Common Market Law Review **51**: 729–740, 2014.

EDITORIAL COMMENTS

The free movement of persons in the European Union: Salvaging the dream while explaining the nightmare

The Spaak blueprint for the establishment of the Common Market is almost sixty years old.[1] The three main strands which, according to the Report, would provide the basis for a common market are well known: a customs union combined with free movement of commodities and factors of production; a policy providing for fair competition; and the adoption of measures to facilitate the transformation and modernization of national economies and enterprises.

As regards one such factor of production – migrant workers – the authors of the Report were aware of the difficulties which the movement of people would entail. They referred to the "prejudices" which the free movement of workers would incite, and envisaged that free movement would be confronted by people's unwillingness to change job and residence. As such, they reflected that the extent of the movement of workers in an entirely free common market should not be overestimated. Nor was emigration regarded as a perfect solution for Member States "exporting" migrant workers: the individuals likely to move would be members of the active working population (and, implicitly, those with more resources), so the ones left behind would be those members of the population who tended to be supported by the State. This meant that efforts to create employment in less advanced Member States – one of the principal objectives of both the Treaty of Rome and all subsequent Treaties – were considered preferable to solutions based solely on emigration. In the view of the Report's authors, there was a common interest in facilitating the movement of less qualified workers: on the one hand, they had more difficulty finding employment in their own Member States where unemployment was high and, on the other, by moving they would make it possible for members of the working population of the host Member State to seek jobs which were better paid and less arduous.

Read with the hindsight provided by decades of experience of a common and subsequently internal market, the Report is a mixture of extraordinary vision and some understandably incorrect assumptions about the changing nature of work and industry. How, for example, could an intergovernmental

1. Rapport des chefs de délégation aux ministres des affaires étrangères, Bruxelles, 21 avril 1956 (Brussels, Comité intergouvernemental, 1956). For a retrospective, see Allemand, "Le rapport Spaak-Uri: 50 ans après", (2006) RMC, 296–301 and the numerous references therein.

committee established in 1956 have envisaged the massive growth in service industries, the reduced need for certain workers to move, or move permanently, given advances in technology, the challenges for local employment markets resulting from increased recourse to posted workers,[2] or the challenges to the European employment market generally of jobs moving on a massive scale to third countries in a highly competitive, global market? In addition, only one of the six founding Member States was envisaged as the main exporter of migrant workers in the 1950s. How would the free movement of persons evolve in an internal market composed of 28 Member States, characterized by considerable disparity between working and living standards in a significant proportion of Member States, accentuated by a deep recession and accompanying austerity, and in which, furthermore, not only is movement of the economically inactive permitted but their equal treatment required in certain circumstances? Nevertheless, the Report's vision continues to impress.

It would have been difficult these last months to pick up a newspaper without reading of opposition to the free movement of persons. The United Kingdom Government has been vocal, for example, about the need to limit free movement within the European Union and about its intention to introduce restrictions on the access of EU migrants to social benefits – the free movement of Bulgarian and Romanian nationals having been the ostensible catalyst for this debate. For future accession treaties, the United Kingdom has suggested that full free movement should not be allowed until new Member States "reach a certain level of income or economic output per head".[3] The British debate has not been restricted to the movement of economically inactive Union citizens, popularly presumed to be benefit tourists. It has extended to the movement of workers themselves, with the imposition of a ceiling being proposed on the number of migrant workers admissible per year. In Germany, the debate has centred on the issue of access to social benefits, specifically the limits to such access for job-seekers and Union citizens who are economically inactive, who are not in search of work and/or who have

2. In the light of recent decisions of the ECJ on posted workers, it is worth revisiting one of Spaak's forecasts to the effect that the prohibition of discrimination between national and migrant workers, combined with national legislation and the action of trade unions, would prevent a downward pressure on wages in host Member States.

3. "Cap numbers of immigrants from European Union, says Theresa May", *Daily Telegraph*, 11 Dec. 2013. See also the letter sent in April 2013 by the UK Home Secretary and her Austrian, German and Dutch counterparts to the President of the Justice and Home Affairs Council regarding the strain on services and national welfare systems posed by the free movement of Union citizens and the response of Czech, Hungarian, Polish and Slovak ministers, in December 2013, highlighting the beneficial nature of such movement for host Member State economies.

little or no likelihood of finding it.[4] These concerns about access to social benefits by those characterized as "poverty immigrants" have given rise to several German preliminary references.[5] In Belgium, a dramatic increase in the expulsion of Spanish nationals, recorded since 2013, has been justified with reference to the excessive burden they were imposing on the Belgian social security system.[6] Fifteen years after voting to introduce Europe-wide free movement rules, Switzerland has now voted in favour of the introduction of a cap to immigration from the European Union. The debate on free movement is thus not restricted to one Member State and cannot be explained glibly with reference to any one State's domestic, political scene or the power of its popular press. The growth and nature of the preliminary references testing the boundaries of EU provisions on the free movement of persons, also attest to a wider political and legal debate.

