‘The Unfinished Enlargement’

Report on
Free movement of people in EU-25

Author: Monika Byrska
Co-editor: Tony Venables

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On 1 May 2004 the European Union welcomed 10 new Member States. 75 million citizens of the former Soviet block countries as well as Malta and Cyprus became part of the EU free travel zone. It was a day on which the whole of Europe united in joyful and welcoming festivities.

A spectacular welcome party was hosted by the Irish Presidency. Leaders of all 25 EU countries met for special celebrations in Dublin and ten other Irish cities held public festivals – one for each of the new Member States. Ireland was no exception. Parties, musical concerts held both in the open air and glamorous music halls, dances, and singing were heard from Finland in the north to Malta in the south, Portugal in the west to Estonia in the east. Beethoven’s ‘Ode to Joy’ was sung along with national anthems of the ten new Member States with joy and emotion all over Europe and spectacular fireworks lit up the skies of all EU 25, symbolising at the same time the beginning of a new era. On this particular day words of welcome and thanks were uncounted even in those European states that have been afraid of the EU enlargement the most.

Shortly after midnight a crowd of Poles led by their German neighbours ‘entered the EU’ through a border crossing in Zgorzelec. The following morning the same two nations sat at one breakfast table set out on one of the bridges, which as an official border between the two countries was not accessible to anyone only 24 hours earlier. Trains packed to capacity with hundreds of people taking advantage of a one-time opportunity to travel throughout the region regardless of the country, met at the Polish-Czech-German border. Elsewhere, passengers boarded a special, historic train taking them from German Schwarzenberg to the Czech town of Karlovy Vary without a through stop at the German-Czech border. At another Czech - Austrian crossing in Bystrice/Grametten hundreds of cyclists took a trip over the border ‘down the EU road’. Similarly many Poles with slight disbelievement rode their bikes through the Polish - Lithuanian crossing ‘to see how it is to travel in the enlarged Union.’

On many border crossings of the new EU Member States the enlargement was welcomed with the sound of car horns, toasts and symbolic removal of border barriers, for example on the Polish - Slovakian crossing in Łysa Polana. The symbolic wedding of a Czech boy called Honza and an Austrian girl called Gretchen was held at the border crossing between the two countries. It ended with a sacramental: ‘What the European Union has joined, let no man tear apart.’

The festive mood continued throughout this commemoritive May weekend, but as the journalist of the Guardian newspaper wrote, the atmosphere of the celebrations had a lot in common with that of a New Year’s Eve – expectations hopes and fears about what will happen next. How welcomed will the new EU citizens really be once ‘the party’ finishes? The image of Europe without barriers was very much only a picture created by the festive mood, which does not necessarily mirror day-to-day reality.

For many western Europeans the issue of migration from Eastern Europe merges with the issue of immigration in general. In 2000, when the EU was to issue its first Common Position on negotiations of the chapter on freedom of movement of people, the Commission conducted its latest Eurobarometer study that was particularly concerned with people’s feelings and views about immigration. This study would be worth updating to see if the attitudes have changed. However, back in 2000, 45 % of the EU citizens were convinced there are too many

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2 Issue of 1st May 2004 ‘Press review – Accession day’
foreigners living in the territory of the Union. 52 % of Germans and 50 % of Austrians (the two largest recipient countries) shared this opinion. On the other hand free movement rights were perceived as a primary benefit of the EU membership by 54 % of Poles and for the majority of the population aged 18-24, which constitutes largest migration potential, immediate implementation of free movement rights was an absolute priority.

The scenarios, according to which millions of Eastern Europeans are waiting for the enlargement as an opportunity to take advantage of western European labour markets and exploit some of the most generous welfare systems, have been presented on many occasion in a run up to 1st May. The controversy over this subject started back in the late 1990s and since then numerous studies, taking different methodological and ideological approaches, tried to measure possible migration flows from Central and Eastern Europe, which could result from enlargement. The outcomes varied and whilst some researchers showed the expected immigration to be at the level of 200.000 persons per year, others sought to prove that the number of migrants would not exceed 41.000.

The latest study prepared by the EU Foundation for the Improvement of Living and Working Conditions shows that the most probable volume of ‘intended’ migration from the 10 new Member States within the period of next five years should equal to about 1% of the population of these countries. Such results confirm the conclusion of the Eurobarometer study published last February, which also measures the Central and Eastern Europeans’ intention to migrate at the level of 1% of the population. The results of both of these studies concur also with figures produced by the Commission’s econometric study mentioning the number of 1.1 million migrants over the period of 5 years after accession. Moreover, as presented by the above mentioned papers, not only is migration most likely to be of a short-term nature, but also the largest migration potential is among the young, well educated and mainly unmarried citizens of the new Member States. In more rational climate, old Member States would be competing for such workers and concerns could be expressed by the new Member States, who may prove to be in danger of suffering from ‘brain drain’ effect.

The results of even the most reliable studies can never be guaranteed to be correct, unless compared with reality. It is too early to assess the number of new Member State citizens, who have moved to another Member State since their country’s accession to the EU. Nevertheless, it may be said with confidence that up till now the expected flood of migrants has not come as yet. As reported throughout the EU 15 only a handful of Eastern Europeans embarked on the airports and international coach stations of major Western European cities like London, Hamburg or Brussels. Even so, there is no evidence to prove their intention of settling down there. Many Czechs, Poles, Slovaks and Hungarians interviewed by the media with regard to their intentions to leave their own country reply that they were particularly upset by what they call ignorant and offensive presentations made by the West European media.

Drawing on the experience of past EU enlargements, neither the accession itself nor the expiry of the transitional periods produced a break in the trend and migration flows from the new Member States remained small. It is true that models of previous enlargements may only be partially reliable. However, at the moment it seems that history will repeat itself. It is highly probable that rising economic trends and brighter prospects for the future in one’s own country will outweigh such costs of migration as social isolation caused by the language barrier, loneliness resulting from separation from one’s family and cultural roots or loss of personal contacts and connections established in one’s own country. Such ‘profit and loss calculation’ multiplied by the burden of obstacles faced by citizens of the new Member States is likely to be enough of an incentive to stay at home. It is one thing to think about a short
spell studying or working abroad in the EU, quite another to leave one’s country more permanently.

