

**The erosion of the European integration process due to certain
restrictions of the free movement of persons**

*La erosión del proceso de integración europea como consecuencia de
ciertas restricciones a la libre circulación de personas*

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Recepción: Enero 2015

Aceptación: Abril 2015

ABSTRACT

According to the Maastricht Treaty, the EU has to strengthen the rights and interests of the European nationals through the introduction of a citizenship of the Union. In this regard, we have to highlight that the free movement of citizens, which is the core right of the EU citizenship, has been in the spotlight during these last years as domestic temporary constraints have been recently imposed by some member States against the population of other European partners, despite the fact that the mentioned right has not only achieved economic benefits, but also paved the way for a common European identity. Why has this happened? Has the UE implemented appropriate measures in order to guarantee this freedom? On the contrary, has the EU's outlook changed due to, among other reasons, the on-going financial crisis that started in 2007? Either way, these national policies do interfere with the main objectives of the single market. Moreover, they severely undermine the very essence of the EU. Consequently, does this mean its denaturalization?

Keywords: European Union citizenship, freedom of movement, supranational measures.

JEL classification: K10, K30, K33.

RESUMEN

De acuerdo con el Tratado de Maastricht, la UE tiene que reforzar los derechos e intereses de los ciudadanos europeos a través de la ciudadanía de la Unión. A este respecto, debemos mencionar que la libre circulación de ciudadanos, la cual forma parte de uno de los derechos esenciales que confiere la referida figura de la ciudadanía, ha estado en el centro del debate durante estos últimos años como consecuencia de las recientes restricciones temporales nacionales impuestas por algunos Estados miembros en contra de la población de otros socios europeos, independientemente de que no sólo ha generado beneficios económicos, sino que también ha marcado el camino de hacia una identidad común europea. ¿Por qué ha sucedido esto? ¿Ha implementado la UE las medidas precisas para garantizar dicha libertad? O, por el contrario, ¿la perspectiva de la UE ha cambiado, entre otros motivos, por la crisis financiera que comenzó en 2007 y que se encuentra actualmente en curso? Sea como fuere, estas políticas nacionales interfieren en los principales objetivos del mercado único. Además, socavan gravemente la esencia misma de la Unión Europea. Consecuentemente, ¿significa esto su desnaturalización?

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Palabras Clave: ciudadanía de la Unión Europea, libertad de circulación, medidas supranacionales.

Clasificación JEL: K10, K30, K33.



1. INTRODUCTION: THE EUROPEAN UNION'S INTERNAL MARKET AND THE FREEDOM OF MOVEMENT: A FIRST APPROACH

The achievement of the European Union's (EU) internal market and the trade liberalization are not ends in themselves. Whereas the European common market originally seemed to be mainly concerned with the abolition of trade barriers, later a broader conception was acknowledged: the promotion of peace, the implementation of the principle of sincere cooperation, the guarantee of the rights conferred by the Union citizenship, as well as the creation of an area with, among other features, freedom, security, justice and environmental aims. Undoubtedly, the above are key tools -which are mentioned specifically in article 3 of the Treaty on European Union (TEU)- that encourage a better integration, the well-being of people and a sustainable development. Within this context, we should highlight that one of the four principles on which the European common market is based relates to the free movement of people that allows us not only to travel freely across European member States, but also eases the exercise of other rights linked to a particular group of people: workers. Which are those rights? The right of movement and residence for workers, the right of entrance and residence for family members, and the right to work in another member State. Nowadays, as a result of the evolution of the European integration process, these rights have changed: they are not only giving support to an economic European dimension, but they also have a socio-political approach. However, we have to notice that the mentioned rights are subjected to certain restrictions, in particular the rights of entry and residence and the right to take up an employment in the public sector. In addition, there are other limitations that can be imposed when referring to citizens that come from new member States.

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In the same vein, it is important to mention that the Maastricht Treaty (TEU, 1992) specifically states that one of the objectives of the European Union is "to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union". What can we understand by citizenship of the EU? In this case, the referred Treaty gives us some basic clues: "Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship".

With no doubt, the implications and considerations of the legal status granted by citizenship are many. Nevertheless, our paper is not aimed to give a fully detailed view of all the issues that could be addressed in the field of citizenship. In fact, the key question established in this paper is linked to the free movement of people and the way in which certain national measures, recently imposed, are affecting not only the referred freedom -strongly supported by the figure of the EU citizenship-, but also the core of the EU itself. Accordingly, the present paper analyses the general legal provisions and

the Community case law that has governed this matter to date. Furthermore, it contests the current position followed by some member States, which are calling for changes and restrictions on the free movement of citizens after the abolishment of the transitional arrangements implemented to workers from Bulgaria and Romania. Moreover, this article rejects any proposal to cap numbers of EU migrants as it clearly contradicts the EU Treaty principle of the free movement of people.

In the light of the above observations, we have to ask ourselves the following questions: do EU citizens perceive free movement as the right most closely associated with the figure of EU citizenship? Is it seen, maybe, as the most positive achievement of the Community integration project, bringing economic benefits to their country's economy? Either way, in the recent European Parliament elections, the free movement has become a vital campaign issue for some political parties. In fact, the referred political groups have made statements that have strongly undermined the mentioned freedom, encouraging in many ways an increase of racism and xenophobia. Therefore, undoubtedly, the discussion goes on.

1. THE MAIN IMPLICATIONS OF THE EUROPEAN UNION CITIZENSHIP

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The Maastricht Treaty specifically states that one of the objectives of the European Union is to strengthen the rights and interests of European nationals through the citizenship of the Union. As it has been previously explained, article 20 (ex article 17) of the referred legal instrument states that “every person holding the nationality of a Member State shall be a citizen of the Union”¹. The mentioned legal provision adds that by no means the citizenship of the Union shall replace national citizenship².

The legal status conferred by the citizenship of the EU is contained in the European treaties, as well as in additional and complementary supranational regulation. Accordingly, by simply glancing over the main legal provisions now in force, we are able to acknowledge the most important rights that European citizens are entitled to: right to move and reside freely on the territory of the Union, subject to the limitations and conditions laid down in the Treaty on the Functioning of the European Union (TFEU) and to the measures adopted to give it effect (article 21 TFEU); right to vote and to stand as a candidate for European and municipal elections in the member State in which you reside (article 22 TFEU); right to receive diplomatic protection in the territory of a third country by the diplomatic or consular authorities of another member State, if your country has no diplomatic representation there (article 23 TFEU); right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language (article 24 TFEU); right to access documents of the



Union's institutions, bodies, offices and agencies (article 15.3 TFEU); and right to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the treaties when certain legal requirements are duly accomplished (article 11.4 TEU).

After briefly mentioning the significant repercussion associated to the Union citizenship, we have to underscore the importance of article 6 of the TEU – modified by the Treaty of Lisbon –, which stresses in paragraph one that the EU recognises the rights established in the Charter of Fundamental Rights of the European Union and, in paragraph two, that it will accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Unfortunately, it does not make any reference to the rights conferred by the Union citizenship, which would have truly strengthened the rights mentioned in the previous paragraph and, at the same time, it would have been consistent with the objectives of the Maastricht Treaty.

