CHALLENGES IN INTRA-EU LABOUR MIGRATION: FREEDOM OF MOVEMENT AND COMBATING DISCRIMINATION WITH A FOCUS ON CEE WORKERS' TREATMENT*

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ABSTRACT

The legal and contextual framework of the European Union that regulates workers' freedom of movement is thoroughly examined in this article, with a particular focus on concerns of discrimination – both direct and indirect – that arise in the EU labour market. The free movement of labour is the cornerstone of the EU, but putting this principle into practice has presented a number of complex issues. Therefore, to provide a thorough understanding of the complexities surrounding worker mobility in the Union, the article begins with a thorough analysis of the legal and contextual framework of the principle of free movement of workers within the European Union. The main focus, meanwhile, continues to be on the complications brought about by (un)equal treatment based on nationality. This involves carefully examining direct discrimination, which means differences and obstacles that affect workers from certain countries, leading to unequal treatment. The cases decided by the CJEU help illustrate this concept. Moreover, the paper scrutinises the concept of indirect discrimination, whereby ostensibly impartial policies or transitional arrangements disproportionately impact specific worker cohorts, particularly those from Central-East European countries. These arrangements entailed intricate application protocols, encompassing prerequisites such as work permits, quotas, suitability assessments, and assorted national regulations, thereby adding complexity to the exercise of freedom of movement for CEE workers. Finally, the author critically examines the transitional arrangements in the context of (in)direct discrimination of CEE countries' mobile workers. In summary, this paper illuminates the complexities surrounding the freedom of movement for workers within the EU, dissecting issues of discrimination and (un)equal treatment based on nationality while critically assessing the impact of transitional arrangements for the CEE workers in that context.

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1. Introduction

The history of migration within Europe is extensive, and substantial population shifts have occurred. Since World War II, intra-European migration has increased; however, this long-term trend is marked by abrupt variations. Behind this tendency, there is a great deal of differentiations, and it conceals patterns that vary greatly depending on the destination country and the type of migration, such as family, labour, and humanitarian migration.[2] One of the variations happened after the Second World War when the dynamic of intra-European migration changed, and Western Europe gradually became a destination for immigration due to political or economic reasons.[3] The establishment of the European Economic Community in 1957 and its tendency to create a common market, allowing for the free movement of people, goods and capital, significantly impacted migration patterns.[4] Nevertheless, only two original Member States, Italy and Belgium, supported workers' freedom of movement as a necessary condition for creating a common market during the first negotiations for the Treaty of Rome[5]. The freedom of movement of capital, products, and services was accepted by the Netherlands, Germany, France, and Luxembourg simultaneously. In contrast, the final acceptance of freedom for workers triumphed and was incorporated into the 1957 Treaty of Rome due to the significant unemployment rate in the Italian territory and the likelihood of the Communist Party's victory.[6] Consequently, Article 3(c) of the Treaty of Rome aimed to eliminate hindrances to the unrestricted movement of persons. However, it did not establish a broad entitlement to the free movement of all individuals. Instead, it pertained exclusively to those citizens of Member States engaged in economic activities, such as workers, self-employed individuals or service providers. Consequently, the concept of free movement of persons was predominantly seen from an economic perspective, specifically concerning the rights of entry and residence for economically active citizens of Member States.[7] However, the Treaty of Rome included clauses that established the foundation for a vast body of legislation and legal precedents concerning equal treatment in employment. These provisions notably prohibited discrimination based on nationality against workers from other Member States,[8] Furthermore, the economic prosperity experienced in northwestern countries in 1960 heightened the motivation for individuals to seek

2 | Jorens, 2022, p. 56.
3 | Dustmann and Frattini, 2011, p. 6.
4 | Roberts, 2009, p. 9.
5 | Treaty establishing the European Economic Community (The Treaty of Rome, or EEC Treaty), signed on 25 March 1957.
6 | Toader and Florea, 2012, pp. 68–69.
7 | Barnard, 2000, pp. 111–112.
8 | Muir, 2015, p. 921.