The public debate that arose round the issue of migration and its possible threats in connection to the EU’s fifth enlargement, very often played on common prejudices and national sensitivities. The debate was one sided and did not take into account many obstacles to migration, which influence the decisions of individuals and families.

- Economic factors. The majority of studies ‘predicting’ an influx of migrants from Central and Eastern Europe operated on a presumption that given a real choice, workers will always opt for an option giving them nominally higher income possibilities. Nevertheless, the results of such studies as well as ‘stories’ i.e. that cabbage harvesters earn EUR 900 a month (three months salary of many Eastern Europeans!) need to be compared to higher living expenses that are a common characteristic of all Western European states.

- Socio-cultural factors.

  - Language and cultural barriers do play a significant role when making the decision to migrate. The majority of migrants do need to work very hard in order to be integrated into the mainstream society and culture of the host country.

  - Personal circumstances. Migration has always been a challenge that requires a lot of courage on the part of the citizen, but also his/her family, which plays a major role. By definition, decisions about the change of one’s country of residence are much more complex in case of marriages or partnerships, where both partners are economically active. The decisions made need to take into account not only the willingness, but also the potential employment possibilities of both partners.

  - Central and Eastern Europeans share particularly strong feelings of being tied to their property. Therefore, the decision about selling or letting a house, which in many cases has been inherited from generation to generation, will not be one that is taken easily.

- Administrative ‘red tape.’ Here the EU and national authorities can do more to eliminate the obstacles: the difficulty of knowing where to find the information to get started, the lack of confidence about pensions and other social entitlements or the risk of professional qualifications and experience not being recognised in the host country.

Preceding the enlargement discussions about the number and ‘quality’ of migrants that will or will not come, rights they should or should not have has caused a lot of confusion. The information available to an average citizen is scattered, often incomplete and (regretfully) on occasions misleading. Therefore, the primary aim of this paper is to provide an outline of the complicated situation as regards free movement of persons and at the same time to draw to the attention of policy makers the potential problem areas and issues that are likely to cause more confusion and misunderstanding.
1. **The freedom of movement in the context of Europe’s ‘new borders’**

The debate about the concept of ‘free movement of persons’ opened in the 1980s has never been really been concluded. Back then it resulted in a situation, whereby five of the Member States which signed the Schengen Protocol abolished their border barriers, while others decided to remain outside the ‘free movement zone’. Since then the Schengen has been extended to nearly all EU countries and has become part of the EU *acquis*. However, even today and especially in the light of the recent enlargement, the debate initiated at the time still continues.

The postcard picked up a year ago, featuring the map of Europe, in which 15 states to the west side of the continent are marked red, with no border lines between them making an impression of one big entity and the other 10 are marked in yellow with borders clearly painted in white, has not lost its validity, despite the fact the as from 1st May all these countries constitute one enlarged territory of the EU. Physical borders between the ‘old’ and ‘new Europe,’ at which citizens need to prove their identity with a valid identity document have not disappeared. What more their disappearance is unlikely to be achieved within the next few years. The symbolic removal of border barriers mentioned in the introduction of this paper, remains very much only symbolic.

The provisions of the *Schengen acquis*, which provides for the abolition (as between signatory countries) of all border controls on persons, are not as yet fully applicable to the ten new countries that joined the EU on 1st May 2004. New Member States, and especially countries like Poland, the Eastern border of which will constitute the longest part of future EU external border belonging to one country, or Hungary, which has the highest number of neighbours, many of whom remain outside the EU, need to prove first that they can stand up to the task of protecting the territory of the enlarged EU from such dangers as illegal immigration or cross-border crime.

The full implementation of the *Schengen acquis*, leading to full unification of the western and eastern parts of the European continent, will be conducted in two phases. As Article 3 of the Act on Accession indicates, all of the *Schengen acquis* is binding on the new Member States as from the date of enlargement. However, it is only this part of the *acquis* listed in Annex 1, hence rules that relate to external border controls, illegal immigration, criminal law cooperation, and certain aspects of police cooperation that apply to the new EU members immediately upon enlargement. As regards the full application of the remaining part of the *Schengen aquis*, including provisions on the abolition of internal border controls, visa policy, freedom to travel, Schengen Information System (SIS) and core aspects of police cooperation, this is subject to the Council’s unanimous decision taken at a later date, after completion of applicable Schengen evaluation procedures and consultation with the European Parliament.

For a majority of new EU citizens only the abolition of internal borders will be a true symbol of their belonging to the Union. Therefore, governments of all new Member States have particularly devoted themselves to introducing all necessary changes and adaptations leading to country’s improved administrative and technical capacity to guard the EU’s external borders by 2006, as per the initially proposed deadline. Their efforts are matched by EU financial support. According to Article 35 of the Act of Accession, by the year 2006 nearly 900 million EUR should be made available to seven new Member States, who will be responsible for the EU external borders, in a form of a specially introduced ‘*Schengen Facility*’ instrument.

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Nevertheless, intensified efforts on the part of the new Member States will not be enough. As stated in the Note on ‘Process leading to the implementation and application of the Schengen acquis’ (15440/02 of 10th December 2002) cooperation on both sides has been ‘efficient and successful.’ Despite that, the initial deadline of 2006 has already been postponed several times. According to the recent note of the Schengen Evaluation Working Group (7162/04 of 16th March 2004) the evaluation of new Member States, which as per Art 3 of the Accession Treaty should lead to Council’s decision about full application of Schengen acquis to the new Member States, will most probably not be performed before 2007. This is connected to the fact that such evaluation processes must be linked to the assessment of operation of Schengen Information System (SIS), the second generation of which is still under construction. Moreover, as set out in point 4 of the above mentioned note, evaluators will not conduct inspections in more than two countries each year.