As played out in the media, however, the free movement debate has no doubt been a source of confusion, surprise and frustration for many EU lawyers. The confusion results from the fact that some of the protagonists in the debate seemed intent on ignoring the instruments already at their disposal to deal with the actual or supposed threat of mass EU migration and the related problem (both supposed and real) of benefit tourism. In the words of Forwood, writing more generally about the United Kingdom's present relationship with the EU, "the public discussion…has so far been largely driven by those pressing for change, often on the basis of a false or misleading prospectus".[7] The element of surprise stems from the rapidity with which the debate has taken hold and how different but related issues (EU migration, migration generally, employment standards and the exclusion of sections of the population from the employed or employable class) have become confused in the minds of

4. For a taste of the German media's analysis of the issues involved and the background political debate see <www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/sozialleistungen-hartz-iv-fuer-arbeitslose-eu-buerger-12808836.html>; <www.welt.de/wirtschaft/article123610112/Deutsche-Richter-schauen-beim-Sozialtourismus-weg.html>. As regards the term "social benefits", see further below.

5. See for examples, the preliminary references pending before the Court in Cases C-333/13, *Dano*; C-19/14, *Talasca* and C-67/14, *Alimanovic* v. *Jobcenter*.

6. See for questions on the subject before the European Parliament <www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2014-000335&language=EN>; <www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+P-2014-003848+0+DOC+XML+V0//EN>.

7. Forwood, "Chinese Curses, Lawyers' Dreams, Political Nightmares and New Dawns: Interesting times for the UK's Relationship with the EU" 15 CYELS (2012–2013), 83. For legal examinations of the UK's free movement difficulties see Shaw and Miller, "When legal worlds collide: An exploration of what happens when EU free movement law meets UK immigration law", 38 EL Rev. (2013), 137–166 and Horsley and Reynolds, *Union citizenship: Development, impact and challenges. National Report on the UK*, FIDE 2014.

commentators and the general public alike.[8] Finally, for those EU lawyers who regard the free movement of persons as one of the European Union's relative success stories, the debate has also been the source of considerable frustration due to the lack of a convinced and convincing response – from EU institutions, EU partners and informed commentators alike – to the terms of an, at times, uninformed, at times, distorted debate which may have a very real impact in the 2014 European Parliament elections and beyond.

EU law does provide Member States faced with an influx of migrant workers and Union citizens more generally with certain tools, but they are instruments of a varied and sometimes unclear or untested nature. Every accession treaty can be and has been accompanied by transitional arrangements whose purpose is to limit the free movement of persons for a certain period.[9] Most Member States availed of these transitional arrangements on the occasion of the "big bang" accessions of 2004 and 2007. Some chose not to – a decision based both on the healthy state of their economies at the time, a need for imported labour and statistical forecasts regarding the numbers which it was thought would migrate.[10] The revamped Regulation 1612/68, like its predecessor, points to how the Member States and Commission can cooperate, track and react to problems arising in connection with freedom of movement.[11] Where draft legislative acts could affect important aspects of a Member State's social security system or affect the financial balance of that system, the Council can refer the matter to the European Council.[12] The provisions of the TFEU on the approximation of laws provides for the possibility of maintaining national provisions "relating to the protection…of the working environment on grounds of a problem specific to that Member State".[13] The Citizens' Directive, about which more anon, provides that beneficiaries of a non-permanent right of residence should not become "an unreasonable burden on the social assistance system of the

8. It is worth remembering, in this regard, that the "free movement of persons in the EU" can cover the movement of economically active and inactive Union citizens as well as the movement of certain categories of third country nationals – see, *inter alia,* Art. 3(2) TEU and Title V TFEU.

9. For future accession Treaties, not least that relating to Turkey, permanent safeguard clauses might be envisaged.

10. See Dougan, "A spectre is haunting Europe…Free movement of persons and Eastern Enlargement", in Hillion (Ed.), *Enlargement of the European Union: A Legal Approach* (Hart Publishing, 2004), pp. 111–141.