higher-paying employment opportunities, thereby creating a demand for affordable unskilled labour.[9] Consequently, the Western powers used labour migrations to fulfil the lack of workforce after their economic recovery due to their inability to satisfy domestic needs. Most countries, such as Germany, first looked for southern European workers, believing they would assimilate into their labour market more easily. Also, the German government negotiated the 'guest-workers' with eight other countries, including Italy, Greece, Spain, Turkey, Morocco, Portugal, Tunisia and Yugoslavia, and that scheme has been taken by several other wealthier European countries, too. The idea behind that scheme was simple: to keep the foreign workers while there were jobs and return them when their country's economy was soured. By the beginning of the 1970s, the economy was slowing in northwestern European countries, resulting in reduced migration to those countries, including Germany, whose government stopped migration in 1973 and 'locked in' foreigners within the country who eventually secured for themselves the legal right to remain there, including the right to family reunification.[10] Therefore, as explained, the variations in intra-Europe labour migration were a constant phenomenon after the Second World War, which followed the economic situation in Western Europe as the leading destination for mobile workers, from the rapid growth in the 1950s and 1960s to the economic downturn in the 1970s. Furthermore, one of the bigger migration variations happened after the new accessions. After additional Member States joined, the founding Member States worried about future labour migration. This fear persisted during the accessions of Denmark, Ireland, the United Kingdom, Greece, Spain and Portugal. Still, it became more intense with the entry of Central and Eastern EU countries, resulting in the introduction of transitional arrangements.[11] The intra-EU migration from East to West became one of the biggest migration fluctuations within Europe, which remained the permanent consequence of the EU labour market.[12] For example, between 2004 and 2007, more than 2.2 million Polish citizens joined the labour migration propensity.[13]

In tandem with the shifts in labour migration within Europe, the right to free movement, initially designed for workers, has evolved due to legislative amendments. This evolution started when the Maastricht Treaty was signed in 1992, which established the European Union and introduced the notion of shared European citizenship. It also gave EU citizens and their family members the right to move and reside within the other Member States.[14] Additionally, the Court of Justice of the European Union (hereinafter: CJEU) has contributed significantly to this evolution through its teleological interpretations, often playing a more substantial role than legislative endeavours.[15] To ensure the full realisation of the right to mobility, the legislative body and the judiciary took steps to prioritise the treatment of workers as individuals rather than just instruments of integration. Consequently, when interpreted generously by the Court, the legislature's framework guaranteed fair treatment for mobile workers.[16] In order to question it, in this paper, the analysis will centre around the extent to which fair treatment was implemented, with a specific

9 | Roberts, 2009, p. 9.
10 | Hansen, 2003, pp. 25–26.
11 | Tudor, 2017, p. 41.
12 | Scholten and Ostaijen, 2018, p. 1.
13 | See more in: Grabowska-Lusinska et. al., 2010.
14 | Grabbe, 2023, p. 23.
15 | Jorens, 2022, p. 58.
16 | Spaventa, 2015, p. 457.

emphasis on the persisting challenge of nationality-based discrimination. Henceforth, in the following, the author delves into the EU legal framework concerning the freedom of movement for workers and scrutinises the issue of (in)equality in the treatment of workers from different Member States, focusing on CEE countries' workers.

2. Legal framework of the EU's pillar: Free movement of workers

The fundamental Treaty provisions regarding free movement rights and the allowable exceptions have seen minimal alternations since the original Treaty of Rome.[17] The most notable changes were introduced by the Maastricht Treaty[18] that entered into force in 1993, establishing EU citizenship rights and restructuring the regulations on capital movements. Nevertheless, despite the enduring stability of this Treaty foundation, questions regarding the extent and scope of free movement law continued to give rise to many unresolved matters.[19] Therefore, the Lisbon Treaty[20], also known as the Reform Treaty, which entered into force on 1st of December 2009, aimed to modernise the EU into a more democratic, effective and transparent Union. Also, it was a moment of renaming the Treaty establishing the European Community in the Treaty on the Functioning of the European Union[21] (hereinafter: TFEU).[22] The Treaty, together with the Treaty of the European Union,[23] was a crucial legal pillar for additionally determining freedoms for EU citizens: the freedom to provide services and freedom of movement of goods, capital and persons. Within the last-mentioned freedom, there is also a freedom of movement of workers, which is one of the crucial aspects for a functional internal market, increasing employment rates and economic development.[24]

