

## The Impact of Enlargement on Free Movement: A Critique of Transitional Periods

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### Abstract

The expansion of the European Union to incorporate ten new Member States in the next wave of accession in May 2004 brings with it certain legal, social and economic implications for both the existing EU-15 and the acceding countries. One of the most important, yet controversial aspects of this process is the extent to which it opens up valuable mobility rights across the Member States, which in turn, extend a range of employment and social benefits to migrants and their families.

As a means of allaying existing Member States' fears that immediate and unfettered adoption of the free movement *acquis* will prompt mass migration and 'social dumping', certain transitional measures have been imposed. This will enable a period of gradual integration and social and economic convergence before the accession country nationals will enjoy free movement rights on an equal footing with existing EU nationals.

This paper will examine in more detail the content and scope of these transition arrangements from the perspective of candidate countries, with a particular focus on Poland and Bulgaria as two countries involved in different waves of forthcoming accession: By reference to existing research and experiences of past enlargement processes, the paper will challenge the rationale behind temporal restrictions on free movement. It will discuss the extent to which both the EU-15 and the accession countries are socially and economically disadvantaged by transition periods. The paper will conclude with a critique of the impact of transition arrangements on the application and articulation of EU citizenship for accession country nationals.

### Introduction

One of the most significant and yet controversial aspects of the forthcoming accession process is the extent to which new states' nationals will acquire immediate and unlimited mobility rights and the concomitant social and economic benefits attached to the free movement of persons provisions. Indeed, it is this thorny issue that has fuelled the existing Member States' resistance to enlargement. Germany and Austria, in particular, have voiced fears that accession workers' unfettered access to the free movement provisions would inevitably prompt mass migration into their geographically proximate and employment-fertile regions. This, they argue, would force wages down and obstruct employment for their own nationals.

A so called 'transition period'<sup>1</sup> has therefore been established, imposing an initial two-year period during which accession workers will be subject to domestic immigration measures in place within the EU-15. Access to some Member States will differ, therefore, according to how liberal domestic immigration policies are. Following this period, the Commission will conduct a review of whether transitional periods in each Member State continue to be effective and justifiable. The decision is ultimately left to the Member State, by reference to its own labour market demands and economic situation, as to whether it should continue with, shorten or end the transition period.

The transition period across all 15 Member States should come to an end after five years but flanking measures can be applied for a further two years maximum (most probably by Germany and Austria) where 'serious disturbances' in the labour market demand such an extension.

It is important to note at this juncture that the transition period applies to prospective migrant workers only. It does not affect the mobility rights of workers who are already employed and legally resident in one of the EU-15. Nor does it apply to migrant students, the self-employed, service providers and all other accession nationals with sufficient, independent economic means who wish to take up a general right of residence in another Member State.<sup>2</sup>

Focusing loosely on Poland and Bulgaria as two countries involved in different stages of the accession process, the aim of this paper is to assess the impact of transition measures on nationals from these countries. The paper will begin by challenging the rationale underpinning the transition arrangements by reference to existing research on migration flows and past experiences of enlargement. It will then move on to consider the disadvantages of transition on the employment opportunities and career progression of accession country workers engaged in different sectors of the labour market (from highly-skilled to manual workers). It will also examine the potential demographic, social and economic implications of transition arrangements for the existing 15 Member States. The paper will conclude with a discussion of the impact of restricted mobility rights under the transition arrangements on the evolving concept of European Union citizenship

## **1. Challenging migration myths underpinning the transition arrangements**

### **i Would granting immediate free movement rights to accession nationals prompt labour market flooding in the EU-15?**

The transition arrangements described above are aimed first and foremost at assuaging existing Member States' fears that immediate adoption of the free movement of persons *acquis* will generate a mass exodus from the accession

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<sup>1</sup> Cyprus and Malta are exempt from transitional arrangements although Malta has a right to impose certain safeguards in the event of a large influx of migrants post-accession. CEC (2002) 'Free movement for persons – a practical guide for an enlarged European Union', DG Enlargement, Brussels, at p.5

<sup>2</sup> Above note, at p.4

countries into the EU-15, thereby flooding their more developed employment and social welfare systems.