11. See Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011, on freedom of movement for workers within the Union (codification), O.J. 2011, L 141/1, Arts. 11 and 12.

12. Art. 48 TFEU.

13. Art. 114(4)-(5).

host Member State".[14] Member States are not obliged to confer entitlement to social assistance or maintenance aid for studies for particular groups of Union citizens for a certain period of time or prior to the acquisition of certain more long-term rights to reside.[15] Finally, Member States may adopt "the necessary measures to refuse, terminate or withdraw any right conferred by [Directive 2004/83] in the case of abuse of rights or fraud".[16]

However, is EU law in this field as clear as it should and could be, either as regards who qualifies as what type of freely moving Union citizen or as regards the gradations of entitlement to rights and benefits which such qualification entails? As regards the question whether Union citizens can access social benefits in a host Member State, a good student of EU law would probably answer: yes, no and it depends. The fact that EU migrant workers are entitled not to be discriminated against on grounds of nationality is one of the more basic and easily understood components of an undergraduate EU law course. But, taking the easiest category, which Union citizens qualify as workers for the purposes of the various provisions of primary and secondary EU law on free movement and non-discrimination? Our imaginary student would reply that in order to qualify as an EU migrant worker, the Member State national in question must be engaged in activity which is both "genuine and effective" as distinct from merely "ancillary and marginal". This loose formula has remained unchanged for decades, with the Court repeatedly holding that the notion of worker should be interpreted broadly.[17] However, while the formula may be well-established and appear simple, its application may give rise to considerable difficulties in practice. The Court has never admitted a *de minimis* rule in the context of the free movement of workers despite occasional requests from national referring courts or arguments of intervening Member State governments to this effect. In *Genc*, the referring court observed: "the Court's case law does not contain a threshold, determined on the basis of working time and level of remuneration, below

14. See recitals 10 and 16 and Arts. 6 and 7(1)(b) of Directive 2004/38/EC of the European Parliament and of the Council, of 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, O.J. 2004, L 158/77.

15. Art. 24(2) of Directive 2004/83.

16. Art. 35 of Directive 2004/83 at issue in pending Case C-202/13, *McCarthy*. See also the discussion of the challenges posed by free movement and specifically the question of abuse in the 29th report of the House of Commons European Scrutiny Committee, *The free movement of citizens*, 8 Jan. 2014.

17. See Case C-444/93, *Megner & Scheffel,* [1995] ECR I-4741, para 18, and the case law cited therein: "the fact that his employment yields an income lower than the minimum required for subsistence…or normally does not exceed 18 hours a week…or 12 hours a week…or even 10 hours a week…does not prevent the person in such employment from being regarded as a worker within the meaning of Article 48 [EEC]".

which an activity would have to be regarded as being marginal and ancillary, and that *this contributes to a lack of precision in the concept of marginal and ancillary activity*".[18] The Court indicated in response: "It is one of the essential characteristics of the system of judicial cooperation established under Article 267 TFEU that the Court replies in rather abstract and general terms to a question on the interpretation of European Union law referred to it…." In the context of such a preliminary reference, the Court appears stuck between a rock and a hard place. The more case-specific and concrete its reasoning, the more its decision is likely to be followed by a series of further references seeking to clarify whether the previous fact-specific ruling can be applied to a different set of facts which arise in a different national, legislative context. If the answer is no, it may give the impression of zig-zagging. The more abstract and general a decision, the more the national referring court and, at a different stage, or different level, the national legislature and national administrative authorities are left grappling with a general rule whose content is well-established but whose practical implications in 28 different social security and social welfare systems may be very different.[19]

If the simpler question of who qualifies as a worker may still give rise to doubts, almost sixty years after Spaak recommended free movement, the question of the rights of job-seekers to free movement, residence and access to social benefits are even more intractable, not least because the jurisprudential developments, dictated by new provisions of the Treaties and resulting from a piecemeal series of preliminary rulings which ensued, quickly overtook the existing provisions of secondary legislation designed to regulate such rights. In 1991, in *Antonissen*, the Court of course held that the free movement of workers entails the right for nationals of Member States to move freely within the territory of the other Member States and to stay there for the purposes of seeking employment. In the absence of an EEC provision prescribing the period during which Member State nationals seeking employment in a Member State could stay, the Court held that if the person concerned provided evidence that he was "continuing to seek employment and that he has genuine chances of being engaged", he could not be required to leave the territory of the host Member State.[20] Yet while this early case law created a possibly

18. Case C-14/09, *Genc*, [2010] ECR I-931 (emphasis added).

19. The difficulties expressed by the German court in *Genc* are reiterated in the UK's recent guidelines, Memo DMG 1/14, JSA(IB) – Right to Reside – "Establishing whether an EEA national is/was a 'worker' or a 'self-employed' person": "In some cases judges have weighed, for example, low hours against long duration of work as part of their overall assessment of whether work is genuine and effective. However, the case-law does not identify one consistent approach to applying these and other factors: each case must be decided on its own merits".

