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EUROPEAN RIGHTS TO FREE MOVEMENT UNDER THREAT

Policies so they survive and work for all EU citizens

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Introduction

European rights to free movement are the second most popular of the European Union's achievements with 25% of people sharing this view according to a Eurobarometer poll, and a majority also believing that it is good for their own country¹. An internal market of four interlinked freedoms of people, goods, services and capital is the basis on which the European Treaties, legislation and policies are built. Moreover, the right to move freely around Europe is the first right of European Citizenship. For the young generation, Europe as a space of freedom stretching from Edinburgh to Zagreb, Lisbon to Riga is taken for granted, but it is also a legacy which has to be defended. Economic studies all point towards similar conclusions: with an ageing population, Europe requires more, not less, free movement of workers. This is also needed to absorb asymmetric shocks between the periphery and core Euro zone countries. Free movement in aggregate is seen as a win-win situation for European migrants themselves, countries of origin and host countries where newcomers fill vacancies which are complementary rather than competing with the domestic workforce and contribute more in taxes than they receive in benefits.

Why then has free movement of people within the Union become a contentious issue as shown for example during the campaign for elections to the European Parliament in May 2014 or in the run-up to the referendum in the UK in June 2016 which led to the decision to leave the EU? A number of reasons can be put forward:

- Before the 2004 and 2007 enlargements of the EU, free movement of people within the European Union was not an issue with numbers sufficiently low to avoid attracting attention. Arguments over "transitional arrangements" and restrictions on access to the labour market raised fears of competition for jobs and undercutting of wages in the old EU-15 and a sense of being treated as second class citizens for people moving from the new Member States.
- The economic and monetary crisis has since 2007 brought to the surface tensions between national and European Citizenship, expressed in the rise of euro sceptical parties now represented by around one third of members in the European Parliament. Centrifugal forces and nationalism are on the rise².
- Whilst the overall picture remains, despite enlargement from 15 to 28 Member States, of a low-level of free movement within the EU by comparison with other parts of the

¹ See standard Eurobarometer of November 2016 available at <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/getChart/themeKy/53/groupKy/266>. It is interesting to notice a big decline of this percentage in the last years: in November 2013, 57% of people, more than double, stated the "free movement of people, service, good and capitals" and as the most positive result of the EU followed by "Peace among the Member States of the EU".

² *How Eurosceptic is the new European Parliament?*, 1 July 2014, BBC available at <http://www.bbc.com/news/world-europe-28107633>.

world, local perceptions and facts can contradict the aggregate figures. Free movement remains unevenly spread and heavily concentrated on certain trajectories and destinations. Local problems with vulnerable European citizens and strain on local services were insufficiently anticipated by EU and national policy-makers.

- Whilst there are signs of improvement in the economic situation after 10 years of “austerity”, unemployment remains unacceptably high in some regions and with wages virtually stagnant, new comers are seen as a threat to jobs and levels of pay. Economic reasons for objecting to free movement of workers within the EU have merged more recently with concerns about migration. The EU faces a more recent crisis of deep division among Member States on immigration and asylum policies.
- There has been a failure of political discourse with even main stream parties allowing free movement of people within the EU to become associated with an increasingly toxic debate about immigration and the perceived failure of migration policies.
- A period of unprecedented political change is seeing the rise of new political parties, the virtual disappearance of others and a sense of traditional “left” “right” divisions giving way to those between the “stayers” retreating behind national borders and the “movers”.
- Free movement of people tends to be presented as if it were an absolute freedom, even though complaints show it is fraught with obstacles. European citizens are under an obligation to have comprehensive health insurance and sufficient resources not to be a burden on the host Member State. Benefit tourism is more myth than reality.

This paper starts with an exploration of patterns of free movement within the EU. Free movement reaches all sectors of the population and is more extensive, if all its forms are taken into account, than the official statistics suggest. This assessment has to be the starting point because it influences the way researchers and policy makers see the future of European Citizenship. For some, free movement is limited to the 3% of the population³, and European Citizenship should find another foundation for its future development, and which appeals to the 97%. For others, this could be a fatal error and it is more a question of building on freedom of movement which should become available to everyone.

The second section is historical, showing that the free movement of people and European Citizenship has deeper historical roots and stronger legal foundations than generally assumed. This is followed by a discussion of intra-EU mobility as an overall win-win situation, but one which requires enabling policies and which should not be taken for granted. Local concerns and failure to address them leave a vacuum for scaremongering about free movement which escalates to the point where restrictions are called for by political parties and some

³ Eurostat News release no.230/2015, 18 December 2015 available at <http://ec.europa.eu/eurostat/documents/2995521/7113991/3-18122015-BP-EN.pdf/d682df12-8a77-46a5-aaa9-58a00a8ee73e>.

governments. This is described in the next section. The final section calls for a new set of policies surrounding free movement of people in the EU.

1. PATTERNS OF FREE MOVEMENT WITHIN THE EU

Europe is on the move, certainly to a greater extent than the official statistics suggest with intra-EU migration taking on increasingly diverse forms. According to the official statistics (Eurostat) 3% of the European population reside in another Member State, less than the 20 million third country nationals in the EU⁴. The immediate onslaught of the economic crisis brought about a slow-down in intra-EU migration, but it has picked up and increased, taking a larger share of migration as a whole. For young people in the hardest hit countries in the Euro zone, the possibility to find jobs in Germany and other better performing economies is a tangible benefit of European Citizenship, although South to North movements remain well below those from “new” to “old” Member States. The official statistics do not capture all forms of mobility such as seasonal or posted workers on temporary assignments in another Member State or cross-border commuting between place of residence and place of work or the more recent trend to long-distance commuting. Such impermanent forms of mobility could add a further 1.6 million to the total. There are more significant but unknown numbers of European citizens whose movements go unrecorded because they stay for a short period, but who are effectively resident in two Member States. “Migration as a phenomenon presents formidable problems in terms of statistical measurements”⁵. Whilst the political importance attached to free movement of people is leading to increasing numbers of studies⁶, improving knowledge of what is really happening, particularly at the local level, for reasons we explain later, is a priority.

According to a special Eurobarometer poll on geographical mobility, 10% of Europeans have experience of living for a time in another Member State. Different forms of regular transnational mobility and networking including “virtual” may be practiced by 30% of 507 inhabitants of the EU, so that sociological Europe is much bigger than the Europe to create a single European labour market and very different from political Europe⁷. Is this not positive?

⁴ Ibid.

⁵ Eurofound, Labour mobility in the EU, Recent Trends and Policies, 2014, available at <https://www.eurofound.europa.eu/publications/report/2014/eu-member-states/labour-market-social-policies/labour-mobility-in-the-eu-recent-trends-and-policies>.

⁶ C. Dhéret et al., Making Progress towards the completion of the Single European Labour Market, EPC Issue Paper no. 75, May 2013, available at http://www.epc.eu/documents/uploads/pub_3529_single_european_labour_market.pdf.

⁷ Special Eurobarometer no. 351 of June 2010 available at http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_351_en.pdf.