The presumption that immediate extension of the free movement of persons provisions will further exacerbate the immigration crisis in countries such as Germany can be challenged, however, firstly in the light of historical evidence and research charting migration practices and past accessions; and secondly, in the light of the contribution Eastern European migrants make to the labour market of existing Member States.

This argument can be challenged on the basis of empirical and historical evidence to the contrary. Willem Maas<sup>3</sup> observes for instance, that even though similar (and, indeed, more stringent) transition arrangements were in place in the wake of Spain and Portugal's accession in the mid 1980s (the so-called 'Iberian enlargement'), many fears as to mass migration from Southern Europe turned out to be ill-founded. Indeed, migration data from this period indicated a reverse trend with many returning to these countries as well as nationals of other Member States gravitating towards the warmer climate and lower cost of living in Spain and Portugal.<sup>4</sup>

The Commission itself has also acknowledged in the context of the current enlargement process that:

*...fears that mass migration would 'flood' the labour markets of present states do not seem justified...in the light of experience from previous enlargements which would suggest that migration flows are affected by economic conditions and prospects, more than by the right of free movement.<sup>5</sup>*

More generally, one could argue that the perceived extent of East to West migration is grossly overestimated: Maas points out, for instance, that:

*Currently, approximately 300,000 nationals of candidate countries are legally employed in the EU, accounting for 0.2% of the EU workforce (roughly 6% of the total non-EU workforce of 5.3 million). In Austria, which has the highest share of workers from candidate countries, they account for 1.2% of the workforce; in Germany, they account for 0.4%. Germany and Austria host 70% of the candidate country workers in the EU, but even in these two*

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<sup>3</sup> Maas, W, (2002) 'Free Movement and EU Enlargement', Paper presented at the Fifth Biennial Conference of the European Community Studies Association, Toronto, 31 May-1 June, at p.9

<sup>4</sup> See further the work of Wallace, C. (2001) 'The new migration space as a buffer zone?' in Wallace, C. and Stola, D. (eds) *Patterns of Migration in Central Europe*, New York: St Martin's Press, pp.72-84

<sup>5</sup> CEC, (2000) 'European Mobility Forum – a New Employee Mobility', *Information Service*, 11 May 2000, quoted in Jileva, E. (2002) 'Visa and free movement of labour: the uneven imposition of the EU *acquis* on the accession states', *Journal of Ethnic and Migration Studies*, Vol. 28, No.4, pp.683-700, at. P.691

*countries candidate country workers still account for only about 10% of all workers from outside the Union.<sup>6</sup>*

Both Poland and Bulgaria are commonly regarded as two of the most fertile sources of migrants to Germany, yet research indicates that nationals *from these countries 'account for only a fraction of all the foreigners resident in Germany and as far as the workforce is concerned, they account for 0.4%.<sup>7</sup>*

**ii. Immediate mobility rights will provide additional gateways to the EU for illegal migrants from third countries**

While the geographical location of Bulgaria has traditionally created an important gateway to Germany for migrants from Turkey, Romania, Iraq, Iran and some African countries stringent visa regulations implemented in 1997, have significantly curtailed the use of Bulgaria as a transit country.<sup>8</sup> These border controls will inevitably become even more rigorous following full accession as the candidate countries embrace the Schengen *acquis*.

**iii. Immediate mobility rights will overburden the social welfare systems of the EU-15, prompting an increase in welfare tourism.**

Research suggests also that workers from Eastern Europe do not, as is commonly presumed, migrate permanently to other countries but instead, are more likely to work for temporary periods, separated from their family. This is largely attributable to Western employers' increasing preference for short-term employment contracts.<sup>9</sup> In that sense, a significant proportion of migrant workers from the CEECs rarely have the opportunity or inclination to apply for the panoply of welfare benefits available in the host state, nor do they claim any family-related benefits. Indeed, as one commentator has suggested:

*The great majority of Poles, Czechs and Hungarians who contemplate possibilities for migration think of it as a supplement to (not a replacement of) their home-country earnings<sup>10</sup>*

The propensity of Eastern Europeans towards temporary as opposed to permanent migration to the EU-15 is supported by the findings of a survey, conducted in May 2001, on prospective labour movement from the candidate countries following accession. 70 per cent of the Polish respondents anticipated working in other Member States for between two months and two years or for intermittent periods between returning home. Only 12 per cent of

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<sup>6</sup> Above note 3, at pp.5-6

<sup>7</sup> Organa, M. (2002) 'The Free Movement of workers and Poland's accession to the European Union', [www.welpolitik.net/policy-forum/article/1374.html](http://www.welpolitik.net/policy-forum/article/1374.html), at p.8. See further, Information note: *The Free Movement of Workers in the Context of Enlargement*, European Commission, 6.03.2001, p. 9.

