



Session 4 FREE MOVEMENT OF PEOPLE in the EU internal market

Free movement of goods is all very well....
But what about ...people?

Who can move freely and for what purpose?
And what rights do they have?

And so we move to the....

eye of the storm...
with
headlines galore in UK media

about immigrants from other EU member states.

But are they immigrants?
or European citizens exercising the freedom of
movement?

But since we are lucky enough..

- Not to have to fight an election....
- Let us examine EU law & policy on the free movement of people and consider its implications with a focus on the UK

But since we So, what does the Treaty say about the free movement of people?lucky enough..

- Preamble DETERMINED to lay the foundations of an ever closer union among the peoples of Europe.
- The internal market shall comprise an area without internal frontiers in which the free movement of goods, **persons**, services and capital is ensured in accordance with the provisions of the Treaties (Art.26 TFEU).

- TITLE IV

FREE MOVEMENT OF **PERSONS**, SERVICES AND CAPITAL

CHAPTER 1

WORKERS

Article 45

Free movement of workers

- Fundamental principle of the European Union Treaty since 1957.
- We will now look at the exact wording in the Treaty and then analyse it in detail.

Article 45 TFEU WORKERS

Freedom of movement for workers shall be secured within the Union.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.
4. The provisions of this article shall not apply to employment in the public service.

Now, let's take it apart!

free movement of workers what rights? what restrictions?

Treaty articles, secondary legislation & case-law

- Non-discrimination
- Direct effect
- Who is a worker?
- Reverse discrimination
- Work-seeker
- Workers' family
- Exercise of workers' rights
- Loss of status of worker
- Public Service exception
- Social and taxes advantages
- Implementing secondary legislation
- New Directive 2004/38/EC
- Critique

What is free movement about?

1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

Example

- Clean Car an Austrian company established in Vienna, appointed as manager a German resident in Berlin who was in the process of relocating in Austria. Clean-car applied to the Austrian authorities to register their business.

Austrian law requires legal persons to appoint as managers persons residing in Austria.

Q. Can you see any problem here?

See notespage.

Who is a worker in the context of Union free movement?

- There is no definition in the Treaty or in any other legislation.
- Definition has been determined by the ECJ.
- Not by member states
- Art. 45 TFEU simply says :
 - “...workers of member states”
 - member state nationality is necessary.
 - Moving to another country to work is necessary.

Who is a worker in the context of Union free movement?

Lawrie Blum Case 66/85 Classic Definition.

- Deborah Lawrie-Blum was a trainee teacher in a West German school. She was denied admission to a preparatory service at a teachers' training college.
- The German Court held a trainee teacher was not a worker.
- The Court of Justice ruled

OBJECTIVELY DEFINED , A ' WORKER ' IS A PERSON WHO IS OBLIGED TO PROVIDE SERVICES TO ANOTHER IN RETURN FOR MONETARY REWARD AND WHO IS SUBJECT TO THE DIRECTION OR CONTROL OF THE OTHER PERSON AS REGARDS THE WAY IN WHICH THE WORK IS DONE .

Who is a worker? Consider this case.

- Mrs Levin, a British national, moved to the Netherlands with her husband, a non-EU citizen.
- Mrs Levin was earning a sum which was below what is considered in the Netherlands a minimum required for two people to support themselves.
- Mrs Levin applied for a residence permit.
- The Dutch authorities refused to issue it.

Q. Do you think Mrs Levin is a worker under EU law?

See the definition in the previous slide.

See extract from the Court's preliminary ruling in notepage.

And some more examples of who is a worker under EU law.

- **Hoekstra**: intention of person irrelevant;
A person is a worker even if part-time employment is undertaken in order to benefit from EU rights.
- **Kempf**: claiming social security benefits to supplement earnings is irrelevant.
- **Steymann**: working for a religious community and receiving payment in kind.
- **Raulin**: person on 'on call' contract for 8 months but had only actually worked 60 hours.
Brevity of employment irrelevant.

Who is not a EU worker?

- Bettray case: in paid work as part of a drug detoxication therapy programme.

Not a worker, if work is ancillary to therapy, rehabilitation and re-integration in society,

Now consider the two situations: what is the difference?

1. Mrs M and Mrs J, Dutch nationals, seek to bring to the Netherlands their parents, Surinamese nationals, who are dependent on them. Mrs M and Mrs J have never worked outside the Netherlands.
2. Mrs A and Mrs B, German nationals, working in the Netherlands, seek to bring to the Netherlands their parents, Surinamese nationals, who are dependent on them

Who can bring their parents into the Netherlands?

Mrs M and Mrs J

- have never worked outside the Netherlands.
- They are not EU workers.
- They cannot bring their parents into the Netherlands, as members of their family, under EU law.

