of the most prized privileges of EU citizenship. But free movement has a chequered history, marked by conflicts and disagreements over the ultimate purpose it serves. Member States have held dramatically opposing views of what it means for the system to be working, while public attitudes have been polarised between young and old, movers and non-movers, and cosmopolitan elites and rural populations. While the most visceral negative public reactions to free movement that followed the economic crisis have softened (in part because intra-EU migration flows were eclipsed by large numbers of incoming asylum seekers during the so-called ‘migration crisis’), free movement remains a deeply divisive issue. And while the remaining Member States are presenting a united front in the face of Brexit, this solidarity could soon crumble if negotiations break down or once complex issues (for instance around implementing a deal on citizens’ rights) begin to materialise.

To fully evaluate the state of free movement today, it is helpful to understand its roots. Originally, the architects of free movement foresaw a system where the circulation of labour would act as the engine of economic growth in the post-war period, by helping meet labour and skills shortages. But this economic objective quickly became intertwined with the more ambitious goal of nurturing the fledgling idea of EU citizenship—itsself designed to secure support for the European project as a whole. This tension between economic and political objectives is at the heart of many recent debates about the limit and scope of free movement, such as the question of whether economically inactive people have the right to move and claim benefits in other Member States.

This deep-seated ambivalence in the broad objectives of the free movement system also make it hard to assess whether the system is working—a question which is very much in the eye of the beholder. For instance, some argue that the rapid and unpredictable population change that EU mobility can bring has placed unmanageable pressure on public services and communities. Others see levels of mobility as too small-scale to make a big difference to economic development and growth. While the European institutions evaluate its impact at a macro level, Member States—unsurprisingly—tend to examine whether it serves their own



interests. This has led to somewhat of a divide between ‘receiving’ and ‘sending’ countries, as the ‘old’ EU countries in Western Europe have sought to protect the interests of their low-skilled and disadvantaged workers (for instance by inoculating against the distorting effects of unfair competition enabled by the practice of ‘posting’ workers—sending workers to other countries at the wage levels of sending countries).

Public anxieties about free movement relate to three areas in particular: abuse of welfare systems, declining labour standards, and integration and social cohesion. The evidence on whether these anxieties are borne out is somewhat mixed:

- **The ‘welfare magnet’ hypothesis.** While the idea that free movement creates opportunities and incentives for people to game welfare systems has been largely refuted, it is the perceived unfairness, not scale of the problem, that fundamentally drives public anxiety—a challenge that is exacerbated by the complexity of the social security coordination system. Recent years have seen more restrictive policies and court rulings by the European Court of Justice, with some negative side effects for vulnerable groups who may fall through the gaps of different protection systems.
- **The labour standards complaint.** There is limited evidence that free movement diminishes wages and labour standards, however it may have some distributional effects on previous cohorts of migrants and low-skilled workers. Political debate about one aspect of this challenge, posted workers, reached a crescendo in 2017 when Member States were split on possible reforms to the system.
- **Insufficient attention to integration.** After becoming a high-profile issue (especially at city level) in 2013- 2014, the issue of integration needs for EU nationals has dropped from the agenda in light of more pressing processing, reception and integration challenges for newly arrived asylum seekers. But in many localities, pressures on public services are simply attributed to migration (broadly) without publics clearly delineating EU versus non-EU populations. Moreover, EU nationals appear to be susceptible to some of the most visible effects of ‘failed’ integration, such as homelessness and destitution. They can also face barriers to accessing integration services such as language training—in part because Member States are not allowed to set integration requirements for EU nationals because of the principle



of non-discrimination with nationals. The sources of anxiety about integration of EU nationals have therefore not dissipated, even if the issue is not currently top of public concerns.

Underlying the main challenges and public anxieties associated with free movement are five tensions and tradeoffs. How these are resolved may play a large role in shaping the future free movement:

- 1. Economic vs. political objectives.** Attempts to evaluate the success of free movement are shaped by whether one adopts an economic or political frame. The economic argument has been tested by the disappointing results of free movement on mitigating the effects of the economic crisis, and does not easily resonate with the majority of the public. Meanwhile, most citizens intuitively understand and support the idea of EU citizenship, but Member States have been reticent to cede power over the national political community. This leaves EU institutions in a conundrum: whether to promote the more symbolically and rhetorically powerful idea of free movement as EU citizenship (which is deeply problematic in relation to its implications for national sovereignty) or to emphasise its economic benefits (which is a difficult argument to win)?
- 2. Protection vs. mobility.** A related challenge is that some Member States have begun using welfare systems as an instrument of immigration control, for instance by deporting EU nationals who purportedly misuse benefits or by encouraging vulnerable groups to 'self-deport' by cutting off access to benefits and services. While the literature on migration refers to a potential tradeoff between more open borders and more open welfare systems, it is unclear if EU institutions should take this argument seriously. Doing so could mean confronting a choice between preserving untrammelled free movement, even at the cost of some mobile EU nationals being left without access to vital benefits and services, or contemplating proposals the EU sees as unpalatable such as an 'emergency brake' (ceiling on numbers) in order to preserve full protection for movers.
- 3. Mobile vs. non-mobile populations.** Those who value the benefits of free movement are overwhelmingly the young and educated; many others feel left behind by



mobility. European institutions are faced with the challenge of walking a fine line between presenting mobility as a vital tool of economic growth and social and cultural exchange without denigrating those who choose not to move. Moreover, policymakers may face a tradeoff—manifesting itself in everything from discussions about ‘brain drain’, to economic policy decisions—between promoting mobility as a mechanism for alleviating unemployment in regions facing economic decline and ensuring that those who choose not to move have sufficient opportunities even in their home regions.

- 4. *Universal citizens vs. migrants with specific needs.*** While the EU institutions have historically had a blind spot to the integration needs of mobile EU citizens, the time may have come to change the narrative on integration to encompass even temporary, high-skilled, or EU migrants. EU institutions may ultimately be faced with a difficult choice: whether to sacrifice the requirements of equal treatment among mobile EU nationals and natives to serve broader integration objectives (for instance, by allowing Member States to require EU nationals to participate in introduction courses) or to protect the principle of non-discrimination even if this makes it hard to acknowledge and address integration needs, such as language barriers, among movers.
- 5. *Coordination vs. complexity.*** The free movement and social security coordination system are non-ideal umbrella frameworks, designed to work across 28 different welfare systems and labour markets. As such, they are rife with grey areas and loopholes, such as lack of clarity over which benefits can be reasonably denied to economically inactive movers, or under what conditions people can be returned to their home countries. While tightening up some of these grey areas could improve a perception of fairness among Member States, it could bring even more complexity into the system—at the risk of creating further barriers to mobility or eroding public confidence. The EU institutions may therefore face a tradeoff between improving how well the system works for all Member States, and maintaining a system which is simple and efficient.

While concerns about free movement have been somewhat eclipsed by anxieties about migration from outside the European Union, as well as security and other challenges, the



contradictions and paradoxes at the heart of the free movement system are not likely to disappear. Fears of Brexit contagion have been allayed, for the most part, by the results of the 2017 elections in France and the Netherlands. But populism and Euroscepticism remain on an upward trend. To stay ahead of the curve—and prepare for a crisis of confidence in free movement in coming years—the EU institutions may wish to consider reforms to the system that go beyond mere tweaking. This means considering ways to package and sell the free movement project and engage publics in its reform, as well as understanding that free movement is intrinsically bound up with questions about broader migration management systems, security, and even regional policy.

I. Introduction

Free movement of people is one of the fundamental freedoms of the European Union (EU), alongside freedom of movement of goods, services, and capital. The right to move to, work, and live in other Member States lies at the heart of the European Union’s economic and political project and is one of the most widely cherished rights by European citizens. For instance, according to the latest Eurobarometer (May 2017), more than eight in ten Europeans (81 per cent) support the free movement of EU citizens who can live, work, study and do business anywhere in the EU.¹

While intra-EU mobility has been part of the history of European integration for over fifty years, its meaning and scope has evolved and expanded over time. From a framework that largely served economic considerations and workers, free movement has become a right for all EU nationals. This ambitious shift to a fundamental right, however, has not been welcomed by everyone. Fault lines and tensions have opened up over various issues, from mobile EU citizens’ access to benefits to the practice of ‘posting’ workers (where companies send workers to work in other Member States but employ them on the labour conditions of the sending country).

¹ See European Commission, ‘Public opinion in the European Union: first results’ (Standard Eurobarometer 87, May 2017), <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKey/2142>



Proponents of free movement argue that it has brought remarkable benefits to the European Union as a whole. It has supported economic growth, provided an outlet for unemployment and a tool to weather crises, and fostered the exchange of ideas and mutual understanding across borders. Its critics, on the other hand, cite issues such as uncontrollable migration flows, brain drain, integration tensions, unsustainable pressure on national welfare states, a downward pull on labour standards and wages, or insufficient protection for vulnerable mobile citizens.² Hostility against free movement reached a crescendo with the UK's Brexit referendum, the outcome of which largely flowed from concerns about uncontrolled EU migration and the loss of national sovereignty on border control. What makes free movement difficult to evaluate is that both the benefits and drawbacks are often in the eye of the beholder, and differ depending on which country is addressed.

The story of the free movement of people is a complicated and tumultuous one, encompassing divergent interests, discourses, and perceptions. The edifice of rules and rights that underlies it reflects these differences, and has evolved to hold some inherent contradictions and tensions. This report explores some of the main controversies, and examines whether the roots lie in the way the system was designed, or in how it is implemented in practice. It analyses whether the perception of structural problems with the regulatory framework (including the popular view that there are 'winners' and 'losers' of free movement) is backed up by evidence, and looks ahead to the likely future of this ambitious project.

The report starts by exploring the history and original rationale for free movement. The second section analyses whether it has fulfilled its overarching objectives. Next, the report examines the main criticisms of free movement from Member States and their publics, and assesses whether these criticisms are borne out by the evidence. It concludes by discussing whether the underlying tensions and tradeoffs at the heart of the free movement system can be resolved, and looking ahead to possible reform.

² For an overview of the evidence on the impact of free movement, see Meghan Benton and Milica Petrovic, *How Free Is Free Movement? Dynamics and Drivers of Mobility within the European Union* (Brussels: MPI Europe, 2013), <https://www.migrationpolicy.org/research/how-free-free-movement-dynamics-and-drivers-mobility-within-european-union>



II. What is the purpose of free movement?

The roots of free movement lie in the post-war recovery, a largely economic goal. But unlike other free trade systems, free movement was introduced in part to further the project of European integration. This dual logic underlies the complex web of regulations and directives that now form the infrastructure for intra-EU mobility of all forms. This section explores the genesis of free movement and its recent political and legislative history.

A. The history of free movement

Free movement has been an integral part of the European project from its very beginnings in the aftermath of the Second World War. Initially, the rationale was largely economic, driven by concerns that labour shortages would hinder reconstruction and economic growth in the post-war period.³ From the outset, the free movement of people was linked to the project of economic integration through a single market, which also involved the free circulation of capital, goods, and services. But labour mobility was also seen as key to realising the *political* objectives of European integration. This sets the European economic integration project apart from other free trade areas, which tend to focus on capital, goods, and services.⁴

From the 1970s onwards, the seeds were sown for the idea of a European Union citizenship, when terms such as ‘community national’ and ‘European citizen’ started to emerge in European Community law.⁵ Through case law of the European Court of Justice (ECJ), the

³ The 1951 Treaty of Paris establishing the European Coal and Steel Community provided for a right to free movement of labour in these industries. In 1957, the freedom of movement of qualified industrial workers was included in the treaties founding the European Economic Community (EEC). Originally, the provisions were limited to six countries (Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany) and focused mainly on blue-collar workers. Since the main purpose of establishing free movement was to enhance economic integration, these rights were only granted to persons engaged in economic activity as workers or self-employed, as well as those giving or receiving services. To ensure social protection for moving workers, social security coordination rules were introduced in 1959. Saara Koikkalainen, ‘Free Movement in Europe: Past and Present’, *Migration Information Source*, 21 April 2011, <https://www.migrationpolicy.org/article/free-movement-europe-past-and-present>.

⁴ Jonathan Portes, ‘Labour mobility in the European Union: a brief history’, National Institute of Economic and Social Research, 15 June 2015, <https://www.niesr.ac.uk/blog/labour-mobility-european-union-brief-history>.