Accordingly, natural persons who possess the nationality of an EU Member State enjoy the autonomous protection of the right to move and reside freely within the territory of the Member States[25] as a fundamental aspect of EU citizenship, as outlined in the relevant EU Treaty provisions. The Charter of Fundamental Rights further supports this provision in Article 45(1).[26] Additionally, the Treaties include provisions that specify the allowable exceptions to the free movement rights established in the Treaty.[27] In the

17 | Treaty establishing the European Economic Community (The Treaty of Rome, or EEC Treaty), signed on 25 March 1957.
18 | Treaty on European Union, 29/07/1992, Official Journal C 191.
19 | Nic Shuibhne, 2013, p. 22.
20 | Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 17/12/2007, Official Journal C 306.
21 | Consolidated Version of the Treaty on the Functioning of the European Union, 26/10/2012, Official Journal C 326 (hereinafter: TFEU).
22 | Goldner, 2007, p. 12.
23 | Consolidated version of the Treaty on European Union, Official Journal of the European Union, 26/10/2012, C 326 (hereinafter: TEU).
24 | Kapural, 2003, p. 45.
25 | Article 20 of the TFEU.
26 | Charter of Fundamental Rights of the European Union, OJ C 326, 26/10/2012; Article 45(1).
27 | Nic Shuibhne, 2013, p. 21.

Treaty's context, the Court emphasised the necessity for an autonomous Community definition of worker and employed person, which delineates the scope of application of this fundamental freedom[28]. The Court was adamant that this definition should not be overly restrictive. The rules governing the free movement of workers encompass the pursuit of effective and genuine activities, excluding activities of such a limited scale that they are deemed purely peripheral and ancillary.[29] Provided that the work undertaken is authentic and effective, even part-time workers[30] and individuals receiving financial assistance from the public funds of the host Member State[31] to supplement their income[32] should not be excluded from the personal scope of the free movement provisions.[33]

Finally, the whole concept of the freedom of movement for workers intended to prevent imbalanced unemployment in the Member States and to increase wages in the EU since more people would be employed and prosperity would be higher.[34] Article 45 of the TFEU guarantees the right to move, reside and work in another Member State while being treated equally as the nationals of the other Member State, just as the right for their family members to enter and reside in that State.[35] Additionally, the secondary legislation is more detailed, regulating the position and rights of mobile EU workers, with a special emphasis on Directive 2004/38/EC[36], Regulation (EU) No 492/2011[37] and Regulation (EU) 2019/1149.[38,39] Although mobile workers and their families enjoy comprehensive rights, the practical implementation of these rights remains a formidable task. To bridge

28 | See more in: Judgment of the Court of 19 March 1964, Mrs M.K.H. Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten (Administration of the Industrial Board for Retail Trades and Businesses), Case 75/63, ECLI:EU:C:1964:19; Judgment of the Court of 23 March 1982, D.M. r v Staatssecretaris van Justitie, Case 53/81, ECLI:EU:C:1982:105.
29 | Judgment of the Court of 23 March 1982, D.M. Levin v Staatssecretaris van Justitie, Case 53/81, ECLI:EU:C:1982:105, p. 1050.
30 | Judgment of the Court of 14 December 1995, Inge Nolte v Landesversicherungsanstalt Hannover, Case 317/93, ECLI:EU:C:1995:438, p. 4656.
31 | Judgment of the Court of 31 May 1989, I. Bettray v Staatssecretaris van Justitie, Case 344/87, ECLI:EU:C:1989:226, p. 1645.
32 | Judgment of the Court of 3 June 1986, R. H. Kempf v Staatssecretaris van Justitie, Case 139/85, ECLI:EU:C:1986:223, p. 1750.
33 | O'Leary, 2009, p. 169.
34 | Davies, 2012, p. 71.
35 | Article 45 of the TFEU.
36 | Consolidated text: Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 16/06/2011, Official Journal L 158.
37 | Consolidated text: Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, 01/08/2021, Official Journal L 141.
38 | Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344, 11/07/2019, Official Journal L 186.
39 | Peročević, 2017, p. 321.