Either way, it should be emphasised that no duties stem from the Union citizenship. Moreover, the main outcome of all the mentioned rights promoted by the discussed figure has turned out to be the following one: the involvement/participation of European citizens in the European Union integration project³. This brings an added value that should not to be neglected in these challenging times where the lack of institutional credibility and legitimacy seems to be the norm⁴.

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In light of the above, it is worth recalling that the Union citizenship is an essential element of governance. Indeed, the former figure is considered as “a source of rights, the most important of which is arguably the ability to shape policies that will directly affect an individual's life” (Picard, 2007: 73), bringing “(...) the Union closer to its citizens, thereby resolving its often criticised legitimacy deficit” (Picard, 2007: 73). Thus, as previously mentioned, in a period of time where the EU is suffering from a continuous gap of credibility, we can understand why European institutions are showing a strong concern towards the rights conferred by the EU citizenship. However, it is important to highlight that, since the beginning of the territorial integration process, the right to free movement has been an area of key focus. Indeed, European treaties and secondary regulation from the start addressed and developed the referred freedom - perhaps the main point nowadays of the European citizenship- in order to consolidate the European project. Necessarily, we have to ask why that is.

As one would presumably anticipate, the abovementioned consideration is strictly linked to the EU's primary goal: the need of establishing a *common market*. Undoubtedly, the creation of an economic area based on a common market was the primary objective of the treaty signed in Rome, in 1957; an agreement that gave birth to the European Economic Community (EEC), the former association consecrated to integrate the economies of Europe⁵, after known as the European Union. The purpose of

this unique market, as the preamble of the referred legal instrument establishes, is to remove the existing obstacles and to guarantee steady expansion, balanced trade and fair competition. Alongside with this, it is important to reinforce the idea about its historical roots, closely bound up with the end of Second World War. After the devastating effects of war, European countries were “anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less-favoured regions”⁶; and to “confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations”⁷. At that moment, European leaders thought that promoting a single economic area would encourage prosperity, growth and peace throughout the European territory.

Therefore, as article 2 of the EEC Treaty states, establishing a common internal market, enhanced by the exercise of certain freedoms, would lead to a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it. Accordingly, when undertaking the commitment of establishing this peculiar economic area, article 3 of the EEC Treaty boosted not only the elimination of trade obstacles, but also spurred the freedom of movement for persons, goods, services and capital. Thus, from that moment on, no significant impediments to those freedoms should be applauded by member States.

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2. GENERAL PROVISIONS AND LEGAL BASIS CONCERNING THE FREE MOVEMENT OF PEOPLE

A citizen of the EU has a number of rights and duties, according to the general legal provisions prescribed by European Law. As mentioned before, an integral part of the TFEU recognises them specifically in articles 20 to 25⁸. Furthermore, this Treaty includes a separate title with clear stipulations regarding the free movement of people, services and capital (Title IV and V TFEU). As a result, this legal instrument provides general and specific measures that encourage the referred freedom⁹.

The varied and extensive regulation now in force -not only contained in treaties- shows how important this freedom is. In fact, as previously explained, the freedom of movement of people turned out to be a huge concern since the mentioned common economic area without obstacles became the main and most recognized European strategy. That being so, it is perfectly understandable why the EEC decided to grant nationals from member States the right to move freely within the European Community, a possibility solely conferred at the beginning to employees, self-employed individuals or service providers. The right of residence throughout the European territory was also



granted initially to the same group of people and their families, giving a strict economic nature to the European integration project in its early phase. Thus, establishing the internal market at the EU's outset triggered the importance of the freedom of movement of people, promoting basically the mobility of businesses and workers throughout Europe.

As a key outcome, the Single European Act finally encouraged, in 1986, the definitive creation of an economic area without frontiers¹⁰. Later on, an important step occurred in 1997 when the Schengen Agreement¹¹ was incorporated into the Union Treaty; an arrangement designed to take away internal borders control in some European states¹².

Either way, it was not until the adoption of the Maastricht Treaty that a formal recognition to the rights of movement was given. The legal basis of these rights is located in Article 3 (ex article 2) of the TEU, which creates an internal market without barriers (with reference to the free movement of people)¹³; or articles 4(2)(a), 20, 26 and 45-48 of the TFEU. Moreover, we have to take into account articles 15, 21, 29, 34 and 45 of the Charter of Fundamental Rights of the European Union. By introducing article 8(a) (current article 20(2) TFEU), the concept of citizenship generalised the right to enter, reside and stay in the territory of another member state for the benefit of all citizens, disregarding if they were or were not pursuing an economic activity. Further on, the Treaty of Lisbon (2009) introduced a new phase in the expansion of those rights¹⁴.

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In line with the objective of transforming the EU into an area of genuine freedom and mobility for all its citizens, several directives were adopted during the 1990s in order to ensure the main rights related to such freedom¹⁵. Within this legal framework, the adoption of Directive 2004/38/EC represented a substantial event in this area¹⁶, as it promoted citizens of the Union and their family members to move and reside freely within the European territory, disregarding any economic factor. The measures established by the mentioned legal instrument were designed to encourage Union citizens to exercise their right to move within the territory of other member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members and to limit the scope for refusing entry or terminating the right of residence¹⁷. The scope of this Directive includes family members¹⁸.

Other relevant legal instruments are the following ones: Regulation No 492/2011 on freedom of movement for workers within the Union¹⁹ and Regulation No 883/2004 on the coordination of social security systems and its implementing Regulation 987/2009²⁰. These current general legal arrangements must continue their development to ensure their proper implementation on the basis of the implications of the EU's Charter of Fundamental Rights and of the Union citizenship status. Likewise, we should mention other important legal provisions also related with the abovementioned freedom:

- The Stockholm Programme and its action plan²¹.
- The Hague Programme: 10 priorities for the next five years²².
- Charter of Fundamental Rights; the European Ombudsman²³.
- Dismantling the obstacles to EU citizens' rights²⁴.
- Follow-up to the recommendations of the High-Level Panel on the Free Movement of Persons²⁵.

In line with the aforementioned matters, it is worth to mention that the discussed freedom is not unlimited. In this regard, Directive 2004/38/EC establishes a series of procedural guarantees, which mainly refer to restrictions that can be duly implemented on the right of entry and residence of European nationals on the grounds of public policy, public security or public health. That is to say, there are legal measures limiting the freedom of movement, which enables European countries to deny the right of entry or residence. Of course, those measures affecting the freedom of movement and residence must be based on the personal conduct of the individual concerned, and such conduct has to represent a threat to vital and fundamental interests of the state. In any event, a member State must duly consider a number of factors before it can grant an expulsion decision.

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Likewise, the Accession Treaty -signed on 16 April 2003- empowered 'old' EU-15 member States to introduce the so-called "transitional arrangements" for countries joining in 2004 the EU²⁶. This meant that certain limitations on the free movement of people could be maintained with regard to citizens coming from new European partners, during a transitional period of 7 years maximum after the accession took place. These restrictions did not concern travel abroad or self-employed activity, and they differed quite much from one member State to another. The remaining transitional periods applicable to the accession of Bulgaria and Romania in 2007 were lifted on 1 January 2014. There are currently transitional periods established for Croatian nationals, which must be lifted by July 2020 at the latest. Apart from those already outlined, relevant regulation has been adopted regarding the entrance and movement of non-Community citizens. For this reason, there are also legal provisions applied to third-country nationals who are not family members of Europeans citizens²⁷.

