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Migration of Workers in contemporary Europe

1. Introduction: A Brief outline of the previous enlargements

In a paper published from the conference which took place here in Wrocław two years ago¹, I outlined the effect of previous enlargements of the EU on worker movement between the new and old member states. I also provided a prognosis of the likely effect of the 2004 enlargement, which included a consideration of the 2006 Commission Report which observed the results of the first two years following the accession of 10 new member states. I focussed for obvious reasons on Poland and the UK and today, I will highlight the main aspects of that previous paper before moving on to see what has happened since.

1.1 The background

Free movement of workers is probably the most important of the free movements by the simple reason that it clearly and directly affects more EU citizens, in contrast, say to goods which although has provided European consumers with an ever greater choice of products to buy, is largely taken for granted.

The situation pre 2004, was that a worker or self employed person who did nothing to offend the public policy or security of the host state has the right, not only to reside and stay in the host state but also to take up employment and bring with him or her other members of the family and to receive social and tax benefits on an equal basis as nationals of the host state².

On 1st of May 2004, ten new Member States joined the European Union and in 2007, Bulgaria and Romania also joined. As with previous enlargements, special transitional rules were provided, not so much to overcome real problems but the fears which are generated

¹ *Worker migration – fears of the latest enlargement of the EU?* [in:] *Stosunki ekonomiczne w rozszerzonej Unii Europejskiej / Economic relations in the EU enlarged*, ed. J. Kundera, Wrocław 2007, pp. 353-362.

² See generally EC Treaty Articles 17-19, 39-55, Secondary Legislation: Regulation 1612/68, Directive 2004/38 of 29 April 2004 and Cases C-85/96 *María Martínez Sala v Freistaat Bayern* ECR [1998] I-2691 and C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193.

about the potential floods of workers swamping the old states and throwing social security systems into chaos and overload.

1.2 Prior expansions

In 1957, the only exception to its limited impact of open borders was that of a large number of Italians moving to Germany but for the most part even this trend was short term and did not result in permanent movement. It remained the case numerically that most employment migration into EC countries was from outside of the EC Member States – mainly from former colonies³.

The 1973 enlargement also failed to produce any shock results and the safeguard clause available was not invoked by any of the new or old states⁴.

The so-called “the southern enlargement of Greece, Spain and Portugal (1981-1986) whilst producing a similar population proportion increase then (c. 20%) as with the 2004 enlargement, caused no difficulties⁵.

The enlargement of 1995, of Austria, Sweden and Finland was simply unproblematic.

1.3 The predictions for the 2004 and 2007 expansions

It was rather predictably feared that on and after the 1st May 2004 and again in 2007, there would be a flood of new member state nationals coming to the existing Member States. I.e. millions of unemployed and unskilled eastern european migrants flooding the labour markets of the existing Member States causing widespread social imbalances, concern and unrest amongst the citizens of the old Member States.

³ 1958: Six Original Member States.

For details of the transitional period, see K. Lewin, *The Free movement of workers*, 2 *Common Market Law Review* (CML Rev.) 300 (1964) and H. ter Heide, *The free movement of workers in the final phase* 6 *CML Rev* 466 (1970). One study (Yannopoulos, 1969), based on the years 1958 to 1965 inclusive, reveals the number of work permits granted for the first time to foreign workers (intra-Community migration) rose from 156,000 in 1958 to 305,000 in 1965.

In 1965, one single country, Italy was the main provider of migrant labour - between 1958 and 1965 the Italian percentage of total Community workers migrating ranged from 75 per cent to 83 per cent. - Swann, *The Economics of the Common Market*, 148 (1981). In France at the time, it is reported that 86 per cent of all foreign workers were non EEC nationals. See Ken Foster, *The Free Movement Of Workers*, in *The Law of the Common Market*, pp. 170-180, (B.A. Wortley ed., 1974).

⁴ The impact of EU enlargement on migration flows: Home Office Online Report 25/03. <http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr2503.pdf>.

⁵ “emigration from Spain to the other EU countries fell from over 200,000 in 1970 (establishment of free trade area) to 120,000 in the late 1970s (application for membership) and about 2,000 to 3,000 in the early 1990s (post-accession).” http://europa.eu.int/comm/publications/booklets/move/41/index_en.htm
The impact of EU enlargement on migration flows: Home Office Online Report 25/03, p. 44.

To counter that, there had been a significant body of evidence gathered up to 2004, which had demonstrated that none of the prior expansions had brought about significant additional worker migration. For example, a Commission report⁶ on enlargement concluded: “Experience of past enlargements shows that emigration diminishes rather than increases after enlargement.