The main focus of policy makers in the aftermath of an economic and financial crisis is inevitably on the European labour market, because it is here that the potential both for growth and the main sources of controversy on free movement lie. Civil society organisations, professional bodies and associations of communities living abroad have a role in drawing attention to mobility as not just employment related but involving a much broader range of phenomena and therefore policies across the board.

If mobility is more widespread than officially recognised, it covers also a wide economic and social spectrum, which at the risk of caricature requires policy makers to take into account a much heterogeneous population than just a mobile workforce:

- **Euro-workers** are the original foot soldiers of Europe, surplus labour from the South needed in the heavy industry sectors of the North. To some extent their successors are the construction and other low or semi-skilled workers from the countries of Central and Eastern Europe, often working below their level of qualifications. Whilst governments tend to stress the value of high-skilled Euro-migrants, in reality low-skilled work can contribute just as much to economic growth.
- **Euro-entrepreneurs** are those who are targeted by the rules on right of establishment for the professions, internal market rules such as the services directive, or measures to reduce the time and administrative burden it may take to set up a business in another Member State. Maybe they have succeeded in filling a niche market at home, so why not expand and try the formula elsewhere in Europe? Euro-entrepreneurs often have complex questions as short or long-distance commuters about tax and social security, family members – a mix of personal and professional preoccupations.
- **Euro-lovers**. Practice of free movement and the choice of where to live and work in another country may not be influenced by economic factors or even professional development alone, but also the difficulty of managing a relationship at a distance with long periods of absence⁸. If the Euro-lovers stay together and found a family, their choice of which languages to use at home, how the children are brought up, whether they access the media of the host country, or the countries of origin, all such factors make this citizenship group an interesting laboratory for the study of European identity.
- **Euro-learners** are an increasingly important category with growing awareness that a period studying in another EU Member State or outside the EU “looks good” on a Curriculum Vitae. Students are aware of the difference in performance of universities

⁸ Euro-lovers have attracted the attention of some European research, particularly on the evolution of European identity in private life (Queen University, Belfast, www.euroidentities.org).

across Europe. A period studying abroad may be time out, and a relatively easy option for some, or more essential for others, to make up for deficiencies in education at home and learn another language (in particular – English). The Erasmus scheme is seen as one of the EU’s success stories. The main problem is that the chance to study abroad tends to be given to high achieving students likely to have such opportunities in any case, whereas research suggests that for less well off or educated students, having such an opportunity is particularly appreciated and productive.

- **Euro-sun seekers** tend to be pensioners from the North seeking a better climate for their retirement on the shores of the Mediterranean. They tend to bring with them their own services, native language media and expat associations, whilst complaining about their own lack of integration in their adopted country of residence. Within the Euro zone, the risks of currency fluctuations to one’s pension or the value of one’s property are reduced, but the crisis has signalled new risks. It has also created new opportunities for pensioners to buy property at reduced prices in Greece, Spain or Portugal. Euro-sun seekers are also taking advantage of the crisis.
- **Euro-stars** are among the young people whose parents and grandparents may have been Euro-lovers or Euro something else. They may regard themselves as European citizens, finding the practice of attachment to more than one country and a readiness to move, work in different languages comes naturally. Many came out of the period when Erasmus was a novelty and had a more formative influence. Euro-stars are well qualified, linguistically competent, involved with each other through social networks and likely to be politically active and become involved in transnational networks. They are likely to be strongly attracted to civic activism beyond the national state.

2. THE ORIGINS OF EUROPEAN RIGHTS TO FREE MOVEMENT OF PEOPLE AND EUROPEAN CITIZENSHIP

Free movement of persons has always been an issue of public debate, become more intense in the run-up to the big enlargement of the EU and the current refugees’ crisis. The historical perspective and explanation of how the European rights came into being is important for those who wish to defend them. It can show that the rights do not just correspond to a set of rules promulgated by “Brussels,” and which could therefore be changed, but are in reality the product both of an older European dream and the earliest period of European integration. In 2013, the European Year of citizens marked the anniversary of inclusion of Union citizenship

in the Maastricht Treaty (now articles 20-25 TFEU), 20 years ago previously, but as one author has observed it could have been a 60 year anniversary⁹.

2.1. From Free Movement of Workers to Include Other Sectors of the Population

A brief reminder of the history shows that the substance of these European rights should not be treated lightly but represents the results of parallel trends in patterns of mobility and more top-down institutional developments towards a citizens' Europe backed by landmark judgements in the Court of Justice of the EU. The origins of European Citizenship rights to free movement lie in the limited degree to which free movement of workers in the coal and steel industries was achieved in the immediate period of post-war reconstruction. The main lesson drawn from this initial sectoral approach was to make free movement a right for all workers. In terms of the Treaty of Rome in 1956 the legislative process governing freedom of movement became also more European and less intergovernmental. It was never easy: a further ten years passed before a general regulation on free movement of workers was agreed¹⁰, described at the time as "an incipient form – still embryonic and imperfect – of European Citizenship"¹¹.

It is often maintained that a European Citizenship cannot be created from the economic basis of an internal market¹². The regulation however treats workers more than factors of production, establishing their right to move with their families, join trade unions and access social security and other benefits on equal terms to workers in the host country. An incremental process to the development of European rights is discernible. As the economy diversified beyond the heavy industries to the services sectors, so patterns of intra-EU mobility became more diverse, with the legislation catching up to cover the self-employed, regulated professions particularly in the health sector and finally after much delay and opposition (reflecting current debates) students, pensioners and non-active persons. The extension of freedom of movement from workers to other sectors of the economy and human activity was an inevitable development of the creation of a single market and one which led naturally to the creation of EU citizenship.

To achieve free movement the coordination of social security arrangements was essential and at an early stage covered by a general Regulation (Regulation 1408/71) which was updated in

⁹ W. Maas, Free movement and discrimination: evidence from Europe, the United States, and Canada, *European Journal of Migration and Law* 15 (1), 91-110, 2013.

¹⁰ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

¹¹ Cit. Lionello Levi Saudri, Commission Vice President, in W. Maas, *Creating European Citizens*, Rowman & Littlefield, 2007.

¹² R. Bellamy, *The Liberty of the Moderns: Market Freedom and Democracy within the EU*, Global Constitutionalism, 2012.

2004 and 2009¹³. The regulation extends the coverage to new categories of the population, including legally resident third country nationals and should in theory improve cooperation among Member States as people move more frequently in and out of different national systems. The rest of the regulatory framework has become more focussed on citizens in general replacing earlier legislation on particular categories of the population or particular professions¹⁴. There are legislative gaps and areas which need further clarification such as the distinction between social assistance and social security or the rights and obligations of job seekers. The strategy for defending European rights to free movement should not though aim at legislative change primarily. That would open the door in the current climate, for governments to restrict further free movement rights. The aim should be to defend the legal framework and ensure it is better enforced.