Be that as it may, how are national and European institutions contributing to the development and the protection of all these rights? If you think that your free movement rights have not been properly upheld, you can make use of the means of redress available at a national level to assert them. Only national courts can award the reparation for the damage suffered by individuals. Of course, it is advisable to contact a local solicitor that will provide legal advice²⁸. The EU has made major efforts in the interest of free movement, such as: a proposal for a directive on the portability of supplementary pension rights on which the Parliament and the Council reached



agreement at the end of 2013; work placements abroad for young workers (the new Erasmus+ programme for 2014 to 2020 allows internships and traineeships for vocational students in other member States); the Commission proposal to facilitate and promote EU mobility under the Europe 2020 strategy (in particular, in the flagship initiatives ‘An agenda for new skills and jobs’ and ‘Youth on the move’, which are also part of the Europe 2020 strategy); the 2010 Commission communication ‘Reaffirming the free movement of workers: rights and major developments’; a proposal for a directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers; or Directive 2005/36/EC (modernised by Directive 2013/55/EU) on the recognition of professional qualifications, which consolidates and updates the 15 existing directives and provides for innovative features such as the European professional card and the mutual evaluation of regulated professions.

The Commission, in 2010, stressed the following: “Member States are responsible for and entitled to take the measures to protect public safety and public order on their territory. In doing so, they must respect the rules laid down in the 2004 Directive on free movement, the fundamental rights of EU citizens and avoid discrimination, notably on grounds of nationality or the belonging to an ethnic minority” (Hartmann, 2014). The abovementioned institution announced that it was crucial to analyse “(...) the situation of all other EU Member States under the Directive on Free Movement to assess whether it will be necessary to initiate infringement proceedings (...)”(Hartmann, 2014).

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In November 2013, the European Commission adopted a communication on “Free movement of EU citizens and their families: Five actions to make a difference on free movement rules”²⁹. The referred document aims to clarify EU citizens’ rights and obligations, as well as the conditions and limitations included under EU law. Moreover, it address the concerns raised by some member States regarding this particular topic. It also sets out five actions to help countries and their local authorities to apply EU laws, providing tools to encourage their full potential, which includes -among others- the use of EU structural and investment funds. Likewise, the European Parliament -in its resolution of 16 January 2014- called on European countries to comply with Treaty provisions in charge of governing the right to freedom of movement in order ensure an appropriate implementation in all member States³⁰. This institution underlines that: “the fact that the rights conferred by EU citizenship are based on human dignity and should not be bought or sold at any price”³¹. Later, the Parliament particularly stressed the need of creating a European network of national contact points to improve the cooperation among member States when enforcing the rights of workers from other EU countries.

Undoubtedly, the free movement is at the core of the EU’s values, giving its citizens the possibility to choose where to live and work, as well as creating mobility and development in the labour market and in the education system. This clearly goes beyond

a purely economic or commercial dimension. Therefore, it is easy to understand why this right to free movement is -in all likelihood- identified as an essential element of the EU (Picard, 2007: 73). Without doubt, the abovementioned right, which has been strongly supported by treaties and secondary regulation³², has caused a huge impact to the figure of the European citizenship³³, enriching in many different ways the lives of European nationals³⁴.

3. THE SCHENGEN AGREEMENT: AREA OF FREEDOM, SECURITY AND JUSTICE WITHOUT INTERNAL BORDERS

The analysed freedom has been strengthened by the border-free Schengen area -based on a body of rules (the Schengen *acquis*)³⁵ -, which implies that European citizens are able to freely cross borders, only subjected to minimum checks. Therefore, the elimination of internal border controls, main objective of the Schengen regulation, means that European citizens do not need to show their passports nor identity cards when travelling within the Schengen area. In this spirit, the Schengen Border Code (SBC), adopted in 2006, is a crucial element in charge of updating and amending the existing regulation concerning border checks carried out on people. One of its legal provisions says that signatories must remove “all obstacles to fluid traffic flow at road crossing-points at internal borders, in particular any speed limits not exclusively based on road-safety considerations³⁶”. However, the above legal tool also establishes that on the grounds of public policy or internal security, EU countries are able to reintroduce those internal border controls.

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The interpretation of those exceptional circumstances, heavily influenced by certain events, is constantly reshaping the Schengen project. In this sense, the Arab spring that began in 2010 clearly meant a new momentum to the discussed *acquis*. At that time, an increase wave of immigrants to Europe took place, particularly nationals from Tunisia who tried to reach European soil. Accordingly, the Italian government tried unsuccessfully to find a solution for those individuals who were fleeing from poverty, conflict, persecution, etc. At one point, the Italian authorities decided to confer them residence permits for a period of six months, being able to move all across the Schengen area, despite the fact that the referred strategy was not a valid one. Immediately thereafter, the French government disappointed with such measure agreed to block every single train that came from the Italian town of Vintimille. Consequently, hostilities arouse and the countries involved asked the European Commission for the approval of a reform regarding mechanisms that, under exceptional circumstances, could be used in order to validly reintroduce border controls. The European Commission, in September of 2011, argued that the reinstatement of those movements' limitations could only be taken at a supranational level (Pascouau, 2013). Thus, the renewal of border controls was seen as a domestic measure of last resort every time



there was a threat to the national security or public policy that had to be acknowledged by European institutions. As could not have been otherwise, the European's Communication, entitled "Schengen Governance – strengthening the area without internal border control³⁷", was subjected to a heated dispute³⁸. In any event, it seems that the referred document was not an appropriate solution as, in 2013, a dramatic event occurred in Lampedusa, an Italian island, where more than three hundred refugees perished³⁹. In view of these tragic events, it was largely predictable the modification of the SBC. In fact, this amendment took place when the Regulation 1051/2013 was adopted⁴⁰. At present, States have to provide appropriate information to the Commission and other member States in order to reintroduce border controls and, if required, convince them about the implementation of such measures through joint meetings⁴¹.

In any case, the right to free movement, strongly ensured through the Schengen regulation, is not only a key Union achievement, but it also constitutes the pure essence of the EU, as it is tightly connected to the establishment of the common internal market: the first and main goal of the European integration project. In addition, this freedom plays a critical role when reinforcing the concept of the Union citizenship. Thus, can temporary constraints -such as the ones contained in the SBC- be seen as retrogressive measures? Moreover, do they endanger the nature of the EU? This and other examples will be analysed below from different perspectives.

4. THE PRINCIPLES RESULTING FROM THE COURT OF JUSTICE CASE LAW

One part of our analysis is based on the European Court of Justice (ECJ) case law, taking into account that we are facing now a very different international context from that which existed when the EU rose and the citizenship was given formal status. Indeed, we are interested in the role played by the mentioned institution when interpreting Community law in the light of fundamental rights and freedoms, as well as in the main applicable legal instruments.

The ECJ has had the occasion to solve all sorts of subjects linked to our topic, in which the free movement of people has been originally used in order to ensure the freedom of establishment and the freedom to provide services⁴², including the protection for workers (if social Europe is to be something we actually want to establish).

Community legislation on the free movement of people has two folds, given the mixed or ambivalent character of this right. There are important differences between the Union citizen status established under European public law and the one that refers or affects European nationals carrying out an economic activity. In accordance with the judgments rendered, distinguishing both approaches is how we also avoid wrong conclusions.