The first generation of SIS, which is currently in operation, was created back in the early 1990s for the purposes of only five countries, which, subject to an intergovernmental agreement, decided to abolish border controls that in their understanding of the free movement of persons principle, constituted a barrier. In 1997 the provisions of Schengen Protocol have been incorporated into the Treaty of Amsterdam and subsequently the cooperation was extended to cover the total of 13 EU countries – the exceptions being Ireland and the United Kingdom - plus Norway, Iceland and Lichtenstein. The technical possibilities of SIS have reached their limit. The outdated technology and limited capacity of SIS I does not allow for its extension to an additional ten new Member States. Therefore, in 2001 it has been decided and stated in the Commission Communication to the European Parliament and the Council (COM(2001) 720) that ‘the setting-up of the second general SIS is an absolute prerequisite for the involvement of the future Member States in the area without internal frontiers.’ SIS II is desired not only to increase the capacity of the system, which according to Commission’s estimations at the end of 2003 was already storing about 2,3 million records on specific individuals, vehicles and objects, which are lost or stolen. It also needs to cope with the increased number of requests, which once the system is fully operational in the enlarged Schengen zone, is expected to rise from 340 million per year to 1.020 million.

It appears that the core of the system is to retain its location in Strasbourg with back-up facilities created in Saltzburg. Nevertheless, the decision concerning the responsibility for overseeing the fully implemented SIS II has not been taken as yet. One may only presume that it raises difficult issues about what is in EU competence, what is in national competence, and which Institution should therefore govern the SIS.

The initial call for proposal encouraging offers from potential developers of the second generation system worth 13.000.000 EUR has been released in June last year and according to unofficial information the contract is to be signed only this summer. This postpones the possible deadline for completion of this part of the project (design of SIS II) to mid-2007. Taking into account the fact that the respective evaluation procedures (as discussed above) may be initiated only after the system is fully implemented and operational, it may be concluded that even in a relatively optimistic scenario it may not be until 2012 that the last of the 10 new Member States will be able to join Schengen zone. Moreover, considering the unclear situation as to whether the new Member States will be required to join Schengen as a group, or will be admitted on individual country by country basis, there is a danger of further delay caused by slower or underperforming countries.
This is an important transition period, the deadline of which is not clearly specified. Subsequently it has very serious implications for the freedom of movement between old and new Member States. Firstly, for an unspecified period of time, citizens of the new Member States, even though able to move freely in the territory of the enlarged EU, will still be subject to border controls at all internal EU borders. It is true that procedures have been facilitated and for example persons leaving or entering one of the new Member States will not be subject to customs controls any more. But such a change will be appreciated largely by truck drivers, who prior to 1st May had to queue on for example the Polish – German border for hours if not days.

For a majority of 75 million new EU citizens the only tangible difference of crossing the border will be the existence of the lane for EU-passport holders, at which procedures should run more quickly. However, many of the Ukrainian or Belarusian nationals will need to go through additional administrative procedures (like that of obtaining a visa), when visiting their families across the EU border. Certain measures concerning the visa policy (e.g. regulation listing countries, whose nationals must be in possession of visas when crossing the external borders or rules relating to uniform visa stickers) do apply to new Member States immediately. On the other hand regulations referring to conditions and issuing procedure of so called ‘Schengen visas’ remain to be applicable only in second phase of the Schengen acquis implementation. Therefore the same Ukrainian family visiting relatives in Poland will not be able to travel with them for e.g. a relaxing weekend on the German side of the Baltic coast, unless they apply for a separate visa allowing them to enter the territory of the Federal Republic of Germany. Similarly e.g. Russians living in Vienna, even though residents of the Schengen zone, will not be able to visit Bratislava without prior obtaining a Slovakian visa.

Numerous concerns have been voiced about the division such a system will impose in certain border regions of the new Member States and their neighbouring countries, largely populated by ethnic minorities of the former. An example of possible problems deriving from such divisions is the village populated by Hungarians, which is located across the Slovakian – Ukrainian border. The village is now left cut in two parts: EU and non-EU territory. The border line running across the village, now EU external border, forces families living on the Ukrainian side not only to apply for a visa, but also to travel 300 km to the closest authorized border crossing point, each time they want to visit their relatives living across the road, but as from 1st May – ‘on the European side.’3

This issue has been addressed in the proposal by the Commission for a ‘Council Regulation on the establishment of a regime of local border traffic at the external borders of the Member States’ (COM (2003) 502 final of 14.08.2003), which lays down common principles an e.g. provides for ‘special L visas,’ but leaves it down to the authorities of each side of the border to negotiate solutions appropriate to their region. During the accession negotiations, the new Member States stressed the importance of such a regime. The possibility of signing such agreements would be much appreciated by them. Nevertheless, the already late timing of this initiative leaves a lot of doubts as to its possible success. On 20th April 2004 a partial agreement as to the proposed text has been reached between the Commission and the European Parliament, but it has run into difficulties in the Council. At present, the only currently enforced text relating to borders is that of Council’s Conclusion (11041/03) adopted

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3 Quoted after article by Eszter Balázs ‘No man’s land in EU’ written for Budapest Sun and available at [http://www.budapestsun.com/full_story.asp?ArticleId={AE01AA8120544EBFA6B1AB3F29DF2AF6}&From=News]
in November last year and calling for joint controls at the common land borders between old and new Member States – it does not cover external borders.

