

## Strong attack against the freedom of movement of EU citizens: turning back the clock

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Last week, in a joint letter to the Irish presidency, four Ministers – representing Austria, Germany, the Netherlands and the United Kingdom – launched a strong attack regarding the freedom of movement of EU citizens. The letter's recurrent argument is the perceived need to protect freedom of movement against abuses, in particular where it is straining social systems. Consequently, in this letter, the ministers request to adopt new restrictive and punitive measures.

The first difficulty with the joint letter is the lack of concrete evidence on this "problem". It is far from clear what the scale of the issue is and to what extent national systems are suffering from an overflow of EU citizens or abuses that endanger social systems.

But even if this is the case in some cities, the solution proposed in the letter is disproportionate as it undermines a far greater good: the freedom of movement of EU citizens.

The second difficulty resides in the underlying reasoning of the letter, which goes further than the usual calls for a revision of rules governing the freedom of movement of EU citizens. The letter uses concepts and words normally used in the field of immigration for third country nationals, thereby enabling EU citizens to be compared and treated as foreigners. This undermines the whole concept of EU citizenship.

### ***The semantic shift: from citizens to immigrants***

Under the Treaties, workers since the 60s and EU citizens since 1992 have been awarded the right to free movement. Consequently, the exercise of "freedom of movement" is delinked from immigration rules applicable to third country nationals. EU workers and EU citizens are not migrants and their rights and statuses are different from the rights and statuses granted to third country nationals.

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

In addition, it appears that the letter's intention is to go back in time and to grant freedom of movement to workers only. This derives from the following sentence: "as responsible Ministers we are committed to protecting the rights of those Union citizens who exercise their right to the freedom of movement in line the common European regulations". Under EU rules, Regulation n° 492/2011 governs freedom of movement for workers, whereas Directive n° 2004/38 regulates the right of EU citizens to move and reside within the territory of the member states.

This point is confirmed by the following sentence highlighting the "common goal" of the Ministers, "which is to promote the mobility of those European citizens wishing to work, study or set up a business in another member state (...)".

Put differently, the freedom of movement is solely granted to workers, i.e. economic agents, who are able to support themselves without becoming a burden for the receiving society. By implication, other EU citizens no longer fall within the scope of freedom of movement, but within the scope of immigration rules.

### ***'Cheaters and abusers'***

Once EU citizens are no longer protected by rules on freedom of movement, it is possible to treat them like migrants, i.e. potential 'cheaters and abusers'. The letter argues that some EU citizens who are not exercising the right of freedom of movement for employment purposes are putting "a number of municipalities, towns and cities in various member states under a considerable strain"

and "avail themselves of the opportunities that freedom of movement provides, without, however, fulfilling the requirements for exercising this right".

The letter further states that "a significant number of new immigrants draw social assistance in the host countries, frequently without a genuine entitlement, burdening the host countries' social welfare system." In addition, some EU citizens "seek the right to reside in another member state through fraud or the systematic abuse of the right to free movement". There is, however, no evidence to support any of these statements.

To sum up, the letter implies that EU citizens may be *a priori* categorised as abusers and a threat to the social cohesion of hosting member states. In this view, it is an additional position undermining freedom of movement.

### ***Developing a punitive approach***

Due to this alleged abuse of the right of free movement of EU citizens, Ministers demand additional measures and sanctions. The letter calls for the Commission to clarify the implementation of existing provisions related to fraud and systematic abuse. This request is, however, misleading since the Commission already published guidelines in this regard in 2009.

In addition, national and EU provisions offering equal access to social benefits for EU citizens without having been employed or paid taxes should be "reviewed urgently" as they represent "an affront to common sense". While "common sense" looks more like a populist statement, it is hard to understand the extent to which solidarity is an affront to it. Furthermore, this proposal counters the logic of EU rules which "should not affect more favourable national provisions".

Finally, the Ministers propose to reinforce sanctions against fraud and abuse with expulsion measures and re-entry bans. The re-entry ban is particularly worrying. Firstly, it is currently applicable to third country nationals, subject to expulsion measures. Extending this mechanism to EU citizens would put them on a par with third country nationals. Secondly, entry bans measures are "workable" at the external borders. It is hard to implement it inside the Schengen area without reintroducing internal border checks, and consequently profoundly affecting the principle of freedom of movement.

### ***Financial aspects: the same basket***

Another significant point relates to the financial aspect: once EU citizens fall within the ambit of "immigration rules", it makes it easier to use the "asylum and migration" funds for EU citizens. However such an idea faces strong legal obstacles. Indeed, it is illegal to use the legal basis of a Treaty devoted to third country nationals to deal with a situation concerning EU citizens.

### ***A critical U-turn in a symbolic year***

The joint letter constitutes a critical U-turn undermining a key principle developed since the Tampere conclusions were adopted in October 1999. The aim at that time was to grant third country nationals rights and obligations comparable to those of EU citizens. The letter follows a different logic as it puts forward the idea to grant EU citizens rights and obligations comparable to third country nationals. In this regard, the re-entry ban proposal constitutes a strong example.

The joint letter is a big step backwards, trying to turn the clock back to before 1992 when freedom of movement was mainly granted to "economic players". It does not reflect the major changes which have occurred since the Maastricht Treaty and the creation of EU citizenship which entitles EU citizens to the right to move and reside freely within the territory of the member states.

Ironically, the Ministers' attack against freedom of movement comes at a key moment: it is launched in the "European Year of Citizens", dedicated to the rights that come with EU citizenship. This shows that we are far from treating this concept as more than a symbol if it is not an obstacle for some "hardliners" to undermine the freedom of movement of EU citizens for political or electoral reasons, and potentially foster the division between citizens by dividing them into "good" and "bad" EU citizens.

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