



Free Movement

IN FOCUS

Is One of the EU's Freedoms at Risk?

4 June 2014

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Under a variety of rubrics, including 'Armutszuwanderung' (poverty migration) and 'social benefits tourism', the debate on the free movement of Bulgarian and Romanian citizens in the EU has entered public discussion. It has featured in the debates leading up to the European elections in May 2014. The European Parliament victory for populists in France, the UK and Denmark has added gravity to these debates.

The general claim has been that Western European countries would witness a considerable influx of Romanians and Bulgarians after 31 December 2013, when the transitional restrictions on Bulgarians and Romanians in the labour market expired. This would create unnecessary competition in the labour market, it has been alleged, and put a strain on the social security systems in the host countries.

Discussions of these issues abound with misconceptions and with claims which are often unfounded. These fallacies are propagated by right-wing populists, but they are also found in discussions carried out by some mainstream parties. There may be momentary electoral profit for any party in making the point about excessive waves of European migrants. In the long run, however, such a discourse favours the right-wing populists as it allows them to set the agenda. This discourse permits them to successfully preach Euroscepticism and xenophobia, hidden under concerns for national social welfare budgets.

Many blame the success of anti-migration rhetoric on the public scepticism provoked by the economic crisis and on the widespread disenchantment with mainstream politics. However, it would appear that the real cause lies in a well-targeted demagogic discourse. Quite apart from the issue of migration from Eastern Europe, immigration—both legal and irregular—is a hot topic in Europe, mainly due to migrant flows from Africa and the Middle East. On this basis, populists have managed to create oversimplifications that, when amplified by the media, strike

a chord with many EU citizens. They have done this by blurring the lines between several distinct categories:

- Sometimes populists intentionally conflate the topic of migration from outside the EU with that of internal EU migration, presenting both as parasitic. Moreover, they do not distinguish between legal and irregular migration.
- At other times, we are faced with a different paradox. When referring to migration from non-EU countries, national populists would like to appear as defendants of 'European-ness' and 'European values'. However, when faced with intra-EU migration, they are fierce opponents of European unity and the principles related to it. In this way, politicians have begun to challenge one of the four basic freedoms conferred on European citizens, the free movement of people.
- Some irresponsible media statements do not differentiate between passport-free travel in the Schengen area, of which Bulgaria and Romania are not full members, and the free movement of people, including access to the labour market in all EU countries. These two categories are mistakenly presented as one and the same thing. This conflation allows populists to misleadingly make the argument that the extension of Schengen will bring more economic migrants from Romania and Bulgaria. However, questions about the Schengen code are not related to the issue of access to countries' labour markets. In other words, that a person can travel without a passport is not connected to that person's access to a given labour market.
- A fourth misconception is that the right of access to the labour market automatically entails the right to receive social benefits on arrival in an EU country. It is on this fallacy that the current paper focuses.

Because migration, loss of jobs, social security abuse and increased taxation are straightforward issues that ordinary citizens can readily identify, it is easy to overlook distinctions.

What could be the result of these oversimplifications? Is the right to freedom of movement within the EU in danger? The answer is 'no', if we adhere to the provisions of the Treaties and to the case law of the European Court of Justice. However, the answer is 'yes', if we do not manage to provide a discourse that stands as an alternative to that which prevails in certain Western European media. If mainstream parties are to provide such an alternative, they need to spell out the realities of the situation by providing reliable data and explaining in detail what the Treaties actually say. Here are some facts that we can start with.

Internal migration in Europe: too much or not enough?

If we step back for a moment to look at the larger picture, we see that—even as the debate rages on about restricting Romanian and Bulgarian workers' access to the labour market—in the medium and long term, Europe is facing a serious skills shortage. The demand for skilled labour is being felt mainly in the EU15 member states, where the number of unfilled vacancies is on the rise. Germany, for example, is expected to have a shortage of around six million

skilled workers by 2025.¹ One way of looking for solutions to such labour market failures is to encourage geographical mobility, including intra-EU mobility. Matching jobs with skills within the EU and managing migration would be a smart way to improve productivity. In fact, the 2013 *EU Citizenship Report* mentions that the mobility of workers is still too low: only 3% of the EU's working age population live in an EU country different from their country of origin.² In addition, the experience of the 2004 and 2007 enlargements has revealed that intra-EU mobility has positive effects on economies and labour markets in receiving countries. The GDP of the EU15 has increased by almost 1% due to labour migration from the 2004 and 2007 enlargements.³

Do EU migrants move from east to west to benefit from the social system of the host state?