The challenge, which the development of second generation of SIS constitutes as well as the complexities of the procedure leading to full implementation and application of the *Schengen acquis*, need to be appreciated. The lesson of previous extensions of Schengen to Italy, Greece and Scandinavian countries shows this is a long and laborious process. Given the already existing ‘delay,’ continued and intensified efforts aiming at abolition of the ‘temporary external’ as well EU internal borders should be undertaken by both sides, the new EU Member States as well as the European Institutions. Otherwise the enlarged EU is not only running into danger of creating first and second class EU citizenship, as discussed in further parts of this paper, but also building a new barrier between the EU and its eastern neighbours. Deadlines should be set and the only hope they will be met lies in a good deal more public and parliamentary scrutiny.
2. Derogations from free movement principle allowed for by the Accession Treaty

2.1 Community provisions

The basic rights attached to citizenship of the Union are set out in part two of the EC Treaty (Art 17 – 22). These include the right to travel, work and live freely in another country, the right to vote and stand in municipal elections in one’s country of residence, and the right to diplomatic and consular protection. As from 1st of May these rights apply to citizens throughout EU 25.4

Moreover, Articles 39 and 43 of the EC Treaty secure also free movement rights for workers (Art 39) and the self-employed (Art 43). Free movement rights guaranteed by the two articles are subject to the non-discrimination principle and cover both freedom to work and reside in another Member State. Secondary legislation flowing from Article 39 EC Treaty includes: Regulation 1612/68 on the free movement of workers, Directive 68/360/EEC giving residence rights, Directive 64/221/EEC allowing the relevant national authorities to restrict residence only on the grounds of public policy, public security and public health; and Regulation 1215/70 giving the worker a right to remain in another Member State after having been employed there. Furthermore, there are a number of directives providing for the recognition of qualifications. Member States have also decided to co-ordinate social security schemes in order to ‘protect’ those, who taking advantage of their free movement rights, throughout their professional career have lived, worked and consequently been subject to different social security systems. This cooperation does not however affect the power of individual Member States to organize their social security system in the way they desire and access to social security system by non-citizens of particular Member State is subject to ‘restrictions.’

The current limitations of the EU legal system have not been considered sufficiently. ECAS research run as part of 1st May celebrations,5 mentioned the limited extent of social rights granted within the scope of the European coordination system, as well as problems with mutual recognition of qualifications. These are serious obstacles to the free movement of people principle. Firstly, European legislation on social security schemes does not harmonize the social security rules set out individually by each of the EU Member States. Systems differ on a country by country basis and (counter to claims made recently by public media) do not offer EU citizens unconditional access to social security (let alone benefits) of any of the EU Member States. The right to reside in another Member State is subject to fulfillment of ‘self-sufficiency’ condition, what does not allow citizen to become a burden on the host Member State. Secondly, the system of mutual recognition of qualifications is very often more complicated than it should be. Since Member States maintain a margin of discretion in considering applications, in practice the recognition of qualifications is not always so ‘automatic.’ In the light of the recent enlargement this problem is bound to become only more burdensome. Six of the new Member States join the EU with a ‘legacy’ of diplomas obtained in countries, which no longer exist (Soviet Union, Yugoslavia and Czechoslovakia). Moreover, qualifications in certain Member States result only from professional experience and correspond neither to training nor to diploma.

4 For more information about EU citizens’ rights please consult ‘50 questions and answers’ – publication by ECAS
5 Detailed results of this study are available on ECAS website (www.ecas.org)
2.2 Derogations allowed by the Accession Treaty

The extension of free movement rights to the additional 75 million new citizens was a particularly sensitive, but ‘popular’ topic of many intensive discussions during the accession negotiations. On the one hand the ambitions and pressure exerted by some of the new Member States and on the other hand the anxiety about possible negative effects on the labour market and employment conditions, voiced by some of the old Member States, had to be balanced. The solution was found in the flexible 2+3+2 transitional arrangement referring to workers and proposed by the Commission. In the process of negotiations it has been agreed in the same form with 8 Eastern and Central European new Member States (no transitional measures apply to workers coming from Cyprus or Malta, even though the latter may restrict access to its labour market in case of disturbances or threat thereof) and included in the Accession Treaty signed on 16 April 2003.

Transitional measures as regards free movement of workers

The possibility of derogation from the free movement of workers principle is set out in Annexes V and VI, VII – X and XII – XIV\(^6\) attached to the Act on Accession.

Paragraph 1 of each of the annexes clearly states that the derogation applies and may be used only with reference to the free movement of workers and freedom to provide services (defined as per act mentioned in this Paragraph). Therefore proposed transitional measures may not be used in order to restrict or limit the free movement rights of students, pensioners, self-employed persons, tourists and other self-sufficient persons.

The operation of the transitional measures, as set out largely in paragraphs 2 to 12 of the said annexes, is phased over three periods:

- **Period 2004 – 2006** during which all current Member States apply national measures or measures resulting from bilateral agreements, thus regulating access to their labour markets. According to Paragraph 12 Member States may introduce under national law greater freedom of movement, (which may be seen equal to that guaranteed by the EC law provisions), but in any case nationals measures may not be more stringent than those that were in force on the day of signing the Accession Treaty (Paragraph 14). Furthermore, during any period, in which national measures or measures resulting from bilateral agreements apply, Member States are bound by the principle of preference set out in Paragraph 14. According to this clause, as regards labour market access, preference should be given to workers originating in the EU over workers who are third country nationals.

- **Period 2006 – 2009** – Before the end of the first two year period, the Commission will produce a report, on the basis of which the Council will review functioning of transitional provisions. Nevertheless, the result of this review will not be binding on Member States. Those who wish to continue application of national measures may still do so after having notified the Commission (Paragraph 3). Only in the absence of such notification, EU provisions governing free movement of workers will apply in the territory of that particular Member State automatically. During this three year period any Member State applying national restrictions may also at any time willingly

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\(^6\) Each of the annexes refers to one of the eight Central and East European States, but all have been negotiated in the same way and therefore foresee application to the same transitional periods to all 8 new Member States.
‘switch’ to full application of EU free movement provisions and should inform the Commission.

- **Period 2009 – 2011** – as a general principle all national measures relating to labour market access should cease to apply by 2009. Nevertheless, Member States are again given a discretion to continue applying national measures (subject to the notification procedure as above) in case of serious disturbances of its labour market or threat thereof. Moreover, during the whole seven year period Member States applying EU provisions on access to their labour market in full may resort to the Paragraph 7 safeguard clause. This allows for partial or total suspension of application of the EU provisions referring to the free movement of workers, in case of disturbances to the labour market or threat thereof, even though the Commission’s permission will be required for this clause to be applied.