the divide between the legal framework and its enforcement, Directive 2014/54[40] was endorsed by both the Parliament and the Council. This Directive's primary objective is to streamline the realisation of rights for mobile workers.[41] Also, it is important to notice that equal social rights to mobile workers have been guaranteed by Regulation 883/2004[42] and Regulation 987/2009[43]; however that matter will not be the subject of this paper.

In the subsequent sections, the author analyses and, subject to critical examination, the primary challenges related to the freedom of movement concerning the equal treatment of workers.

3. Challenges in workers' freedom of movement: Analysing direct and indirect discrimination

Among its various objectives, the internal market law's primary and essential task is eliminating discriminatory obstacles to cross-border movement. The eradication of discrimination can also be readily justified as a fundamental normative goal in creating a borderless economic zone.[44] Therefore, the equality or non-discrimination principle is essential to the European integration process, and the endeavour of equality among both individuals and European states is a primary objective which has been widely recognised as a prerequisite for advancing toward the vision of 'an ever closer union among the peoples of Europe.'[45] The union's foundation is rooted in the core value of equality, articulated as a commitment to non-discrimination based on nationality, with the ultimate goal of gradually eliminating barriers among Member States for economic entities.[46] Workers are entitled to extensive rights ensuring equal treatment, granting them equal opportunities in terms of employment, benefits, social welfare and tax benefits. In addition to being protected against discrimination, workers have the right to access job markets in different Member States without encountering unjust obstacles. The definition of barriers is quite expansive, encompassing any regulation that hinders the free movement of workers, particularly when it directly obstructs their entry into the labour market, as outlined in the Treaty.[47] Article 45(2) of the TFEU regulates that

40 | Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, OJ L 128, 30/04/2014.
41 | Spaventa, 2015, pp. 467–468.
42 | Consolidated text: Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, 31/07/2019, Official Journal L 166.
43 | Consolidated text: Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, 01/01/2018, Official Journal L 284.
44 | Nic Shuibhne, 2013, p. 194.
45 | Article 1(2) of the TEU.
46 | Muir, 2015, pp. 919–920.
47 | Spaventa, 2015, p. 467.

> such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.[48]

This provision forbids discrimination based on nationality, referring to the citizenship distinct from the state's nationality involved in discrimination.[49] However, the TFEU only addresses direct discrimination and does not explicitly cover other forms based on criteria other than nationality.[50] Nevertheless, free movement law was never limited to addressing discrimination alone. The key cases, *Dassonville*[51] and *van Binsbergen*[52] defined free movement rights broadly as dealing with restrictions or hindrances rather than just discrimination.[53]

Furthermore, established legal precedent now affirms that the prohibition of discrimination encompasses treating similar situations differently and applying the same rule to dissimilar situations. The Court commonly uses the terms 'direct' and 'indirect' discrimination to address such distinctions,[54] and it initially dealt with directly discriminatory measures, but over time, the focus of case law evolved.[55] An example of direct discrimination would be denying individuals access to a specific professional activity solely based on their non-national status in the host State.[56] In such instances, the Member State has no legal justifications unless the prohibition falls within the boundaries of the exceptions outlined in the Treaty provisions.[57] Direct discrimination was significantly addressed in the *Bosman* case[58], in which the other state's national was treated less favourably compared to a worker who was a citizen of that state. The Court confirmed that in that case, the guarantees of freedom of movement and the prohibition of discrimination from the mentioned Article were violated, and the contested provisions were discriminatory. Furthermore, as mentioned, the Court has previously focused on direct, open-nationality discrimination, but it began addressing indirect discrimination in the *Giovanni Maria Stogiu vs Deutsche Bundepost* case,[59] highlighting that equal treatment rules prohibit open and concealed discrimination with similar effects.[60] Indirect discrimination occurs