2.2. From Access to European Justice to Forging European Citizenship

At a time of increasing public preoccupation with the non-transparent lobbying processes and their undue influence on legislation, rules governing free movement offer some guarantees of being more citizen driven and in the public interest. Thus, the Treaty of Rome in 1957 addressed not only the Member States but also their citizens as the European Court of Justice established in an early landmark judgement (C-26/62 Van Gend & Loos). From this original finding – rare for any international treaty - the legal framework has been a result of the interplay between cases brought by citizens to national courts and referred to the Court of Justice and then reflected in the European legislation. The independence of the Court has been an important guarantee in defining the status of worker or reciprocal access by citizens to services in each other's Member States, for example.

When Union citizenship was added to the Maastricht Treaty, opinions varied as to its significance – “a cynical exercise in public relations” for some¹⁵, heralding a new post-national citizenship for others. The Court of Justice of the European Union is establishing the territory of Union citizenship uneasily between these extremes. Reflecting Van Gend & Loos, the Court repeated in its judgements: “Union citizenship is destined to be the fundamental status of nationals of Member States, enabling those who find themselves in the same situation to

¹³ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community has been revised by Regulation 883/2004 on the coordination of social security systems with its implementing rules (Regulation 987/2009).

¹⁴ Directive 2004/38/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, consolidated nine pieces of previous legislation and reflected the case-law of the European Court. A similar process was apparent in the area of recognition of professional qualifications with Directive 2005/36/EC consolidating piecemeal laws profession by profession and a more general system of mutual recognition.

¹⁵ Cit. Weiler, 1998 in J. Shore, *The Transformation of Citizenship in the European Union*, Cambridge, 2007.

enjoy the same treatment in law irrespective of their nationality subject to such exemptions as are expressly provided for” (C-184/99 Grzekezjk).

As this statement implies, early judgements relied on a link between Union citizenship and non-discrimination on the basis of nationality (C-85/96 Martinez Sala; C-209/03Dany Bidar). More recently the status of European Citizenship has appeared more enforceable in its own right irrespective of economic situations and even actual free movement across a border (C-34/09 Ruiz Zambrano). In theory, European citizens have more rights than they imagine and which they do not have to prove; it is for Member States to show that any restrictions are reasonable and proportionate. There is a gap however between the Court’s perception of European citizens and that of Member States, which still tend to regard them as aliens and have implemented Directive 2004/138 through their legislation on immigration.

It was inevitable that once Union citizenship was included in the Treaties, it would become through appeals to the courts more than just a public relations exercise. European rights are being assessed when they come in conflict with the main areas of national expenditure such as social assistance, benefits for job seekers, the organisation of health systems or university education. They may also conflict with policies which are sensitive in other ways such as immigration policy, one’s choice of name or even the acquisition of citizenship itself (C-135/08 Rottman). Members of the Court have been unusually outspoken in drawing attention to the significance of this line of case-law. For an apparently distant EU Institution, the Court looks sympathetically at all the circumstances surrounding the appeal, including European citizens of very young age (C-200/02 “Baby Chen”).

At the same time, the “exemptions expressly provided for,” are taken into account, namely the requirement not to be a burden on the health and social assistance systems of the host Member State. The Court is sensitive to the arguments of Member States about the danger of “benefit tourism”, requiring for example a reasonable period of residence before non-contributory social assistance can be claimed. In a recent case (C-333/13 Dano v. Jobcenter Leipzig) the Court found that “A Member State must therefore have the possibility of refusing to grant benefits to economically inactive Union citizens who exercise their right to free movement solely in order to obtain another Member State’s social assistance although they do not have sufficient resources to claim a right of residence.” The judgements do not always offer clear solutions so much as indicate ways to reconcile European rights with Member States’ prerogatives but on a case by case basis – creating a challenge for citizens, their advisers and front-line officials (i.e. “the financial situation of each person concerned should be examined specifically” in C-333/13 Dano v. Jobcenter Leipzig). The Court has created a space for Union citizenship but has not sought to impose a post-national citizenship¹⁶.

¹⁶ H. Van Eijken, European citizenship and the constitutionalisation of the European Union, 2017.

2.3. From rhetoric about a peoples' Europe to a Europe without internal borders

In parallel to legislative processes and clarification by the Court of Justice, a more top-down process towards European Citizenship was steered by heads of government in the European Council. Their concern was that the creation of an economic common market was leaving citizens behind or in periods of “eurosclerosis”, losing their support. Special committees were set up to explore such ideas as a European passport, equivalence of qualifications, student exchanges and symbols of citizenship.¹⁷ Much of the early history is one of fits and starts. Once directly elected in 1979, the European Parliament gave impetus to such reforms and in its proposed Treaty on European Union declared that “citizens of the Member States shall ipso-facto be citizens of the Union.”¹⁸ A more decisive push came from the European Commission’s White Paper “Completing the Internal Market” of 1985 which included “a new initiative in favour of community citizens” with a view to completing the internal market of goods, services capital and persons by January 1993. This was not to be for free movement of persons but at least 5 Member States went ahead with the Schengen Agreement which now covers 26 states in the Union and neighbouring countries.

In theory, this Europe without borders is underpinned by a space for freedom, justice and security. If citizenship is the “right to have rights”, the EU is setting up a comprehensive structure. This is particularly so since the entry into force of the Lisbon Treaty which gives the Charter of Fundamental Rights the same value as the Treaties (Article 6 TEU) and requires the Union to become a party to the European Convention on Human Rights (ECHR). This will give individuals an ultimate right of appeal against its claims to the European Court of Human Rights in Strasbourg.¹⁹ It places European citizens’ rights in the broader framework of universal basic human rights and their more modern expression – for example condemning trafficking in persons as a form of slavery.

The Charter makes “citizenship” one of six chapters, the others being dignity, freedom, equality, solidarity and justice. It places more emphasis on economic and social rights than the ECHR. According to one observer: “Citizenship of the European Union has finally acquired its Bill of Rights in the form of a legally binding EU Charter of Fundamental Rights; the skeleton that citizenship of the Union once was is now acquiring the flesh and blood it needs to merit the title.”²⁰ The Charter places citizenship in a broader context and helps to show that

¹⁷ Report on European Union, Leo Tindermans, December 1975. Reports by the working party for a Peoples’ Europe chaired by Pietro Adonnino, March and June 1985.

¹⁸ The proposal for a Treaty on European Union 1984 presented by Altiero Spinelli, member of the European Parliament.

¹⁹ After years of hesitation in the context of Treaty revisions with member states equally divided as to whether the Union should have its own separate charter or join the ECHR, the issues have been settled in favour of both steps.

²⁰ Cit. in E. Guild, The European Union after the Treaty of Lisbon, Fundamental rights and the EU citizenship. CEPS Liberty and Security in Europe, July 2010, page 1. http://aei.pitt.edu/15107/1/Guild_Jean_Monnet_speech_e-version.pdf.

European rights are not just those triggered by crossing a border, but include a raft of rights stemming from the EU Treaties and secondary legislation within one's own country and a more limited set of rights to have a say in the governance of the EU.