Moreover, the Court has always made a distinction between the citizens who have exercised their freedom to move and who have not exercised it. The latter group demand recognition and an adequate protection. However, initially, this freedom was essentially directed towards economically active persons and their families. That is to say: the abovementioned freedom was addressed at the beginning only to persons carrying out an economic activity in a member State other than that of which they were nationals⁴³.

Within this context, it is important to point out that the traditional case law recognised that Community legislation on freedom of movement of workers, freedom to provide services and freedom of establishment cannot be applied to persons who have never exercised those freedoms. Some sort of movement between member States was required. Concerning this dual legal basis, the EU case law has made significant progress to overcome the major differences between economically active persons and European citizens at large. As a result, when free movement does not have an economic approach, it is not necessary the movement from one member State to another.

34 According to this extensive interpretation of citizenship's rights, the Court emphasizes that when there is no economic activity, this right must also be fully recognised and respected, given that its scope is not limited to an intra-EU trade because it is, indeed, an inherent feature of the European citizen status.

As stressed by the ECJ in its case law, "Union citizenship assumes nationality of a Member State but it is also a legal and political concept independent of that of nationality. Nationality of a Member State not only provides access to enjoyment of the rights conferred by Community law; it also makes us citizens of the Union. European citizenship is more than a body of rights which, in themselves, could be granted even to those who do not possess it. It presupposes the existence of a political relationship between European citizens, although it is not a relationship of belonging to a people. On the contrary, that political relationship unites the peoples of Europe. It is based on their mutual commitment to open their respective bodies politic to other European citizens and to construct a new form of civic and political allegiance on a European scale"⁴⁴.

Regarding the on-going jurisdiction of the ECJ, holding the nationality of a member State is the only way to acquire citizenship of the Union. This simple situation entails the implementation of EU law, even if the individual concerned, who invokes these rules, has never crossed the frontiers of the member State in which he/she resides. Unfortunately, is not very clear to determine when an individual is or not under a cross-border situation. This has been also stressed by that Advocate General Sharpston in the case of the Baumbast family: "However, I do not think that exercise of the rights derived from citizenship of the Union is always inextricably and necessarily bound up with physical movement. There are also already cases in which the element of true



movement is either barely discernable or frankly non-existent”⁴⁵. Consequently, the free movement is recognized as a full and autonomous right for the economically non-active citizens (Kochenov, 2010: 19)⁴⁶. The Court reiterates that a right of movement could be derived from Article 18 EC in the application by analogy of the rules for economically active persons. In the words of Advocate General “that right is inseparable from citizenship. Article 18 EC – and these are my words -- establishes a fundamental right in favour of citizens of the European Union to move and reside freely within it. It subsumes the rights to move and to reside in favour of both economically active and economically non-active citizens under a single denominator. For the economically non-active Article 18 EC has additional significance. Since the introduction of Article 18 EC – in the Maastricht Treaty – the right to move and reside in favour of economically non-active persons stems directly from the Treaty and is no longer fully subject to the assessment of those entrusted with the enactment of secondary legislation”⁴⁷.

Either way, the ECJ has repeatedly declared that the principle of non-discrimination on the grounds of nationality is an essential safeguard for this freedom⁴⁸. This is in conformity with the judgment made in the Cowan-case: discrimination based on nationality with regard to EU-citizens is prohibited⁴⁹. This principle, laid down in particular in Article 7 of the EEC Treaty, must also be interpreted in specific situations governed by Community law. Community legal principles require that the possibilities afforded by a member State to its own nationals, in terms of state compensation, must be afforded to all EU citizens as well.

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On the other hand, there are cases linked to a European scheme, even if people are not exercising actively their right of free movement. There are situations of persons applying their legal status as private citizens: his/her right to move and work in another member State. The case C-148/02, *García Avello*, is an example⁵⁰, whilst it is true that Community law on citizenship and freedom of movement does not apply to cases between a State and its own nationals. This approach was also confirmed by the ECJ in the case C-353/06, *Mr Grunkin and Ms Paul*, and the *Standesamt Niebüll*, to implement EU law (Lara Aguado, 2006: 1-7). or in the case *Chen & Zhu*⁵¹.

The judgment of the Court of Justice in relation to the case *Ruiz Zambrano* highlights an issue, already debated by the jurisprudence and the doctrine (Abarca Junco and Vargas Gómez-Urrutia, 2012: 1-23). The key topic seeks to ascertain the impact of the European Union nationality of some underage children, who have not exercised their right of free movement. Until now the premise that "it would be necessary to cross the border" to be covered by Community law was true. However, the referred case questioned this⁵². As a result, the ECJ argues that the abovementioned situation should not be left vulnerable by EU law. So, the Court expressed a position with regard to the extension of the scope of EU law, with a legal argument, that it is also clear in a latter judgement. On these grounds, the ECJ rules as follows: “Article 21 TFEU is not

applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State, provided that the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States”⁵³ (case McCarthy).

The approach taken is novel in part due to the questions raised and by the arguments provided regarding the status of EU citizenship and the notion of citizenship itself. Following the Cowan-case this judgement is clear⁵⁴. So, discrimination against nationals of other member States who are entitled to freedom of movement -in particular as recipients of services (e.g. tourists)-, would be potentially counterproductive because it disincentives free mobility for who is wishing to go sightseeing. For this reason, it would be advisable to apply directly Article 18 TEC. Or, in the contrary, should we not be talking about the right to travel freely and refer in fact to the freedom of movement in these cases? On this point, “it must be observed, however, that the situation of a Union citizen who, like Mrs McCarthy, has not made use of the right of freedom of movement cannot, for that reason alone, be assimilated to a purely internal situation”⁵⁵. The European Court “has outlined the Member States’ freedom to treat their own citizens worse than those of other Member States in the area of freedom of persons and of establishment” (Jessurun d’ Oliveira, 1990: 76)⁵⁶.

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The Court has dealt with many inter-related issues that have caused particular problems for citizens. As an example, we must mention that the ECJ has interpreted that European citizens must remain excluded from the application of domestic legal rules on foreigners. All forms of discrimination will be avoided within the territory of a member State other than the one of their nationality. In this way, it would appear that a special status is created: the European foreigner. It seems that a very frequent and problematic interaction between national rules on foreigners and the right of free movement deriving from European citizenship has taken place. Why? Clearly, it is a result of incorrect or imperfect transposition of some Directives into the domestic law, as evidenced in the cases *Mrax*⁵⁷ y *Akrich*⁵⁸. The central issue in the case *Akrich* called into question the effects of freedom of movement and mobility in Europe in relation with domestic law. This case originates in the juxtaposition of two different areas of competence⁵⁹. From this point of view, it is clear the application of the national criterion to prevent discrimination in cross-border situations or to remove obstacles to the exercise of the European freedoms. So, if this right is not recognised or guaranteed for the worker’s family into the host country, the freedom of movement is being limited⁶⁰.

It is important to keep in mind the influence of international human rights law. Certain European case law shows how economic and political freedoms may clash with



fundamental rights. Fundamental freedoms allude to the seemingly indivisibility of these rights, which should be equally promoted and protected. This reality is affirmed by the structure of the Union and the corresponding ECJ approach in balancing fundamental rights with freedoms.