⁵ The idea of a ‘Europe for Citizens’ was first proposed in the 1970s. The concept of Community citizenship was first mentioned in the 1976 Tindemans Report (on how the term ‘European Union’ might be interpreted) and received some rudimentary foundations in 1979, with the introduction of direct elections to the European Parliament. See Cris Shore, *Building Europe: The Cultural Politics of European Integration* (New York: Routledge, 2003). However, the idea of European Citizenship did not gain momentum until the Spanish government, prior to the negotiations preceding the Maastricht Treaty in 1990, submitted a proposal titled ‘The Road to European Citizenship’. See European Parliament, ‘EU citizenship



boundaries of the free movement framework gradually expanded to include non-workers. By the 1990s, the rights and entitlements of students, retirees, and other economically inactive people were officially codified in community legislation with a set of directives.⁶

With the Treaty of Maastricht in 1992—which outlined the founding principles of a political (and no longer merely economic) union and introduced the concept of European citizenship—free movement took on its new guise as a fundamental right.⁷ Promoting the mobility of Europeans became an essential element of the project of building a shared cultural and political identity.⁸

Meanwhile, the introduction of the Eurozone in the late 1990s further strengthened the economic case for a labour mobility area. Since a single currency removes the ability of countries to control their money supply, the theory is that countries rely more heavily on ‘exporting’ their workforce elsewhere in periods of unemployment instead of adjusting their currency to bring in investment and create jobs.⁹ Free movement of labour thus became more critical to the project of economic convergence across the Union, by exchanging a flow of capital for a flow of labour.

rights’ (Briefing PE 599.361, European Parliament, March 2017),

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599361/EPRS_BRI\(2017\)599361_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599361/EPRS_BRI(2017)599361_EN.pdf).

The European Court of Justice has played a fundamental role in widening the scope of free movement since the 1970s. Its rulings gradually shifted policy from protecting primarily free movement of workers to the free movement of persons. In several rulings, the court decided that a Member State of the EEC could not deny entry to or deport a citizen of another EEC state on the basis of personal conduct unless that conduct would warrant equally punitive action if it were undertaken by a citizen of the former state. See Koikkalainen, ‘Free Movement in Europe: Past and Present’.

⁶ In 1990, three directives extended the right of free movement to Member State nationals who were not economically active, such as pensioners, students, and otherwise economically inactive people. From the outset, however, their right to free movement was qualified by some limitations that would then be confirmed in later legislation: a citizen of the Union who is not economically active can only move and reside when he/she is unlikely to be a burden on the social security system of the host state. Elspeth Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law*, (The Hague: Kluwer Law International, 2004)..

⁷ See Willem Maas, ‘Trade, Regional Integration, and Free Movement of People’ in *A New Atlantic Community: The European Union, the US and Latin America*, Joaquín Roy, ed. (Miami: European Union Center of Excellence/Jean Monnet Chair, University of Miami, 2015), <http://www.yorku.ca/maas/Maas2015a.pdf>.

⁸ Jeffrey T. Checkel and Peter J. Katzenstein, eds., *European Identity (Contemporary European Politics)* (Cambridge: Cambridge University Press, 2009).

⁹ For a discussion of the role of labour mobility vis-à-vis exchange rate mechanisms as an equilibrating force on the labour market, see Julia Jauer, Thomas Liebig, John P. Martin and Patrick Puhani, ‘Migration as an Adjustment Mechanism in the Crisis? A Comparison of Europe and the United States’ (working paper no. 155, Organisation for Economic Co-operation and Development (OECD), Paris, January 2014), <http://www.oecd.org/migration/mig/Adjustment-mechanism.pdf>.



B. Recent trends in free movement: from enlargement to crisis

Since the turn of the millennium, a series of events shook the ground on which the foundation of free movement rests. Three (mainly eastward) enlargement rounds in 2004, 2007, and 2013 almost doubled the number of EU Member States (from 15 to 28) and increased the Union's population by about one quarter. The rationale for this expansion was to promote stability across the region as a whole, while supporting countries still dealing with the aftermath of their transition from communist countries to free market democracies. But the admission of countries with lower wages than existing members to the labour mobility area attracted concerns from the outset about large-scale migration. Although countries were entitled to impose transitional arrangements (to restrict access to their labour markets for an initial period), these did not fully assuage their concerns.¹⁰

The economic crisis created a further test for free movement, as it dampened confidence in the EU's power to support economic growth across all Member States. Prolonged austerity measures and concerns about welfare spending led to concerns about 'welfare tourism' and 'poverty migration' moving up the agenda. Meanwhile, the economic crisis precipitated a new phase in free movement, with a growth in flows from southern European countries to the North, which experienced a speedier recovery.¹¹

Most recently, support for free movement has been tested by the 2015-16 migration crisis. While large and unpredictable mixed flows of newcomers in many European countries shifted the focus of public and political debate away from intra-EU mobility, the crisis also worsened fears of a loss of control on migration. Several Member States within the borderless Schengen zone imposed border checks, questioning the sustainability of this dimension of free movement in the context of security concerns and terror attacks.¹² Moreover, since public concerns about pressures on public services due to population

¹⁰ These transitional arrangements allowed EU member states to temporarily restrict the rights of workers from the new EU members moving to another EU country to work, for a maximum period of seven years. These could be applied to all new Member States, with the exception of Cyprus and Malta. All old EU member states except for Ireland, Sweden and the UK decided to adopt these transitional periods.

¹¹ Benton and Petrovic, *How Free is Free Movement?*

¹² Jon Henley, 'Extend Border Controls to Counter Terror Threat, Say France and Germany', *The Guardian*, 15 September 2017, <https://www.theguardian.com/world/2017/sep/15/france-and-germany-extend-limit-on-schengen-zone-suspension>.



changes did not distinguish between different types of migration, the challenges caused by large-scale mixed flows of asylum seekers and other migrants were often collapsed together in the eyes of the public.

Finally, the UK referendum vote to leave the European Union has both cast light on existential threats to the European project and, somewhat counterintuitively, encouraged greater solidarity among remaining countries. Factors behind the vote included negative attitudes towards immigration and the perceived loss of economic sovereignty and national identity.¹³ While elections in 2017 in France and the Netherlands were perceived as a ‘win’ for mainstream parties in the face of the threat from populist, Eurosceptic parties, this trend is on the rise. The main threats to public confidence in European institutions and free movement are discussed in section 4.a.

C. The existing framework of free movement: from professional mobility to posted workers

A complex web of regulations and directives regulates free movement, including systems and frameworks that do not strictly pertain to the free movement of people—namely those related to posted workers and the Schengen area—that are nonetheless intrinsically connected to it.

Free movement of persons applies to the entire European Economic Area (EEA), which encompasses all 28 EU member states and the EFTA countries Norway, Iceland, and Liechtenstein. Switzerland, despite not having ratified the EEA, takes part in the single market, and therefore in the free movement framework, through bilateral arrangements.

In 2004, to bring more coherence into the complex regulatory framework of free movement rights and to codify the body of case law of the Court of Justice of the European Union into official law, Directive 2004/38/EC (commonly referred to as the Free Movement Directive, Residence Directive, or Citizens’ Rights Directive) was adopted by the European Parliament

¹³ Harold D. Clarke, Matthew Goodwin, and Paul Whiteley, ‘Why Britain Voted for Brexit: An Individual-Level Analysis of the 2016 Referendum Vote’, (paper presented at EPOP Conference, 10 Sept 2016), <https://blogs.kent.ac.uk/epop/files/2016/07/Clarke-Goodwin-and-Whiteley.pdf>; Will Somerville, ‘Brexit: The Role of Migration in the Upcoming EU Referendum’, *Migration Information Source*, 4 May 2016, <https://www.migrationpolicy.org/article/brexit-role-migration-upcoming-eu-referendum>



and the Council of the EU.¹⁴ This centrepiece of secondary legislation on free movement detailed the fundamental rights of entry and residence in member states for EU citizens and their spouses and dependent family members. Besides consolidating previous legislation and case law, the directive introduced some important innovations as well as several safeguards and protections.¹⁵ However, it also created certain problems, as some areas were left unclear, including the interaction with the social security system, described below.

i. Social security

The coordination of social security systems has been described as the ‘oil in the free movement mechanism’.¹⁶ In a nutshell, it helps the movement of people run more smoothly. This set of rules, which started to be designed in 1959 and is currently codified in two regulations (No 883/2004 and Regulation No 987/2009),¹⁷ ensures that people moving around the EU do not lose their entitlement to social protection. To reflect the diversity of social security systems within the Union, the framework is based on the principle of coordination rather than harmonisation: the individual member state decide who is to be insured under their legislation, which benefits are granted, and under what conditions (within certain minimal constraints). The coordination rules apply to social security, but not to social assistance (a distinction that is not always easy to draw at national level, especially in the case of ‘hybrid’ benefits such as special non-contributory cash benefits).¹⁸

¹⁴ European Parliament and Council of the European Union, ‘Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States’, 29 April 2004, EUR-Lex, L 158/77, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:e>.

¹⁵ Among the main innovations introduced by the Directive are: the right of EU citizens and their families to reside for up to three months without any conditions and formalities, apart from the requirement to hold a valid identity document; a right of permanent residence after five years of continued legal residence in the host Member State; and additional guarantees and safeguards that limit Member States’ power to end the right of residence and/or to expel EU citizens. European Parliament, Directorate-General (DG) for Internal Policies of the Union, *Obstacles to the right of free movement and residence for EU citizens and their families* (Luxembourg: EU Publications, 2016), [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571375/IPOL_STU\(2016\)571375_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571375/IPOL_STU(2016)571375_EN.pdf)

¹⁶ Meghan Benton, *Reaping the Benefits? Social Security Coordination for Mobile EU Citizens* (Brussels: Migration Policy Institute (MPI) Europe, 2013), <https://www.migrationpolicy.org/research/reaping-benefits-social-security-coordination-mobile-eu-citizens>.

¹⁷ European Parliament and Council of the European Union, ‘Regulation (EC) No 883/2004 of the European Parliament and of the Council on the Coordination of Social Security Systems’, 29 April 2004, EUR-Lex, L 166, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>; and European Parliament and Council of the European Union, ‘Regulation (EC) No 987/2009 of the European Parliament and of the Council Laying Down the Procedure for Implementing Regulation (EC) No 883/2004 on the Coordination of Social Security Systems’, 16 September 2009, EUR-Lex L 284, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:284:0001:0042:en:PDF>.

¹⁸ Benton, *Reaping the Benefits?*



The main principles of coordination are:

- **Non-duplication**, meaning that persons exerting free movement rights pay contributions to only one country at a time;
- **Non-discrimination**, meaning that they have the same rights and obligations as the nationals of the country where they are covered;
- **Aggregation**: in determining the benefits to which the person is entitled, periods of insurance, work or residence in other countries are counted; and
- **Exportability**: free movers entitled to a cash benefit from a country may receive it even while they live in a different EU member state.

In December 2016, the European Commission launched a proposal to update the system of social security coordination, as part of its package to strengthen labour mobility.¹⁹ The proposal makes some targeted changes in the areas of unemployment benefits (especially for jobseekers and frontier workers),²⁰ long-term care, access to welfare benefits for economically inactive persons,²¹ social security coordination for posted workers,²² and family benefits.

ii. Schengen

The absence of internal borders within the Schengen area is one of the visible symbols of free movement, however it is technically a separate system. The Schengen agreements operate separately from the free movement framework (and indeed some countries are in the free movement area but not Schengen).

¹⁹ European Commission, 'Fairness at the Heart of Commission's Proposal to Update EU Rules on Social Security Coordination', *News Release* 13 December 2016, http://europa.eu/rapid/press-release_IP-16-4301_en.htm.

²⁰ The proposal aims to improve the mobility of jobseekers by prolonging the period that they can receive unemployment benefits from the last country they worked in from three to six months. For frontier workers, the proposal shifts the responsibility for paying their unemployment benefits from the country of residence to the member state of employment, if the duration of employment was at least one full year.

²¹ The proposal codifies recent case law of the Court of Justice of the EU with regard to welfare benefits for economically inactive persons and the conditions on which access to these benefits is granted to them. It allows Member States to expand access to social assistance for this group (defined as those not working, looking for work, or deriving rights as family members as workers), conditional on having a legal right of residence. For economically inactive persons, this depends on them having sufficient resources not to become an unreasonable burden on the social assistance system as well as having comprehensive sickness insurance.

²² The proposal also seeks to amend social security coordination for posted workers, to better equip national authorities with the means to verify the social security status of these workers and address cases of abuse. It reinforces the obligations of responsible institutions to check the status of posted workers and it sets rules for better exchange of information between national authorities, not only social security authorities, but also immigration and tax authorities, labour inspectorates.