In a similar way to Union citizenship itself, the impact of the Charter may be both less than hoped for by some, but more than just a codification of existing rights as claimed by others. Many citizens have been misled into believing that this is a general charter for human rights, whereas it is only applicable in areas where the EU has legal competence (Article 51). The charter is an additional source of law citizens and their representatives can claim, particularly with the new rights to good administration (Article 41) and access to justice (Article 47). A number of scholars (i.e. Bauback 2017) have argued that better application of the Charter against Member States which violate basic European values and the rule of law would make European Citizenship more relevant. This is true in the sense that Commission enforcement efforts, infringement procedures and court cases tend to concentrate on relatively technical violations of European law, whereas national governments can apparently be immune from prosecution when it comes to violations of basic rights such as press freedom, rights of association or independence of the judiciary.

3. COSTS AND BENEFITS OF LABOUR MOBILITY

The benefits of more rather than less freedom of movement in the European Union are argued by a significant volume of European but also national studies. "EU migrant workers can help the host country's economy to function better by addressing skills shortages and labour market bottlenecks. They contribute to macroeconomic demand and to government revenues, so they can help to create more jobs in the host country. They can also help to reduce the tax burden on the domestic population."²¹ This is not therefore a zero sum game. The same lecture goes on "all available studies point in the same direction. There is a consensus among experts on these fundamental, overall advantages of EU labour mobility." An additional argument and one which leads many studies to conclude that the level of labour mobility in Europe is low, for example by comparison with the US, is that "it is also a necessity to make the European Monetary Union (EMU) more resilient."²² "Free movement of workers within the EU does not appear to be acting as a significant shock absorber against the widening economic asymmetries between core and periphery within the EU".²³

²¹L. Andor, former European Commissioner for employment, Labour mobility in the European Union – The inconvenient truth, Speech at University of Bristol, 2014.

²² Eurofound, Labour mobility in the EU, Recent Trends and Policies, 2014.

²³ Cit. Holland and Paluchowski in Ibid, p. 18.

In theory free movement is a win-win situation: well prepared migrant workers can improve their living standards and gain additional skills and competencies; host countries gain because they are more likely to be of working age on average than the local population, whilst countries of origin can benefit from remittances and the return of more skilled workers, if their period abroad in the EU is temporary rather than permanent. Whilst the bigger picture is one where the benefits of labour mobility outweigh the costs – it is always possible to find specific examples where this aggregate positive scenario is contradicted by facts on the ground. The challenge for policy makers is to address these very real concerns and not fall in the trap of giving way to demands for general restrictions. “Member States governments should address these genuine concerns by tackling the specific problems – and not by restrictions on free movement.”²⁴

3.1. Concerns of would be European Migrants Themselves

The main pull factors are the availability of jobs and people move to work or look for work, (not to access social benefits) and therefore compare wages and the cost of living in their own country and a possible new country of residence. This decision-making process does not though necessarily follow just the economic logic necessary to create a well-functioning European labour market. Other factors come in play, such as language, with “some empirical evidence, migration flows between countries with closely related languages tend to be larger than between countries with unrelated languages”²⁵.

Given the uneven performance within and between countries across Europe, proposals to improve the functioning of the European labour market place emphasis on removing barriers, by more support to intra-EU migrants to learn the language of the country of destination. There is also increasing recognition that family and social ties are a deterrent, explaining the gap between theoretical intentions to move and actually doing so. Migration flows may be encouraged by transnational networks or they may be discouraged by the loss of social capital in one’s country of origin which is difficult to replace in one’s country of destination. Later, we consider a proposal for a free movement solidarity fund to address this issue. Studies of how to improve the functioning of the European labour market place emphasis on the need for mentoring “more personalised guidance,” and upgrading EURES (European Job Mobility Portal). Given the wide variety and heterogeneous categories of people on the move, policy makers need to address also issues outside the labour market, and work more closely with associations representing European citizens or providing them with information and .

²⁴ L. Andor Speech at Bristol University, 2014.

²⁵ Cit. Belot and Ederveen in Eurofound, Labour mobility in the EU, Recent Trends and Policies, 2014, p. 46.

3.2. Concerns about the barriers to the exercise of free movement rights on the one hand, and their abuse on the other

In the last section of this report, a number of proposals are put forward to reduce the gap between the fine principles of European law and the practice on the ground by Member State administrations, which tend to stress the exceptions rather than the spirit of European law. Most advice services will confirm that more people are coming to their doors with complaints. It is difficult to conclude whether this is due to a hardening of attitude towards EU migrants by front-line officials, or increased awareness by European citizens of their rights. The barriers are well known: obstacles to free movement and residence particularly for EU families including third country nationals, risks of expulsion against low income groups and job-seekers, delays in accessing social entitlements or recognition of professional qualifications, “red tape” due to the failure of Member States to recognise each other’s documents. Increased public awareness of the barriers within Europe could lead many young people to seek work outside Europe.

As the Eurofound study puts (page 9): “It is clear that the national debate in many countries has increasingly focussed on the negative rather than the positive prospects of intra-EU mobility”²⁶. In this debate, the barriers to intra-EU mobility are ignored. Free movement is seen as an absolute unconditional freedom, which is being abused. The European Commission has in repeated occasions demanded evidence of abuse but “no Member State has given the Commission any factual evidence that so-called benefit tourism is systematic or widespread.”²⁷ In a communication “Free movement of EU citizens and their families: Five actions to make a difference”²⁸, the Commission spells out the rights and obligations attached to free movement and aims to address the concerns raised by some Member States²⁹ by helping them to fight marriages of convenience, apply EU social security coordination rules or meet the challenges of social inclusion. Whilst there is little evidence of “benefit tourism” as a push factor for intra-EU migration, there are circumstances in which reliance on benefits may be a reason to stay in the country, rather than return home. This can occur for example when free movement is abused by unscrupulous employers paying EU migrants less than the minimum wage, and exploiting them in other ways by imposing illegal contract conditions, housing and other costs, so that the migration experience ends in failure.

²⁶ Cit. Ibid. p. 19.

²⁷ L. Andor Speech at Bristol University, 2014.

²⁸ COM(2013) 837 final 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.

²⁹ The UK, Germany, Austria and the Netherlands raised such concerns in a joint letter to the Irish Presidency. This communication provides valuable guidance with its reference to the Treaties, European legislation, and a number of opinion polls and studies, including one by ICF GHK milieu: A fact-finding analysis on the impact on the member states’ social security systems of the entitlements on non-active intra-EU migrants to special non-contributory cash benefits and health care.

3.3. Concerns about Strain on Local Services in Countries of Destination and Brain Drain in Countries of Origin

In “Five actions to make a difference, the Commission mentions for the first time “efforts to help build the capacity of local authorities to use European structural and investment funds efficiently”³⁰. The message is therefore that the overall benefits of free movement of people and the rights attached to them should be preserved, but that more than just the EU regulatory framework is required to deal with problems on the ground. In the Barca report to the Commission with recommendations for the future of cohesive policy 2014-2020³¹, it was argued that “Cohesion policy, by combining EU principles and the freedom of Member States and regions as well as local institutions to apply them to specific needs, could serve as the appropriate framework to take one step further.” Migration is recommended as one priority for the funds. The report argues that “citizenship is de facto defined in part by the accessibility of people to services” – from which it follows that European Citizenship is about access to each other’s services, to mutual advantage. Therefore, “an EU place-based approach can respond to the highly differentiated way in which migration inflows and outflows affect different places.”³²

Because patterns of free movement are so strikingly uneven across the Member States, there are regions and cities in countries of destination where strains on local services – housing, health, schooling, transport, can be affected by the sudden and unexpected arrival of large numbers of newcomers. Migration can become also a convenient scapegoat for cuts in public services and failure to invest in local infrastructure, but it is a factor to be addressed on the basis of sound local population statistics and economic evidence.