<sup>8</sup> 1997 saw the creation of a new border police to regulate migration activities into and out of Bulgaria.

<sup>9</sup> Okólski, M. (1997) 'Recent Trends in International Migration – Poland 2001', Working Paper No.28, University of Warsaw Institute for Social Studies, at pp.18-19

<sup>10</sup> Morawska, E. (2000) 'Transnational Migrations in the Enlarged European Union: A Perspective from East Central Europe', Florence: European University Institute, Robert Schuman Centre, EUI Working Paper 2000/19

them intended to work for longer than two years and 13 per cent expressed a desire to settle permanently in another Member State.<sup>11</sup>

### The Specific case of Frontier Workers

In addition to the temporary patterns of migration described above exists a trend in short-term movements comprising a highly intensive shuttling back and forth across international borders for the purposes of work.<sup>12</sup> Okolski has categorised these moves as "incomplete migration", characterised by frequent trips abroad of short-duration for work while maintaining a steady residence and household links in the country of origin.<sup>13</sup> The majority of Polish migrant workers in Germany fall into this category (approximately 238,000 by December 2000), the vast majority of whom are sub-contracted to Germany by Polish construction or manufacturing firms.<sup>14</sup>

Arguably, these types of migrants (in Poland, the Czech Republic, Slovenia or Hungary) would benefit most from the immediate adoption of the free movement *acquis*. In that sense, they would be provided with more fertile opportunities to cherry pick between the lower cost of living in their home accession country and the higher wages on offer in the neighbouring EU-15 state.

Certainly the greater disparity between the economies of the existing Member States and those of the accession countries would beckon a greater incidence of daily cross-border commuting. It is difficult to identify any significant problem, however, in nationals of one country legitimately commuting between two countries given the potential employment and economic gains to be made by both countries. Indeed, the implementation of European secondary legislation<sup>15</sup> coupled with bi-lateral agreements between states<sup>16</sup> to ensure the exportability of welfare and employment benefits between Member States are specifically designed to facilitate and, indeed encourage highly mobile life-styles and career trajectories of this nature.

### The importance of Eastern European labour to the market economies of the EU-15

However ill-founded, current Member States' objections appear to be targeted primarily at migrants employed in low-skilled jobs. Again, such fears are grounded in misconceptions as to the actual 'burden' these workers place on the employment and welfare systems of the host state. Moreover, such fears

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<sup>11</sup> Referred to by Jileva, above note at p.690. See also Mitsilegas, V. 'The implementation of the EU *acquis* on illegal immigration by the candidate countries of Central and Eastern Europe: challenges and contradictions', *Journal of Ethnic and Migration Studies*, Vol. 28, No.4, pp.665-682, at p.670

<sup>12</sup> Council of Europe, 'Current trends in international migration in Europe' <http://www.social.coe.int/en/index.htm>

<sup>13</sup> Okólski, M. (1997) 'Recent Trends in International Migration – Poland 2001', Working Paper No.28, University of Warsaw Institute for Social Studies

<sup>14</sup> Above note, at p.11

<sup>15</sup> Notably, Regulation 1408/71 of 14<sup>th</sup> June 1971, OJ No. L28/1 1997, on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Article 20 refers specifically to frontier workers.

<sup>16</sup> Germany and Poland have completed inter-governmental agreements enabling nearly 250,000 seasonal workers per year to cross into German regions.

betray the important contribution such workers make in plugging vital and gaping labour market gaps. One commentator has noted that:

*Immigration labour (temporary or permanent) can alleviate bottlenecks in the labour market, contribute to lower wage inflation and often lead to the development of new entrepreneurial cultures.*<sup>17</sup>

Zimmermann has further argued that the highly motivated attitude of economic migrants is conducive to more moderate labour costs and nurturing international competitiveness.<sup>18</sup>

In any case, the work undertaken by low-skilled migrants is essentially that which nationals of the host state simply have neither the inclination nor skills to do. In that sense, migrants from the accession countries are likely to pose the greatest threat to other immigrants from non-candidate countries employed in similar jobs than to nationals of the host state.