In this context, it should also be recalled that this right is neither absolute nor unconditional. Indeed, we share the view of Advocate General in C-109/01, emphasizing the restrictions on that right which may not exceed those considered legitimate by the principle of proportionality and the conditions and limitations laid down by the EC Treaty⁶¹. The Court of Justice has consistently held that European law imposes certain limits on this power, and that domestic law may not restrict those freedoms. Limitations may be made only if they necessary and genuinely meet objectives of general interest recognised by the Union to protect obvious concerns, such as: public order and security, public health and the financial interests of member States. The ECJ shows, “moreover, that even an alert issued for the purposes of refusing entry which may well be lawful at the outset does not necessarily constitute sufficient evidence of a threat to public security or public policy (...) those offences could have been sufficient evidence to suggest that the mere presence of the two men in the Schengen area would have posed a genuine, *present* and significant threat affecting one of the fundamental interests of society”⁶². The Court gives us some clues in a recent case in which it was held that member States are not able to conduct surveillance at internal borders that may have an equivalent effect to border checks⁶³.

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In essence, there is a doctrine which defends the process of protecting European citizens and their free movement -exercising or not an economic activity-, punishing or even excluding limitations not allowed by European law, as well as further practices that may discourage persons from making use of this right on the basis of article 20 TFUE. This right should be exercised -by objective standards- with freedom and dignity, requiring always an equal treatment.

5. STATE RETROGRESSIVE MEASURES

As it has been previously outlined, the right to free movement of European citizens, which is the *core right of the EU citizenship*, has been in the spotlight during these last years. Why? Has the UE implemented appropriate measures in order to guarantee this freedom? On the contrary, has the EU's outlook changed due to, among other reasons, the on-going financial crisis that started in 2007? In this sense, it is desirable to mention, once again, that the discussed right has not only achieved economic benefits, but also paved the way for a common European identity. Only thus, it is possible to understand why European institutions have provided instruments in this area to support member States when trying to meet their obligations, as well as solutions to certain situations

that could have heavily harmed the Schengen area⁶⁴. However, despite the above positive outcomes and the numerous aids given by the EU concerning this crucial topic, we should stress controversial temporary restrictions established on this freedom of movement.

The most popular restrictions refer to the perishable measures addressed to national workers from new European member States⁶⁵. As it has been previously explained, these transitional arrangements, agreed by old member States, were mainly adopted during the EU's last major enlargement, which took place at the beginning of the new century⁶⁶. Indeed, foreseeing the accession of new Eastern States, some countries, like France and Austria, suggested the implementation of a transition period of seven years, whereas others encouraged a more rapid integration. Finally, it was decided that "the transition period for full freedom of movement of workers would extend for a maximum of seven years"⁶⁷, although countries were able to remove restrictions at any time, once the initial period of two years expired⁶⁸. However, if those were taken away, States could apply the so-called "safeguard clause" against other member States during the transitional period in "urgent and exceptional cases" (Kraleva, 2013: 3 and ff). It is important to note that Spain, in 2011, relied on this clause in order to reintroduce restrictions against Romanian workers, despite the fact that its labour market was opened since 2009. As Kraleva states, "the mere existence of transitional arrangements clearly limits one of the fundamental freedoms of the European Union and thus creates a *second class* Union citizenship" (Kraleva, 2013: 11)⁶⁹.

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In line with the above, another complex and controversial scenario is the SBC. Concerning the referred legal framework, member States are able to reintroduce border controls if there is a serious threat to their public policy or internal security order. This leads us to the following question: are European countries -signatories of the Schengen *acquis*- arguing the existence of such threats to reintroduce those obstacles when in reality they want to monitor the entrance of people into their national territory? As an undefined legal concept, which are the exceptional circumstances that will match as a risk to the public policy or internal security order?⁷⁰ Steve Peers argues that the reintroduction of internal border controls on the pre-existing grounds of public policy by means of Regulation 1051/2013 has no special impact (Peers, 2013: 44). Nevertheless, the imposition of this kind of measures as last resort solution, according to the scholar, requires the application of the principle of proportionality (Peers, 2013: 32 and ff.). Moreover, Peers declares that the existence of "serious deficiencies" to reintroduce border controls -as provided in Regulation 1051/2013- has to be based on a recommendation issued by the Council and the Commission (Peers, 2013: 7). He believes that if member States are not fulfilling with the legal requirements they will "likely face a legal challenge from the Commission and/or via the national courts which will resolve this issue" (Peers, 2013: 46). According to Pascouau, the amendments to the Schengen rules will strengthen the role played by the European Commission and the



European Parliament in Schengen governance, particularly in the evaluation of serious deficiencies (Pascouau, 2013: 2 and ff). Thus, it seems that the discussed restrictions will not severely harm the freedom of movement that European citizens have. However, prominent European personalities are, nowadays, pushing for establishing domestic and unilateral restrictions beyond those exceptional needs. How and in which way?

In this sense, we should highlight David Cameron's strategy, who in 2013 was willing to limit the exercise of the freedom of movements by introducing the following measures: "not paying out-of-work benefits to EU citizens arriving in the UK for the first three months; not paying social benefits to EU citizens for more than six months, unless they have a genuine employment prospects; not offering housing benefits to newly-arrived EU jobseekers; removing and imposing 12 month re-entry bans for EU citizens who are begging or sleeping rough; increasing fines for employers who underpay their employees" (Ghimis, 2013: 16). In 2014, according to Migrant Watch UK, new regulation entered into force with the sole aim of ensuring that migrants will not take advantage of the British benefits system. From that moment on, "only people who have a legal right to be in the UK and plan to contribute to the economy"⁷¹ will have access to the British welfare system. A country, nowadays, worried about mass migration reached its peak with the heated declarations of Rear Admiral, Chris Parry, who said -in 2006- that all this population movement that Britain and other European countries are suffering is comparable to the threats faced by the Roman Empire with the Goths and the Vandals⁷². Probably, these concerns were strongly linked to the last Union's enlargement. At that moment, it was highly discussed the opening of labour markets, the promotion or limitation of the right of free movement, etc. In fact, at that time, EU governments feared mostly a "threat of national economies with increase of nationals' employment rate and of the costs on national social welfare" (Raspotnik et. al, 2012: 9). Previously, during the boom years, European citizens were seen in UK as a positive factor for the economy of the country⁷³. However, later -coinciding with the severe and recent financial crisis-, a dramatic change of mind took place, evidencing a lack of solidarity between member States⁷⁴. Either way, the worst part of all is that this lack of solidarity was not well founded, as recent evidence shows that those fears were only doom and gloom prophecies (Pinyol-Jiménez and Sánchez Montijano, 2013).

Unfortunately, other countries like Austria, Germany, and The Netherlands have followed the same trend as UK. This is made evident after a letter signed jointly by the referred countries in which the main argument focused on the need to protect the freedom of movement against abuses, especially when it refers to burdening the social system⁷⁵. As Pascouau declares, the solution proposed by the referred states undermines the same good that they "pretend" to protect: the freedom of movement of EU citizens. From his point of view, "(...) EU's citizens may be a priori categorised as abusers and a threat to the social cohesion of hosting Member States (Pascouau, April 2013)⁷⁶. Moreover, "(...) the letter's intention is to go back in time and to grant freedom of

movement to workers only”. In other words, those countries want to focus solely on “economic players” (Pascouau, April 2013), without embracing “the major changes which have occurred since the Maastricht Treaty and the creation of EU citizenship which entitles EU citizens to the right to move and reside freely within the territory of the Member States” (Pascouau, April 2013). This is confirmed, *inter alia*, through the following sentence: “[the main objective of the signatory Ministers] is to promote the mobility of those European citizens wishing to work, study or set up a business in another Member State (...)” (Pascouau, April 2013).