20. Case C-292/89, *Antonissen,* [1991] ECR I-745, paras. 13 and 21. Contrast with the Spaak Report, *supra* note 1, p. 89, which referred to "le droit de se présenter dans tout pays de

extended right to stay, the Court excluded a right of access to social benefits while the Member State nationals in question searched for work. The social benefits' Rubicon had not yet been crossed. Those who moved in search of employment qualified for equal treatment, but only as regards access to employment.[21]

What changed all this was the inclusion in the Treaty of provisions establishing the status Union citizenship and the rights of those citizens, derived directly from the Treaties, to move and reside within the Union. Article 20(2) TFEU attaches to that status of citizen the rights and duties laid down by the Treaty, including the right not to suffer discrimination on grounds of nationality within the scope of application *ratione materiae* of the Treaty.[22] The Court thus revised its previous, pre-citizenship, case law which had restricted job-seekers' access to social benefits.[23] The question left unanswered was of course which national benefits of a financial nature are intended to facilitate access to employment? In *Vatsouras*, the Court examined a provision of the German Social Code which provided that foreign nationals whose right of residence arise solely out of the search for employment were excluded from receiving social benefits. It held that it was for the competent national authorities and, where appropriate, the national courts to establish the existence of a real link with the labour market – the reference point against which the equal right of Union citizens to social benefits was increasingly being tested – but also to assess the constituent elements of that benefit, in particular its purposes and the conditions subject to which it is granted.[24] In *Vatsouras*, the Union citizens in question had already worked and the Court was seeking to reconcile the possible limitation of their right to "social assistance" in Directive 2004/38 with the principles already established on the basis of the principle of non-discrimination and Article 21 TFEU in other citizenship cases, not least *Collins*. However, the decision again left it to national competent authorities and national courts to decipher from a series of judgments, in which the conditions to be applied were established incrementally, how to render different provisions of national social law compatible with EU law on free movement and citizenship and how to

la Communauté aux emplois *effectivement offerts* et de demeurer dans ce pays, si un emploi est *effectivement obtenu*…" (emphasis added).

21. Case 316/85, *Lebon,* [1987] ECR 2881, para 26.

22. Case C-85/96, *Martinez Sala*, [1998] ECR I-2691, para 62.

23. See Case C-138/02, *Collins*, [2004] ECR I-2703, para 63: "In view of the establishment of citizenship of the Union and the interpretation in the case-law of the right to equal treatment enjoyed by citizens of the Union, it is no longer possible to exclude from the scope of Article [45(2) TFEU] – which expresses the fundamental principle of equal treatment, guaranteed by Article [18 TFEU] – a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State."

24. Joined Cases C-22 & 23/08, *Vatsouras,* [2009] ECR I-4585.

reconcile different provisions of EU law, not least Regulation 883/2004 and Directive 2004/38. This question of reconciliation arose again recently, in *Brey*, where the Court held that the concept of "social assistance" used in the Directive cannot be confined to those social assistance benefits excluded from the scope of the Regulation.[25] Furthermore, when determining whether the social assistance benefit applicant has sufficient resources to avoid becoming a burden on the host Member State, the competent authorities must first "[carry] out an overall assessment of the specific burden which granting that benefit would place on the national social assistance system as a whole, by reference to the personal circumstances characterizing the individual situation of the person concerned."[26] One is left with the impression that national systems of social security and social welfare founded on the principle of solidarity[27] have become increasingly entangled with a new status at EU level which appears to have been intended to inspire such solidarity.[28]

So has Spaak's dream of free movement become a nightmare – legally over-complicated, politically abused, allegedly costly and popularly misunderstood? If so, is the Court of Justice, at times, or, in part, to blame? With its case law on free movement having been punctuated in recent years by judgments which have, at times, lacked sufficiently extensive or solid reasoning and, at other times, seemed to be at odds with rulings handed down some months previously, the Court is clearly not immune from criticism. A taste of the latter can be found in the numerous articles and case notes on Union citizenship which have graced the pages of this and other journals in

25. Case C-140/12, *Brey*, judgment of 19 Sept. 2013, nyr. The concept of social assistance system in Directive 2004/38 was held, in para 61, to cover: "all assistance introduced by the public authorities, whether at national, regional or local level, that can be claimed by an individual who does not have resources sufficient to meet his own basic needs and the needs of his family and who, by reason of that fact, may become a burden on the public finances of the host Member State during his period of residence which could have consequences for the overall level of assistance which may be granted by that State."