On the basis of Paragraph 13 of respective annexes Austria and Germany are additionally allowed to apply national restrictions referring to the provision of certain services (as listed in this Paragraph). As clearly interpreted by the two countries in their joined Declaration no 19 (annexed to the Final Act of the Accession Treaty), where appropriate, the restriction may apply to their whole territory. Furthermore, provided that they retain restrictions as regards free movement of workers, they may also apply the restriction applicable to service providers for the entire period of seven years.

From the year 2011 onwards no transitional measures referring to freedom of movement of persons may be imposed. Until that time Member States, in declarations annexed to the Final Act of the Accession Treaty, have committed themselves to grant increased labour market access to new Member States nationals. (cf. Declarations no 6, 7, 10, 11, 13, 15, 16 and 18).

There are also two exceptions from the above described possible restrictions. Firstly, as stated in Paragraph 2 new Member States nationals, who have lived and worked legally in one of the old Member States for an uninterrupted period of 12 months or longer prior to the accession ‘will enjoy access to the labour market of that Member State.’ Similarly, national measures of a particular Member State will cease to apply to those workers coming from the new Member States, who after the date of the 1st of May 2004 will be admitted to the labour market of that particular current Member State for an uninterrupted period of 12 months or longer.

The second exception relates to the family members. The worker’s spouse and children, who prior to the date of accession have been legally residing in a current Member State with a worker authorised to stay there for more than 12 months, should have immediate rights of access to that Member State’s labour market. Those arriving after the date of accession, but during the period of application of the transitional provisions, should gain access to the labour market of the particular Member State once they have been resident in that state for at least eighteen months or after three years from the date of the accession, whichever is earlier. Family members’ general right to join a worker and reside with him/her in another Member States does not fall under the scope of transitional arrangements, hence applies fully as of 1st May 2004.

The 2+3+2 formula, flexible, but very complicated may have been an acceptable compromise at the time of signing the Accession Treaty. The dangers connected with a parallel existence of a European and national regimes (differing on a country by country basis), applicable to the freedom of movement of persons were not foreseen a year ago and no systems of notification or co-ordination were established. As indicated by the Member States at the time, the flexible
2+3+2 arrangement would result in a more or less uniform system, under which freedom of movement for labour would be guaranteed with only a few exceptions, largely covering countries which lie at the border with one of the new Member States or have historically been frequently chosen by migrants from Central and Eastern Europe destination.

Nevertheless, the intentions expressed by EU 15 back in spring 2003 and even Declarations annexed to the Final Act (as discussed above) have not been binding on any of the Member States. Contagious as a virus, the scare of an ‘influx of migrants from Central and Eastern Europe’ led some of the Member States to ‘rethink’ their promises and as the 1st of May 2004 drew closer, in many cases to apply or announce more protectionist measures.

**National measures**

The Accession Treaty does not clearly specify what form the transitional national measures may or must not take. The only guideline provided by this act is given in Paragraphs 13 and 14 stipulating that national measures applied may not be more stringent than those applicable at the date of 16 April 2003. Therefore, Member States resorted to a variety of different restrictions ranging from limitations depending on sector or type of work, through quota arrangements, to work permits granted only when a national cannot be found to fill the vacancy. All these measures are also likely to apply in different timescales. Is the free movement of people principle bound to be replaced by migration management practices?

**Countries not restricting access to their labour markets**

Ireland, the UK, and Sweden are the only three countries that decided to open up their labour markets as from the first day of the accession. As much as Ireland was of the opinion that the application of transitional measures ‘will create unnecessary tensions’ for most of the time preceding the enlargement, Swedish decisions concerning opening of their labour market came as a nice surprise nearly on the day of accession. On 28 April the Swedish Parliament rejected the government’s proposal on transitional measures and Swedish officials ‘shared the good news with those most concerned’ during their stay in Warsaw at the World Economic Forum. As regards the UK, which was inclined to open up its labour market already in April 2003, despite the generally unrestricted access to the labour market under the newly introduced ‘Workers Registration Scheme,’ citizens of the 8 new Member States will need to register with the Home Office in order to obtain a ‘worker’s registration certificate.’

**Countries restricting access to their labour markets**

The majority of other old Member States did announce and publish adequate measures providing for the application of different work permit schemes as regards workers from 8 Central and Eastern European countries. For example Belgium retains its current work permit system with permits A (for all salaried workers) and B (for temporary employment) for a minimum period of two years. Workers wishing to take up employment in the Netherlands are also required to obtain a work permit, even though the government has abandoned its earlier intention of introducing quotas. In a number of sectors granting of such permit is subject to simplified procedures, where the waiting time does not exceed two weeks. Nevertheless, work permits for all other jobs, falling outside the scope of specified sector ‘relaxations’ are granted only when a Dutch national (or national of other old Member State) willing to take the vacant post cannot be found. The situation is similar in Finland, where under national law, which is applicable to nearly all new EU nationals (exceptions Malta and Cyprus) for a minimum period of two years, work permit will only be granted provided that the vacancy cannot be filled by a Finnish worker. Yet another work permit scheme is present
in **Denmark**. This country applies a system, under which citizens of the EU-8 are allowed to obtain a work permit only once they obtain an official residence permit and only for full time employment. The system applied by **France prima facie** may seem very similar to that operated by the Dutch, where current work permit policy applicable to salaried workers has been maintained. France foresees also possibilities of opening the labour market in specific professional sectors and currently the work permit requirement does not apply to students and researchers. Nevertheless, according to announcements made by this country’s representatives, the system will be in place for a period of 5 years.