Alongside this, Huddleston argues that European countries have different requirements in terms of measuring the existence of ordinary obstacles and opportunities for immigrants when trying to become citizens. In his research, he points out that language, economic resources requirements, administrative regulation, etc., are very different from one country to another and this in many ways harms what he calls the “the naturalization procedure” (Huddleston, 2013.). These different policies are clear obstacles that have been duly acknowledged as such a long time ago and, still, no remarkable European measures have been adopted in order to put an end to the above discriminatory situation. The scholar concludes that “(...) most procedures involve potentially long processing times and some level of bureaucracy, especially when the deciding authority is the executive or legislature. Judicial review is often not guaranteed for language or integration requirements or on specific issues such as discrimination within the procedure” (Huddleston, 2013: 1).

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Together with all the above points and as a finishing touch, there is a dramatic example of a significant violation of citizen’s rights that took place in 2010: the expulsion of Roma minorities from France⁷⁷, which triggered a strong condemnation from the European Parliament, whereas the Commission threatened with the implementation of punitive actions. According to Human Rights Watch, France did not duly comply with the engagement undertaken with the Commission in October 2010 in terms of ensuring an appropriate transposition of the Directive 2004 related with the freedom of movement⁷⁸. Further on, in 2013, Manuel Valls, at that time France’s Interior Minister, called for Roma population to return back to their countries of origin⁷⁹. Significantly more quiet were the measures imposed by Denmark in 2011, which meant the reintroduction of border controls⁸⁰. Recently, Switzerland, a country which is part of the Schengen area, decided to hold -at the beginning of 2014- a referendum about European immigration. The result backed the reintroduction of border controls, sabotaging the European regulation, as quotas will be applied to European citizens.

Therefore, we understand that the above incidents and the existent regulation that contains disputed exceptions, portends a grim future for the freedom of movement. Consequently, the Union citizenship will be jeopardised too. This has been dramatically demonstrated after the brutal terrorist attack that took place in France at the beginning



of this year against workers of the French magazine called Charlie Hebdo⁸¹, when Marine Le Pen declared the need to put a stop to the Schengen area⁸². Sadly, doing this will severely affect, without any objection, a freedom that has taken a long time to get properly recognised.

6. FINAL CONSIDERATIONS

We consider that the EU's internal market integration process is not pursued in isolation. It is clear that economic developments must be counterbalanced by social considerations and public interests, which have been provided by the EU citizenship. We are aware that the Union's process of institutionalization also requires an active citizenship and the full recognition of common values such as freedom, governability and stability. The decisions adopted by the ECJ in its case law underlines that the citizenship of the Union has consequences in many different areas for all European nationals. This has been confirmed by the regulations implemented within the European territory. Moreover, the peculiar status promoted by the referred figure has created a unique general system of movement that has enriched the condition of Europeans. In fact, it is a good example of what the EU is doing to help citizens in concrete terms, particularly, when it comes to finding a job or studying.

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Likewise, we must note that that the right of free movement is not only an economic principle, but also it is strongly connected with the Union citizenship in its political, administrative, judicial and social dimension. Undoubtedly, it represents one of the Union's biggest achievements and constitutes one of the main priorities for European institutions. The right of free movement, considered the corner stone value of the EU, enables European citizens to take advantage of being a national of a member State. It has been stressed that the EU, its institutions and its member States, should coordinate their efforts in this regard, promoting free movement of people as a main objective to complete the territorial integration process. Therefore, eliminating obstacles to the free circulation of people between European countries has to be a priority. So, the exceptional measures above referred, as well as the restrictive national policies recently implemented by some European States, which directly interfere with the objectives of the European single market, severely undermine the very essence of the European Union. This circumstance translates into the fact that European citizens' rights are being flouted.

As we have seen, dismantling Roma camps in France, backing immigration quotas in Switzerland, imposing restrictive immigration policies in the UK, etc., are critically harming the exercise of the right of free movement, once viewed as the EU's priority in charge of spurring economic growth. Basically, the financial crisis has triggered national measures directed to undermine citizens' rights, despite the fact that the

European legal framework has mostly encouraged -since the beginning- the right to move and reside freely within the EU by, among others, cutting back many administrative formalities to the bare essentials.

To prevent future similar actions, member States should encourage instead the articulation of an appropriate evaluation mechanism that required the binding participation of European institutions, when facing exceptional threats in order to duly monitor unilateral domestic measures. Following exactly the footsteps established in Regulation 1051/2013 -under the “umbrella” of the principle of proportionality-, would improve the effectiveness and timing of action in the field and, likewise, it would promote transparency and accountability. To some extent it addresses the complex issue of European citizenship through different and complementary angles, reflected in various actions. Implementing those actions in the referred way would be of interest to the European citizenship, a figure that has taken a long time and effort to crystalize.

However, continuing with the application of controversial domestic policies in detriment of the discussed figure, strongly threatens to derail the EU integration project. This has already attracted the Union’s attention, promoting an active citizenship and reducing dissatisfaction and alienation as much as possible.

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In this context, we have to highlight once again that European institutions play a dynamic role in establishing and improving the process of integration, defining and implementing concrete measures. They have always energetically supported the efforts of member States in this area but, unfortunately, the lack of a harmonised policy and joint citizenship is leading to a tightening up of domestic regulation, not contributing to overcome current deficiencies. Notwithstanding the above trend, it is clear that the EU still has some way to go to increase its overall implementation. For this reason, the referred context reaffirms the importance of promoting mobility and addressed topics, such as: the removal of obstacles and the adoption of appropriate administrative and legal strategies. In this regard, we argue that labour mobility, in the EU, should never be regarded as a threat to national markets. In other words, mobility -a basic pillar of the Community integration process- must be one of the means by which people are able to improve their living and working conditions. Undoubtedly, attacking the freedom of movement, as nowadays is happening, not only is weakening the Union citizenship, but it is also harming the hard core of the EU itself.

The aftermath of the Second World War led to the removal of obstacles, becoming the EU’s identity mark. Loosing this characteristic feature, which has brought out peace and harmony to a significant part of the European continent, would take us to other times, such as Hadrian’s Age, where limitations were imposed to procure the separation of different worlds and geographical demarcation was regarded as a priority⁸³.



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¹ It has to be highlighted that nationality is determined solely by the domestic regulation of Member States.

² Thus, to enjoy the citizenship of the Union is vital to be a national of any Member State and, as stated in the Declaration made by the Birmingham European Council in 1992, this figure will provide additional rights and protection.

³ As the European Commission states in its website, the participation of European citizens in the territorial integration project promotes the emergence of a European identity. Available at:

http://ec.europa.eu/citizenship/about-the-europe-for-citizens-programme/overview/action-1-active-citizens-for-europe/index_en.htm

⁴ These negative aspects may lead to a risky project characterised with a severe democratic deficit. Available at:

<http://www.theguardian.com/commentisfree/2013/jun/10/how-to-reduce-eu-democratic-deficit>

⁵ Originally, the EEC encompassed the European Economic Community (EEC), the European Coal and Steel Community and the European Atomic Energy Community (Euratom).