Similarly problems of brain drain, loss of skilled workers to maintain the infrastructure in specific regions of countries of origin – are equally real. Matching supply and demand across borders in health services may be to mutual advantage but it does not always work that way, if it has negative repercussions on access to such services in left behind regions.

For many of the recommendations to improve European policy on free movement of people, cohesion policy is the right context. The social fund can address issues of training for mobility and social inclusion; the regional fund could be used to help meet infrastructure development needs of localities in countries of origin and countries of destination. The proposal in the last section is that the two should be linked in a European free movement solidarity fund, which can be set up within EU Cohesion policy. This is also the framework within which exchange of best practice can be encouraged and successful local experiments to tackle the unwarranted

³⁰ COM(2013) 837, “Five actions to make a difference”, p.11.

³¹ Barca Report, available at http://ec.europa.eu/regional_policy/archive/policy/future/barca_en.htm.

³² Ibid. p.144.

side effects from the advantages of free movement can be scaled up. Although the economy gains from the new arrivals, it is important to demonstrate to the domestic sedentary population that they should not bear the full cost in increased demand for public services, but that this should be shared between countries of origin, countries of destination and the EU budget.

4. COMBATTING SCAREMONGERING ABOUT FREE MOVEMENT OF PEOPLE

As already said free movement is both one of the most popular and the most contested of the EU's achievements: should the discourse of migration be changed? The consensus appeared to be that actions speak louder than words, to answer peoples' concerns. As the examples below show, it is from a narrative about a specific issue to do with borders, a group in the population or locality that below the surface of the apparent popularity of EU free movement, hostility can be stirred up. This is being done, as the campaign for the 2014 European elections showed, not only by euro sceptical or fringe parties, but by main-stream politicians as well. In all the examples below, the populist conclusion would be restrictions on free movement, and even the reinstatement of border controls. The response should be to resist such restrictions and make free movement work better. Without such a response, scaremongering about free movement has considerable resonance.

- **The Polish Plumber -**

In France, in the run-up to the 2005 referendum which saw the rejection of the constitutional Treaty, “the Polish plumber” made a considerable impact. This was used as a mythical example derived from the first version of the services directive, which proved highly controversial. Based on the costs of labour being in early 2000 on average 3.47€ per hour in the new Member States and 22.19€ per hour in EU 15³³, the Polish plumber is able to offer his services in Paris from Poland, driving his French competitors out of business. Business leaders and the “yes” campaign pointed to the shortage of plumbers in Paris, whilst a Polish travel agency produced a poster of a plumber as a male sex symbol with the slogan: “I am staying in Poland.”

- **The “Roma Affair”**

Again in France, but also in Italy and to a more limited extent in other EU Member States, the rights of Roma as European citizens was a further test of legislation and policy on free movement of people. The dismantling of Roma camps over summer 2009 by the Sarkozy government, combined with the repatriation of the inhabitants eventually led to mass expulsion which is forbidden by the citizenship directive and the Charter of Fundamental

³³ Data available at Eurostat website: http://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly_labour_costs.

Rights. The Roma Rights Centre in Budapest, civil society organisations in Paris, Bucharest and Brussels took up the cause, but whilst their legal arguments were sound, the basis in terms of evidence and the willingness of those directly affected to step forward was weak. In the discussion between the delegation for the Commission and the French government, the European citizen concerned needed to be – if not physically present – at least there as a third party. The problems found by the Commission in enforcing European legislation and the Charter directly in an emergency situation were evident. This explains why Viviane Reding, the then Commissioner responsible, used political rather than legal pressure, stating that Europe had not seen such deportations since the Second World War. The issue has since gone quiet, but is by no means resolved.

- **Political Exploitation of Tensions over Open Borders**

Tensions over Schengen appeared at intervals to be signalling a spill over from the Euro crisis affecting Europe's achievements in guaranteeing in open borders. There was a Dutch proposal to monitor border crossings and a Danish proposal to strengthen border control towards Sweden and Germany. This was despite the long tradition of absence of border controls in the countries of the Nordic Council and the investment in the bridge to increase the flow of traffic. A more serious dispute between France and Italy over refugees from Libya was referred by Silvio Berlusconi and Nicolas Sarkozy to the European Council, which working in June 2011 asked for legislative proposals. The aim was to extend the Schengen safeguard clause so that as a measure "of very last resort" it would "allow the exceptional reintroduction of internal border controls in a truly crucial situation", meaning where a Member State was no longer in control of immigration on its external Schengen frontiers. The legislation has been adopted since.

The Commission defended this proposal as a lesser of two evils, and a way to contain strain to the Schengen system, whilst at the same time, demanding more European supervision of the safeguard clause. The attacks on Schengen have withstood the economic and financial crisis as well as anti-immigration rhetoric. The newly-won freedom to travel across the European continent since the fall of the Berlin wall and the extension of the Schengen zone to the new Member States (except Bulgaria and Romania) can no longer be taken for granted however. The EU is now going through a period where temporary border restrictions are being extended in a number of Schengen states exposed to pressures on the external borders. In February 2017, the EU Council decided to allow Austria, Germany, Denmark, Sweden and Norway to prolong the temporary re-introduction of border controls. The Commission has actively monitored the situation with a "Back to Schengen roadmap".

- **Popular Initiative in Switzerland in favour of Immigration Quotas**

By a wafer-thin majority, 50.3% of the Swiss population voted on 9 February 2014 in favour of an initiative by the right-wing People's Party. The new constitutional provision approval in the referendum provides that "the number of permits entitling foreigners to reside in Switzerland

shall be subject to annual ceilings and quotas.” The promoters of the initiative distanced themselves from more extreme supporters such as the Egerkingen Committee which coordinated the successful campaign for the proposed ban on minarets in 2009. Voter participation was low at 56% but the result is clear. In contrast to the European Citizens’ Initiative, Switzerland has a system of binding, direct rather than deliberative democracy. It is not as if the borders will suddenly become closed since the government has three years to implement the provision with legislation and then negotiations with the EU. It is difficult to imagine however how a quota system, which has now become a democratically established right, can be reconciled with the European rights to free movement. This vote therefore could signal an end to the EU-Swiss agreement on the free movements of persons signed in Luxembourg on 21 June 1999, which was also approved in a referendum held less than three years.

This affects 1.15 million foreign workers in Switzerland or 23% of the Swiss workforce, but also a further 453,000 Swiss citizens living throughout the EU. Commentators have also pointed out that this referendum could be a counterproductive blow to the high performing Swiss economy and standard of living it was designed to protect.