Even stricter national measures are applied by another two countries. **Italy** operates a work permit scheme, which is automatically limited by an already fixed quota of 20,000 workers coming from the EU-8 in the year 2004. Only in cases of certain sector specific professions, work permits will be issued outside the scope of the quota fixed for 2004. Similarly in **Portugal**, as intentions expressed prior to the enlargement might indicate, for the period of two years after enlargement the current system of work permits granted within quotas set every two years (covering all foreign nationals with the exception of EU-15, Cyprus and Malta) will be maintained.

**Austria and Germany**, which have traditionally been the two countries receiving a majority of migrants from Central and Eastern Europe, voiced their concerns as regards the probable negative impact of migration on employment markets most loudly. Therefore, both will continue applying national restrictions (i.e. work permits schemes) and provisions deriving from bilateral agreements signed between themselves and individual new Member States. As discussed above, both countries are also allowed to apply certain restrictions as regards freedom to provide services. According to information available both complied with the ‘notification requirement’ and informed the Commission by letters dated 29.03.2004 in the case of Austria and letter dated 27.04.2004 in the case of Germany that they do intend to make full use of the derogation from Art 49 allowed by the Treaty of accession.

As regards **Spain** transitional measures will apply, nevertheless detailed regulations are still in the process of being drafted by the Ministry of Employment and Social Affairs. As regards the remaining two EU countries, namely **Luxembourg** and **Greece**, no information has been released as yet.

**New Member States**

On the basis of Paragraph 10 of the Annexes to the Accession Treaty discussed above new Member States are allowed to restrict access to their labour market by nationals of the old Member States on the basis of reciprocity. That means that as long as restrictions flowing from national measures or bilateral agreements are applied by e.g. Italy with reference to Slovakian nationals, Slovakia may apply equivalent measures with reference to Italian nationals. Concerning free movement of workers between new Member States themselves, as long as any of the old Member States maintains restrictions with reference to one of the new Member States, the remaining 7 new Member States may resort to a safeguard clause (as discussed in earlier sections of this paper), applying restrictions with reference to nationals of that particular new Member State.

Countries exempt from the above rule are Cyprus and Malta. **Cyprus**, which will not face any restrictions on the part of the old EU-15, can also not be subject to such restrictions imposed by new Member States and cannot restrict access to its own labour market. **Malta**, similarly to

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7 For list of sectors, please consult discussed here Annexes to the Accession Treaty – Paragraph 13
Cyprus cannot be subject to restrictions applicable either on the part of old or new Member States, but according to provisions set out in Annex XI, Malta at any time during the period of seven years after the accession, in case of disturbances to its labour market or threat thereof, may resort to a safeguard clause, restricting access to its labour market. Up till now Malta has not made use of this right.

Out of the 8 Central and Eastern European new Member States only Poland and Hungary are known to be applying reciprocal measures with reference to nationals of the old Member States. Exact details of these measures are again hard to obtain, even though in the case of Poland the relevant legislation has been adopted on 30th April and is already published (however only in Polish). Czech Republic, Estonia, Latvia and Slovakia have not implemented any restrictions, while no information as yet has been released by Lithuania and Slovenia. None of the new Member States have requested the Commission’s authorisation to restrict access to their labour markets by new EU Member States nationals.

Potential problem areas

The compromise reached thanks to adoption of the flexible 2+3+2 arrangement has created confusion in practice and potentially is also one of the main problem areas. Not all national governments are really open and informative as to the scope and type of national measures applied by them. Some of them e.g. Greece or Luxembourg still have failed to make the information about measures they will apply public. The decisions of others have already changed so many times, that keeping oneself updated, is difficult even for researchers observing the developments on a day-to-day basis. The best example of this is the contradictory information supplied by some European portals and individual websites of national ministries, which referencing one another, provide contradictory data. It is one thing to advise citizens they should be more ‘entrepreneurial’ and gather information about the country they wish to travel to before departure, quite another to supply them with information they have a right to request.

The parallel existence of national and European regimes applicable to freedom of movement for workers on occasions may be problematic for lawyers, not to mention citizens. Where does the dividing line between application of the two regimes lie? If a worker has been authorized to gain access to the labour market, which regime do his/her rights fall under – European or national? The Accession Treaty itself leaves a few grey areas. For example should ‘access to the labour market’ granted to new Member States nationals already resident in one of the old Member States on the basis of Paragraph 2 be read as full labour market access, i.e. as per Community rules or will Member States be allowed to put restrictions under national law? Are Member States allowed to implement restrictions falling outside the scope of labour market access? The answer seems simple – no, but steps in that direction taken by some individual Member States do create confusion.

The UK constitutes a particularly good example. As long as the procedure of registering under the national Workers Registration System is allowed under Paragraph 6 of the Annex to the Accession Treaty (as discussed above - provided that the scheme is run for monitoring purposes only and that granting of such certificate is automatic rather than conditional), the introduction of new rules, which as announced by the UK would prevent workers from the new Member States from gaining access to social benefits for at least two years after the accession sounds much more worrying.
As provisions of the Accession Treaty stand, Paragraph 2 of the mentioned annexes limits the scope of derogation allowed for by the Accession Treaty to Articles 1-6 of Regulation 1612/68 regulating workers’ access to employment. Additionally, Paragraph 9 mentions derogation from application of those articles of Directive 68/360EC (conferring on workers residence rights), which ‘may not be dissociated’ from provisions of aforementioned Art 1-6 Regulation 1612/68. Consequently one would have to presume, that once a national of a new Member State is authorized to access the labour market of another Member State, Articles 7-9 of Regulation 1612/68 (concerning equal treatment) and Art. 10-12 (concerning the worker’s family), let alone provisions of other EC law instruments on mutual recognition of qualifications or social security schemes do apply normally according to Community law. Therefore, should the UK under its national system be allowed to restrict access to social benefits, which in any case are not available to those who are not contributing to the country’s welfare? Some might claim that since access to the labour market for the first two years is guaranteed on the basis of national law, it is therefore only for national authorities to set out conditions for the application of rights and benefits deriving directly from the labour market access right (e.g. conditions of work, social security etc.). The Accession Treaty does not however expressly grant Member State the power to regulate anything else apart from access to employment.

