

Paper's outline

1. **Setting the scene:** the framework
2. **Legal dilemmas:** stratification of rights and entitlements within the EU
3. **Mobile researchers and students in Europe:** what rights?
4. **Concluding Remarks:** the "Fortress Europe" Paradox

1. Setting the scene: the framework

The Migrant: The Double “W” Debate:

- **WHO**: Who has the right to enter and settle in Europe?
- **WHAT**: Under what conditions?

The Member States:

- **Structural inequalities** & asymmetric shocks
- **Flexible arrangements**

The EU: Demographic & economic Challenges:

- **Working age population**
- **Patterns of employment growth**
- **Innovation emergency**

2. Legal dilemmas: stratification of rights & entitlements

EU's aims: increasing EU's attractiveness as a destination for talented migrants and a centre of excellence for studies and vocational training.

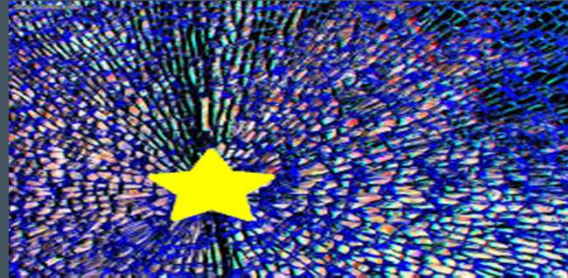
NOT achieved by increasingly restrictive/protectionist domestic migration policies & "opt in" & "opt out" regimes.

NOT a single legal framework for mobility of individuals:

- **EU citizens** & their EU & TCNs family members: Free movement provisions
- **Other TCNs:** Area of freedom, security and justice

Tensions between citizenship and fundamental rights

2. Legal dilemmas: stratification of rights & entitlements



EU's liberal aims & market-based objectives: legal residence for individuals not in a systematised manner.

- **EU Citizens:** EU citizenship framework. Various layers of protection and classification: EU workers (and researchers) or permanent residents at the top of the hierarchy.
- **TCNs:** Patchy access to social rights and integration requirements: permanent residents followed by highly skilled migrants (and researchers) at the top of the hierarchy. (Utilitarian & economically-oriented approach)

3. Mobile researchers and students

EU citizens:

- The **Citizenship Directive** (Directive 2004/38/EC on the right of citizens of the Union & their family members to move and reside freely within the territory of the MSs)

TCNs:

- The **Researchers' Directive** (Directive 2005/71/EC on a specific procedure for admitting TCNs for the purposes of scientific research)
- The **Students' Directive** (Directive 2004/114 on the conditions of admission of TCNs for the purposes of studies, pupil exchange, unremunerated training or voluntary service.)

3. Mobile EU Researchers

NOT specific provisions on researchers who are treated as workers or self-employed. Citizenship Directive applies!

RESIDENCE RIGHTS:

- **Short-term residence:** Right to move/reside/remain up to 3 months (Art 6) - NO SPECIAL CONDITIONS REQUIRED
- **Mid-term residence:** more than 3 months and up to 5 yrs (Art 7) - CONDITIONS for EU citizens and their family (qualified status)
- **Permanent residence:** 5 yr period of uninterrupted legal residence (Art. 16) - NO FURTHER CONDITIONS

OTHER RIGHTS? Access to social goods and social security on equal foot as nationals .

3. Mobile TCNs Researchers

RESIDENCE RIGHTS: **Mid-term residence**: more than 3 months in the MSs for the purposes of conducting a research project.

CONDITIONS (**Fast track procedure**)

a) a valid travel document; b) a hosting agreement signed with a research organisation; c) where appropriate, present a statement of financial responsibility issued by the research organisation; d) not a threat to public policy, public security or public health;

OTHER RIGHTS? **TEACHING** (art 11); **EQUALITY with nationals** for the recognition of diplomas, certificates & other professional qualifications in accordance with the relevant national procedures, working conditions, including pay and dismissal, branches of social security, tax benefits and access to goods & services and the supply of goods and services made available to the public (art 12) & **INTRA-UNION MOBILITY 3 months** (art 13).

FAMILY RIGHTS? Residence Permit left to MS. NO SPECIFIC PROVISIONS on privileged residence rights & access to the labour market for spouses. No intra-mobility of families together with the researcher.

3. Mobile EU Students

Regulated by Article 7 c) Citizenship Directive

RESIDENCE RIGHTS: **Mid-term residence**: more than 3 months

CONDITIONS:

1. **Enrolment at a private or public establishment**, accredited or financed by the host MS on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, incl vocational training;
2. **Comprehensive sickness insurance cover** in the host MS
3. **Sufficient resources** (assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, for themselves and their family members not to become a burden on the social assistance system of the host MS during their period of residence.)

Broad definition of **purpose of study** & **access to benefits** and **study grants (CJEU)**. University and school **fees** as nationals. Students can work (no limitations in the Directive). **Student family** allowed to join.

3. Mobile TCNs Students

RESIDENCE RIGHTS: Mid-term residence more than 3 months

CONDITIONS

(Art 6) (GENERAL)

a) a valid travel document; b) if minor, parental authorisation; c) sickness insurance; d) not a threat to public policy, public security or public health; e) provide proof, if the MS so requests, that he/she has paid the fees;

(Art 7) (SPECIFIC)

a) accepted by an establishment of higher education to follow a course of study; b) evidence of sufficient resources to cover his/her subsistence, study and return travel costs; c) evidence of sufficient knowledge of the language of the course; d) evidence, if the MS so requires, that he/she has paid the fees charged by the establishment.

OPTION for MSs to apply it for school pupils, volunteers & unremunerated trainees (Art 3) - Specific conditions apply. University and school fees might be different than nationals. Working rights up to 10 hours! No provisions for families. No provisions for short study mobility to a 2nd MS.

4. The "Fortress Europe" Paradox

Migrants' rights versus MSs' concerns

Different layers of **citizenship** or **denizenship** = **Matrioska doll**: Nested entitlements & gate-keeping theory



The "revolving doors" thesis



4. The "Fortress Europe" Paradox



EUROPE A FORTRESS? WHAT ARE YOU TALKING ABOUT?!
CAN'T YOU SEE - THE DOOR IS OPEN WIDE!

4. Concluding remarks

How does the legal framework promote mobility of researchers and international students in Europe?

Making mobility easier & improving current rules: Proposal of a Directive amending and recasting Dir. 2004/114/EC & 2005/71/EC.

AIMS:

- Improving the provisions of TCN researchers, students, school pupils, unremunerated trainees and volunteers,
- Applying common provisions to two new groups of TCNs: remunerated trainees and au-pairs.
- Supporting social, cultural and economic relationships between the EU and third countries,
- Fostering the transfer of skills and know-how and promote competitiveness while, at the same time, providing for safeguards ensuring fair treatment of these groups of TCNs.

The End



THANK YOU
FOR LISTENING!