## **2. The disadvantages of transition arrangements on the employment opportunities and career progression of accession country workers**

### Mobility as the key to career-progression for highly-skilled professionals

Of course, migrant workers from any one country do not represent an homogenous group; there is a clear distinction between workers engaged in different types of economic activity, for example highly skilled professionals and manual workers. In the light of research suggesting that the latter group are more inclined to work temporarily in the EU-15 for purely economic reasons, it is likely that transition periods would pose the greatest disadvantage to the highly skilled for whom migration is more about career progression than it is about economic survival.

The importance and desirability of mobility as an aid to career progression (for those in the scientific or industrial sector, for example) becomes ever more critical when training opportunities and resources are limited within the home state. This is already evidenced in the identifiable exodus of Polish scientists to neighbouring Germany, thereby placing a growing expectation of mobility on others in the sector, regardless of personal, family and financial commitments at 'home'.

The Commission, in its most recent report charting the progress of Poland and Bulgaria towards fulfilling the criteria for full membership of the European Union, alludes to the under-funding of academic and industrial scientists and identifies specific shortcomings in the research-related administrative infrastructure of both countries.<sup>19</sup> These failings inevitably hamper scientists' future desirability as workers in other Member States, prompting many to

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<sup>17</sup> Jileva, above note 5, at p.691

<sup>18</sup> Zimmermann, K.F. (1998) 'German job mobility and wages' in Ohashi, I. and Tachibanaki, T. (ed) *Internal Labour Markets, Incentives and Employment*, London: Macmillan, pp.300-33

<sup>19</sup> CEC (2002) Regular Report on Bulgaria's Progress Towards Accession, Brussels 9.10.2002, COM (2002) 700 final, at p.92-93; and CEC (2002) Regular Report on Poland's Progress Towards Accession, Brussels 9.10.2002, COM(2002) 700 final, at p.97-98

migrate as early as possible in their careers to obtain the requisite level of training and to maximise their professional opportunities.

#### The Impact of selective, protective policies in favour of highly-skilled migrants

The impact of transition measures on the mobility of highly skilled workers is felt not only by the individuals themselves, but by the existing Member States who benefit significantly from the 'brain gain' arising out of fluid free movement practices.

As a means of fulfilling their own labour market demands, the EU-15 specified that exemptions should be applied to the transition arrangements in favour of certain categories of workers. In Germany and some other Member States, for example, there has been an increasing demand for highly qualified specialists, especially in the IT and medical sector.<sup>20</sup> The German government responded to this deficit by inviting a quota of up to 50,000 highly-skilled foreign professional in these sectors to live and work in Germany.<sup>21</sup> Similar measures are anticipated at the other end of spectrum in respect of manual workers.

Such initiatives are highly indicative of a 'supply-on-demand' mentality whereby the transition period operates very much in the interests of the EU-15's labour market requirements rather than those of the accession countries thereby prioritising the labour potential of accession country workers over and above the human dignity of their nationals more generally.

#### A two-way process: the impact of transition on migration to the accession countries

Migration is not a one-way process and transition arrangements affect mobility from the EU-15 to the accession countries as much as from the accession countries to the EU-15. Changes in immigration trends within the countries awaiting imminent accession bear testimony, to a large extent, to their successful transition towards democracy, respect for human rights and the positive development of economic and social conditions. Rising standards of living and the openness of the labour market in turn lead increasing numbers of immigrants to settle in these countries although, admittedly, only a cursory number are likely to come from the existing EU-15.

Specific exceptions have been made, therefore, to enable and indeed, encourage EU nationals in the scientific sector, for instance, to participate in training and research programmes in Poland with immediate effect from the date of accession. Furthermore, Bulgaria has implemented the Employment Promotion Act, with the possibility of removing the work permit regime in favour of EU migrants who wish to work in Bulgaria following accession. Legal authority for EU nationals to enter these countries is insufficient in itself, however since an identifiable lack of scientific research funding and opportunities more generally clearly impacts upon Poland and Bulgaria's desirability as hosts for incoming migrant workers or, indeed, for return migrants (an issue which will be considered further later).