Migration within the EU is predominantly from east to west although recently there have also been indications of a south-to-north movement. Evidence shows that the vast majority of EU migrants do not move country to benefit from social security. Rather, people move to find and take up employment, driven by better income and job opportunities. A recent study deals with the issue of EU migrants who are not active in the labour market, including pensioners, students and jobseekers.⁴ It shows that this group of EU citizens forms only between 0.7% and 1% of the overall EU population. The study also presents data which demonstrate that, in most countries, EU immigrants are less intensive users of welfare than nationals.

Is the social security system of the host member states abused under 'loose' EU rules?

The fiscal impact of intra-EU mobility is a major concern to those who oppose the rights of free movement for all EU citizens. In this context, it should be mentioned that it is national governments, not EU institutions, which determine eligibility for social benefits. The basic principle that national governments operate under is this: if you have never contributed to the social security system of the country, you are not eligible for benefits. This applies to the citizens of the country as well as to jobseekers from other EU countries. Thus, the issue is not the applicant's nationality but whether or not the person has contributed to the system.

Some national governments may pay allowances to people whose income is below a certain level, even if the person has not contributed to the social security system. (Non-nationals from other EU countries can also be eligible.) Only a few countries have this policy: Estonia, Finland, Germany, Ireland and the UK.⁵ Nevertheless, and this is very important, even these countries apply a number of tests. To be eligible for these 'non-contributory cash benefits', a person, whether a national or an EU migrant, must meet a number of criteria. Typically, these

¹ D. Ziller, 'How Europe Could Tackle its Growing Skills Shortage', *Europe's World*, 1 June 2013.

² European Commission, *EU Citizenship Report 2013*, COM (2013) 269 final (8 May 2013), 6.

³ European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *Employment and Social Developments in Europe 2011* (2012).

⁴ This is not an exhaustive list. See C. Juravle et al., *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*, ICF GHK and Milieu (Brussels, 14 October 2013), 63.

⁵ Ibid.

criteria include being a resident, actively looking for paid work and being registered with the employment services in the country.

Again, it is important to note that EU law leaves it to national governments to define the conditions of eligibility. This means that a migrant's eligibility for benefits is based on national legislation. The only matter the EU requires is that it is residency which is decisive and not another criterion.⁶ In practice, the essential criterion in any member state is residence in the country (as opposed to temporary status). As there is no 'harmonisation' in the sphere of social policy, member states are free to determine the conditions for residence.

In assessing whether the person is to be considered a resident, national social security authorities use a list of criteria, which typically include the duration of stay in the country, family status and ties in the country, housing situation, the practice of a professional activity and residence for tax purposes in the country. EU legislation says that a person should be covered by the system of only one member state.

The overall conclusion here is that the definition of residence in any EU member state, and hence the granting of benefits, becomes, de facto, a national affair. EU law does not oblige any country to grant income support or any other kind of social assistance to jobseekers who are in a country for the first time. EU bodies would only interfere if there was discrimination on the basis of nationality. As long as national governments adhere to their own legislation on residence, they are by no means bound by 'a Brussels dictate' of legislation on social security.

Finally, although the number of migrants may seem high to some, the value of non-contributory benefits claimed by non-active EU migrants still accounts for less than 1% of the total amount of this expenditure.⁷ Therefore, as a European Parliament resolution recently pointed out, the alleged abuse of benefits cannot serve as a justification to curb free movement.⁸

How many Bulgarians and Romanians should Western European countries expect?

In some Western European countries, one question which has been prominent in the debate before the 2014 European Parliament election is 'How many will come?' Because there are no data available yet from the relevant national authorities, any response can only provide estimates. Still, there are strong indicators which need to be taken into account.

Drawing on past experience with EU enlargements, we can conclude that lifting the transitional restrictions on the labour market will certainly have some effect on free movement. It also

⁶ This is governed by Regulation (EC) no. 883/2004. This Regulation facilitates free movement and coordinates relevant criteria in social security systems, meaning that the member states may provide additional conditions in national legislation when they assess eligibility for benefits (European Parliament and Council Regulation (EC) no. 883/2004 on the coordination of social security systems, OJ L166, (30 April 2004), 1).

⁷ C. Juravle et al., *A Fact-Finding Analysis*, 63.