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⁶ Preamble of the EEC Treaty.

⁷ *Ibid.*

⁸ Consolidated version of the Treaty on the Functioning of the European Union (TFUE), Official Journal C 326, 26/10/2012 P. 0001 – 0390. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

⁹ The freedom of movement is a right guaranteed by primary and secondary Community law. It is one of the four fundamental freedoms of the EU enshrined in the TFUE as a cornerstone of European integration and directly connected to citizenship.

¹⁰ The Single European Act reviewed and amended the Treaties of Rome, providing a new momentum to the European integration project, as its main aim was to complete the internal market.

¹¹ The Schengen Agreement led to the creation of an area in which the freedom of movement of people has to be ensured. The states that signed the referred legal document agreed to remove internal borders, to grant visas for short stays, asylum, to cooperate between police and judicial authorities, etc.

¹² The concept of free movement of people appeared during the signing of the Schengen Agreement in 1985 and the subsequent Schengen Convention in 1990, which initiated the abolition of border controls between participating countries. It was done through the area of freedom, security and justice without internal borders. As the Stockholm Programme and its action plan points out, “the European area of freedom, security and justice is, together with the Europe 2020 strategy, a key element of the EU’s response to the global long-term challenges and a contribution to strengthening and developing the European model of social market economy into the 21st century” (See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions: Delivering an area of freedom, security and justice for Europe’s citizens. Action Plan Implementing the Stockholm Programme. Brussels, 20.4.2010 COM(2010) 171 final: 2.

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¹³ Article 3 (ex article 2 TEU):

1. *The Union’s aim is to promote peace, its values and the well-being of its peoples.*

2. *The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.*

3. *The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*

¹⁴ In a context of increased internationalization, the concept of the free movement of people has changed in meaning since its inception: “the first provisions on the subject, when creating the European Economic Community in 1957, referred merely to the free movement of individuals considered as economic players, either as employees or providers of services, thus covering the free movement of workers and the freedom of establishment. The Treaty of Maastricht introduced for every person holding the nationality of a Member State citizenship of the EU from which stems the right of persons to move and reside freely within the territory of the Member States. The Lisbon Treaty confirmed this right, which is also included in the general provisions of the area of freedom, security and justice” (Hartmann, 2014).

¹⁵ Summaries of EU legislation (e.g.): Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity; Council Directive 90/366/EEC on the right of residence for students; and Council Directive 90/364/EEC on the right of residence (for nationals of Member States who do not enjoy this right under other provisions of Community law and members of their families).

¹⁶ 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.

¹⁷ This Directive had to be transposed into national law and implemented by all Member States by 30 April 2006. On 10 December 2008, the Commission presented a report on the application of the Directive to the Council and the European Parliament, which highlighted a number of serious problems with the transposition provisions. In 2009, it issued a Communication on guidance for better transposition and application of the directive.

¹⁸ Family members: the spouse; the registered partner, if the legislation of the host Member State treats registered partnerships as equivalent to marriage; the direct descendants who are under the age of 21 or are dependants and those of the spouse or registered partner; the dependent direct relatives in the ascending line and those of the spouse or registered partner.

¹⁹ They claim that any national of a Member State has the right to seek employment in another Member State in conformity with the relevant regulations applicable to national workers. So, he or she is entitled to receive the same assistance from the national employment office as nationals of the host Member State, without any discrimination on the grounds of nationality. And also they have the right to stay in the host country for a period long enough to look for work, apply for a job and be recruited. This right applies equally to all workers from other Member States, whether they are on permanent contracts, employed as seasonal or cross-border workers or provide services. Workers may not be discriminated against, e.g. with regard to language requirements, which must only be reasonable and necessary for the job in question. For further information:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:141:0001:0012:EN:PDF>

In this line, EURES is a cooperation network involving the Commission, the public employment services of the EEA Member States and other partner organizations, and Switzerland. From 2014, EURES will improve the self-service tools on its digital platform so as to become a real Europe-wide job mobility portal and develop targeted mobility schemes for concrete shortcomings in the labour market (for further information:

<https://ec.europa.eu/eures/main.jsp?catId=29&acro=eures&lang=en>).

²⁰ See the indicative roadmap about the partial revision of regulations (EC) NOS 883/2004 and 987/2009, that it is provided by European Commission. Date of roadmap: 12/03/2013. Available at:

http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2013_empl_003_coordination_social_security_systems_en.pdf

²¹ European Commission, Brussels, 20.4.2010 COM (2010) 171 final. Available at:

http://ec.europa.eu/commission_2010-2014/malmstrom/pdf/com_2010_171_en.pdf

²² Communication from the Commission to the Council and the European Parliament of 10 May 2005 – The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice [COM (2005) 184 final – Official Journal C 236 of 24.9.2005]. The Commission feels that efforts should be **concentrated on the following 10 priorities**: “**Strengthening fundamental rights and citizenship**. The Union plans to monitor and promote the observance of fundamental rights in European policies. Among other things, it converted the European Monitoring Centre on Racism and Xenophobia into the European Fundamental Rights Agency (FRA) in January 2007. The Commission will devote special attention to children’s rights and to continuing its efforts to combat violence against women. It also intends to work against all kinds of discrimination and to ensure the protection of personal data. The way in which the rights conferred by European citizenship – such as free movement within the Union and voting rights in European Parliament and local elections – are exercised must also be improved. The measures adopted by the Commission include *inter alia* the “Fundamental Rights and Justice” framework programme and assessment reports on how successfully directives regarding the right to move and reside freely are applied”.



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For further information: MEMO/05/153, Strasbourg, 10 May 2005: 3. Available at: http://europa.eu/rapid/press-release_MEMO-05-153_en.pdf

²³ For further information: <http://www.ombudsman.europa.eu/en/home.faces>

²⁴ EU CITIZENSHIP REPORT 2010 Dismantling the obstacles to EU citizens' rights /* COM/2010/0603 final */
<http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52010DC0603>

²⁵ Communication from the Commission to the European Parliament and the Council of 1 July 1998 on the follow-up to recommendations of the High-Level Panel on the Free Movement of Persons: On 14 January 1996, the Commission had requested the High-Level Panel on the Free Movement of Persons, chaired by Simone Veil, to identify the problems still arising in this area, to evaluate them and to propose solutions. On 18 March 1997, the High-Level Panel presented its report which makes over eighty recommendations in the seven main areas of interest to citizens of the Union wishing to move within the Community area. The recommendations dealt with entry and residence, access to employment, social rights and family status, tax and financial status, cultural rights and the particular situation of nationals from non-member countries. For further information see:

http://europa.eu/legislation_summaries/justice_freedom_security/citizenship_of_the_union/l23032_en.htm

²⁶ See about enlargement - transitional provision: <http://ec.europa.eu/social/main.jsp?catId=466&langId=en>

²⁷ For further information see: http://www.europarl.europa.eu/ftu/pdf/en/FTU_5.12.3.pdf

²⁸ To find out more on the right of free movement in http://ec.europa.eu/justice/citizen/move-live/index_en.htm

²⁹ Brussels, 25.11.2013. COM (2013) 837 final. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0837:FIN:EN:PDF>

³⁰ European Parliament resolution of 16 January 2014 on respect for the fundamental right of free movement in the EU (2013/2960(RSP)). Available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0037+0+DOC+XML+V0//EN>

³¹ European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)) Available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0038+0+DOC+XML+V0//EN>

³² In this sense, we have to mention the Directive 2004/38/EC, which is about the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This legal tool constitutes a good example of how vital European secondary regulation has shaped the referred freedom. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF>

³³ According to the European Commission: "Around 11 million EU citizens have taken advantage of this right and now live in another EU country. Many more of them travel regularly to other EU countries for business or as tourists without checks within the Schengen area or they enjoy fast-track checks at borders". Available at:

http://ec.europa.eu/justice/policies/citizenship/docs/guide_free_movement_low.pdf

³⁴ *Vid. Supra*. Footnote 35.