The general conclusions summarised were that the EU should not expect a tidal wave of emigrants from the eastern and Mediterranean acceding and candidate countries and all indicators pointed to a volume similar to that experienced after the southern enlargement of the EU in the 1980s. Furthermore, the Report predicted that most of the ‘old’ countries of the EU would hardly be affected and two thirds of all migration was likely to be of a temporary nature”.

According to the EC Commission, studies⁷ indicated that migration from all new Member States to existing Member States would only be about 1% of the working age population of the new Member States to 2009. This was calculated as representing an overall movement total of about 220,000 per year. Put in another context, in April 2004, the UK alone had some 610,000 unfilled job vacancies. Of the 13 candidate countries surveyed, the highest potential migration was predicted to be from Romania and Bulgaria, which of course, were two countries not included in the 2004 expansion.

In support of the Commission findings, a 2002 UK Home office report⁸ concluded that “net immigration from the AC-10 to the UK after the current enlargement of the EU will be relatively small, at between 5,000 and 13,000 immigrants per year up to 2010.” With the advantage of hindsight, this report has been shown to be more of a work of fiction than fact.

However, such evidence of previous expansions and the reports and prognoses based on them led me to conclude at the conference in 2006, that if all things remained equal, if workers matched vacancies and the UK took every single migrating worker from the 10 new states, it would take over two and a half years to fill the UK’s job needs. We’ll come back to the UK’s job needs later in this paper.

Turning to the profile of the potential migrants; this was predicted statistically to be young, tertiary level educated, single, non-cohabitating male but who would evolve statistically over time to become a young, tertiary level educated, single, female migrant.

⁶ Commission Publication *Free Movement of Workers to and from the New Member States – How will it work in Practice?* http://europa.eu.int/comm/employment_social/free_movement/en2-pr-pdf.pdf

⁷ The European Foundation for the Improvement of Living and Working Conditions: *Migration trends in an enlarged Europe*” based partly on “Candidate Countries Eurobarometer 2002.1 April, 2002. (2004), pp. 94, ISBN 92-897-0248-6 www.eurofound.eu.int/publications/EF03109.htm

⁸ *Op. cit.* note 4 above.

Thus, the receiving countries of the EU were predicted to expected to receive a high quality labour supply of young, qualified and mainly unmarried people.

In case these forecasts proved to be completely wrong, transitional arrangements and safeguard clauses were, as always in the past, written into the Accession Treaties. However, Governments can and do act on the basis of the research results presented to them but before we consider what actually happened, I'll return in brief to the transition arrangements.

2. The 2004 and 2007 Transition Arrangements⁹

a) A 'standstill clause' was included freezing the access arrangements in the 15 old Member States to that of the date the Accession Treaty, which was 16th April 2003.

b) Then, 2+3+2 formula.

For the first two years following accession to 2006, access to the labour markets of old Member States depended on national measures and policies. Each of the old Member States took individual decisions on access to its labour markets by citizens of each of the new Member States (except Malta and Cyprus – because of size).

The new member states were also able to employ safeguard clauses to protect against incoming workers from either the other new member states or reciprocally against workers from the 15 old member states.

Second; there was a three year period to 2009, in which all states must advise the Commission whether transitional measures were to continue or were lifted and from 2009 on, member states must apply for permission to impose restrictions or to allow free movement of workers.

The accession Treaties for the 2007 enlargement provided the same 2+3+2 periods (with dates 2009, 2012 & 2014 respectively).

2.1 Measures adopted from 1st May 2004

In the years immediately preceding the accession of the 10 new member states, there were increasing concerns expressed about the possible consequences of the opening of labour markets. These arose largely as a result of the poor economic conditions in Germany and

⁹ The 2004 Accession Treaty http://europa.eu.int/eur-lex/en/search/treaties_accession.html
Article 24 of the Treaty and then in Annex IIB and then further in detail for each state under Annexes V to XIV of the Treaty
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/04/24&format=HTML&aged=0&language=EN&guiLanguage=en>

other countries and from Germany and Austria as front line states facing potentially the greatest migrant worker inflows. As a consequence, rather more states than assumed decided to take advantage of the transition clauses resulting in 12 from the 15 old member states applying from the start various bans, permits and /or quotas to workers from the accession states. The UK, Ireland and Sweden did not and essentially treated workers from the 10 new states on an equal basis as any other EU national in taking up employment, but subject to conditions.

Of the new states, Poland, Slovenia and Hungary applied reciprocal restrictions to nationals from the EU-15 Member States applying restrictions, the others did not. All new Member States opened their labour markets to workers of the other new Member States.