Mrs A and Mrs B

- work in another member state than their own.
- They are EU workers.
- They can bring their parents into the Netherlands, as members of their family, under EU law.

Reverse discrimination

- The previous example illustrates that Free movement of workers requires **movement of a worker between member states**.
- If no movement, then purely national situation. Union law does not apply.
- A national worker may not rely on Art.45 TFEU vis-à-vis his / her own state.

As a result a national worker may enjoy less rights than a Union worker.

Work-seekers entitled to limited right of entry in order to seek work

Literal interpretation of Art. 45 TFEU does not include them.

In 1975 in the **Royer** case the European Court granted the right of entry and residence to nationals of member states for the purpose of seeking work, pursuing self-employment or re-join family.

Member states must grant a reasonable length of time to seek work.

UK 6 months deemed reasonable;
Belgium 3 months which can be extended

So, once a Union worker, one has

- 2) Such freedom of movement shall entail the **abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment**

So, once a Union worker, one has

the right, subject to limitations justified on grounds of public policy, public security or public health:

- (a) to accept offers of employment actually made;
- (b) to move freely within the territory of Member States for this purpose;
- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
- (d) to remain in the territory of a Member State after having been employed in that State.

Worker's family: 4 categories

- **Right** to install themselves with worker. **Irrespective of nationality**
- spouse
- and descendants under 21 or who are dependants
- Dependent relatives in the ascending line of worker and spouse.
- Member states to **facilitate** entry of other relatives dependent on worker or living under same roof in country of origin.

Equal access to employment, housing, education and social rights

- Very wide range of directly enforceable rights.
- No quota of nationals allowed in jobs
- Experience in another member state must be taken into account.

Examples

- The widow of an Italian worker in France was entitled to fare reduction for large families.
- An Italian working in France entitled to disability allowance for adult son.

Social security rules

Article 48 TFEU (full text in notepage)

-measures of social security as are necessary to provide freedom of movement for workers;
.....to secure for employed and self-employed migrant workers and their dependants:
- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

Rights in detail

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 Reflects ECJ sweeping statement that

‘ Union citizenship is destined to be the fundamental status of nationals of member states. ‘

(case C-184/99 Rudy Grzelczyk)

Can a member-state limit free movement of workers?

Yes, member-states can

- Reserve employment in the public sector to nationals.
But what is public sector in an age of privatisation?
See notespage for details.
- Impose limitations justified on grounds of public policy, public security or public health.

To be examined in detail in further sessions.

Critique (I. Ward)

- the free movement of persons or of some persons?
- Is the case-law incoherent and discriminatory?
- Too narrow a focus on the economic characteristics of a person?
- Free movement : a rhetorical illusion?

And what is the impact on UK politics?

It's an election year, stupid!

For seminar next week

- **reflect on the EU rules we examined so far**
- read selectively from materials in the next slides
 - and aim to come to an assessment of the rules and the arguments.

To what extent is immigration a real challenge or a



UK statistics and Home Office report what story do they tell?

- Office for National Statistics
- <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/index.html>
- <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/august-2014/index.html>
- <http://www.bbc.co.uk/news/uk-politics-28368567>
- A report on UK immigration has caused a row within government because Tory ministers believed it was too pro-European, sources have told Newsnight.
- The leaked Home Office report draws together evidence from 67 businesses, think tanks, unions and experts.
- It concludes the influx of EU migrants has had a largely positive effect, and cites evidence suggesting they are less likely to use benefits than Britons.

- **What are David Cameron's options on EU immigration?**

<http://www.openeuropeblog.blogspot.co.uk/2014/10/what-are-david-camerons-options-on-eu.html>

And elsewhere :

- **German 'crackdown' on EU citizens' access to benefits: what does it involve?**

<http://www.openeuropeblog.blogspot.co.uk/2014/08/german-government-set-to-implement.html>

- **Belgium to expel 2,712 EU citizens**

31.1.2014 By EUOBSERVER <http://euobserver.com/tickers/122940>

Belgian authorities sent expulsion letters to 2,712 EU citizens for being an unreasonable burden on the welfare system, reports euronews. The majority asked to leave come from Romania and Bulgaria, followed by Spain and Italy. Students and people who have lost their jobs are among those asked to leave.

And the wider picture: OECD Report Policy Challenges for the Next 50 Years

This paper identifies and analyses some key challenges that OECD and partner economies may face over the coming 50 years **if underlying global trends relating to growth, trade, inequality and environmental pressures prevail.**

http://www.oecd-ilibrary.org/economics/policy-challenges-for-the-next-50-years_5jz18gs5fckf-en