³⁵ The countries that comprise the Schengen area are the following ones: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Greece, Latvia, Lithuania, Luxembourg, Malta,

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⁴⁸ See Case C-46/12, Judgment of the Court (Third Chamber) of 21 February 2013, paragraph 28. Reports of Cases not yet published. Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-46/12>

⁴⁹ See Case C-186/87, Cowan, judgment of 2 February 1989, paragraph 19. Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61987CJ0186>

⁵⁰ By judgement of 21 December 2001, received at the Court on 24 April 2002, the Conseil d'État (Council of State) referred for a preliminary ruling under Article 234 EC a question on the interpretation of Articles 17 EC and 18 EC. Later, this judgement was reached by the European Court of Justice on 2 October 2003 in the case of Garcia Avello v. Belgium. Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-148/02>

⁵¹ Case C-200/02, Kunquian Catherine Zhu y Man Lavette Chen c. Secretary of State for the Home Department. Judgment of the 19 October 2004, Rec. 2004, p. 9925 (Available at: <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=76821&occ=first&dir=&cid=343955>): “Do Articles 12, 17 and 18 of the Treaty establishing the European Community, or one or more of them when read separately or in conjunction, confer a right of residence upon a citizen of the Union in the territory of the Member State of which that citizen is a national, irrespective of whether he has previously exercised his right to move within the territory of the Member States? Must Articles 12, 17 and 18 of the Treaty establishing the European Community, in conjunction with the provisions of Articles 21, 24 and 34 of the Charter of Fundamental Rights (adopted by the European Council of Nice on 7 December 2000, published in its current version in OJ 2007 C 303), be interpreted as meaning that the right which they recognize, without discrimination on the grounds of nationality, in favour of any citizen of the Union to move and reside freely in the territory of the Member States means that, where that citizen is an infant dependent on a relative in the ascending line who is a national of a non-member State, the infant's enjoyment of the right of residence in the Member State in which he resides and of which he is a national must be safeguarded, irrespective of whether the right to move freely has been previously exercised by the child or through his legal representative, by coupling that right of residence with the useful effect whose necessity is recognized by Community case-law (Case C-200/02 *Zhu and Chen*), by granting the relative in the ascending line who is a national of a non-member State, upon whom the child is dependent and who has sufficient resources and sickness insurance, the secondary right of residence which that same national of a non-member State would have if the child who is dependent upon him were a Union citizen who is not a national of the Member State in which he resides?” (Ferrer Lloret, 2005: 6).

⁵² Case C-34/09, Ruiz Zambrano. Available at:

<http://curia.europa.eu/juris/liste.jsf?pro=&lgrec=es&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=C-34%252F09&td=%3BALL&pcs=Oor&avg=&page=1&mat=or&jge=&for=&cid=115018>

See also opinion of Advocate General Sharpston delivered on September 2010. Available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=82590&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=115018>

⁵³ See Case C-434/09. Available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=82119&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=298043>

⁵⁴ **Case 186/87, Ian William Cowan v Trésor public, judgement of the Court of 2 February 1989.** Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61987CJ0186>

⁵⁵ See Case C-434/09 paragraph 46.

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differences in wage levels, old member states feared a massive influx of migrants to their labour [sic] markets” (Kraleva, 2013: 9).

⁶⁶ Information hereby provided:

http://europa.eu/legislation_summaries/enlargement/2004_and_2007_enlargement/e50017_en.htm

⁶⁷ Information hereby provided: http://www.eurotopics.net/en/home/presseschau/archiv/magazin/wirtschaft-verteilerseite-neu/arbeitnehmerfreizuegigkeit_2007_01/ueberblick_entwicklungen_erfahrungen/

In the Accession treaties of Bulgaria and Romania it was stated that full freedom of movement for workers would be obtained no later than January 2014. Nowadays, only nationals from Croatia are suffering these limitations, which will disappear in 2020.

⁶⁸ Different phases were established during this seven-year period (Kraleva, 2013: 9-10).

⁶⁹ Kraleva argues the following idea: “Popular fears have become a political justification for the introduction of transitional arrangements. Supported or suggested for economic reasons, politicians have often preferred to opt for more stringent and popularly more acceptable policies, thus imposing restrictions on the free movement of workers from new member states”. Cfr. D. Kraleva, *op. cit.*: 11.

⁷⁰ As the European Commission stated, the Schengen acquis must be strengthened through “a governance system capable of responding effectively [...] to exceptional circumstances and challenges which might put the overall functioning of Schengen at stake. *Supra*. Footnote 21.

⁷¹ Information hereby provided: <https://www.gov.uk/government/news/tough-new-migrant-benefit-rules-come-into-force-tomorrow>

⁷² Information hereby provided: <http://www.immigrationwatchcanada.org/2006/06/11/beware-the-new-goths-are-coming/>

⁷³ Information hereby provided: http://www.epc.eu/pub_details.php?pub_id=3421

⁷⁴ *Ibidem*.

⁷⁵ Information hereby provided: http://docs.dpaq.de/3604-130415_letter_to_presidency_final_1_2.pdf

⁷⁶ According to Pascouau: “The joint letter from the four ministers undermines this long-standing acknowledged approach and uses – in an unprecedented manner – words and concepts normally applicable to immigrants. This includes terminology such as “immigrants from other member states”, “immigration of European citizens”, or “member states of origin”.

⁷⁷ Information hereby provided:

<http://www.france24.com/en/20100818-france-expelling-roma-bulgaria-romania-police-sarkozy-besson/>

⁷⁸ Information hereby provided:

<http://www.hrw.org/news/2011/09/28/france-s-compliance-european-free-movement-directive-and-removal-ethnic-roma-eu-citi>

⁷⁹ Information hereby provided:

<http://www.dailymail.co.uk/news/article-2432217/Frances-Interior-Minister-calls-Roma-gypsies-return-Romania-Bulgaria-integrate.html>

⁸⁰ Information hereby provided: <http://www.bbc.com/news/world-europe-13366047>

⁸¹ Information hereby provided:

<http://www.telegraph.co.uk/news/worldnews/europe/france/11332098/Paris-Charlie-Hebdo-attack-January-7-as-it-happened.html>

⁸² Information hereby provided: <http://rt.com/news/221167-le-pen-france-attacks/>

⁸³ Hadrian built a wall 80 miles long to separate the Romans from the barbarians. The main aim of this construction, according to some theories, refers to the fact that the emperor wanted to limit immigration movements. Available at: http://www.ancient.eu.com/Hadrians_Wall/