The initial Schengen Agreement, which first went into effect in 1995, created a common, borderless area between Belgium, France, Germany, Luxembourg, the Netherlands, Portugal, and Spain. Two years later, the Schengen rules were incorporated into the Treaty of Amsterdam, and by 1999 European citizens were free to cross most intra-European borders without having to show their passports. In 2016, the Schengen Area encompasses 26 European countries (22 EU member states and the four EFTA states).²³

Concerns about terrorist attacks and migrant flows have prompted border checks to be reinstated, in certain instances, since 2015. Austria, Denmark, France, Germany, and Norway have all temporarily imposed some controls on their borders with other Schengen states. The Schengen rules allow for border controls to be reintroduced for six months in the case of a security threat (up to two years in exceptional cases). The initial impetus of the latest closures was the state of emergency declared by France following its terror attacks in November 2015, but most countries are now seeking to retain checks following migrant flows. Although these closures pertain to flows of migrants from third countries, they affect free movement in so far as they create additional hurdles—both administrative and symbolic—to free movement of EU nationals. According to a leaked document in September 2017, a joint proposal from France and Germany asking for more permanent closures has received initial backing.²⁴

iii. Posted workers

The 1996 Posting of Workers Directive sets out rules on people working temporarily in another country to deliver a service, while remaining attached to their employer at home. This form of mobility is covered under the regime of free movement of services, not of people. The social security contributions of posted workers are the responsibility of the employers that posts the workers abroad, and contributions are set by the country of origin. They are also subject to labour laws (from working time to maternity leave and industrial disputes) where their official employer (or sending company) is based. However, to guarantee fair competition and protection of labour standards, the Posting of Workers

²³ European Commission DG Migration and Home Affairs, 'Schengen Area', https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en.

²⁴ Henley, 'Extend Border Controls to Counter Terror Threat, Say France and Germany'.



Directive lays out a set of core rights posted workers enjoy in their member state of activity, following the labour legislation of that country. Among other aspects, this includes minimum rates of pay and minimum paid annual leave, however these levels are often lower than the guidelines agreed for particular sectors through collective bargaining agreements, hence in practice posted workers are often paid less than other workers in the same sector²⁵

Some Member States have been critical of the posted workers framework, because they think it violates the principles of equal pay for equal work, and allows posted companies to undercut local companies. One of the main concerns has been the incentives to abuse the system by falsely registering as based in a Member State with lower minimum wages. As a result, in 2014 an Enforcement Directive was adopted, which calls on the Member States to verify compliance with the existing rules and encourages a better exchange of information between national authorities.

The Enforcement Directive did not change the rules of posting of workers, but simply tried to improve their enforcement. However, in the view of the Commission and many Member States, this did not go far enough. In 2016, the Commission proposed a revision of the rules, to build a more solid framework of protection for workers' rights while ensuring that service providers compete fairly. One of the centrepieces of this proposal is the replacement of the principle of 'minimum pay' with the principle 'equal pay for equal work in the same place'. This proposal has become deeply politicised, pitting the diverging interests of 'receiving' and 'sending' member states against each other (see section 4.A.ii).

III. Free movement as a mobility system

Intra-EU mobility is a one-of-its-kind experiment, which cannot be easily compared with other mobility systems. The principle of equal treatment of all citizens, derived from a supranational notion of citizenship, makes it unique. Other free trade agreements, such as

²⁵ It is up to countries to decide what additional labour laws apply to posted workers operating in their country. For instance, some countries have considerable provisions for pay and working conditions of posted workers. For an overview of existing protection for posted workers in the EU Member States and Norway.

the North American Free Trade Agreement (NAFTA) or the Association of Southeast Asian Nations (ASEAN), do not usually include free mobility of people.

There is no agreed definition of what a successful mobility system looks like, especially given the multiple goals that the architects of free movement envisaged the system as serving. Broadly, most analysts agree that i) free movement in the EU has positive economic benefits overall ii) it has also brought some negative 'distributional' impacts on specific localities or disadvantaged groups, such as low-skilled workers, and iii) mobility is modest in scale due to some persistent barriers to mobility.

A. Barriers to labour mobility

As of January 2015, 16 million EU nationals lived in another EU Member State, or around 3.1 per cent of the population of the European Union.²⁶ However, this does not account for the 1.3 million cross-border workers (who are not officially resident in their country of employment), 3 million posted workers, and returnees (who still count as mobile EU nationals for legal and administrative purposes).²⁷ All told, the figure is about 20 million.

The European Commission takes the view that the current three per cent ratio compared to other countries is low. One of the most frequently made comparisons is between mobility rates in the European Union and the United States, where mobility is higher.²⁸ As a result, the Commission argues that labour mobility plays only a small part in economic convergence relative to other regional policy. However, much of this analysis predates the economic crisis, which arguably could have had worse effects in regions most affected without the outlet of labour mobility.²⁹ Moreover, it is always difficult to compare internal and cross-border mobility. Some commentators conclude that EU mobility is very low, especially considering the greater asymmetry in employment rates and wages, which could

²⁶ Eurostat, 'Migration and migrant population statistics', updated March 2017, http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics

²⁷ European Commission, *2016 Annual Report on intra-EU Labour Mobility*, p.2nd ed. (Luxembourg: EU Publications Office, 2017), <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7981&furtherPubs=yes>.

²⁸ A paper on this topic from 2008 concluded that labour mobility 'does not play an important role in reducing the disparities between EU region [sic], therefore other aspects need to be considered when designing policies to reduce economic and social disparities between regions.' Zuzana Gáková and Lewis Kijkstra, *Labour Mobility Between the Regions of the EU-27 and a Comparison with the USA* (Brussels: European Commission DG Regional Policy, 2008), http://ec.europa.eu/regional_policy/sources/docgener/focus/2008_02_labour.pdf.

²⁹ Benton and Petrovic, *How Free is Free Movement?*



be expected to enhance free movement.³⁰ Others think that it is relatively high given the greater language, cultural and bureaucratic barriers. In any case, defining success is hard as there is no optimum rate for mobility.³¹

i. Inefficient systems for matching labour supply and demand

One barrier to greater mobility may be ineffective mechanisms for matching labour supply and demand. While the European Employment Services (EURES) coordination mechanisms seeks to encourage national employment services to exchange vacancies and applications, only a small share of vacancies listed by national employment services make it to EURES, and these are often overrepresented at the low-skilled end of the spectrum.³² Until recently, the EURES online portal only covered between 30 and 40 per cent of all vacancies in the EU.³³ This compounds the fact that public employment services tend to be a last resort for publishing vacancies, in many countries.

A new regulation approved in 2016 aims at restructuring EURES to make it more transparent, efficient and appealing to users. Under the new rules, Member States are required to publish all job offers recorded by their public employment services, including apprenticeships and traineeships. It updates the technology on which the matching tool is based to allow automated matching of skills and vacancies.³⁴ Private employment

³⁰ Interview with European Commission official, DG Employment, June 2017.

³¹ As the British MEP Jean Lambert put it, "I don't think you should push the number or percentage of free movement. People do it because they want to. This idea that you should be moving to be European... most people don't move, it's fairly normal. You can tell people that the opportunities are there, that if they want to do it that's how they can do it. [...] I think the Commission has gotten better at that, providing information about what you should know about social security and other regulations when you move. But I don't think there is a magical percentage." Interview with Jean Lambert, MEP, October 2017.

³² EURES is a coordination mechanism founded in 1993 to allow national employment services to exchange vacancies and applications. It offers a range of services for jobseekers and employers, providing information to improve the matching process; these are offered by employment advisors at national level, as well as through an online portal.

³³ Mikkel Barslund, Matthias Busse, and Joscha Schwarzwälder, 'Labour Mobility in Europe: An untapped resource?' (policy brief no. 327, Centre for European Policy Studies, Brussels, March 2015), <https://www.ceps.eu/system/files/Labour%20Mobility%20PB%20joint%20Bertelsmann%20FINAL%20mb.pdf>.

³⁴ According to the Commission, this reform was necessary because the framework was out-dated and hampered by five main shortcomings: 1) Insufficient labour market transparency as not all job vacancies and CVs are accessible via the EURES portal; 2) Limited capability for automated matching of CVs and job vacancies due to the different classification systems for skills and competences used in the Member States; 3) Uneven access to EURES services across the EU as job-seekers and employers are not systematically informed about the EURES network; 4) Limited capacity of EURES advisors to assist with matching, recruitment and placement services, including access to active labour market measures and advice on social security (mobility support services); and 5) Insufficient exchange of information between Member States on labour shortages and surpluses. European Parliament, 'Reform of the European Network of Employment Services (EURES)' (briefing PE 528.792, European Parliament, Brussels, July 2014), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/528792/EPRS_BRI\(2014\)528792_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/528792/EPRS_BRI(2014)528792_EN.pdf).



organisations can now join the network, a reform designed to improve job matching. Experts and social partners have viewed the regulation as a step in the right direction, although resistance from Member States, and some technical limitations, remain.³⁵

But the fact remains that many would-be migrants may be unable to identify adequate employment opportunities from their home country without having detailed institutional knowledge about local employers or sector-specific job search platforms. Many would-be migrants look for employment opportunities through social networks, which can smooth their initial arrival, but may mean they struggle to find work commensurate with their skills and experience. For instance, many of the Eastern European migrants to the UK in the years following enlargement relied on social networks of existing migrants working in low-skilled jobs, which may have exacerbated the disproportionate representation of Eastern Europeans in these roles.³⁶

ii. Risk-taking and individual migrant decisions

Another reason the analogy between the United States and Europe does not fully hold is that movement within the EU requires a greater risk and investment on the part of the individual migrant. The system is designed to encourage more efficient labour matching by enabling people to move without a job lined up (a significant difference to most other labour migration policies). It does so by allowing jobseekers to retain access to the contributory benefits they are entitled to based on their contributions in previous countries. But in their new country of residence, jobseekers are only eligible for non-contributory benefits if they have worked there before. These non-contributory benefits vary widely

The new regulation ‘aims to develop EURES into a true European placement and recruitment tool. For this purpose, the EURES portal should make available a near-complete supply of job vacancies and an extensive pool of CVs, and it should establish an effective, automated system to match vacancies and CVs across Member States’. European Parliament, ‘Legislative Train Schedule, Deeper and Fairer Internal Market with a Strengthened Industrial Base / Labour: European Network of Employment Services’, updated 20 October 2017, <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-labour/file-european-network-of-employment-services>.

³⁵ Interview with ETUC Advisor, July 2017; interview with European Commission official, DG Employment and Social Affairs, June 2017; Mikkel Barslund, Matthias Busse and Joscha Schwarzwälder, “Labour Mobility in Europe: An untapped resource?”

³⁶ Madeleine Sumption, ‘Social Networks and Polish Immigration to the UK’ (Economics of Migration Working Paper 5, Institute for Public Policy Research, London, May 2009). See also Tommaso Frattini, *Moving Up the Ladder? Labor Market Outcomes in the United Kingdom amid Rising Immigration* (Washington, DC and Geneva: MPI and International Labour Office, 2014), <https://www.migrationpolicy.org/research/moving-up-ladder-labor-market-outcomes-united-kingdom-immigration>



among different EU countries, and for a jobseeker to access them, there needs to be a 'genuine link' between the jobseeker and the labour market (usually defined as active jobseeking and/or a genuine chance of entering work). Making use of free movement is therefore no doubt easier for individuals who have work lined up.

With its December 2016 proposal to revise social security coordination rules—currently under discussion in the European Parliament and the Council—the European Commission is also seeking to make it easier for jobseekers to move without a job by proposing allowing jobseekers to export their unemployment benefits for a longer period of six instead of three months. The purpose of this change is to increase their chances to find work in the host country. However, since jobseekers would be paid at the rate of their home country, these benefits may not cover costs in high-income member states, as some experts have observed.³⁷

iii. Administrative barriers and bureaucracy

Finally, some would-be mobile EU citizens face administrative barriers to moving. These can include the treatment of third-country national family members of EU citizens, cumbersome and lengthy administrative processes, poor information among responsible national or local authorities, or citizens' lack of awareness about their own rights.³⁸

Finally, obstacles can extend beyond free movement legislation, and pertain to rules that create practical difficulties when moving between countries. These include taxation, the matriculation and use of vehicles, or problems in the recognition of diplomas which may hinder access to employment.³⁹ In some cases, problems in these areas regard poor implementation of existing rules or a lack of information/assistance. In other cases, as with taxation, problems derive from the fact that the EU has no competence in this area, and rules are laid out in bilateral agreements between countries, making coordination difficult.