⁸ European Parliament, Resolution on respect for the fundamental right of free movement in the EU, 2013/2960 (RSP) (16 January 2014).

needs to be borne in mind that Bulgaria and Romania have the lowest GDP per capita in the EU, the former with 47% of the EU28 average and the latter with 50%.⁹

The 1 January 2014 lifting of the labour restrictions on Romanians and Bulgarians concerns only the nine countries which maintained transitional measures to the latest possible date. These are Austria, Belgium, France, Germany, Luxembourg, Malta, the Netherlands, Spain (only for workers from Romania) and the UK. The remaining member states either did not put these controls in place or lifted them at an earlier date (Ireland, Italy and Poland). Consequently, any increase in the number of intra-EU migrants should mostly affect those nine countries.

Lifting the transitional controls will not result in a migration tsunami, as some predict. The reason for this is that Bulgaria's and Romania's accessions took place seven years ago, and those who wanted to look for better opportunities abroad have already done so.

In addition, we need to bear in mind that, as of 2007, Romanians and Bulgarians have been able to register as self-employed in any EU member state or to work by obtaining a work permit. For certain categories of workers, work permits have not even been required. Romanians and Bulgarians who are self-employed have also been able to claim social benefits under certain circumstances. Therefore, the changed situation after the lifting of restrictions will mostly be attractive to jobseekers rather than to people seeking to abuse social security. Although in certain localities—for instance, certain German municipalities—there are concerns over the increased number of Bulgarian or Romanian citizens, those numbers cannot be linked to the lifting of restrictions.

In comparison with the 10 countries which joined the EU in 2004, the populations of Bulgaria and Romania are significantly smaller, and therefore a proportionally smaller movement of people should be expected. Romania has roughly 22 million inhabitants and Bulgaria approximately 7 million, much smaller populations than the 75 million of the 2004 enlargement.

There are concerns in some German and Dutch municipalities that the number of people needing social welfare is on the rise due to EU migration.¹⁰ The argument could be valid if it were backed by evidence. However, no figures have been presented to show a correlation between Romanian and Bulgarian citizens' requests for social benefits and the opening of the Western European labour market. Figures released by the UK's Office for National Statistics released in May 2014 showed that after transitional controls were lifted in the UK, the number of Romanians and Bulgarians working in the country has decreased by three thousand.¹¹

Social factors, such as culture and lifestyles, also have to be taken into consideration. Long-term figures show that when Romanians and Bulgarians immigrate to another EU country, they prefer Southern European countries. The top destinations are Italy (37%) and Spain (30%). Other Western European countries are less popular, with Germany receiving 12% of

⁹ Eurostat, 'GDP per capita in PPS' (15 November 2013).

¹⁰ V. Pop, 'German Government to Curb "Welfare Tourism"', *EUObserver*, 25 March 2014.

¹¹ Office for National Statistics, *Labour Market Statistics, May 2014*, Statistical Bulletin (14 May 2014), table 8.

the migrants from Romania and Bulgaria, and the UK being the destination for 5%.¹²

Why do we have to differentiate intra-EU mobility from migration from outside the EU?

It is clear that migrants, regardless of whether they are from the EU or beyond, move mostly because of inequitable social or economic situations in their countries of origin. The rights of both EU and non-EU citizens must be respected and enforced with equal determination. However, we still need to pay special attention to intra-EU migrants because they are subject to different rules. Labour market restrictions on EU citizens can be imposed for a limited time after accession, typically for a period that is specified in the accession treaties. But thereafter they have to end irrevocably. Extending the restrictions for no reason would simply mean depriving EU citizens of one of the basic rights conferred on them by EU law.

Conclusion

Although we have focused on legislation, statistics and costs to social security systems, the big questions that remain on the agenda for politicians are rather about principles. Will the EU allow one of its core principles, the freedom of movement, to be violated by member states for short-lived political benefits? After all, the free movement of people is a pillar of the single market. Compromising free movement would mean a devaluation of EU citizenship and a setback to the EU project as a whole. Furthermore, it would mean that populists were defining how ambitious the European agenda should be.

Mainstream political parties should be ready to confront the populists with facts and stand behind the basic EU principles. They need to base their arguments on sound reasoning and accurate figures—and not on fears, as populists do.

It is up to the mainstream parties to make it clear what the benefits of free movement are. It is also up to these parties to propose mechanisms to improve the functioning of labour mobility, providing solutions to skills shortages and local unemployment in Europe. In this respect, there is a great scope for non-populist parties at the European level to coordinate between different national party voices from their respective party families.

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¹² L. Andor, 'Labour Mobility in the European Union: The Inconvenient Truth', lecture at the University of Bristol, 10 February 2014.

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