48 | Article 45(2) of the TFEU.
49 | Bačić and Sarić, 2014, p. 38.
50 | Toth, 2022, p. 6.
51 | Judgment of the Court of 11 July 1974, Procureur du Roi v Benoît and Gustave Dassonville, Case 8–74.
52 | Judgment of the Court of 3 December 1974, Johannes Henricus Maria van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid, Case 33-74.
53 | Nic Shuibhne, 2013, p. 195.
54 | White, 2004, p. 51.
55 | Nic Shuibhne, 2013, p. 195.
56 | See as an example: Judgment of the Court of 21 June 1974, Jean Reyners v Belgian State, Case 2-74.
57 | White, 2004, pp. 51–52.
58 | Judgment of the Court of 15 December 1995, Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, Case C-415/93.
59 | Judgment of the Court of 12 February 1974, Giovanni Maria Sotgiu v Deutsche Bundespost, Case 152–73.
60 | Toth, 2022, p. 6.

when a condition or requirement disproportionately affects nationals or other Member States compared to their nationals. If there is a case of indirect discrimination[61], it can be deemed acceptable if it can be demonstrated that the condition or requirement is objectively justified. Objective justification requires the party imposing the condition or requirement to prove that it is grounded on objective, non-nationality-biased criteria and is proportionate, indicating that there is no alternative, less discriminatory means to achieve the valid objective.[62] Incorporating indirectly discriminatory measures into the scope of the Treaty represented a pivotal move in guaranteeing substantial influence. This also had favourable, politically soothing implications, as it disassociated potential violations of EU law from discussions involving blame and intent.[63] Also, since the *Martínez Sala* case, the CJEU has expanded the equal treatment rights of mobile citizens, even when they don't engage in a genuine economic activity.[64] Nowadays, Directive 2004/38/EC[65] outlines and defines exceptions to the prohibition of nationality discrimination. However, it is important to note that the prohibition of discrimination based on nationality can only be applied in cases where EU nationals and their family members are the subjects of the cross-border movement.[66]

Over the years, the EU has confronted numerous challenges related to nationality-based discrimination within the EU labour market. As a case in point, the enlargement of the EU into Central-Eastern Europe (hereinafter: CEE) represents one of the most contentious subjects in the EU's history. This expansion will be examined in more detail in the following section, with a specific emphasis on critically assessing whether the limitations toward CEE workers constituted (in)direct discrimination by the EU itself.

Besides the enlargement, another relevant example was the economic turmoil of 2008, which saw a revival of protectionist discourse, particularly in certain Member States, with the United Kingdom being the most prominent example. In the UK, the anti-migration rhetoric found a receptive audience deeply rooted in the country's Eurosceptic sentiments, ultimately contributing to its exit from the EU.[67] Brexit was also a subject of numerous questions regarding the equal treatment of EU workers in a now ex-EU country. The convergence of these elements, including restrictions during enlargements and economic crises, has wielded a substantial impact on discussions and implementation regarding the free movement of workers. This suggests that a fundamental pillar of EU integration has become ensnared in controversy to the extent that it has become a viable subject for political manoeuvring.[68]

61 | See as an example: Judgment of the Court of 20 October 1993, Maria Chiara Spotti v Freistaat Bayern, Case C-272/92.
62 | White, 2004, p. 54.
63 | Nic Shuibhne, 2013, p. 195.
64 | Judgment of the Court of 12 May 1998, María Martínez Sala v Freistaat Bayern, Case C-85/96.
65 | Consolidated text: Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 16/16/2011.
66 | Muir, 2015, pp. 925–926.
67 | Spaventa, 2015, p. 459.
68 | Spaventa, 2015, p. 459.