³⁷ Cecilia Bruzelius, Constantin Reinprecht, and Martin Seeleib-Kaiser, 'Stratified Social Right Limiting EU Citizenship', *Journal of Common Market Studies* 55, no. 6 (2017), <http://onlinelibrary.wiley.com/doi/10.1111/jcms.12555/full>.

³⁸ European Parliament, DG Internal Policies of the Union, *Obstacles to the right of free movement and residence for EU citizens and their families*.

³⁹ European Parliament, DG Internal Policies of the Union, *Obstacles to the right of free movement and residence for EU citizens and their families*.



B. The impact of free movement

It is inherently difficult to judge the success of free movement because of the vast array of interests involved. What benefits movers may have adverse effects for non-movers, while countries of origin and countries of destination may be differentially affected by large-scale migration flows. Much of the literature therefore focuses on macroeconomic impacts at the national (or even European level), however recent studies have cast light on the potential for such overarching studies to hide ‘distributional effects’—impacts on particular groups or localities that may be obscured by only looking at the big picture.

i. Overall trends

Of the 11.3 million EU 28 citizens of working age (20-64 years) living in an EU member state other than their country of citizenship in 2015, 8.5 million were employed or seeking a job.⁴⁰ The annual flows have been steadily increasing over the past few years. In 2015, about 1 million EU/EFTA citizens made use of their free movement rights.⁴¹

The lion’s share of movements have been from East to West. The economic crisis had the effect of partly redirecting flows. While the period after accession saw large-scale mobility from new Eastern European Member States to Western and Northern Europe (especially Germany, the UK, Italy and Spain),⁴² the period after the economic crisis saw overall flows dampen (and especially recede to Spain and Italy) and return migration to Eastern Europe increase.⁴³

Recent data, however, puts this picture into perspective. There was no massive shift of patterns of free movement from the East-to-West pattern to a South-to-North one. This is

⁴⁰ European Commission, DG Employment, Social Affairs and Inclusion, *2016 Annual Report on intra-EU Labour Mobility*, pp. 23-24

⁴¹ Ibid.

⁴² Since the enlargement round of 2004, in which ten new countries accessed the Union, the predominant flows of migration have been from Eastern Europe to Western European member states. Only 7 per cent of EU mobile citizens, accounting for slightly over 1 million people, reside in Eastern European EU member states. Mikkel Barslund and Matthias Busse. 2016, ‘Labour Mobility in the EU: Addressing challenges and ensuring “fair mobility”’, (Special Report No. 139, Centre for European Policy Studies, Brussels, July 2016).

⁴³ European Commission, DG Employment, Social Affairs and Inclusion, *2016 Annual Report on intra-EU Labour Mobility*.



the case only in some countries, like Germany and Austria. Flows from the South intensified, but flows from Eastern European countries also remained considerable.⁴⁴

These asymmetries in flows explain why, while evaluations of free movement have found a broadly positive impact both on the European Union as a whole and its Member States, its effects have not been evenly felt.

ii. Economic effects

The evidence on the impact of immigration is a mixed picture. While immigrants contribute to public finances and can support job creation, they can also compete for jobs with workers and bring down labour standards if they are willing to tolerate a lower wage or if worse conditions. Overall, the fiscal impact of migration is thought to be neutral or fairly minimal.⁴⁵ In theory, we could expect EU migration to have a worse economic effect since countries are unable to adjust inflows based on economic conditions. But the characteristics of migration flows are an overwhelming determinant of whether the impact of migration is positive.⁴⁶ While family and humanitarian arrivals tend to do badly, intra-EU mobility is largely characterised by labour mobility. Moreover, since EU migrants come from relatively wealthier countries they are less likely to move without good job prospects ahead of them.

Studies of intra-EU mobility, relative to migration in general, have generally found positive overall results. A 2011 study report concluded that intra-EU mobility flows after the 2004 enlargement, particularly from EU-12 to EU-15 member states, played a positive role in the economy of receiving countries, contributing to the skill mix and filling labour shortages in some sectors and raising the long-term level of EU-15 potential output by up to 0.9%, with the largest boosts taking place in member states that received large inflows.⁴⁷ However, research has found some distributional effects—especially on existing groups of migrants—

⁴⁴ Ibid.

⁴⁵ OECD, *The Fiscal and Economic Impact of Migration* (Paris: OECD Publishing, 2014), <https://www.oecd.org/policy-briefs/PB-Fiscal-Economic-Impact-Migration-May-2014.pdf>.

⁴⁶ OECD, 'The Fiscal Impact of Immigration in OECD Countries', *International Migration Outlook 2013* (Paris: OECD Publishing, 2013), http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/international-migration-outlook-2013_migr_outlook-2013-en#page127.

⁴⁷ A 2011 study report concluded that intra-EU mobility flows after the 2004 enlargement, particularly from EU-12 to EU-15 member states, played a positive role in the economy of receiving countries, contributing to the skill mix and filling labour shortages in some sectors and raising the long-term level of EU-15 potential output by up to 0.9%, with the largest boosts taking place in member states that received large inflows. See European Commission, *Employment and Social Developments in Europe* (Brussels: European Commission, 2011), http://ec.europa.eu/employment_social/esde/2011/



although a number of studies have found this effect is less dramatic for EU migration than other forms of migration.⁴⁸

The literature on economic impact falls into three broad categories:

- **Impact on countries of destination.** A number of studies have found that intra-EU mobility flows after the 2004 enlargement, particularly from new to old Member States, played a positive role in the economy of receiving countries, filling labour shortages in some sectors and increasing the potential for growth.⁴⁹ In the UK, a recent study focusing on three sectors in which large numbers of EU migrants are employed (hospitality, food and drink, and construction), found that there was no significant negative impact on native workers, and that rather than that, EU migration has helped employers fill vacancies in an effective and sustainable manner.⁵⁰
- **Impact on countries of origin.** For sending countries, especially in Eastern Europe, there have also been some negative economic effects, although the gravity of this impact is disputed. Countries of origin can face important costs as a result of free movement, such as skills shortages in certain sectors (e.g. healthcare), and a dwindling workforce against the backdrop of an ageing population.⁵¹ Many of those who have left these countries are young and well-educated, and their emigration is often permanent, contrary to the rhetoric of 'brain circulation'.⁵² Moreover, where people have returned they have always been able to put their skills and experience

⁴⁸ For instance, an Italian study found that EU migration had a modest positive impact on wages and unemployment, but some negative effects for previous cohorts of migrants. Paola Monti, 'Labour Mobility from New EU Member Countries: the Impact on Italy', *Free Movement of Workers and Labour Market Adjustment: Recent Experiences from OECD Countries and the European Union* (Paris: OECD Publishing, 2012), http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/free-movement-of-workers-and-labour-market-adjustment_9789264177185-en#.WffpUhNSzeQ#page10.

⁴⁹ See European Commission, *Employment and Social Developments in Europe*.

⁵⁰ Heather Rolfe and Nathan Hudson-Sharp, *The impact of free movement on the labour market: case studies of hospitality, food processing and construction* (London: National Institute of Economic and Social Research, 2016), <https://www.niesr.ac.uk/publications/impact-free-movement-labour-market-case-studies-hospitality-food-processing-and>

⁵¹ Interview Commission official, DG Employment and Social Affairs, June 2017; interview Jean-Michel Lafleur, October 2017.

⁵² Ruben Atoyán, et al., *Emigration and Its Economic Impact on Eastern Europe*, (staff discussion note SDN/16/07, International Monetary Fund, Washington, July 2016), <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1607.pdf>.



acquired abroad to good use.⁵³ The push and pull factors behind the east-west trend within intra-EU mobility are primarily income differentials. However they also include differences in the level of corruption, the transparency of institutions, and the quality of services. These factors are not likely to diminish any time soon. Large-scale emigration thus risks entrenching the problem, as it slows down economic growth, increases government spending, and hinders social and economic convergence.⁵⁴

- **Economic crisis.** Many studies of the impact of free movement predate the economic crisis. But economic theory predicts that immigration will have a more detrimental impact under negative economic conditions.⁵⁵ At the macroeconomic level, the economic crisis is sometimes portrayed as the litmus test of free movement, but researchers disagree as to how effectively free movement mitigated its damage. The OECD estimated that free movement played a limited role as an adjustment mechanism, reducing unemployment by six per cent at the maximum in the years 2008-2010.⁵⁶ On the other hand, this contribution is not negligible either, if one considers the modest numbers of movers in the overall labour force. Other studies carrying out simulations to assess impact of internal EU mobility found the impact of cross-border mobility on GDP to be very small.⁵⁷

iii. Social effects, especially at the local level

The impacts of free movement have not been dispersed evenly. Some localities have been more affected by rapid population changes, a fact which is often obscured by large-scale studies at a macro level. For example, a study looking at the impact of post-enlargement

⁵³ Overall, the evidence on impact to Eastern European countries is quite mixed. Wages have increased by a negligible level, and unemployment is estimated to have gone down a similarly small amount. See Jo Ritzen, Martin Kahanec, Jasmina Haas, 'EU Mobility' (IZA Policy Paper No. 125, Institute of Labour Economics, February 2017), <http://ftp.iza.org/pp125.pdf>

⁵⁴ Ibid.

⁵⁵ Giovanni Peri, *The Impact of Immigration in Recession and Economic Expansion*, (Washington, DC: MPI, 2010).

⁵⁶ Although the report acknowledges the small size of these effects, which are insufficient for migration to act as a major adjustment mechanism for regional market shocks, it highlights that the contribution is not negligible given the limited numbers of free-mobility migrants in the overall labour force. OECD, *Free Movement of Workers and Labour Market Adjustment: Recent Experiences from OECD Countries and the European Union* (Paris: OECD Publishing, 2012), http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/free-movement-of-workers-and-labour-market-adjustment_9789264177185-en#.WcesOoyCw2w#page4.

⁵⁷ Ernst & Young, *Evaluation of the impact of free movement of EU citizens at local level – Final Report* (EY, 2014) http://ec.europa.eu/justice/citizen/files/dg_just_eva_free_mov_final_report_27.01.14.pdf.



East-West flows concluded that while pressures associated with migration changes were minimal, as a whole, a sudden rise in certain localities can create bottlenecks and pressures in the provision of certain services, such as education and housing.⁵⁸

Because intra-EU mobility cannot be easily predicted or planned for, some localities have found themselves dealing with large yet unanticipated changes in their population. In the UK, in the years following enlargement, some rural areas with little experience with immigration or integration programming had to rapidly adjust to large inflows. These population changes can create difficulties in public service planning, for instance if budgets are set by higher levels of government in advance, and so local authorities have to meet the needs of a larger or more diverse population than anticipated.⁵⁹

An influx of newcomers can also create specific bottlenecks in public services, such as health or education systems. Due to the uneven distribution of migrants and refugees in cities, the number of foreign pupils (from both EU- and non-EU backgrounds) enrolling can be concentrated on some individual schools. Non-native children are at risk of a number of less favourable outcomes, such as lower academic results, difficulties in finding new friends among national students, and risks of discrimination due to differences in cultural background, language, etc.⁶⁰ Meeting these needs can create considerable pressures on teachers and schools with a high concentration of newcomers.⁶¹

At the extreme, difficulties planning for mobile populations—combined with their often limited eligibility for public services—can mean vulnerable groups are susceptible to destitution and poverty. Homelessness and issues related to illegal employment and displacement of native workers, in particular, have created considerable tension and have been addressed prominently in public debates in EU Member States at the receiving end of

⁵⁸ Eurofound, *Social dimension of intra-EU mobility: Impact on public services* (Luxembourg: Publications Office of the European Union, 2015).

⁵⁹ Elizabeth Collett, *The Integration Needs of Mobile EU Citizens: Impediments and Opportunities* (Brussels: MPI Europe, 2013), <https://www.migrationpolicy.org/research/integration-needs-mobile-eu-citizens-impediments-and-opportunities>.

⁶⁰ Ernst & Young, *Evaluation of the impact of free movement of EU citizens at local level*.