In the UK, a worker registration scheme was set up and 12 months continuous employment was required before all social state benefits could be claimed. Whilst in-work benefits are available, i.e. those related as supplementary benefits but rarely required, other pre-employment and post employment benefits are denied.¹⁰ Without going into the complex technical details in the UK, if migrant workers became unemployed, they could not rely on benefits.¹¹ Consequently, it is arguable that if such workers then became a burden on the state, they could be deported. This stance appeared to me to fit both existing EU law rules at that time, e.g. as in the ECJ decided case of Antonissen case and subsequent UK cases considering this including *H & D* and *Zalewska*¹².

The latter case concerns the application for income support benefit from a Polish woman who entered as a registered worker but who then ceased work. On a third instance appeal to the Northern Ireland Court of Appeal, it held that the accession transitional arrangements do allow a different regime to apply to the 2004 entrant state' workers. Thus, national law regulations should apply and not the general EU law regime and the Court held that benefits could be denied. The consequences of this, i.e, what should happen to the person who then becomes a burden on the state was not explored. Furthermore, there was no reference to the ECJ to determine whether the UK Court position was correct in EU Law. Therefore until

¹⁰ See the Social Security (Persons from Abroad) Regulations 2006 (SI 2006/1026). See also S. Currie, "Free" movers? The post-accession experience of accession-8 migrant workers in the United Kingdom, (2006) 31 *EL Rev.* pp. 207-229.

¹¹ See V. Mitsilgas, *Free movement of workers, EU Citizenship and enlargement: the situation in the UK*, *Journal of Immigration Asylum and Nationality Law*, 2007, 21 (3), pp. 223-232.

¹² Case C-292/89 *Antonissen* [1991] ECR I-745, [1991] 2 CMLR 373, *H & D v The Secretary of State for work and Pensions* [2004] 3 CMLR 11, *Zalewska v Department for Social Development* [2007] NICA 17.

challenged before the ECJ, this position remains the case despite criticisms¹³. The rules therefore prevent claims whilst in work in the first year but the question is raised whether an EU citizen can they be a burden if they are in work? This is something not yet determined under EU Law.

2.2 The 2006 2 yr Report from the Commission¹⁴

The main conclusion of this report was that migrant flow was negligible – no, flood with migrants numbers stable in most countries and that the three open states “experienced high economic growth, a drop in unemployment and a rise of employment”. Also, it was observed, that there was no surge in welfare demands.

Only two countries had a work force entry with more than 1% of workers from the 10 new states. Austria, despite having fully closed borders to workers at 1.4% and Ireland at 2.0%. Germany had 0.7% with an effective ban on migrant workers from the new states and the UK had a 0.4% increase only with no restriction. It was suggested that where there were above than expected high figures, this may have been due to pre-existing EU 10 workers in those countries becoming legal migrants rather than representing new migrants. Hence the conclusion that the national restrictions had little effect on worker migration

2.3 So what really happened?

The UK and Ireland experienced much higher than expected immigration levels especially from Poland.

An Accession Monitoring Report by the UK Home Office¹⁵ provided figures to show that 796,000 A8 country migrant workers applied for work registration up to December 2007, of which 66% were Polish (just over ½ million).

The Report identified the profile of migrant workers arriving as conforming with previous predictions as full time, young male migrants with no families shifting to female. From the report, the following statistics support the conclusion.

97% undertook more than 16 hours per week and 87% were in full time employment. 82% were below the age of 34, only 7% had dependents with them and only a small fraction

¹³ See K. Puttick, *Welcoming the new arrivals? Reception, integration and employment of A8, Bulgarian and Romanian migrants*, 20 (4) *Journal of Immigration, Asylum and Nationality Law*, (2006), pp 238-254 and the Currie article above.

¹⁴ <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0048:EN:NOT>

¹⁵ The Accession Monitoring Report, (May 2004 – December 2007, UK Home Office, 2008. http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/Reports/accession_monitoring_report/

applied for benefits and of those c. 12,000 applications only about 25% (3,004) were further processed, i.e. 75% of claims were rejected following the initial consideration. 78% of workers were, though, very low paid (less than £6.00 per hour)¹⁶.

The gender profile has also moved in line with expectations from a c. 60/40 male to female split in 2004 to the latest figure of 54/46 in quarter ending December 2007.

Finally, a figure which presents itself is that in the final quarter of 2007, the percentage of workers who indicated an intention to stay less than 3 months, was 59%

Ireland recorded a figure of 94,000 migrant worker arrivals from Poland in 2006, some 67%¹⁷ and c. 100,000 in 2004 and 2005 combined.

In conclusion, the reports prior to the 2004 expansion, got pretty much everything right apart from the additional c. 1 million migrant workers who took up work in the UK and Ireland in 3 ½ years! Ooops!