Moreover, the free movement agreement contains a “guillotine clause” which if broken automatically triggers termination of six other bilateral agreements with the EU on transport, agriculture, technical standards, government procurement, scientific and technical co-operation. Politicians have reacted by pointing out that the agreement with the EU is not like a Swiss cheese, with holes in it, and that a pick and mix policy is not possible. At that time the firm line taken by EU leaders was influenced by the need to signal to the UK that an opt-out or renegotiation of free movement of people to and from the UK should not be possible whilst maintaining full participation in the other three “commercial” freedoms of the internal market. The firm line taken by the EU appears to have been accepted by the Swiss authorities.

- **Scaremongering about “Benefit Tourists”**

A typical theme, often fuelled by Euro-sceptical or right wing political forces is that free movement paves the ways for so-called “benefit tourists.” In early 2013 four ministers of the interior from the UK, Germany, Austria and the Netherlands wrote to the EU Council pointing out that some municipalities were being “put under considerable strain by certain immigrants from other Member States (...) burdening the host countries’ social welfare system.” They also drew attention to their need, whilst supporting free movement as a fundamental right, to defend the rights of their own citizens. There is very little evidence of “benefit tourism”, despite differences in levels of Member States’ welfare benefits which in theory could be exploited by European citizens practising their rights to free movement within the EU.³⁴

³⁴ In free movement of EU citizens, five actions to make a difference, the Commission states, “recent studies conclude that there is no statistical relationship between the generosity of the welfare systems and the inflows of mobile EU citizens.”

Despite this, restrictions on free movement became a major plank in the bid by the UK government to renegotiate their terms of membership of the EU, the results of which were put to the in-out referendum after the 2015 general elections. In a speech on 26 November 2014, the then Prime Minister, David Cameron, did not go so far as to demand “emergency brakes” or quantitative restrictions on intra-EU migration. The five proposed measures would however have an equivalent effect, creating a new class of European citizens in waiting:

- To deport EU job-seekers who have not found work within six months; and to stop such job-seekers accessing ‘universal credit’ (which will incorporate the current job-seeker’s allowance) when it is rolled out from 2015 onwards, for their first four years in Britain;
- To impose a four-year period before EU migrants have access to in-work benefits like tax credits and housing benefit;
- To stop workers in one EU Member State collecting child benefit there for children who live in another Member State;
- To prevent workers from countries that join the EU from seeking work in the rest of the EU and these countries’ economies have partially converged with those of the existing members;
- To make it easier to deport criminals, fraudsters and beggars from other Member States and to ban their re-entry.³⁵

The threat to European rights to free movement is evident. It is also worrying that such speeches by leading politicians, which fail to make a clear distinction between free movement of people within the EU and immigration, will feed prejudice. The message and assumptions on which the speech is based are as negative as the proposals. For example: “freedom of movement has evolved significantly over the years from applying to job-holders to job-seekers too; from job-seekers to their non-European family members; and from a right to work, to a right to claim a range of benefits.”³⁶

This essentially negative approach to freedom of movement was reflected in the agreement between the European Council and the UK of February 2016, which is no longer relevant because of the latter’s decision to leave the EU. It showed however that scaremongering about freedom of movement has created a climate whereby governments are prepared to consider restrictions on European rights. Hence, it is clear that the EU can no longer rely on its traditional policies alone to defend freedom of movement.³⁷

³⁵ Summary by the Centre for European reform.

³⁶ D. Cameron Speech at EU, 28 November 2014.

³⁷ For further consideration of the UK demands, the settlement of February 2016 between the EU and the UK and the debate around BREXIT, see <http://ecit-foundation.eu/wp-content/uploads/2016/05/Tony-Venables-The-UK-Referendum-on-Membership-of-the-EU-2016.pdf>.

5. POLICY RECOMMENDATIONS TO ENSURE THE SURVIVING OF RIGHTS TO FREEDOM OF MOVEMENT AND THEIR EXPANSION

Freedom of movement which is the first right of European Citizenship faces a paradox: it is the most popular of the EU's achievements, and is more widely practiced, has deeper historical roots and legal foundation than generally thought. At the same time, it has been under attack from euro sceptical and xenophobic forces and there are increasing tensions between the "movers" and "stayers" which has led to governments accepting, for the first time, that restrictions could be justified. The fact that in the recent elections in Austria, Netherlands and France, these forces have been defeated does not mean that the paradox round free movement is solved. To an increasing extent, questions are being asked about the future of free movement and European Citizenship. In the introduction, it was pointed out that before the enlargement of the EU from 15 to 28 Member States, free movement was at a lower level, and below the political radar screen. The main emphasis in EU policy was on legislative reform and enforcement of European rights. This should continue at the risk of the rolling back of European rights. This approach centred on the role of the Commission as guardian of the Treaty in conjunction with help of the Court of Justice of the European Union was sufficient to maintain European rights among a smaller group of countries with similar levels of pay and costs of living. Policy making has however lagged behind what is required in a broader, more diverse Union, where legal instruments are no longer enough. Traditionally, fewer policies and funds have been devoted to intra-EU mobility than to immigration and asylum, even though that is beginning to change. These sets of recommendations are put forward to:

1. Enforcement of European Rights,
2. Creation of a European Free Movement Solidarity Fund,
3. Bridging the gap between "movers" and "stayers".

5.1. Enforcement of European rights

The historical development shows that the EU has in theory developed a complete architecture for the protection of European rights, particularly since the Lisbon Treaty made the Charter of fundamental rights legally binding. The problem is the gap between the rights and the way they are interpreted and enforced by national authorities, which often look for the exceptions rather than the spirit of European law. There is tension between free movement and immigration, creating barriers for family members from outside the EU to obtain visas and residence. There is tension between free movement and protection of social welfare budgets which have been met, reducing the options for citizens to find employment in another Member State. Many find themselves in a state of limbo. As the expanding scope of complaints show, there are also tensions because of differences across Member States

when it comes to access to education, family law, same-sex marriage and simply the “red tape” of requiring documentation and official translations. To reduce the tensions and overcome obstacles to freedom of movement, new legislation is not needed. Much more at issue is how to ensure that national authorities apply not just the letter but also the spirit of EU legislation which is still regarded as “foreign”, and ensure it is better applied. To a large extent this is primarily about scaling up and speeding up existing efforts. This is bound to be an uphill struggle, which in the current climate receives insufficient political support. New ideas and approaches should therefore be tried alongside the traditional instruments at the disposal of the Commission as guardian of the Treaties.