⁶¹ Meghan Benton, Helen McCarthy, and Elizabeth Collett, *Into the Mainstream: Rethinking Public Services for Diverse and Mobile Populations* (Brussels: MPI Europe, 2015), <https://www.migrationpolicy.org/research/mainstream-rethinking-public-services-diverse-and-mobile-populations>. See also Brian Salant and Meghan Benton, *Strengthening Local Education Systems for Newly Arrived Adults and Children: Empowering Cities through Better Use of EU Instruments* (Brussels: MPI Europe, 2017), <https://www.migrationpolicy.org/research/strengthening-local-education-systems-newly-arrived-adults-and-children-empowering-cities>.



intra-EU flows.⁶² Homelessness can be exacerbated by difficulties EU mobile citizens face accessing social housing—or even homeless shelters. This phenomenon is common in the case of the Roma. These issues may be small-scale, but their concentration and dramatic visible effects can contribute to negative sentiment around migration.⁶³

Imbalances at local and community level can give rise to tensions at a national level.⁶⁴ In 2013, German cities complained in an internal paper about the challenge presented by high numbers of Romanians and Bulgarians settling in urban neighbourhoods already characterised by high unemployment and ending up destitute. The influx of Roma was in particular focus in the paper, which stated that “the social balance and social peace is extremely endangered” and called for more support by the federal government and the EU.⁶⁵ The issue of perceived ‘welfare tourism’ (people moving to take advantage of more favourable welfare systems) is discussed in section 4.a.

IV. Remaining Challenges and Anxieties over Free Movement

Of the four freedoms that underpin the European Single Market, the free movement of people attracts the most controversy—and, arguably, the greatest challenges.⁶⁶ The potential challenges can relate to three different levels: design, transposition, and implementation:

- **Poor design of the rules themselves.** Fitting a common framework to the diverse governmental, legislative and institutional traditions of 28 Member States is a complex task, which has created some grey areas and conflicting interpretations that some actors seek to employ to their advantage. For instance, one of the UK’s main complaints about social security coordination prior to Brexit was that the system had

⁶² Eurofound, *Social dimension of intra-EU mobility*.

⁶³ Ernst & Young, *Evaluation of the impact of free movement of EU citizens at local level*.

⁶⁴ Eurofound, *Social dimension of intra-EU mobility*.

⁶⁵ *Der Spiegel*, ‘German Cities Complain of High Immigration’, *Der Spiegel*, 04 February 2013,

<http://www.spiegel.de/international/germany/german-cities-worried-about-high-immigration-from-romania-and-bulgaria-a-881409.html>

⁶⁶ Interview with ETUC advisor, June 2017



a bias towards Member States with social insurance systems instead of residence-based benefits.⁶⁷

- **Unfinished transposition**—the process whereby Member States embed European rules into country legislation can also be the source of challenges.⁶⁸ Over the years, the Commission has launched several infringement proceedings against Member States, because of slow progress transposing the Free Movement Directive.⁶⁹
- **Uneven implementation**, especially where authorities or individuals lack correct information about the rules, can create barriers to mobility or pockets of inconsistency. Communication and exchange of information is not only lacking among different Member States, but also within single countries, where immigration authorities, labour inspectorates, healthcare authorities, and providers of social services often operate in parallel or even in contradiction with each other.

Challenges associated with each of these three areas can operate independently, or interact with one another. For instance, poorly defined rules and legislation can exacerbate problems of poor understanding and inconsistent enforcement at a local level. Moreover, the perception of these challenges differs widely depending on perspective; some commentators think that a free mobility system that creates fundamentally asymmetrical incentives to move (because of considerable differentials in social, economic, and institutional conditions between Member States) is working as it should. Others believe it undermines the integrity of the system itself.

⁶⁷ UK Home Office and Department for Work and Pensions, *Free movement of persons: review of the balance of competences* (UK, 16 May 2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335088/SingleMarketFree_MovementPersons.pdf

⁶⁸ A 2008 report about the transposition of the Free Movement Directive, the European Commission remarked that '[n]ot one Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States'. Commission of the European Communities, 'Report from the Commission to the European Parliament and the Council on the Application of Directive 2004/37/EC on the Right of Citizens of the Union and their Family Members to Move and Reside Freely Within the Territory of the Member States', COM(2008) 840 10 December 2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0840:FIN:EN:PDF>.

⁶⁹ European Parliament, DG Internal Policies of the Union, *Obstacles to the right of free movement and residence for EU citizens and their families*.



This section explores perceived challenges around free movement and the extent to which they are borne out by evidence. It first examines common complaints about the system of free movement, and what is behind these concerns. Then, it analyses the tensions and paradoxes that underlie these anxieties, and whether these can be resolved. Most of these challenges relate to two or more of the levels above; some to all three, increasing the difficulty of crafting an appropriate response.

A. Political challenges and recent controversies, including public opinion

The worst years of economic gloom in Europe saw a number of flashpoints over free movement, ranging from the deportation of Roma from France in 2010 to a letter from four countries calling for decisive action to reduce benefit fraud and misuse of free movement.⁷⁰ Attention to the issue subsided for a time, at least while the Euro crisis and migration crisis loomed large (and in part following some empirical studies and ECJ court cases that took the wind out of the welfare tourism argument).⁷¹ But the UK referendum vote to leave the European Union, coupled with a high-profile fight over posted workers, has returned free movement to the top of the policy agenda. While the posting of workers technically relates to freedom of movement of services, it has become a powerful symbol for the unfairness Member States and publics attribute intra-EU mobility and has coloured its overall perception. In other words, the potential for conflicts to erupt over free movement still exists, even if these tensions are currently lying dormant.

⁷⁰ Letter to the Irish Presidency of the Council of the European Union, addressed to Alan Shatter, Minister for Justice and Equality and President of the European Council for Justice and Home Affairs; from Johanna Mikl-Leitner, Federal Minister of the Interior, Austria; Hans Peter Friedrich, Federal Minister of the Interior, Germany; Fred Teevan, Minister for Immigration, the Netherlands; and Theresa May, Secretary of State for the Home Department (April 2013), accessed 30 October 2017, http://docs.dpaq.de/3604-130415_letter_to_presidency_final_1_2.pdf.

⁷¹ For instance, a 2013 report found little evidence suggesting that EU citizens moved for benefits-related reasons. ICF GHK in association with Milieu Ltd, *A Fact Finding Analysis on the Impact on the Member States' Social Security Systems of the Entitlements of Non-Active intra-EU Migrants to Special Non-Contributory Cash Benefits and Healthcare Granted on the Basis of Residence* (London: ICF GHK, 2013), http://ec.europa.eu/employment_social/empl_portal/facebook/20131014%20GHK%20study%20web_EU%20migration.pdf. Moreover, in recent years, the European Commission has taken action to support national authorities in implementing free movement rules. In 2014, it published a handbook to help national authorities to fight abuse of free movement rights, particularly marriages of convenience. Other priorities have been helping authorities apply the rules of social security coordination and meet social inclusion challenges as well as improving the implementation of free movement rules at the local level, e.g. by fostering the exchange of best practices. European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Free Movement of EU citizens and their families: Five actions to make a difference' (COM [2013] 837 final, 25 November 2013).



i. Concerns over welfare tourism, and the 'restrictive turn'

A great deal of public controversy around free movement centres on the 'welfare magnet' hypothesis, namely that EU citizens (especially the economically inactive) will use their right to move to exploit generous welfare systems in other Member States. This issue has been described as the main source of public mistrust about free movement.⁷²

Anxieties about this issue came to a head when, in 2014, four countries wrote a letter to the European Commission calling for urgent action to address welfare tourism and abuse of the social security system.⁷³ German Chancellor Angela Merkel said that free movement should not become 'de facto immigration into the social security system'.⁷⁴

Concerns about welfare tourism strike at the heart of public fears about migration violating the social contract between governments and their citizens, by creating the perception that there are rewards for the strategic. The concern is that people can game the system by moving between different countries to pick and choose the most favourable combination.⁷⁵ Public reaction to this issue operates almost independently from the issue of costs that such behaviour imposes. For instance, in the UK, one of the main sources of contention has been paying EU nationals for child benefit at local rates even if children live in their countries of origin. Even though most evidence suggests that the overall costs of such a policy are minimal, the perceived unfairness is troubling for many people to grasp.⁷⁶ These concerns were exacerbated by the aftermath of the economic crisis and rising competition for increasingly scarce resources, which has contributed to breeding resentment of those

⁷² Tito Boeri and Herbert Brücker, 'A European mobility assistance scheme', VoxEU, 22 April 2014, <http://voxeu.org/article/european-mobility-assistance-scheme>

⁷³ Letter to the Irish Presidency of the Council of the European Union, addressed to Alan Shatter, Minister for Justice and Equality and President of the European Council for Justice and Home Affairs; from Johanna Mikl-Leitner, Federal Minister of the Interior, Austria; Hans Peter Friedrich, Federal Minister of the Interior, Germany; Fred Teevan, Minister for Immigration, the Netherlands; and Theresa May, Secretary of State for the Home Department.

⁷⁴ Jeevan Vasagar, 'Angela Merkel warns on EU benefit migration', *Financial Times*, 29 January 2014, <https://www.ft.com/content/f6af507e-88e0-11e3-bb5f-00144feab7de?mhq5j=e5>

⁷⁵ Benton, *Reaping the Benefits?*

⁷⁶ For instance, Jonathan Portes observes that from an economic point of view, there is no major problem to EU migrants claiming a higher proportion of tax credits and child tax credits since most analysis suggests that EU migrants have a net positive economic impact overall. However he points out that child benefit was never intended to pay for children living in other countries with lower living costs, and that "'fairness' is a more difficult, and more subjective, question, to which there can be no definitive answer.' Jonathan Portes, 'Migrants, Benefits and the UK's Renegotiation: Questions and Answers', National Institute of Economic and Social Research Blog 9 November 2015, <https://www.niesr.ac.uk/blog/migrants-benefits-and-uks-renegotiation-questions-and-answers-updated>.



perceived to be ‘undeserving’ of social assistance, and to closing systems of solidarity along national lines.

Looking behind the headlines, very little evidence exists for welfare tourism, by any metric. The benefits that individuals accrue by moving to gain access to a different welfare system, compared to the economic incentives of escaping unemployment or improving job opportunities, are marginal.⁷⁷ Several studies have pointed to the low levels of benefits use among EU nationals. A more direct analysis of the ‘welfare magnet’ hypothesis explored the link between benefit spending and immigration flows, and have found no link.⁷⁸ Moreover, the argument that free movement encourages economically inactive people to game the system fundamentally misunderstands the rules, which offer protection against this.⁷⁹ Economically inactive people are at risk of losing their right of residence if they claim social assistance. And recent ECJ rulings have further clarified the limited conditions under which economically inactive residents can claim access to benefits.⁸⁰

This area is still characterised by considerable grey areas. Chief among these is the fact that EU nationals can lose their right to reside (a key legal principle both for immunity against expulsion and claiming further benefits) if they become a burden, but a claim to social assistance cannot by itself be used to determine this, as Member States must assess each

⁷⁷ Benton, *Reaping the Benefits?*

⁷⁸ Corrado Giulietti, et al., ‘Unemployment Benefits and Immigration: Evidence from the EU’ (IZA discussion paper no. 6075, Institute for the Study of Labour, Bonn, October 2011), <http://ftp.iza.org/dp6075.pdf>

⁷⁹ According to the Citizens’ Rights Directive, economically inactive people have the right of residence beyond the first three months only if they have comprehensive sickness and are self-sufficient (defined as not becoming a burden on the social assistance system of their country of residence). European Parliament and Council of the European Union, ‘Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States’.

