

## Unconfirmed but still feared: the tidal wave of Bulgarians and Romanians one year later

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This time last year politicians and media were stoking fears over the massive floods of Romanians and Bulgarians who were about to invade the UK (but not only) as the employment restrictions for these EU citizens were being lifted in nine remaining EU Member States. These fears have proven to be unfounded. Nevertheless, major national and EU developments will continue to feed this debate. Three different scenarios can be thought of in this sense.

### ***Not floods of unskilled workers, but small-scale waves of skilled migration: the UK case***

The situation in the UK is very interesting as it is characterised by the most widespread concerns over EU's free movement policy. The figures published by the Office for National Statistics (ONS) in November 2014 show an increase in the number of Bulgarian and Romanian nationals who have moved to the UK. Although characterised by the ONS as "significant", this increase must be weighed against the general context in which it occurred.

Firstly, the figures are far from the predictions put forward by the "massive floods" forecasters. While the most "pessimistic" were talking about 29 million Bulgarians and Romanians waiting to leave their home countries, the "moderate" prognosticators were expecting approximately 70,000 migrants per year in the UK in the next five years. In total, 32,000 Bulgarian and Romanian citizens arrived to the UK between June 2013 and June 2014. It is now safe to say that the expected 'invasion' has not happened.

Secondly, this increase is not uniquely due to the elimination of labour market restrictions. The number of citizens from other EU Member States moving to the UK also rose, despite already benefiting from unrestricted labour market access before 2014. This is a sign of a healthy UK economy in need of labour force.

Thirdly, EU citizens moving to the UK is not bad news. The vast majority are either already highly skilled or on the point of becoming so. This enables them to greatly contribute to the British economy. University College London economists estimated that EU mobile citizens made a net contribution of £20bn to UK public finances between 2000 and 2011.

### ***Echoes of national fears at EU level***

However at an EU level, strong worries expressed domestically (most loudly in the UK) have not fallen on deaf ears. In different ways, the EU institutions reacted to this rhetoric throughout 2014. One of the first to do so was the European Council. In June, it adopted the Strategic Guidelines (SG) on freedom, justice and security including one paragraph stating: "*[the freedom of movement] **needs to be protected, including from possible misuse or fraudulent claims***". This paragraph should be looked at from two different angles.

On the one hand, the reference to the freedom of movement appears in a strategic document dealing with justice and home affairs policies. Although, this is not new – the Tampere, The Hague and Stockholm programmes also referred to the freedom of movement – two problems emerge: one legal and one political. The legal is that while the SG derive from article 68 TFEU, the freedom of movement of EU citizens is enshrined in article 21 TFEU and does not fall under the scope of article 68 TFEU. Politically, there is a tendency to link freedom of movement and migration related provisions. This could lead to an attempt to downgrade the rights enjoyed by EU citizens.

On the other hand, the wording of this paragraph should be scrutinised. While a provisional version of the SG focused on "**removing obstacles to EU citizens' free movement**", the final document states that, freedom of movement "**needs to be protected, including from possible misuse or fraudulent claims**". The pro-active stance of the provisional version has turned into a passive/reactive position. The final wording is a typical EU compromise with a political message showing that domestic fears are heard at EU's highest political level.

More recently, the EU Court of Justice (ECJ) has taken a stronger stance on the abuse of free movement. In its Dano ruling, the Court made it clear that those EU citizens who have never worked and who are not searching for a job, are not entitled to unemployment benefits in the host EU Member State. Whereas in the past the ECJ has been interpreting the equal treatment principle generously, on this occasion, it has applied the EU law *à la lettre* to banish what unmistakably appeared to be an attempt of fraud. This judgment shows that the EU legislation already comprises safeguards allowing authorities to fight against abuses of free movement.

### ***Three scenarios for the future: containment, contamination and coalition***

Despite all the statistical, institutional and jurisprudential developments showing that there is no such thing as “benefits tourism”, the lessening, to any significant scale, of this discourse is unfortunately not for tomorrow. Several scenarios can be envisaged, but the future will depend greatly on the results of the UK elections:

- **Containment:** with the upcoming general elections, the anti-free movement rhetoric could remain concentrated in the UK. However, it is very risky for the increasingly fragile UK-EU relationship to put freedom of movement on the negotiation table as the intention of several UK political leaders seems to be. Also, this might lead to damaging some bilateral relationships. Chancellor Merkel declared that she would not trade the freedom of movement against UK’s EU membership.
- **Contamination:** this discourse could increase its geographical and material scope. In the past, some other Member States, such as the Netherlands or Austria, have expressed worries on the issue. An even limited geographical expansion might lead to a contamination of other related policy fields. The Schengen rules could be the next victim.
- **Coalition:** the constitution – via a wider geographical expansion – of a strong coalition of Member States wanting to revise the EU Treaties to limit the freedom of movement. The option of a treaty change (ordinary or simplified procedure) requires unanimity and there is a consensus over the improbability of a unanimous decision on the issue. Furthermore, although in theory both revision procedures could be used to reduce EU’s competences, this would be contrary to a paramount objective enshrined in the Treaty: the ever closer union.

It may safely be said that questioning the freedom of movement is synonymous with questioning the entire European project and decades of integration effort. One way out of this downward spiral would be to shift from the “**how to limit the free movement provisions**” discourse to “**how to better implement**” them in order to avoid abuse while making sure that a very wide interpretation of this term does not itself become a tool to eventually limit the freedom of movement. This is a lesson that the EU institutions seem to have learned but which has not yet penetrated the domestic debates in all Member States.

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