26. *Brey*, ibid., para 64.

27. See the discussion in, e.g., De Búrca (Ed.), *EU Law and the Welfare State*, XIV *Collected Courses of the Academy of European Law* (OUP, 2005), or Dougan and Spaventa (Eds.), *Social Welfare and EU Law* (Hart, 2005).

28. See, to this effect, the statement in Case C-184/99, *Grzelczyk*, [2001] ECR I-6193, para 31, regarding what the status of Union citizenship is destined to become, as well as the invocation of solidarity at para 44 of the judgment: "the sixth recital in…Directive [93/96]'s preamble envisages that beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State. Directive 93/96, like Directives 90/364 and 90/365, thus accepts a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States, particularly if the difficulties which a beneficiary of the right of residence encounters are temporary".

recent years.[29] As regards the question of what constitutes an unreasonable burden on the public finances in the host Member State, take, for example, the possibility of the applicant in *Baumbast* having recourse to the emergency medical care in the host Member State which his own insurance did not provide. The Court is invited, in such cases, to engage in complex empirical analysis examining parameters such as the average cost of the care sought, the statistical likelihood of the applicant requiring such care, the number of migrant workers who would potentially benefit from such a ruling as well as the state of the host State's public finances.[30] This is a fair assessment of what judgments of this stature might or should entail. But the Court, more than most national courts perhaps, is very dependent on the submissions of the parties, intervening Member States and the Commission, the latter in its capacity as guardian of the Treaties in infringement actions and long-standing *amicus curiae* in preliminary references. Do the Commission and the Member States equip themselves, and in turn the Court, with the type of concrete data which might allow the criterion of "unreasonable burden" to be examined more closely? Is it their duty to do so?[31] In some recent cases involving the rights of students to study finance either *qua* Union citizen or *qua* child of a migrant worker – *Commission* v. *Netherlands* and *Prinz & Seeberger* – Advocate General Sharpston appears to suggest that the Commission and/or Member States are failing to do so.[32]

Furthermore, when it comes to the movement of Union citizens as distinct from migrant workers, it is clear, with hindsight (and even perhaps without[33]) that the failure to adopt legislation in a timely fashion as the citizenship case law continued to proliferate must surely be regarded as a mistake. Even once that legislation was adopted, it provides Union citizens with a far-from-clear basis to understand their rights, and national courts and administrative authorities with a far-from-clear basis on which to interpret and enforce them.

29. See e.g. Weiler, "Epilogue: Judging the judges – Apology and critique", in Adams et al. (Eds.), *Judging Europe's Judges* (Hart, 2013), pp. 235–253, at p. 247 et seq.; Rigaux, "Regroupement familial", (2013/ No.12) *Europe,* 18–20 (commentating on the decisions in Case C-86/12, *Alokpa* and C-87/12, *Ymeraga*)*;* or Tryfonidou, "(Further) signs of a turn of the tide in the CJEU's citizenship jurisprudence" (2013) MJ, 302–320 (commenting on Case C-40/11, *Iida*, judgment of 8 Nov. 2012, nyr).

30. See e.g., Weiler, op. cit. previous note.

31. See generally, Nic Shuibhne and Maci, "Proving Public Interest: The growing impact of evidence in free movement case law", 50 CML Rev. (2013), 965–1006.

32. See the Opinion of A.G. Sharpston of 21 Feb. 2014 in Joined Cases C-523 & 585/11, *Prinz & Seeberger*, paras. 61–64; See also, the discussion in her Opinion of 16 Feb. 2012 in Case C-542/09, *Commission* v. *Netherlands*, paras. 67 et seq., particularly paras.102–103 and 117–119.

33. The Commission has argued for the direct effect of Art. 8a EC (now 21 TFEU) since Case C-378/97, *Wijsenbeek,* [1999] ECR I-6207, para 35.

A trend in recent years of incorporating directly into legislative proposals extracts from judgments of the Court may not be the most effective means of regulating the rights to movement and residence of Union citizens, given the complexities outlined above.