- **More emphasis on prevention is better than cure.** Legislation covering free movement of people takes the form generally of directives which establish common principles and objectives but leave it to each Member State to implement them according to their own legal and administrative practice. Although the so-called “citizenship directive” on free movement of European citizens does no more than reflect the case-law of the European Court, the Commission found that no single article had been correctly reflected in national law by all Member States.³⁸ In retrospect a binding requirement on Member States to notify in advance to the Commission any draft implementing measures, but also any other legislative measures which could have affected implementation might have prevented the subsequent infringement procedures.
- **A one-stop shop in each Member State to solve problems quickly.** At European level, there is “Europe-Direct” with a free phone system which sends more difficult questions to Your Europe Advice or if more than just guidance is needed SOLVIT which aims to solve problems within 10 weeks. This deadline to instil a more problem-solving approach in the European administration should apply to all EU citizen assistance services, and in turn these should operate according to the same standards in each Member State. The Directive 2014/54/EU requires Member States to set up contact points, and give equality bodies and NGOs a bigger role in defending European rights.³⁹ The EU-level system for handling questions and complaints is well-established and has real potential for being replicated across the EU through the websites of national authorities and one-stop shops in major cities and regions.

³⁸ Report from the Commission on the application of Directive 2004/38 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)84 final, 10.12.2008). This conclusion was supported also in a study by ECAS for the Legal Affairs Committee of the European Parliament (Pc 410/650).

³⁹ Directive 2014/54/EU of 16 April 2014 (OSL128/8 of 30.4.2014) on “measures facilitating the exercise of rights conferred on workers in the context of freedom of movement of workers” should be implemented by 21 May 2016.

- **Collective action by citizens.** The Commission has considerable discretion as to whether or not it acts on individual complaints. Therefore, citizens have an interest in grouping their concerns and evidence together to give them greater weight, and perhaps backing them up with a petition to the European Parliament or a European Citizens Initiative to the European Commission. When the Commission tries to persuade Member States to lift barriers to free movement rights, citizens need to make their presence felt as an unofficial third party. There is nothing to prevent an association from making a collective complaint, attaching the facts and grouping together individual cases. The right of consumer organisations to intervene in to help settle cross-border claims has been recognised, a right which could be extended to other areas. Free legal advice and pro-bono legal support are essential to support collective action as well as the necessary resources to bring citizens together and collate the evidence.
- **A fast-track enforcement procedure.** It is relatively easy to send a complaint, but unless there is an immediate solution, it can take at least two years before the Commission appeals to the European Court of Justice and a further 18 months at least for judicial procedures. In the meantime, the Member State(s) concerned can maintain the barrier to the exercise of European rights. The Commission should apply to the European Court to demand a Member State lift immediately any barrier to the exercise of European rights which *prima facie* violates European law and affects a large number of people, pending full examination. Such an approach should also apply to violations of fundamental rights.

5.2. Creation of a European Free Movement Solidarity Fund

In addition to making more effective use of European law to improve enforcement, action at the local level could also reduce tensions between European citizens on the move and the host country society. These tensions fuel demands for general restrictions on European rights and scaremongering about benefit tourists. However, because free movement is so unevenly spread the real issues are exceptional instances of brain drain in countries of origin or strains on local services in host countries. EU cohesion policy combines a European framework with strong emphasis on local community development and partnership with all actors. This would be the right context to set up such a European Free Movement Solidarity Fund. There should be equal contributions to such a fund from the country of origin, the host country and the EU budget. This approach is fair in the sense that the local economy does benefit from the newcomers, but the local host population sees that the cost of their increased burden on public services is shared by their own country, the country of origin and the EU.

A number of researchers are recommending similar initiatives as the following quotation shows: "...negative externalities are felt locally, for certain occupational groups and in respect of certain public and welfare services. The establishment of something like an EU Fund to ease the impact of mobility (or immigration more generally) could serve the purpose. It could work through national (better – subnational) applications and selection criteria based on adequate evidence of impact."⁴⁰ Although the legal frameworks for freedom of movement within the EU and international migration and asylum are quite different, it can only make sense at the local level to treat migration flows as a whole rather than set up different services for each. Such a free movement solidarity fund should carry out different tasks:

- **Statistical evidence needs assessment and partnership at a local level.** There is no doubt that knowledge of patterns of free movement of people within the EU has improved, with more studies being published. It would help to encourage a more informed debate about freedom of movement within the EU if the Commission published an annual report. Where statistical evidence is still lacking however is at a local level, in order to explain and involve people in the local community, but also make it possible to design policies in response. More use of EU cohesion funds and creating within that context a European free movement solidarity fund would have to be based on sound statistical evidence of outflows and inflows of people and their impact on services. Without an evidence based approach, there is a risk that migration becomes the scapegoat for failures to invest in local public services. In EU cohesion policy, the partnership principle has been strengthened and become more inclusive. Migration, including free movement, is the domain where partnership is a pre-condition of success and not just a desirable addition, because it involves such a wide range of public services and stakeholders. The structural funds already provide for the possibility of setting up local action groups to institutionalise partnerships which should carry out such needs assessments and design projects.
- **A minimum income or unemployment benefit scheme to ensure more equal rights to freedom of movement**⁴¹. The starting point for this proposal is the observation that the Court of Justice of the EU has become more restrictive in supporting claims by non-active EU citizens to social assistance in their country of destination. This makes portable social rights, originating in one's country of origin all the more important. The problem here though is that the substance of these rights is so different except in the core of the Eurozone and better performing economies across EU Member States. A

⁴⁰ M. Ferrera, Should EU citizenship be duty-free?, EUDO, 2017.

⁴¹ A full description of this scheme which is one of the main outcomes of the BEUCITIZEN research projects can be found in "Stratified social rights limiting EU citizenship" by Martin Seeleib Kaiser. Journal of Common Market Studies – May 2017.

jobseeker from Romania moving to Denmark would be entitled to a weekly unemployment benefit of only 27 euros whilst a Dane moving in the opposite direction would receive 367 euros. Different levels of economic development and welfare benefits create stratified social rights which the researchers recommend could be measured in a European Index of Free Movement and Social Rights (EIFMSR). The EU is currently emphasising a social rights pillar, but this is largely aspirational, a set of rights and principles, but unrelated to free movement of workers. The advantage of a minimum income Scheme based on calculating an EU average of unemployment benefit would be to offer a more tangible benefit. The proponents of the scheme linked to mobility claim that it would only cost 1 billion euros, and that if successful it could be expanded. This innovation could reduce concerns in the host country that EU citizen jobseekers might claim social benefits.

- **Social support and training for workers in countries of origin and host countries.** Ideally jobseekers or those who have found a job in another EU country should benefit from advice and mentoring before departure, on arrival in their new country and when necessary to help them return back home. A-Z mentoring could prevent most problems. The circular short-term nature of much intra-EU migration suggests that along the main routes, support services should be linked together. Advice services in the country of destination need to know more about the country of origin and vice-versa. Strengthening cross-border links through EURES, the EU employment service for the free movement of workers should be one objective. In the context of EU Cohesion policy, there is no need to invent new funds to support free movement of job seekers and workers: the social fund can provide for training, the integration of migrant workers and action against poverty. Providing support to EU citizens on the move to help them find jobs and integrate in their country of destination is in line with current EU policy making. It is more a question of developing existing services such as EURES and linking them together across migration highways rather than creating new ones. Partnerships between local authorities, a wide range of services (employment, language tuition, housing...) and civil society organisations should be formed as local action groups. In turn, such groups should be linked across borders. Such measures are only focussed on those on the move and do not address issues of broader impact and social change in countries of origin and countries of destination – the concerns in other words of the population which remains static.
- **Measures to prevent brain drain in countries of origin and strains on local services in countries of destination.** Ideally within the EU no one should be forced to leave their own country to find work elsewhere. In theory Cohesion policy can be brought to bear on prevention of excessive outward migration through the regional fund. Local action groups can develop plans to attract EU and other investments so as to develop infrastructure projects which will create offers of employment. In this way, young

people may be given more of a choice as to whether or not they should take advantage of their rights to free movement or try to build a future at home. Ideally, also, within countries of destination, local authorities may be eligible for support from the regional fund so that local services are able to cope better with a sudden increase from EU citizens in demand for housing, school places, local transport or other services. Euro-sceptical political parties have presented free movement as if it was a problem rather than an opportunity and their own country as unable as long as it remains a member of the EU to do anything to deal with its negative side effects. This is not true, since free movement is not unconditional and the EU does have policies and funds on which local authorities can draw to meet increased demand for local services. This should though become a more deliberate policy in order to target places in greatest need.