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<sup>20</sup> Above note 7, at p.8

<sup>21</sup> See further the discussion by Jileva, above note 5, at pp. 691-693.

### **3. The demographic, social and economic implications of transition arrangements for the existing 15 Member States**

Quite aside from the contention that the reasons underpinning transition periods are empirically and historically unfounded, there are some very real, human consequences to restricting such a crucial aspect of EU membership. Perhaps there is some perverse justice in the prediction that, by imposing restrictions on individual mobility, the EU is cutting off its nose to spite its face as transition measures clearly carry potentially injurious social and economic consequences for the existing Member States.

#### The ageing population of the EU-15

First of all, many of the EU Member States, including the most fervent opponents of immediate application of the free movement *acquis*, are faced with the demographic and social consequences of an increasingly aged population. Declining birth rates over the last twenty or thirty years are a feature of almost all Member States' demographic profiles.<sup>22</sup> This trend will ultimately jeopardise the sustainability and strength of the labour force and place an unprecedented burden on social welfare systems. Accessing foreign labour as a means of sustaining economic growth and safeguarding the viability of social security and pension regimes will, therefore become a growing preoccupation in the coming years.<sup>23</sup> Interestingly, the Commission has noted that the threat of a declining labour resource is greatest in relation to engineering, science and technicians.<sup>24</sup>

#### Propensity to Return to or Remain in the home accession state

Transition periods operate on a somewhat superior presumption that, given a real choice between their home country and one of the EU-15, workers will almost invariably opt for the more economically prosperous option. Accession, however, may well prompt an increase in return migration which carries with it the promise of enhanced living and working conditions, ready-made social networks, a lower cost of living and a greater sense of cultural allegiance. Moreover, the negative experiences of many third country nationals in the Member States pre-accession (for example, Romanians in the Irish Republic) may further prompt a surge in return migration.

Furthermore, in spite of existing Member States' plans to implement quotas and specific exemptions in respect of the most vulnerable sectors of the labour market, as employment and the economy of the accession states stabilises and as social welfare systems develop, migration could quickly become a less attractive alternative to many workers. As Organa states, 'Good economic expectations reduce the propensity to migrate'<sup>25</sup>

In the same vein, Jileva goes as far as suggesting that enlargement itself could provide the best anti-immigration policy possible and that it is the

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<sup>22</sup> Jileva, above note 5, at p.692

<sup>23</sup> Organa, above note 7, at p.8

<sup>24</sup> Ardittis, S. (1992) 'The new brain drain from Eastern to Western Europe', *International Spectator*, Vol 27(1), pp.79-96 quoted in Jileva, above note 5, at p.692.

<sup>25</sup> Organa, above note 7, at p.16

developments that take place within the accession countries that will prove decisive push and pull factors in migration processes rather than the developments solely in the EU-15:

*EU membership can become a crucial factor in creating prospects for CEE countries' nationals to find jobs in their home countries, and thus function as a migration deterrent. There will be a considerable return migration to Eastern Europe, [in much the same way as there was a huge rate of return to Ireland and Greece since their accession in 1973 and 1981 respectively], stimulated by improving economic conditions in the immigrant's home country.<sup>26</sup>*

The reluctance of many accession nationals to embrace life in another Member State is apparent in the response to specific quotas established in some Member States to attract highly skilled professionals from the candidate countries. Interest in taking up this offer was only marginal in Poland with many predicting more profitable job offers in their home country, particularly once the economic benefits of EU membership start to filter through.<sup>27</sup> One could argue also that there is a greater prospect of brain-retention in the accession countries if individuals are forced, as a result of transition periods, to remain in their home country for a few years to develop their careers as part of a close-knit and established research community.

To safeguard accession countries against further 'brain drain', however, developments in respect of education, training and mobility entitlement have to be complemented by more effective and holistic social policy initiatives. The 2002 Commission report notes that legislative alignment with this aspect of the *acquis* has yet to be achieved in both Poland and Bulgaria, particularly in relation to labour law, equal treatment, health and safety at work (p.149; p.81) and more effective co-ordination of social security, tax and pension regimes (p.88; p.53). Bulgaria, which has been relegated to the second wave of Eastern enlargement, clearly has to make some progress in this respect.