4. Challenging the attainment of equality for CEE mobile workers

Though still partially relevant, the European aim to establish the free movement of workers had significant implications. It eliminated immigration restrictions among member states and relinquished direct control over labour market fluctuations, preventing protectionist policies favouring EU mobile workers. This shift reduced the attractiveness of effective tools for job creation during economic downturns. On the other hand, while migration was not a central EU debate topic until the 2004 enlargement,[69] it impacted the discourse on migration.[70] The entrance of the CEE countries to the EU was referred to as a 'return to Europe' because their freedom of movement undoubtedly contrasted the intra- and interstate mobility constraints they had to deal with under the communist system.[71] In 2004, the European Union witnessed the accession of 12 new Member States. However, the Treaties of Accession were exclusively detailed for 10 CEE new Member States. Consequently, most individuals from the new States working in the territories of the 15 existing Member States before 1st May 2004, were there due to the application of national immigration regulations or bilateral agreements between the respective countries. This was the case if the 'old Member State' implemented transitional arrangements.[72] The concept of 'fundamental freedom' faced challenges due to transitional arrangements, allowing member states to delay workers' movement from specific acceding countries without the need for factual justification. This derogation aimed to prevent labour market disruptions in existing member states, especially considering the substantial economic disparities among acceding countries. This restriction applied only to workers, as self-employed and non-economically active individuals could move freely. Similar arrangements were implemented for the accession of Romania and Bulgaria in 2007[73] and Croatia in 2013[74], albeit on a smaller scale.[75] As a result, transitional arrangements curtailed the freedom of movement for workers, effectively enabling the possibility for Central-East EU citizens to be employed for a period of up to seven years. These limitations encompassed intricate application processes involving work permits, quotas, demonstrating suitability, and various national regulations.[76] Hence, to facilitate the gradual alignment of the labour market between existing and new Member States, transnational arrangements were devised through a sequential procedure known as the 2+3+2 formula. This approach allowed the old Member States to implement transnational measures for an initial two-year period, with the option to extend them for an additional three years if necessary. The possibility of an extra two-year extension was granted only in exceptional cases, contingent upon providing evidence of significant labour market

69 | Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, OJ L 236, 23/09/2003.
70 | Spaventa, 2015, pp. 458–459.
71 | Petev, 1998, p. 83.
72 | White, 2004, pp. 18–19.
73 | Treaty of Accession of the Republic of Bulgaria and Romania, OJ L 157, 21/06/2005.
74 | Treaty of Accession of the Republic of Croatia, OJ L 112, 24/04/2012.
75 | Spaventa, 2015, pp. 458–459.
76 | Ulceluse and Bender, 2022, p. 452.

disturbances resulting from the accession of new Member States.[77] These transitional limitations have diminished the status of nationals from CEE countries and strained the development of a shared political, geographical, social and civil identity among EU citizens, but they also effectively allowed discrimination based on nationality within the realm of employment.[78] Consequently, whether the massive fear before the enlargement was justified is questionable and can be analysed through several post-enlargement reports.[79] Moreover, the evidence stemming from the 2004 enlargement indicates that the transitional arrangements have adverse consequences on some labour markets. This is primarily because these restrictions only pertain to the free movement of workers and do not extend to the free movement of self-employed individuals. Consequently, these arrangements pushed the labour activities into the informal sector, resulting in the unlawful employment of accession workers. This, in turn, exposed them to exploitation due to the absence of legal safeguards regarding wages and working conditions while also undercutting the lawful labour market. As such, the country-specific decision-making process regarding transitional arrangements, made without knowledge of other Member States' actions, may not be entirely logical, particularly if the primary intention behind these arrangements was to protect the domestic labour market rather than simply making enlargement more politically acceptable.[80]