⁸⁰ In recent years, a number of flagship rulings have recognised states’ rights to deny access to benefits to economically inactive residents who are not self-sufficient or jobseekers not actively seeking work, thus clarifying some grey areas of the Citizens’ Rights Directive and its interaction with the rules of social security coordination. Recent CJEU case law has recognised member states’ right to restrict access to social assistance as well as to certain (especially non-contributory) social benefits—such as jobseeker’s allowance—to EU citizens that are not working nor looking for work and do not satisfy the conditions for lawful residence (i.e. having sufficient resources not to become a financial burden on the social assistance system and having comprehensive sickness insurance). Some of the main rulings symbolizing this shift were: *Brey* (2013), *Dano* (2014), *Alimanovic* (2015), and *Garcia-Nieto* (2016). Landmark ECJ rulings like *Brey*, *Dano*, and *Alimanovic* have made it de facto very difficult, if not impossible, for economically inactive (poor) EU migrant citizens to access minimum subsistence benefits during the first five years of residence. See Cecilia Bruzelius, Constantin Reinprecht, Martin Seeleib-Kaiser, ‘Stratified Social Rights Limiting EU Citizenship’, *Journal of Common Market Studies* 55, no. 6 (2017): 1239 – 1253, <http://onlinelibrary.wiley.com/doi/10.1111/jcms.12555/full>. This represented a significant turn away from previous years of the ECJ’s previous more generous approach—also termed ‘social citizenship jurisprudence’—which was critical of national welfare restrictions and held that EU Member States had to show a degree of financial solidarity between their nationals. See Anita Heindlmaier and Michael Blauburger, ‘Enter at your own risk: free movement of EU citizens in practice’, *West European Politics* 40, no. 6 (2017): 1198 – 1217.



case on its own merits. However, the cases (alongside Commission recommendations on areas such as marriages of convenience) appear to have allayed the concerns of Member States.⁸¹

At the same time, however, a trend towards greater closure has also prompted public anxiety about overly restrictive policies and their unintended consequences, especially as they relate to poverty, homelessness and destitution, suggesting the pendulum may have swung too far in the opposite direction. One interviewee described a race to the bottom, where Member States are encouraged to stretch the boundaries of what is made possible for symbolic rather than genuine purposes, for instance by cracking down on rough sleepers.⁸² Similarly, some scholars and civil society organisations have argued that recent changes risk turning EU citizenship into an empty shell devoid of social rights.⁸³ Several homelessness charities are working to raise the profile of the issue of destitute and homeless EU citizens; in a street count in March 2017, for instance, over 1 in 10 homeless people were mobile EU citizens.⁸⁴

A further challenge in the way the public perceptions have shaped the policy landscape is that the problems may in fact lie elsewhere. One much more marginal discussion has been benefits accessed by workers and the way that these distort incentives to move, because in-work benefits increase the relative take-home pay gap between the country of origin and destination. This issue lends itself less to media stereotypes of undeserving immigrants and public scapegoating, but evidence suggests that EU migrants are direct beneficiaries of in-work benefits. For example, a recent study that disaggregated types of benefits use found a higher take up of employment-related benefits, both unemployment and in-work benefits.⁸⁵ This issue did briefly reach political prominence: former UK Prime Minister David Cameron

⁸¹ For instance, one interviewee argued that the discussion about ‘winner and losers’ had ‘expired’, because discussions in the Council no longer addressed welfare abuse issues after the ECJ cases and Commission recommendations. Interview with Council Secretariat official, August 2017.

⁸² Interview with Jean Lambert, MEP.

⁸³ Herwig Verschueren, ‘Free Movement of EU Citizens: Including for the Poor?’ (paper presented at ISLSSL 21st World Congress, Cape Town, 15-18 September 2015), <http://islssl.org/wp-content/uploads/2015/10/Belgium-HerwigVerschueren.pdf>

⁸⁴ Nicole Mondelaers, ‘Dénombrement des personnes sans abri et mal logées en Région de Bruxelles-Capitale’ (7 November 2016 – 6 March 2017), http://www.lastrada.brussels/portail/images/PDF/20171012_Strada_Denomb_Rapport_FR_V7_POUR_BAT.pdf.

⁸⁵ Eurofound. 2015. *Social dimension of intra-EU mobility*.



decided at the last moment to take up the cause of in-work benefits when he sought to strike a deal with the European Commission prior to the UK independence referendum. He had repeatedly cited welfare tourists as the main challenge, but pivoted at the last moment following the work of the think tank, Open Europe on this issue.⁸⁶ He won a concession on this issue, gaining the right to restrict non-contributory in-work benefits for the first four years of residence, but this deal was rendered obsolete by the referendum vote.

After the dust on Brexit has settled, it will be interesting to see whether benefits use and social security coordination rise up the agenda. One interviewee noted that in private meetings countries have begun talking about issues such as bogus marriage and social security fraud once again—as if the floodgates had been opened by Brexit⁸⁷—however the need to present a united front on Brexit negotiations has silenced this discussion (at least for the time being) in formal settings such as the European Council.

Criticism of the distorting effects of in-work benefits are also closely tied to concerns about downward pressure on labour standards, discussed next.

ii. Social dumping, unfair practices and labour standards

Public anxiety about declining labour standards is often subsumed under the header of ‘social dumping’. Social dumping loosely refers to any practice of undercutting local workers, however it is used in a variety of ways in European public discourse to mean everything from downward pressure on wages to the practice of evading regulations (such as minimum wage legislation) to gain a competitive advantage.⁸⁸ These negative effects are mostly associated with posting of workers or with undeclared labour.⁸⁹ Particularly after the

⁸⁶ Open Europe, ‘New Open Europe briefing: EU migration - How David Cameron can get back on the front foot at home and in Europe without ending free movement’ (press release, 24 November 2014), <http://archive.openeurope.org.uk/Article?id=22825>.

⁸⁷ Interview with national government official, June 2016.

⁸⁸ See Eurofound, EurWORK, ‘Social dumping’, 30 October 2017, <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/social-dumping-0>. For an overview of these definitions, see European Parliament, ‘Understanding social dumping in the European Union’ (briefing PE 599.353, European Parliament, March 2017), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599353/EPRS_BRI\(2017\)599353_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599353/EPRS_BRI(2017)599353_EN.pdf).

⁸⁹ This is also the main meaning that the European Commission attaches to the term ‘social dumping’. On 14 August 2015, Marianne Thyssen, European Commissioner for Employment, Social Affairs, Skills and Labour Mobility, stated in an answer to a written question from the European Parliament on definitions: ‘There is no definition of the concept of “social dumping” in EC law. The term is generally used to point to unfair competition due to the application of different wages and



Eastern enlargement, posting was linked to political discourses about unfair competition among employers based on lower labour costs, crowding out local workers in labour-intensive sectors, abusive and exploitative practices (e.g. bogus self-employment), and social dumping.⁹⁰

Despite widespread adoption of the term, evidence for social dumping is patchy. At a macro level, the impact of free movement on wages has been close to zero.⁹¹ But the practice of posting workers (although a small group) has been linked to violation of labour standards.⁹² These exploitative practices are one of the reasons why some see the EU single market as damaging the ‘social compact’ within individual Member States, by hurting organised labour and ordinary workers.⁹³ Although posting is a small-scale phenomenon (at least compared to intra-EU mobility as a whole), it disproportionately affects certain sectors, countries and regions—raising the stakes unions and other actors to take on this cause.⁹⁴

The rules governing posting of workers are characterised by numerous grey areas and pockets of complexity, which provides leeway for ‘creative’ practices to thrive. For instance, one practice that has attracted attention is ‘post boxing’: renting an address in a country with less stringent labour standards (for instance without wage minimums for particular sectors) so that a company can formally be registered there, to evade paying social security and taxes in the country where the work is being carried out.⁹⁵ Although recent reforms

social protection rules to different categories of workers’. European Parliament, Understanding social dumping in the European Union.

⁹⁰ DG Internal Policies of the Union, ‘Posting of Workers Directive – current situation and challenges’ (PE 579.001, IP/A/EMPL/2016-07, June 2016),

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579001/IPOL_STU\(2016\)579001_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579001/IPOL_STU(2016)579001_EN.pdf).

⁹¹ Ritzen, et al., EU Mobility.

⁹² A posted worker is ‘a person who, for a limited period of time, carries out his or her work in the territory of an EU member state other than the state in which he or she normally works’ (Council Directive 96/71/EC). The Posting of Workers Directive establishes a core set of rights, including on maximum work periods and minimum rest periods; minimum paid annual holidays; minimum rates of pay; health and safety at work; and conditions on hiring workers through temporary agencies. Unlike other workers, they remain attached to the social security system in their home country.

⁹³ Jo Shaw. 2015. , ‘Between Law and Political Truth? Member State Preferences, EU Free Movement Rules and National Immigration Law’, *Cambridge Yearbook of European Legal Studies* 17 (2015): 247-286.

⁹⁴ As a study by the European Policy Centre has evidenced, the most affected economic sectors include construction (42 per cent of total postings happen in this sector), manufacturing (21.8 per cent all of postings), service activities such as health, education, and social work (13.5 per cent) and business services (10.3 per cent), followed by transport, communication and agriculture. Roughly 50 per cent of all posted workers are hosted by Germany, France, and Belgium, while Poland is the main sending country. Claire Dhéret and Andreia Ghimis. 2016., ‘The revision of the Posted Workers Directive: towards a sufficient policy adjustment?’ (discussion paper, European Policy Centre, 20 April 2016), http://www.epc.eu/documents/uploads/pub_6475_revision_of_the_posted_workers_directive.pdf.

⁹⁵ An interviewee from the European Trade Union Confederation (ETUC) referred to the system of posting of workers as a ‘supermarket’ for some bad employers, in which they can pick between different categories of workers with different



(including some proposals in the legislative pipeline – see Box 1) seek to close some of these gaps, they may not be able to remove incentives to game the system for certain employers given these economic disparities. The system was built two decades ago for a group of countries whose wage levels and welfare systems were very similar, raising questions about whether it is compatible with a mobility system of dozens of countries with widely divergent wages and labour standards.

The issue of posting of workers pits not only social partners against each other, but governments as well. Eastern European Member States, who are the biggest senders of posted workers, accuse receiving Member States of selective protectionism. A fight over this issue erupted in 2016-2017 (see Box 1).

Box 1: Posted workers – A microcosm of misaligned incentives across Member States

In March 2016, the European Commission presented a proposal to revise the rules on posting of workers. The proposed changes would require employers to pay the ‘same pay for the same work in the same place’—for instance wages governed by collective bargaining agreements, instead of only national minimum wages. This change responds to concerns about fair wage conditions and fair competition. Moreover, the proposal would bring about greater transparency in situations of subcontracting and temporary working, to prevent these practices from being used by employers as a backdoor to lower wages. The proposal also prescribes that after 24 months the labour law of the host member state would apply in full, reducing the possibility of long-term posting.

The proposal is still in the legislative pipeline. Progress was stalled by criticism from several Member States, including Eastern European countries which argued that the principle of equal pay would reduce the competitive advantage of companies operating out of these countries. Some business groups called the proposal ‘an attack on the single market’, calling on the Commission to focus on fighting illegal practices (such as bogus self-employment and undeclared work) rather than on restricting the rules for legal posting.⁹⁶

On the other side of the debate, French President Emmanuel Macron has made posting a priority (and indeed sought to further tighten the Commission’s proposals), citing his desire to protect local workers from unfair competition and social dumping. France is the second largest receiver of posted workers in the EU (after Germany).⁹⁷

status to keep costs as low as possible, using tricks such as letterbox companies to hire national workers as posted workers (Interview with ETUC advisor, June 2017).

⁹⁶ Labour Mobility Initiative, ‘Business Europe: Commission proposal is an attack on the Single Market’, 30 May 2016, <https://www.mobilelabour.eu/11052/businessseurope-commission-proposal-is-an-attack-on-the-single-market/>

⁹⁷ 2015 data showed that France hosted 11.9 per cent of all posted workers in the European Union (177,674). This makes the country the second receiver after Germany, which in 2015 hosted 418,908 posted workers, amounting to 28.0 per cent



On 16 October 2017, the European Parliament agreed on a common position, with its employment committee agreeing to anchor the principle of ‘equal pay for equal work’ in its revised rules on posting of workers.⁹⁸ At the time of writing, an agreement between the Council and the European Parliament seemed within reach before the end of 2017, despite ongoing disagreements in areas such as the duration of long-term posting and the treatment of the transport sector.⁹⁹ It seems likely that the new agreement will extend the legal basis of the Posting of Workers Directive, from a sole focus on freedom of services to social legislation as well. The implications of beginning to see posted workers as mobile workers and citizens, not just mobile service providers, are significant as it would move the framework of posting of workers closer to the free movement of people.

Although posting is a relatively marginal phenomenon, it creates perverse incentives for unscrupulous employers to seek to circumvent the rules, which undermines the integrity of the system. Although the rules are being tightened, stronger enforcement needs to be another piece of the puzzle.¹⁰⁰ In the *State of the Union 2017, Roadmap for a More United, Stronger and More Democratic Union*, the President of the European Commission Jean-Claude Juncker proposed to establish a European Labour Authority in 2018. The task of this authority would be to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations, as well as further initiatives in support of fair mobility.¹⁰¹ However, one commentator argued that this was a rushed proposal that takes no account of the fact that coordination between labour inspectorates has been

of all posted workers in the EU. In both countries, the main sector of employment of posted workers is construction by quite some distance (39.6 per cent in France, 44.5 per cent in Germany), and the main country of origin of posted workers is Poland. European Commission, Posted Workers: Germany (Country factsheets, European Commission, Brussels, 2015), [http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=10&&langId=en&mode=advancedSubmit&advSearchKey=Post Work](http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=10&&langId=en&mode=advancedSubmit&advSearchKey=Post+Work); European Commission, Posted Workers: France (Country factsheets, European Commission, Brussels, 2015), [http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=0&&langId=en&mode=advancedSubmit&advSearchKey=Post Work](http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=0&&langId=en&mode=advancedSubmit&advSearchKey=Post+Work).