#### **4. A two-tier system?: transition arrangements and the evolving concept of European citizenship**

A final concern arising out of the imposition of a transition period is its impact on the evolving application of EU citizenship. This concern centres, first of all, around the acknowledged correlation between the status of Union citizenship and access to the free movement of persons provisions. Secondly, the transition arrangements pose challenges to the more abstract and symbolic importance of citizenship as denoting membership of a political community and a shared stake in identifiable rights and responsibilities beyond the national level.

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<sup>26</sup> Above note 5, p.691

<sup>27</sup> Organa, above note 7, p. 8

### Transition arrangements and the correlation between Union citizenship and the free movement provisions

The illusive concept of Union citizenship attained constitutional status in 1992 when it was established formally within Articles 17-22 of the EC Treaty. While this process did little more than formalise pre-existing entitlement already available under secondary legislation,<sup>28</sup> it did reinforce the correlation between citizenship and the rights available under the free movement provisions. Indeed, there is now a wealth of academic literature highlighting the exclusive, yet highly privileged citizenship status afforded to individuals in a position to take advantage of the free movement provisions and the 'hollow' nature of the concept for other 'static' (economically less viable) individuals for whom migration is less of a prospect or ambition.<sup>29</sup>

It could be argued that the transition arrangements provide us with a different, somewhat inferior vintage of Union citizenship by essentially denying any free movement rights for at least a limited period to accession country workers. Indeed, in a bizarre twist of fate, they actually endow workers with a *less* privileged status than non-workers who wish to take up a general right of residence, study or retire in another Member State. In that sense, a more complex hierarchy of free movement entitlement emerges in relation to accession country nationals, with the self-employed and service-providers at the apex, accompanied by the privileged labourers and highly-skilled professionals called upon by the EU-15 to meet their market demands, followed by students and those of independent economic means, followed by dependent family members. Workers who are not in demand or who are not already employed in the EU-15 at the time of accession suddenly find themselves relegated to the bottom of this hierarchy.<sup>30</sup> This shift in the fortunes of migrant workers has led one commentator to note that:

*The ongoing enlargement negotiations provide those optimistic about the prospects for European citizenship with a sobering reality check. Enlargement will force the context of EU citizenship to be filled in; what does EU citizenship mean? What are its core rights, and what is auxiliary? It may be well and good to have the right to appeal to the European ombudsman, and even the right to vote in municipal elections, but can we really speak of meaningful citizenship when the key right of EU*

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<sup>28</sup> Notably, under Regulation 1612/68 on the free movement of workers which has been generously interpreted by the ECJ to develop a range of social, economic and employment rights for migrant workers and their families.

<sup>29</sup> For a detailed review and analysis of the concept of Union citizenship, see Ackers, L. and Stalford, H. (forthcoming 2004) *A Community for Children? Children, Citizenship and Migration in the European Union*, Aldershot: Ashgate; Oliveira, Á. C. (2002) 'Workers and Other Persons: Step-by-Step From Movement to Citizenship – Case Law 1995-2001' *Common Market Law Review*, 39, pp. 77-127; D'Oliveira, J. (1995) 'Union Citizenship: Pie in the Sky?', in A. Rosas and E. Antola (eds) *A Citizen's Europe: In Search of a New Order*, Sage, London; Shaw, J. (1998) 'The interpretation of European Union Citizenship' *The Modern Law Review*, Vol. 61, No.3. pp.293-317; and Weiler, J.H.H. (1998) 'Introduction: European Citizenship - Identity And Differentity' in La Torre, M. (ed) (1998) *European Citizenship: An Institutional Challenge*, London

<sup>30</sup> For an analysis of the hierarchy to have emerged under the provisions regulating free movement between the EU-15, see Ackers, L. (1998) *Shifting Spaces: Women, Citizenship and Migration within the European Union* Bristol: Policy Press.