If this phenomenon is put into the context of the previous analysis of the discrimination types and if such transitional arrangements are properly evaluated, the treatment of the CEE workers during their first entry into the EU labour market may be viewed as an instance of indirect discrimination based on nationality. This discrimination originates in the temporary arrangement that allowed Member States to postpone workers' movement from particular adhering nations without providing a rationale. Workers from CEE nations were the main target of the restrictions; self-employed people and those who were not engaged in the economy were exempt. Individuals from these particular accession nations were treated differently depending on their nationality since they encountered challenges that citizens of other EU Member States did not, with the exception of the 'Southern countries', which are not analogous to this situation. Keeping in mind the differences in wealth between the acceding nations, these agreements aimed to avoid upsetting the labour markets in the 'old' Member States. Although this goal is justifiable, the fact that workers from particular CEE EU nations were disproportionately affected highlights the indirect discriminatory aspect of these agreements. Finally, the author agrees with certain scholars' points of view[81] that the (mis)treatment of CEE mobile workers throughout the transitional era revealed the existence of dual-tier EU citizenship since the accession of the CEE countries, which exists even nowadays.[82] Nevertheless, despite the fact that the transitional arrangements have deepened economic divides in the EU, it is still likely that it will be applied to less affluent candidate states, too. To address confusion and criticism, the EU must provide clear legal information and consider alternative labour market protections, such as immigration quotas, to prevent

77 | See more in: Holland et al., 2011.
78 | Currie, 2016, p. 162.
79 | For example: Holland et al., 2011.
80 | Spaventa, 2015, pp. 472–473.
81 | See more in: Ulceluse and Bender, 2022.
82 | Konjević, 2023, p. 134.

perceptions of unequal treatment among nationalities. In conclusion, it can be affirmed that these transitional arrangements exacerbated the longstanding disparities between Western and Eastern Europe rather than achieving the ultimate objective of fostering equal EU citizenship.

5. Conclusion

The migration history within Europe has witnessed extensive population shifts, with significant variations since World War II. The establishment of the European Economic Community in 1957 and the subsequent growth of a common market played a pivotal role in shaping intra-European migration patterns, focusing on the freedom of movement of workers. The legal framework initially emphasised the economic aspect of free movement, targeting economically active citizens of Member States. Over time, EU law has evolved, extending the rights of free movement to EU citizens and their family members, with a broader emphasis on individual rights rather than mere economic integration. The Court of Justice of the European Union has played a crucial role in interpreting and expanding these rights, ensuring fair treatment for mobile workers.

However, challenges related to direct and indirect discrimination have persisted. The enlargement of the EU, including the accession of CEE countries, brought about significant variations in managing these migrations, limiting the freedom of movement for CEE workers and indirectly discriminating against them. Therefore, even though the concept of free movement of workers has transformed over the years, emphasising the rights and equality of mobile individuals, and despite legal advancements, challenges remain, particularly in addressing discrimination based on nationality. The best example of it was the treatment of CEE mobile workers during the transitional period, which exemplified indirect discrimination and highlighted the existence of dual-tire EU citizenship. The question arises as to whether the same treatment of workers will be applied in future accessions since candidate countries also belong to the economically less wealthy part of Europe.

Besides that, economic crises and protectionist sentiments have added complexity to discussions surrounding the free movement of workers. Brexit, for instance, raised questions about the equal treatment of EU workers in the UK. Nevertheless, the circumstances brought about by the Covid-19 pandemic have served as a wake-up call for Western countries, highlighting the significance of intra-EU labour migration for the sustenance of their national labour markets.

In summary, the journey of labour migration within the EU has been marked by evolving legal frameworks, persisting challenges, and the ongoing pursuit of equal treatment for all EU citizens, regardless of their nationality. The freedom of movement for workers remains a multifaceted and dynamic component of European integration, necessitating innovative solutions in the face of future accessions and emerging challenges.

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