3. The latest developments

The state of play is that Finland, Greece, Portugal and Spain have announced full access. France, Denmark, the Netherlands, Luxembourg and Belgium have now partially relaxed the rules for specific regions and types of jobs. Italy increased its quota especially as its last quota was not reached and Germany and Austria remained closed. The rules though are too different for each country to be considered here but can be found online¹⁸.

3.1 The 2007 expansion

It was as a result of the negative press engendered by the unexpectedly high influx of migrant workers to the UK following 2004, that the liberal regime previously established was considerably restricted. Britain has effectively closed its borders to workers from Bulgaria and Romania by requiring worker authorisation¹⁹, rather than just simple registration²⁰. In other words, there is no automatic right to take up employment in the UK and whilst migrant

¹⁶ *Ibid*, key findings, pp. 1-2.

¹⁷ Central Statistics Office of Ireland <http://www.cso.ie/statistics/LabourForce.htm>. Report at <http://www.cso.ie/statistics/LabourForce.htm>

¹⁸ <http://europa.eu.int/eures/main.jsp?&countryId=&accessing=0&content=1&restrictions=0&step=0&acro=free&lang=en>

¹⁹ See the Accession (Immigration and Worker Authorisation) Regulations 2006 (SI 2006/3317). <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/Reports/bulgarianromanian/report4/report4.pdf?view=Binary>.

²⁰ Details of the new and old systems can be found in V. Mitsilgas, *Free movement of workers, EU Citizenship and enlargement: the situation in the UK*, *Journal of Immigration Asylum and Nationality Law*, 2007, 21 (3), pp. 223-232.

workers from Bulgaria and Romania can enter the UK, they will be denied any benefits whilst attempting to obtain employment except in select skilled work shortages²¹.

In 2007, there were c. 5,000 applications in total from the two countries, split c. 50/50, of which about 4,000 were approved. As a consequence, these figures are then inline with what might have been expected according to the predictions made prior to 2004 although the new regime for these two countries may have prevented greater numbers arriving. This presents though a completely different picture from Polish migration. Why are the reasons for this apparent anomaly?

This is too big a question for this short paper to determine. Clearly the political and economic situation in Poland at the time of accession and thereafter is the main cause, the details of which though must be explored elsewhere. Does this mean now though, that Britain's job needs are now satisfied with by the polish migrant workers and that Britain has enough inward migration? And is Poland empty by about 700,000 to 1 million workers? To answer the first, – no, because, astonishingly (at least to me) the UK now has 686,000 job vacancies which is 76,000 more than before 2004.²²

Indeed, ironically, reports now suggest that the recent improvements to the Polish economy are in part based on inflow of money from the UK and elsewhere. This in turn makes Poland more desirable in employment terms so that Polish workers are returning and indeed being lured back to Poland?²³

However, one of the problems in working out what has happened is that UK official statistics do not record how many or when migrant workers leave the UK and there appears to be no official Polish record of polish migrant workers re-entering their homeland.

Whilst I as a lawyer, I approached free movement from this perspective, there is very little hard law apart from the transitional arrangements and the odd case now arising to analyse or comment on. It is clear that in the UK there was in 2004, generosity of entry for the 2004 states, as shown by the large numbers admitted without hindrance, but it may be there was and is not generosity of treatment. If subsequent cases reveal that the treatment of the migrant workers does not stand up to EU legal requirements, this would appear to be a bit

²¹ For further details in the Bulgarian and Romanian accessions, see K. Puttick, *Welcoming the new arrivals? Reception, integration and employment of A8, Bulgarian and Romanian migrants*, 20 (4) *Journal of Immigration, Asylum and Nationality Law*, (2006), pp 238-254.

²² http://www.statistics.gov.uk/ELMR/04_08/downloads/Table2_22.xls

²³ <http://www.independent.co.uk/news/uk/home-news/tide-of-migration-turns-as-polish-workers-return-787914.html>. Newspaper reports showing affect on Poland and Wroclaw.
<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/08/01/wpole01.xml>
<http://www.iht.com/articles/2007/05/16/business/zloty.php>

ironic in comparison with the regimes maintained by the 12 other pre 2004 member states in that complete denial of entry to the labour market seems to be a greater wrong than acceptance under conditions. However, until challenged and held to be unlawful by the ECJ, the UK measures appear have been declared to be lawful by the UK courts. Furthermore, from the figures and statistics produced, the open borders regime conducted by the UK seems to have been highly beneficial for the UK economy, for the polish migrant workers and the Polish economy. I will leave it to my economist colleagues to have the final word in agreeing or opposing this view.