Returning to the issue of access to social benefits touched on above, is it not remarkable that the Social Security Regulation and the Citizenship Directive, adopted on the same day, make no reference to each other? The relationship between the Social Security Regulation and the embryonic rules on citizenship had been the subject of debate and disagreement as far back as the *Antonissen* case on job-seekers. Yet no attempt was made in 2004 to articulate the relationship between these two pieces of legislation, with the result that, inevitably, the Court is called on to do so in cases like *Stewart*, *Brey,* or other cases now pending.[34] In addition, the very language of the secondary legislation involved in these movement and access to benefits cases highlights the difficulties which exist. These provisions of EU law on the movement of Union citizens are now impacting on the interpretation of provisions of directives addressing the rights of third country nationals and their family members where similar language is used. Meanwhile, the Charter lurks in the background.[35] If there is confusion in some of the Court's decisions, one must ask if it stems partly from confusion in the DNA of the relevant provisions of EU secondary law itself.

This cursory analysis of complex legislation and complex and evolving case law is intended neither as an excuse for succinct judicial reasoning nor a justification of the "false or misleading prospectus"[36] which is feeding the immigration debate in some Member States. However, a degree of candid discussion about the complexity of the legal issues which lie behind the scare stories on free movement in the popular press – one of the spectres haunting Europe at present[37] – is perhaps called for. It is undoubtedly difficult to distil the complex legal picture outlined above for the general public, but it is surely not impossible to explain more clearly the rights which EU law confers on Union citizens and the brakes and safeguards available to Member States. Benefit tourists do exist and, for certain Member States or in certain regions,

34. Case C-503/09, *Stewart,* ECR [2011] I-6497; *Brey*, cited *supra* note 25.

35. Art. 34 of the Charter refers to social security benefits, social services providing protection, including in cases of loss of employment, social advantages, social and housing assistance, to add to the same or similar list of terms variously describing social benefits in Regulation 883/2004, Directive 2004/38 (social assistance), Regulation 1612/68 (social advantages) and Directives 20033/86 on family reunification (social assistance systems) and 2003/109 on the long-term residence of third country nationals (social security, social assistance and social protection).

36. See Forwood, op. cit. *supra* note 7.

37. See Dougan, op. cit. *supra* note 10, pp. 111–141.

dealing with this phenomenon poses considerable problems. Is it not better to engage with these realities rather than haranguing Member States which raise them, albeit in the context of national debates which may be both distorted and ill-informed?

Plenty of facts and figures tell a story of free movement which is much more appealing and hopeful than the version which has appeared recently in *Bild* or the *Daily Mail*. Engaging with the real difficulties which the free movement and access cases highlight could be counterbalanced with these very real facts and figures. They tell a tale of economically active Member State nationals, or those who wish to be economically active but who hail from Member States where unemployment has reached record levels – not least those hardest hit by austerity –, availing of the opportunities which EU free movement law offers them and their families. They also tell a tale of host Member States availing of their employment, whether on a long or short-term basis. They remind us that the free movement of persons provides both highly-skilled workers which host Member States desperately need and low-skilled workers doing jobs which the host State's population no longer wish to perform. Many reports making the economic case for free movement depict EU migrants as net contributors in host Member States and reveal their limited recourse to public funds.[38]

Let us spare a final thought for the Spaak Report. In 1956, free movement was also intended to encourage Member States to engage in economic development and job creation given the grave structural unemployment problem existing in some regions. This aspect of the Report is as relevant now as it was sixty years ago. It reminds us that the founding Member States sought to provide the basis, in the Treaty of Rome, for an ever closer union, and affirmed, as "the essential objective of their efforts the constant improvement of the living and working conditions of their peoples". We now know how complex the attainment of such shared prosperity is – but surely the free movement of persons within the EU remains a crucial part of realizing such objectives.

38. See e.g. OECD, *International Migration Outlook 2013*; Centre for Research and Analysis, *Assessing the Fiscal Costs and Benefits of A8 Migration to the UK*, Discussion Paper Series CDP No. 18/09; Centre for European Reform, *Is immigration a reason for Britain to leave the EU?* October 2013, as well as various reports by the European Commission, *Impact of mobile EU citizens on national social security systems* (October 2013), *Free Movement of EU citizens and their families: five actions to make a difference* (COM(2013)837 final) and *Evaluation of the impact of the free movement of EU citizens at local level* (February 2014).