There is also the issue of possible limitation of rights granted by EU law to students. What will happen to students, who generally enjoying full free movement rights under Community law, wish to take up part-time employment in countries like Denmark. Will they be banned from doing so? And what about students in the UK, who, when taking up employment will (according to current definition of a ‘worker’ provided for in respective national legislation) need to register with the Workers Registration Scheme? What rights and obligations will they be subject to? Those referring to their status of student and deriving from the EU law or those referring to their status of worker, hence governed by the national system and not challengeable in the European courts?

During the enlargement negotiations, and at the time of signing the Accession Treaty, it seemed that consensus could be found and that many of the individual Member States would not resort to ‘protectionist’ arrangements. A year ago, when ECAS together with the Charities Aid Foundation and the Stefan Batory Foundation held a European citizenship forum in Warsaw, the lack of notification procedures foreseen for the initial period of two years could be explained by an argument that at least half of the EU-15 did not intend to apply transitional measures anyway. Today, the non-binding nature of Council’s reviews run after the initial two-year period as well as the simple notification (not consent) procedure in case of continuing application of national measures after 2006 is another potential source of problems. Austria and Germany have already indicated that they will make use of the allowed derogations for the whole period of seven years. Do they already foresee the result of the review run by the Council in 2006 and continuous existence of ‘serious disturbances of its labour market or threat thereof’ in the period between 2009 and 2011 or do they simply realize that the mere requirement of informing the Commission (without an obligation of seeking permit) is not really a constraint put on them? Will there be an opportunity to challenge at the European level the national measures if there are no ‘serious disturbances’ of the labour market?

Last but not least are questions relating to the worker’s family members. As provided for by the Accession Treaty, family members moving to one of the old Member States after the date of 1 May will have to wait 18 months before gaining access to their new country’s of residence labour market. Under the Europe Agreements they enjoyed right of access to
employment straight after settling down with a worker. This would imply that the provision of Paragraph 8 (as discussed above) is contradictory to the provision of Paragraph 14 the Treaty annex concerning freedom of movement for persons, according to which no measures should be more stringent than those existing on the date of signing the Treaty.

Unfortunately the questions asked above have to remain unanswered. The long awaited and historic date of 1 May, which was expected to change Europe forever, is already gone. Nevertheless, the atmosphere of confusion as to who is welcomed in the enlarged Union and on what terms only seems to be thickening. Despite the existence of some obvious shortcomings in the Accession Treaty as regards the application of transitional arrangements, it is a primary source of the EU law, which may not be ruled invalid. Therefore it is in the hands of both the EU Institutions as well as national governments to adhere to their declared commitment to create a truly enlarged Europe within full meaning of this word. The new EU 25, as shown by the latest Eurobarometer results, is already loosing its ‘popularity.’ Therefore, transitional arrangement should be brought to an end as quickly as possible. Otherwise the already ‘uncomfortable’ political message that some of the EU citizens are ‘more of a liability than an asset’8 to the EU will get even more discomforting. This is something that the enlarged Union cannot afford.

8 Repeated after Helen Stalford (July 2003) – ‘Free Movement Post Accession – Transitional arrangements in Poland and Bulgaria’
3. Recommendations

Freedom of movement is a crucial part of the single market. Meanwhile, nobody may be really sure what to expect. As this report proves, with reference to two most important areas connected to citizen’s freedom of movement (i.e. the abolition of borders and freedom of movement of workers), the forecast made at the time of signing the Treaty were much more favourable. Today, only a few weeks after the historical date of 1st May, the enlargement seems to be bound to remain ‘unfinished’ for much longer and what worse, an unspecified period of time.

On the one hand, the delay connected to development of the second edition of Schengen Information System postpones the date of possible abolition of all border controls as between old and new Member States by another two years. Subsequently, should evaluation procedures leading to Council’s decision about full implementation of Schenegen acquis be really conducted in no more that two countries a year (as indicated in the latest note of the Schengen Evaluation Group), even further delay by up to 5 years is possible.

On other hand, the 2+3+2 arrangement referring to the freedom of movement for workers persons has also proven to be disappointing. Only a year ago it seemed that national measures restricting access to the labour market for citizens of the eight new Member States will not be applied by nearly a half of the old EU-15. In the meantime we can observe the situation, whereby national measures are not only applied by 12 of the 15 countries, but are also largely proliferated and on a country by country basis differ as to the timeframe (2 of 5 years) as well as type of applied restrictions (quota arrangements, full work permit schemes, relaxed measures applicable in certain sectors). The application of these measures also makes little economic sense. Given the declining birth rates in Western Europe, inflow of migrants at certain level (as claimed by some scientists EU 15 would required the inflow of half a million migrants in the period between 2005 and 2010) is necessary in order to ensure the continuous economic growth and swift functioning of pension and social security schemes. Meanwhile, the restrictive measures are being adopted despite the fact that the expected influx of migrants did not come.

The situation is bad both for the citizens and for the single market. It cannot continue. To avoid the confusion and misunderstanding caused by simultaneous application of the European and differing national regimes applicable to the freedom of movement on the one hand and partial application of Schengen rules of the other, actions by both the European institutions as well as national governments are required. We should aim to bring down the transitional measures restricting access to European labour markets before the end of the initial period of two years (i.e. 2006) with only a possible exception applicable to regions located at borders between the new and old Member States. Furthermore, the recently setout deadline for the completion of the design phase of the SIS II should be strictly observed. No further delay in extension of the Schengen zone to 10 new countries should be acceptable beyond the end of 2007. To attain this objective, the political will and engagement of all actors present at the European scene is required.

To Citizens

There are certain rights, which citizens should be aware of:

- Despite the existence of EU internal and temporary external borders, all new Member States’ nationals are free to move within the territory of the EU on simple presentation
of valid passport or identity card. Hence they may travel and reside in another Member State for a period of up to three months without complying with any special formalities and their entry may be refused only on grounds of public policy, public security or public health.