⁹⁸ Socialists & Democrats in the European Parliament, ‘Posting of workers: S&Ds to make equal pay for equal work at the same place a reality’ (press release, 16 October 2017), <http://pr.euractiv.com/pr/posting-workers-sds-make-equal-pay-equal-work-same-place-reality-159541>.

⁹⁹ Following the European Commission’s proposal, the status of posted workers and all related rules will apply for a maximum duration of 24 months. After this period, a worker would fall under national labour legislation. French president Macron repeatedly insisted that this maximum duration be limited to one year. Another major point of disagreement is whether truck drivers should be considered posted workers or not, and therefore be granted a higher remuneration if they are in a Member State with a higher pay rate. The Commission proposal introduces a deadline of three days, after which the labour laws and pay standards of the host country should be applied to the truck driver. France, Germany, and Austria are in favour, while Spain, Portugal, and Poland, whose transport sector is active across Europe, argue for an exemption of the sector from the new directive. Eric Maurice, ‘Member states eye agreement on posted workers’, EU Observer, 18 October 2017, <https://euobserver.com/social/139502>.

¹⁰⁰ Interview with ECAS director, March 2017; interview with ETUC advisor, June 2017; interview with Council Secretariat official, August 2017.

¹⁰¹ President Jean-Claude Juncker’s State of the Union Address 2017, Brussels, 13 September 2017, http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm.



entirely lacking until now.¹⁰² And of course, addressing the challenge of coordination will have limited effect if the systems for national enforcement are themselves lacking.

iii. Integration and social cohesion

The large influx of asylum seekers, refugees, and other migrants in the last few years has amplified public anxieties about immigration. Different types of migration (namely intra-EU mobility and mixed flows of non-EU nationals, including asylum seekers) are often thrown together in media and political rhetoric.

These trends occurred against the backdrop of existing integration challenges. Integration was historically an afterthought for EU nationals, with most policies designed exclusively for third-country nationals. Indeed the EU has rejected describing EU nationals as ‘migrants’, and routinely failed to acknowledge that they might have integration needs. But EU nationals often have similar integration needs, ranging from barriers to entering work or moving upwards in their occupations from navigating local services and understanding how basic systems work.¹⁰³

As a result, EU citizens may face more limited employment opportunities or find it harder to move upwards in their occupations.¹⁰⁴ EU mobility has been associated with considerable brain waste (underemployment), which may have positive initial benefits (at least for employers in receiving countries) but is ultimately highly costly for the continent as a whole, especially in light of rising labour and skills shortages. Moreover, for sending countries the hope is that their mobile nationals will send home remittances and/or ultimately return home and bring with them skills and experience acquired abroad or invest and set up businesses. If educated workers are routinely working in low-skilled jobs, especially those in

¹⁰² Miroslav Beblavý, ‘Is Juncker’s enthusiasm for a common labour authority premature?’ (Commentary, Centre for European Policy Studies, Brussels, 18 September 2017), <https://www.ceps.eu/publications/junckers-enthusiasm-common-labour-authority-premature>.

¹⁰³ For instance, a 2014 study by IPPR found that poor understanding among newcomers about how waste collection and recycling worked was a major factor behind people being resentful of their neighbours; and that more newly arrived EU migrants (rather than longer-standing migrant populations) were more likely to attract such criticism. Alice Sachrajda and Phoebe Griffith, *Shared Ground: Strategies for Living Well Together in an Era of High Immigration* (London: Institute for Public Policy Research, 2014), <http://www.ippr.org/read/shared-ground-strategies-for-living-well-together-in-an-era-of-high-immigration>.

¹⁰⁴ A 2015 Eurofound report listed the difficulty of accessing language courses (which are often free for third-country nationals, but not for EU citizens) as one factor weakening the status of free movers from EU10 countries in other member states. Eurofound, *Social dimension of intra-EU Mobility*.



sectors that are heavily dominated by nationalities (where they lack even the opportunity to learn a new language) they may return home without having significantly advanced their careers or acquired new skills.

Political interest in the integration of EU nationals escalated following the economic crisis, in part because of cuts to integration spending. The Dutch government investigated the possibility of introducing civic integration classes for newly arrived EU migrants, however it discovered that this would be incompatible with EU law (and specifically the principle of non-discrimination) so it let the issue drop. In countries which have universal free language classes, such as Sweden, there is less of a disparity in the services on offer to third-country nationals and EU nationals. As such, the principle of non-discrimination can be seen as a 'double-edged sword': it has prevented authorities from seeing the needs of EU nationals for fear of violating this principle.

As described above, investments in integration are especially important in cities and localities with a high concentration of migrants. In many member states, however, investments in integration were reduced as a consequence of the economic crisis.¹⁰⁵

B. Five underlying tensions in the free movement framework and how to resolve them

The anxieties mentioned reveal some fundamental tensions and tradeoffs in the policy framework of free movement. This section explores the potential for resolving these tensions.

i. Economic vs. political objectives

As described in section 2.A, the original rationale for free movement was largely economic, but over the years it has become a symbol of the European Union as a political entity. The introduction of EU citizenship with the Treaty of Maastricht, which extends free movement as a fundamental right to all nationals of an EU Member State regardless of their economic status, epitomised this shift.¹⁰⁶ Free movement therefore cannot be captured through an

¹⁰⁵ Elizabeth Collett, *The Integration Needs of Mobile EU Citizens: Impediments and Opportunities*.

¹⁰⁶ Maas, 'The Origins, Evolution, and Political Objectives of EU Citizenship'.

economic cost-benefit analysis. It seeks to create a political community, and substantiate the notion of EU citizenship.

There are therefore two competing logics at work. Whether free movement is considered a success or not depends on which frame through which it is evaluated. In relation to the political dimension, support for and understanding of EU citizenship has improved over the years, as a 2015 Flash Eurobarometer on European Citizenship showed.¹⁰⁷ Today, two-thirds of Europeans feel they are citizens of the EU, and the ratio is even higher among younger respondents.¹⁰⁸ However, some national governments find the political dimension of free movement as a fundamental right hard to accept, since it questions the primary of the national political community. Some have argued that making free movement into a right changed the relationship between individual citizens and Member States, by giving citizens the right to resort to courts to enforce their rights against their governments.¹⁰⁹

Meanwhile, the economic rationale has been tested in recent years by two separate sources. The system of free movement was built on the premise of economic convergence, the hopes for which have been cooled by events of recent years. While the evidence on free movement is broadly positive, its effects have been mostly marginal rather than creating wholesale change in raising living standards of countries of origin. At the same time, economic arguments have come under attack from another source: the trust of the public. The past few years have seen populist parties increase their share of the vote through a platform of anti-elitism, while one of the defining features of the 'Leave' campaign in the Brexit referendum was to reject the arguments of economists and experts.¹¹⁰ In a context where people trust their felt experience in local communities rather than macroeconomic studies, the appeal to the political rather than economic virtues of free movement may in fact be more powerful.

¹⁰⁷ European Commission, 'Flash Eurobarometer 430 – March 2016 "European Union citizenship"' (March 2016), http://ec.europa.eu/justice/citizen/document/files/2016-flash-eurobarometer-430-citizenship_en.pdf.

¹⁰⁸ European Commission, *2017 EU Citizenship Report: Strengthening Citizens' Rights in a Union of Democratic Change* (Brussels: European Commission, 2017), http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51132.

¹⁰⁹ Maas, 'The Origins, Evolution, and Political Objectives of EU Citizenship'.

¹¹⁰ Henry Mance, 'Britain has had enough of experts, says Gove', *Financial Times*, 3 June 2016, <https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c>



Looking ahead, this tension between economic and political rationale may create difficulties for European institutions and Member States alike. The EU institutions are faced with the choice between promoting the idea of free movement as EU citizenship and confronting with pushback from Member States, who see this as an affront to sovereignty, or promoting the economic benefits of free movement, a case which seems to have little resonance with broader publics. This tension could also manifest itself in difficult policy questions. For instance, EU institutions are faced with the question of whether to further restrict the rights of economically inactive mobile EU citizens, which would further erode the right to free movement, but which could have some minimal positive economic effects. Meanwhile, Member States grappling with the rise of populist parties and high levels of Euroscepticism, such as France and the Netherlands, may face the choice between repeating accurate but staid economic arguments or constructing a more compelling political vision of EU membership and free movement.

The European Commission has committed to undertake activities to strengthen EU citizenship, but whether these initiatives will be successful remains to be seen. The future of free movement as something more than a pillar of the single market, but rather as a fundamental right of European citizens, will depend on the credibility and sustainability of this belief in the European Union as a political community.

ii. Protection vs. mobility

A further tension concerns the dual aims of reducing barriers to labour mobility and protecting the vulnerable. Several countries, including the Netherlands and the United Kingdom, have sought to use welfare policy to regulate migration flows in recent years, for instance by cutting off benefits to encourage destitute migrants to 'self deport'. Similarly, Belgium has dramatically increased its returns of (largely economically inactive) EU nationals in response to welfare use concerns.¹¹¹

¹¹¹ As a recent report put it, 'controlling EU migrants' access to welfare has become a new way for states to filter undesirable migrants.' Jean-Michel Lafleur and Mikolaj Stanek, 'Lessons from the South-North Migration of EU Citizens in Times of Crisis' in *South-North Migration of EU Citizens in Times*, Jean-Michel Lafleur, Mikolaj Stanek, eds., (Basel: Springer International Publishing, 2017), 221, https://link.springer.com/content/pdf/10.1007%2F978-3-319-39763-4_12.pdf p221



For economically inactive people and jobseekers, restrictive welfare policies can leave them exposed to poverty and destitution if they decide to move.¹¹² Several scholars have drawn attention to the inherent contradiction in making freedom of movement a right without ensuring that disadvantaged groups can make use of it.¹¹³ At the extreme, such an approach may create an underclass of mobile EU citizens whose residence is tolerated but who are denied equal treatment with respect to social benefits.¹¹⁴ Making it harder for vulnerable people to access a social safety net can also cause unintended consequences which affect broader communities, such as an increase in homeless and destitute people (including those who can no longer afford to go home). This creates the risk that overly restrictive policies, designed to allay public concerns about welfare tourism, can backfire by making the challenges of vulnerable EU migrants more visible.

On the other hand, protecting vulnerable people and creating more expansive welfare policies to encourage more people to move could create distorted incentives to move to countries with higher levels of social assistance, even in the absence of economic opportunities. This, in turn, could exacerbate unemployment and economic pressures in countries in southern or eastern Europe.

The literature on non-EU migration predicts such a conflict between relatively open welfare systems and free movement, raising the question of whether restrictive welfare policies (and the unintended consequences that these may cause) are a necessary feature of free mobility areas—at least to a degree. For instance, a number of scholars have pointed to the potential tradeoff that countries may face between making their borders more open and making their welfare systems more open.¹¹⁵ Moreover, an empirical analysis of the

¹¹² Heindlmaier and Blauburger, 'Enter at your own risk'.

¹¹³ For instance, one expert argues that depriving economically inactive people of the right to free movement (because they are required to have sufficient resources and not become an unreasonable burden on their country of residence's welfare system) contradicts the idea of free movement as a 'right'. Verschueren, 'Free Movement of EU Citizens. Another scholar argues that the European social has a contradiction at its heart between the closed, cohesive community that forms the basis for the welfare state, and a project of European integration built on 'weakening or tearing apart those spatial demarcations and closure practices that nation-states have historically built around (and often within) themselves. Maurizio Ferrera. 2009. , 'The JCMS Annual Lecture: National Welfare States and European Integration: In Search of a "Virtuous Nesting', *Journal of Common Market Studies* 47, no. 2 (2009), 220, https://www.researchgate.net/publication/23961174_The_JCMS_Annual_Lecture_National_Welfare_States_and_European_Integration_In_Search_of_a_%27Virtuous_Nesting%27.

¹¹⁴ Heindlmaier and Blauburger, 'Enter at your own risk'.