5.3. Bridging the gap between “movers” and “stayers”

As pointed out in introduction, there is a tendency to conclude that because the share of the EU population living and working in another Member State is limited and working in another Member State is limited to 3%, free movement may be important, but other measures are necessary to make European Citizenship relevant to the other 97%. So far, we have argued that with a decentralised free movement solidarity fund applied in places of most outward and inward migration, the EU should show that it is as much concerned about the static population as those on the move. The EU should stress the local dimension which is the origin of citizenship. For the governance of the commons immediacy is important. It is the level where there is most shared knowledge and where citizens whether local or EU citizens have most decision-making power. It is the privileged level for action and citizen participation provided city authorities are given the necessary authority and funds to respond to demands. It would however be a mistake to base a European Citizenship of the future on alternatives to freedom of movement, the first right of the European citizen and starting-point for others. The official figures of those living permanently in another Member State are a gross underestimate of all forms of short-term mobility, cross-border commuting or other forms of physical or virtual transnational movement, interaction or transaction. Surely the objective of the EU should be to aim to extend the benefits of being European to the whole population? This is why the guidelines by the ECIT Foundation propose a series of reforms to give more popular appeal to EU citizenship and make it relevant to everyone:

- **A right to be informed about the EU.** Although Eurobarometer surveys show awareness of European rights has increased, 49% of the population remains

unaware⁴². There is a socio-economic divide when it comes to awareness and attitudes towards EU citizenship with a sense that “insiders” are more likely to be among the well-educated and linguistically competent with opportunities to travel, whereas “outsiders” are more likely to be from lower income groups, rural communities or the older generation. A right to be informed is the gateway to other rights and could be a first step towards overcoming these divisions which are not only expressed in opinion polls but also reflected in votes on European issues in national and European elections. What would such a right mean in practice? Firstly, it would involve a change to the Treaties when there is a next opportunity for their revision. Secondly, it could mean for example that every household receives information about the elections to the European elections which would encourage better turnout, over 50%.

Another example could take the form of a Guide to European rights distinguishing between those applied within one’s own country, those triggered by crossing a border and those which can be used to make one’s voice heard with the EU institutions. Unless people know the rights how can they be expected to use them or see the relevance of EU citizenship? Making this a right places an obligation on the EU Institutions and national authorities to scale up their methods of communication to achieve more universal appeal and coverage.

- **A right to be educated for European Citizenship.** The question arises of whether the information would be meaningful unless the recipient has some prior knowledge of the EU and curiosity about what Europe has to offer. The Commission does not have competence to propose instruments in the field of education, but does have competence for EU citizenship to at least put forward recommendations and a model approach. In theory, education for citizenship has expanded thanks to support from the Council of Europe in particular. All governments across Europe pay lip service and can produce evidence of practice of education for citizenship and human rights. The practice and extent of civic education varies though considerably, sometimes taught as a stand-alone subject, sometimes linked to others. The European dimension can be enhanced at least for the teaching of history and languages. A real difficulty in the area is to find and share examples of best practice, let alone evaluate the results. Nevertheless, all the evidence points to the fact that unless Europe becomes part of the general knowledge acquired from a young age, understanding and practising European Citizenship becomes reserved for the better educated, linguistically competent and well-travelled.
- **Access to EU life-long learning and mobility programmes should be possible for all.** In turn, information and education for European Citizenship are unlikely to be enough

⁴² Eurobarometer of November 2016 available at <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/getChart/themeKy/50/groupKy/268>.

or sufficiently motivating unless those on the receiving end have a chance to participate. What happens outside the formal school setting is just as important. EU citizens should be given a once in a lifetime opportunity to spend a period up to three months in another Member State, funded by an equivalent of the ERASMUS programme. This would take the form of a personal entitlement to study, train, seek employment or undertake voluntary work. The cost of such an “ERASMUS for all” is high, but could be justified, especially if considered alongside possible future initiatives to raise revenue for the EU through taxes on financial transactions or applying the principle that the polluter pays. A more important justification is that the research shows that the positive impact of European exchange programmes is far greater on those who would not otherwise have had the opportunity, rather than on those who would anyway because they are enrolled in higher education or happen to have the right family and social connections. This makes common sense.

- **A European citizens’ card.** Finally, all this could be brought together in just one fully protected card. This would provide a practical symbol of European Citizenship and save considerable time and money for citizens and the administration alike. Such an initiative would also show that Europe has the political will to go digital. It could be added as the reverse side of national identity cards and serve a number of different objectives:
 - Provide evidence for public authorities and service providers of European rights and entitlements. This would involve enlarging the scope of the health card to cover social rights, academic and professional qualifications. People would also be able to see their rights and where to go when things go wrong.
 - Allow people to engage more easily with the EU institutions and sign a petition or citizens’ initiative, vote in European elections or find out how to make enquiries with the EU and obtain documents.
 - Provide proof of the entitlement recommended here to allow everyone a once-in-a-lifetime opportunity to participate in a European exchange programme.

Such a card, replacing the need to supply paper and other forms of evidence, would save considerable time and money for citizens and the administration.

Conclusions

Free movement of people, although the EU's most popular achievement is being contested to an increasing extent. In this document, it is argued that whilst overall free movement is a win-win situation, there are inevitable failures and local problems because of its uneven spread. It is not though because of this, that calls for restrictions on European rights should be allowed to succeed. On the contrary, the emphasis should be on defending European rights by stepping up enforcement to make sure that they work better, whilst dealing locally with local problems. The European Union is now emerging from an enlargement process where "transitional arrangements" and overall restrictions on free movement rights for European citizens from new Member States created more problems than they solved. There should now be emphasis on giving cities and local authorities more power and resources to manage effectively the impact of free movement of people, where there is an impact in selective regions. Evidence suggests that although messages about the overall benefits of intra-EU migration and progress towards a European labour market should be part of the response to scaremongering about free movement, they are not enough. The message has to address local communities and the facts on the ground. At the same time, there is a need to provide opportunities for all EU citizens to enjoy the benefits of this first transnational citizenship of the modern era.