- Transitional measures relate only to workers. They do not affect the freedom to move to another Member State as a student, pensioner, self-employed or worker’s family member. In reality any citizen may move to another Member State provided he is able to prove his medical cover and sufficient resources to be self sufficient.

- For the first two years after the accession each Member State is regulating access to its labour market on the basis of national legislation. Nevertheless, none of the measures may be more restrictive than those imposed prior to enlargement. In fact three of the old Member States operate a rather relaxed system, which allows new EU citizens to take up jobs in the UK, Ireland and Sweden. They are also free to access the labour market of any of the new Member States.

- Member States may only impose restrictions as regards access to employment. Hence, one should insist that provisions of mutual recognition of qualifications, as well as social security rights should be applied equally to workers from new and old Member States.

- Each citizen has a right to be informed about measures directly influencing his/her rights. Some useful links and possible sources of advice and information are listed below. Nevertheless, citizens should also insist on better information release by national administrations of individual Member States.

**To European Institutions**

- A truly informative debate about the impact of enlargement on freedom of movement of people has not taken place yet and it is high time to start such discussions. The institutions and particularly the European Commission should be an initiator of further studies aiming to assess the real migration flows. Further studies and publications as to the real migration movements and influence of enlargement could not only provide citizens with reliable information, but also cool down many of the unfounded fears.

- As shown in this report, information available to a citizen is scattered, often late and hard to access. The European Commission should encourage Member States to increase their efforts concerning public information campaigns. The necessity to counter myths surrounding the recent accession becomes more and more evident. Scare-mongering on welfare shopping must come to a stop. The Commission should draw the attention of individual Member States that the EU law already provides significant protection.

- The ‘underperformance’ of some of the Member State concerning the release of information, which each citizen has a right to obtain should not be tolerated. In full respect of the fact that for the initial period of two years, notification procedures referring to national measures applied by individual Member States has not been foreseen by the Accession Treaty, we must insist that the Commission does not
remain passive. The institution should request information from individual Member States, since only then may it fulfil its role as a ‘guardian of the Treaty.’

- The Commission should be particularly vigilant about the correct application of the EU law and especially during the initial period of two years after the enlargement. The attempts of some governments indicating the intentions to restrict access of workers from Central and Eastern Europe to social security systems of the countries they reside should be curbed in its early stages. Member States should not be allowed to extend their restrictions further than issues of access to their labour market. Moreover, other problem areas signalled in this report and relating to problems of simultaneous existence of national and European regimes as regards e.g. working students or rights of workers’ family members, who when migrating after the date of enlargement would not be granted labour market access – a right which was given to them by the provision of the generally less favourable Europe Agreement, should also be given particular attention.

- As discussed in this report, the Commission regulation on the establishment of a regime of local border traffic at the external borders of the new Member State has proven to be a valuable initiative. Its importance should be taken into consideration by the Council of Ministers, the decision of which is currently expected.

- As quoted in some European circles the confusion caused by the late adoption of national measures and in many cases the negligent attitude towards proper information campaigns cannot be treated as a norm. It would be advisable for the European Ombudsman, together with a network of national Ombudsmen, to investigate whether the way in which respective national measures have been implemented does correspond to principles of good administration, as well as those referring to EU citizenship and articles concerning freedom of movement, inserted in the Charter of Fundamental Rights.

**Information sources**

1. To obtain more information about free movement rights within the enlarged EU please consult the Europe Direct website ([www.europa.eu.int](http://www.europa.eu.int)), and especially its ‘Dialogue with citizens’ part containing comprehensive factsheets about all 25 EU countries (currently in the process of being updated ([www.europa.eu.int/citizensrights](http://www.europa.eu.int/citizensrights)).

2. Questions may also be referred to Europe Direct by an e-mail or free phone number. Please visit the website ([www.europedirect-cc.ccc.eu.int/websubmit/?lang=en](http://www.europedirect-cc.ccc.eu.int/websubmit/?lang=en)) or telephone 0800 67 89 10 11.

3. You can also refer your questions concerning the scope or ‘meaning’ of EUY legislation and their influence on your rights to the Signpost Service ([www.europa.eu.int/citizensrights/signpost/index.htm](http://www.europa.eu.int/citizensrights/signpost/index.htm)) or in cases of infringement of EU rules – to a SOLVIT (please find the address of the SOLVIT centre located in your country on a website ([www.europa.eu.int/citizensrights/signpost/index.htm](http://www.europa.eu.int/citizensrights/signpost/index.htm)).

4. For information about individual national measures referring to workers, please consult the EURES portal on ([http://europa.eu.int/eures/index.jsp](http://europa.eu.int/eures/index.jsp)) or individual websites of respective national authorities:
• Austria – (http://www.bmwa.gv.at/BMWA/default.htm)
• Belgium (http://www.meta.fgov.be/pa/ena_index.htm)
• Denmark (http://www.udlst.dk/english/default.htm)
• Finland (http://www.mol.fi/tiedotteet/2004043001.html) or (http://www.ecas.org/product/91/default.aspx?id=258)
• France (http://www.diplomatie.gouv.fr/mae/index_gb.html)
• Germany (http://www.arbeitsagentur.de/)
• Ireland (http://www.google.co.uk/search?hl=en&ie=UTF-8&q=Department+of+Enterprise+Trade+and+Employment+Ireland&meta=)
• Italy (http://www.welfare.gov.it/NR/rdonlyres/eksea53ajmavixsir26pzfuq5pljfhvd5bubzabhn2qr5gqqprh4eirc24wqbvtyrkfea4t7fxxc5j4cownczbkkece/UElcome.pdf)
• The Netherlands (http://internationalezaken.swz.nl/)
• Sweden (http://www.migrationsverket.se/english.jsp)
• UK (http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_perm its.html)

5. You can also try contacting citizens Citizen Advice Centre in your own country. Such networks are not existent in all European Member States, but you may try obtaining information about them from the secretariat of Citizens Advice International, a new organization, which shares premises with ECAS.