*citizenship – the right to move and take up residence – is denied to at least one important category of individuals: migrant workers?*<sup>31</sup>

The selective, 'supply-on-demand' approach to affording mobility rights to accession national workers further fuels fears as to the highly exclusive nature of Union citizenship. Enlargement has prompted the EU to adopt a highly instrumental approach to free movement whereby the fate of accession nationals is left entirely to the economic fate of the EU-15. A new application of citizenship has therefore, emerged, whereby accession countries are expected to assume all of the responsibilities associated with Union membership even though most of their nationals will have little opportunity to enjoy any of the benefits. As Maas notes: *'Despite the existence of EU citizenship, short-term economic self-interest and domestic political concerns continue to trump European rights.'*<sup>32</sup>

It is hardly surprising, therefore, that there is curiously little mention of 'Union citizenship' in the documents relating to the enlargement process and virtually no mention of the language of 'rights' that citizenship necessarily incorporates. Instead, there is a much more clinical and literal reference to the entitlement and obligations inherent in the four freedoms.

The emergence of more recent case law in which individuals have claimed specific social entitlement on the sole basis of their Union citizenship and EU nationality status<sup>33</sup> raises further questions as to the legitimacy of denying access to basic free movement related rights.

Aside from threatening the very substance of Union citizenship as we know it, the transition arrangements challenge more general, prevailing theories of citizenship which traditionally denote a common political, geographical, social and civil identity, implying a share in individual and collective rights and responsibilities. The inconsistency with which transition measures have been imposed (exempting countries such as Cyprus, and those involved in the last 'Nordic' enlargement) provides a less than positive political footing on which to continue the enlargement process with clear evidence that some accession nationals are perceived as more of a liability than an asset to the European Union.

## **Conclusion**

The aim of this paper has been to challenge some of the myths underpinning the application of transition periods and to consider the impact of transition on our understanding and application of the concept of citizenship of the Union.

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<sup>31</sup> Maas, above note 3, at p.15

<sup>32</sup> Above note 3, at p.9

<sup>33</sup> See notably, Case C-85/96, *Martínez Sala*, [1998] ECR I-2691; Case C-274/96 *Bickel v. Franz*, [1998] ECR I-7639; and Case C-413/99, *Baumbast and 'R'*, Judgment of the Court of 17<sup>th</sup> September 2002, 2002/C274/03. For a critique of these and other related cases, see Oliveira, A. C. above note 29; and Spaventa, E. and Dougan, M. (2003) 'Educating Rudy and the (Non-)English Patient: A Double Bill on Residency Rights Under Article 18(1) EC' 28 *European Law Review*, pp. 699-712.

The transition arrangements essentially represent the subjugation of important social and economic rights enshrined principally within the free movement provisions in order to render enlargement more politically palatable.

Yet the hysteria surrounding the impact of enlargement on migration from the East is clearly at odds with immigration and employment statistics across the European Union and with past experiences of enlargement. Moreover, the blanket application of transition arrangements to all accession countries in relation to all 15 current Member States presumes some kind of consistency or convergence in migration patterns across these countries. East to West migration has, in most instances, stabilised in the course of the past decade. In fact, we are now witnessing the gradual transformation of many accession countries from countries of emigration into transit and immigration countries. The main preoccupation in the post-accession years is, therefore, likely to be curbing illegal third country migration into the accession regions rather than regulating emigration to the Western Member States.

This suggests that there is a general anti-immigration rhetoric fuelling objections to immediate mobility rights for workers, entrenched very much in domestic politics which conflate Eastern European migration with general immigration, asylum-seeker and refugee problems. This is difficult to understand given the powerful labour resource available in the accession countries which will be of critical importance as the EU-15 population ages and as advancements in technological and scientific research demand access to a larger pool of highly-skilled professionals from other countries.

While the application of selective policies in favour of certain employment sectors may address immediate gaps in the EU-15's labour market, they essentially serve to reinforce inequalities between EU nationals and accession nationals, and between the economically valuable and the economically burdensome.

The paper has also referred to the importance of mobility rights to our interpretation and articulation of EU citizenship which denotes a shared cultural, economic and political community. Denying core free movement entitlement to workers, even on a temporary basis, strips citizenship of much of its substance in terms of the social rights to which mobility gives rise, thereby denying a significant proportion of individuals with any tangible means of staking their claim in this community. The failure of the European Institutions to apply even the language of citizenship in the negotiations leading up to enlargement is somewhat indicative of their reluctance to extend the *benefits* of citizenship to accession country nationals. This is at odds both with recent, broader judicial interpretations of the concept of citizenship as well as with the EU's endeavour to manifest a more explicit commitment to human rights and equality within mainstream law and policy-making.

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