¹¹⁵ Daniel A. Bell, 'Justice for Migrant Workers? The Case of Migrant Domestic Workers in East Asia', in *Beyond Liberal Democracy: Political Thinking in an East Asian Context* (Princeton, NJ: Princeton University Press, 2006); Ryan Pevnick,



relationship between openness of labour migration programmes in 46 countries and the civil, political, economic, residence, and family rights accorded to migrants found that the greater the openness, the more limited the package of rights accorded.¹¹⁶ However, the exact nature of this purported tradeoff (and indeed whether it is a tradeoff) is an open question, since there are a number of counter examples to this trend. And there is a danger that the narrative of a tradeoff (i.e. situation where policymakers face a choice between one good or another) may legitimise kneejerk and protectionist welfare policies.¹¹⁷

Nonetheless, the EU institutions may ultimately face the choice between protecting free movement even at the cost of some mobile EU nationals being left without access to vital benefits and services, or contemplating proposals the EU sees as unpalatable such as an ‘emergency brake’ (ceiling on numbers) in order to preserve full protection for movers.

iii. Mobile vs. non-mobile populations

European institutions have historically regarded mobile Europeans as critical to the European project. By becoming agents of mobility, the expectation is that this population can temper nationalism and strengthen the feeling of a European identity and sense of belonging.¹¹⁸

This focus, however, can create a gulf between mobile EU citizens and those who decide not to seize the opportunity to move, be it for a (perceived or real) lack of resources such as education, language ability, information, and skills, or simply because they feel tied to their family, community, and country. The latter are the large majority of the European population, and their perspective is crucial when it comes to perceptions, discourses, and policies around free movement. For example, while younger generations tend to perceive the benefits of free movement in terms of opportunities for learning and working, older generations may see mobility as devaluing their skills and lifestyles. The Brexit vote

¹¹⁶ 'Social Trust and the Ethics of Immigration Policy', *Journal of Political Philosophy*, 17, no 2 (2009): 146-67. **Martin Ruhs**, *The Price of Rights: Regulating International Labor Migration* Princeton (NJ: Princeton University Press, 2013).

¹¹⁷ Ruhs, *The Price of Rights*.

¹¹⁸ Meghan Benton, 'The Price of Rights: Regulating International Labor Migration', *European Journal of Development Research* 26, no. 5 (2014): 933-935, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2535328.

¹¹⁸ Jeffrey T Checkel and Peter J Katzenstein, *European Identity* (Cambridge: Cambridge University Press, 2009), 167-89.



indicated that support for the European project is split along age lines (with authoritarian personality traits also playing a large role).¹¹⁹

European institutions must walk a fine line between presenting mobility as a tool of economic growth and a pre-eminent political and cultural integration without denigrating those who choose not to move. There is a risk that free movement is presented as the solution to all ills—at the expense of investing in people who are unable or unwilling to move. This expectation of having to be mobile can ultimately feed resentment among those who do not want to move.¹²⁰

Moreover, this tension may manifest itself in policy choices between providing support for would-be movers and creating opportunities for those who wish to stay in their home regions. This is especially the case among regions facing population and economic decline, which may feel far from the cities and economic centres capturing the greatest innovation and economic growth. The pre-eminence of free movement in the European project raises questions about whether people should have the right to stay in their countries—or even regions or localities, of origin—or whether it is a reasonable expectation that they should move to where the opportunities are. It is not realistic for everyone to move away from their home countries to take advantage of opportunities elsewhere, so free mobility may carry with it the risk that deprived regions slide into a vicious circle of depopulation and economic decline.

There is thus a potential tradeoff between enabling people to move and improving opportunities for those who choose not to. The EU institutions must therefore situate free movement policy in the context of broader cohesion and regional economic development actions. At the same time, European policymakers could also support actions to ensure that mobility brings benefits for countries and regions of origin, for instance by ensuring that there is support for returning mobile EU nationals to set up businesses, put their skills acquired abroad to good use, and/or invest money earned abroad.

¹¹⁹ Socioeconomic background and region played a less significant role than is often thought. See Erik Kaufmann, 'Trump and Brexit: Why It's Again Not the Economy, Stupid', LSE Blogs November 9th 2016, <http://blogs.lse.ac.uk/politicsandpolicy/trump-and-brex-it-why-its-again-not-the-economy-stupid/>.

¹²⁰ Rainer Bauböck, 'There's more to European citizenship than free movement', Euractiv, 19 May 2017, <https://www.euractiv.com/section/uk-europe/opinion/theres-more-to-european-citizenship-beyond-free-movement/>.



iv. Universal citizens vs. migrants with specific needs

Intra-EU mobility has not historically been treated as migration. On one hand, mobile EU citizens are presented almost as nationals—a status which is protected by the principle of equal treatment. In official language, EU institutions carefully avoid the term ‘migrant’ and ‘migration’ when it comes to intra-EU mobility. However, this approach risks negating the importance of supporting their integration into the host country and it downplays the barriers—linguistic, cultural, informational, and bureaucratic—they face as non-nationals. On the other hand, national authorities and the media often present free movers as migrants: a portrayal that resonates with large parts of non-mobile populations while calling into question the reasons for free movers’ special treatment.

One particular instance of this challenge is that the issue of integration and language courses has been largely ignored because setting requirements and obligations may be perceived as restricting free movement rights. The principle of equal treatment can thus operate as a double-edged sword,: mobile EU nationals may share many integration needs with third-country nationals yet cannot be the subject of targeted policies.¹²¹ In many cases, EU citizens have similar language requirements to third-country nationals, but may face greater barriers to accessing low cost provision, for instance because they are less likely to be eligible for public subsidies.¹²² In Austria, for example, third-country nationals can access language training at reduced cost or for free, while EU mobile citizens have to pay, which for those on low incomes may find difficult to afford. Similarly, in the Netherlands and the UK, budget cuts in recent years have led to a scarcity of publicly subsidised language courses, affecting foreigners in low-paid jobs, including many EU citizens.¹²³ The bureaucratic requirements of EU funding rules (which restrict European Social Fund programmes to EU nationals and Asylum, Migration and Integration Fund programmes to third-country

¹²¹ Interview with Jean-Michel Lafleur, October 2017.

¹²² In several EU Member States, austerity measures have led to budget cuts in the area of language learning support. In some countries, language support is subsidised for third country nationals, while this is not the case of EU citizens. A 2015 Eurofound report listed the difficulty of accessing language courses (which are often free for third-country nationals, but not for EU citizens) as one factor weakening the status of free movers from EU10 countries in other member states. The lack of skills in the language of the host country hinders mobile EU citizens from navigating the host country’s rules and procedures and from accessing public services. Eurofound, *Social dimension of intra-EU Mobility*.

¹²³ Ibid.



nationals) can exacerbate this problem further, since civil society organisations and other providers are restricted in who they can serve.¹²⁴

Addressing the integration needs of EU citizens who move on a temporary basis is not easy. While most Member States have well-developed systems for *permanent* integration, few have thought through how to encourage *temporary* members to thrive in a way that supports community cohesion and labour market integration. However, such questions may become more pressing in light of the migration crisis, where many countries are increasing the proportion of refugees to whom they grant temporary protection.

The EU institutions may therefore face a choice between being more flexible in regard to European funding (allowing certain funds to support mixed populations, for instance) and preserving the bright line between EU and non-EU migration. While acknowledging more definitively the integration needs of EU nationals would be an important step, a more difficult question is whether the principle of equal treatment could be compromised to enable Member States to promote (or even require) integration courses for EU newcomers.

v. Coordination vs. complexity

Finally, in any decisions about further reform, the EU institutions may face a tradeoff between improving how well the system works for all Member States, and maintaining a system which is simple and efficient. For instance, the system of social security coordination is flawed, in part, because it seeks to impose universal rules on 28 different systems based on different principles and terminology.¹²⁵ Beyond imposing harmonisation, which is resisted by Member States (who want to retain their only welfare models built on long-standing traditions and history), the only choice is to make one 'umbrella' system of coordination work for all. But this overarching system must, by definition, be defined broadly, which has created a patchwork system with several grey areas and loopholes. For instance, there is a lack of clarity over which benefits can be reasonably denied to economically inactive movers because of the need to adopt one term that fits with both contributory and non-contributory welfare systems.

¹²⁴ Salant and Benton, *Strengthening Local Education Systems for Newly Arrived Adults and Children*.

¹²⁵ Interview with staff of the Council Secretariat, October 2017.



While tightening up some of these grey areas could improve a perception of fairness among Member States, it could bring even more complexity into the system—at the risk of creating further barriers to mobility or eroding public confidence. This issue has been imbued with renewed urgency following the Brexit vote. Here, concerns about the combination of a flexible labour market with a large low-skilled sector in tandem with a non-contributory welfare system were dismissed as British exceptionalism.¹²⁶

Striking the right balance between finding a common denominator and keeping national peculiarities intact can be an arduous challenge. Finding a balance between very different systems could lead to a highly complex set of rules, or a level of abstraction that is difficult to translate smoothly into national legislation or that makes it possible to apply the letter while disregarding the spirit. Moreover, while reducing opportunities for abuse is an important endeavour, policymakers need to be aware that additional complexity could itself create further grey areas and loopholes. Moreover, any system needs to be understandable, for mobile citizens, for companies, and for authorities involved in managing the framework.

Without complete harmonisation, there will always be space for interpretation and for independent agendas. But there is still room for improvements in monitoring, exchange of information, and enforcement—elements which have historically been underdeveloped.

V. Conclusions

The system of free movement has brought significant benefits for individual EU citizens, Member States, and the continent as a whole. But the last decade of history of free movement has been marked by a set of conflicts and crises that have eroded ‘buy-in’ for the system at the level of Member States and the broader public. For now, free movement is of low concern to countries afflicted by the fallout from the migration crisis and still processing backlogs in asylum applications. Meanwhile, fears among Brussels elites that Europe was facing an existential threat from the spread of populist, anti-Europe parties have been allayed by recent elections in France and the Netherlands.

¹²⁶ Comment by Martin Ruhs at the event “Free Movement of Labour and European Welfare States - Are the two compatible?”, Brussels, 2 May 2017

But this sense of calm and complacency with the project of free movement could easily give way to further crisis. The coming years are likely to bring deeper scrutiny of the holes in the patchwork tent that is the regulatory system of free movement, as high-level negotiations on Brexit (and particularly the issue of citizens' rights) give way to the challenge of implementing an exit deal for the UK. Moreover, if negotiations on an exit deal stall and Member States begin to tear away from the Council and seek to forge their own bilateral deals with the UK, this could galvanise public demand for a fairer assessment of the costs and benefits of various forms of free movement.

The fate of free movement is intrinsically bound up with the fate of Europe as a whole; support for free movement has risen and fallen with Europe's economic successes and woes. Its likely future therefore depends more on policy areas *outside* intra-EU mobility—from migration and security to regional policy—than within it. Nonetheless, a number of weak spots could be addressed to prepare for the next dip in public confidence. The EU institutions have stuck to a line that intra-EU mobility is in everyone's interests, a line that may need to be nuanced in light of emerging evidence that many people left out of the European project. Evidence about macroeconomic impact, even if positive, may not outweigh the feeling of loss of control and escalating social and cultural change that characterises people's felt experience in their communities. The goal of protecting public confidence and restoring trust has been deprioritised by the Commission which sees it as pandering to xenophobia, but making sure that all are brought along requires taking these concerns seriously. Going forward, it will be important to reclaim the middle ground and make sure free movement of the future is in everyone's interests.

It is also important that free movement is situated in broader thinking about migration. Many of the localities that are facing the greatest pressure from migration from outside the EU are also major hubs for newly arrived EU migrants; this pressure to support newcomers, whatever their backgrounds, coupled with difficulties planning public service provision, can create significant bottlenecks and pressures for local services. Meanwhile, many of the lessons from the integration of third-country nationals could be applied to EU nationals, and vice versa.



Finally, there is a distinct need for symbolic and public engagement policies that extend beyond the traditional free movement framework. Brexit has shown that it is not just about small technical adjustments to the framework, but about emotional and symbolic value. This is what underpins a community, and this is what is missing in the European project.



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REMINDER

ROLE OF EUROPEAN MOBILITY AND ITS IMPACTS
IN NARRATIVES, DEBATES AND EU REFORMS

The REMINDER project is exploring the economic, social, institutional and policy factors that have shaped the impacts of free movement in the EU and public debates about it.

The project is coordinated from COMPAS and includes participation from 14 consortium partners in 9 countries across Europe



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