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Freedom of Movement of Labour in the Eurasian Economic Union

Movement of Labour Perspectives in Light of a
Comparison with the European Union

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ABSTRACT

La regionalizzazione è sempre più diffusa nel mondo, con variabili livelli di efficacia. Per quanto riguarda la zona post-sovietica, fin dal momento dello scioglimento dell'unione abbiamo osservato tentativi di cooperazione da parte dei paesi del territorio. Dopo diversi tentativi di integrazione economica, fu formalizzata nel 2015 l'Unione Economica Eurasiatica (UEE). L'Unione ha l'obiettivo di eliminare le barriere doganali e di creare un mercato unico di beni, servizi e lavoratori. Il libero movimento del lavoro sarà proprio il punto focale di questa tesi.

Il primo passo per comprendere l'importanza e le caratteristiche della libertà di movimento delle persone nell'Unione Economica Eurasiatica è quello di analizzare la situazione durante l'Unione Sovietica e i cambiamenti comportati dal suo scioglimento. Il movimento dei cittadini dell'URSS era una realtà complessa e talvolta contraddittoria. I confini nazionali fra le ex repubbliche sovietiche che oggi conosciamo erano ai tempi solo simbolici, e in quanto tali non comportavano un vero limite. Tuttavia, la libertà di movimento totale degli individui era ancora limitata, fortemente all'inizio e meno in seguito. I cittadini si spostavano con difficoltà da una città all'altra e gli abitanti delle campagne in particolare erano fortemente penalizzati nella loro possibilità di spostarsi, data anche la mancanza di documenti, che non erano garantiti loro dal governo. La migrazione interna era regolata dalla *propiska*, un sistema di registrazione della residenza che era necessario ai cittadini per vivere e spostarsi nel territorio. Non era possibile spostarsi senza, ed era in molti casi difficile da ottenere.

Dopo lo scioglimento dell'URSS le Repubbliche Sovietiche divennero indipendenti, e per consentire ai cittadini di spostarsi attraverso questi nuovi confini, i paesi stabilirono disposizioni che regolassero questi movimenti. L'organismo principale che consentiva la libertà di movimento degli individui era, e in una certa misura è tuttora, la Comunità degli Stati Indipendenti (CSI), un'organizzazione creata contemporaneamente allo scioglimento dell'URSS. Per quanto riguarda il presente, l'Unione Economica Eurasiatica è stata creata come coronazione dell'Unione Doganale e della Comunità Economica Eurasiatica. Gli Stati membri dell'EAEU sono Armenia, Bielorussia,

Kazakistan, Kirghizistan e Russia. Il Trattato sull'Unione include norme relative alla libera circolazione di beni, servizi, capitali e lavoro. Le norme per la libera circolazione del lavoro sono quelle che consentono ai cittadini degli Stati membri di muoversi e lavorare con maggiore facilità e tutela. Il soggiorno e le condizioni consentite all'individuo dipendono dal suo contratto di lavoro. Il Trattato dell'Unione aiuta i cittadini nella fase del loro ingresso nel Paese consentendo loro di avere un periodo di registrazione di 30 giorni e non richiedendo la tessera di immigrazione per soggiorni brevi. Vieta inoltre la discriminazione, consente il riconoscimento di titoli di studio e parla delle prestazioni previdenziali per i lavoratori. Anche i familiari dei lavoratori possono risiedere con loro. Queste disposizioni sono sicuramente importanti, perché indicano una volontà di integrazione nel mercato del lavoro, ma sono ancora in una certa misura basilari e non sviluppate nei dettagli, lasciando molte delle decisioni alla discrezionalità degli Stati membri.

Successivamente, allo scopo di una comparazione, viene presentata l'Unione Europea, sottolineando il desiderio di integrazione e di libera circolazione delle persone sul territorio affermatosi fin dalla fondazione. La base per la libera circolazione delle persone è presente nel Trattato dell'Unione Europea, ma le disposizioni principali sono contenute nel Trattato sul Funzionamento dell'Unione Europea. Qui, i diritti sono divisi come derivanti da cittadinanza, lavoro o stabilimento. La libera circolazione dei cittadini è forse l'aspetto più interessante del diritto dell'UE sulla mobilità. È un principio dell'UE e dipende da una cittadinanza europea condivisa che consente la circolazione. Tuttavia, tale diritto può essere invocato solo se nessuno degli altri si applica allo specifico caso dell'individuo. Questo diritto è stato particolarmente sottolineato dalla CGUE, che ha svolto un ruolo importante nel confermare che i cittadini dell'UE hanno effettivamente il diritto alla circolazione indipendentemente dal loro stato lavorativo. Probabilmente il più completo tra gli atti legislativi in materia è la Direttiva 2004/38/CE del Parlamento europeo e del Consiglio, del 29 aprile 2004, relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri. Si tratta di un ampio documento che dettaglia le condizioni di libera circolazione dei lavoratori in modo molto più ampio rispetto al TFUE. Contiene indicazioni sulla durata della permanenza,

eventuali permessi di soggiorno e procedure formali, i familiari dei lavoratori, che possono essere sia cittadini comunitari che cittadini di paesi terzi, e diritti del lavoro. Infine, viene delineata l'area Schengen. I vantaggi di Schengen sono subito evidenti: tutti gli individui sul territorio degli stati membri possono circolare liberamente, e anche i cittadini di paesi terzi sono avvantaggiati da ciò, grazie al visto unico per accedere a tutti i paesi Schengen. Questa è sicuramente una grande pietra miliare per il movimento in Europa.

Successivamente vengono messe a confronto l'Unione Economica Euroasiatica con l'UE e in particolare mette in giustapposizione le posizioni dei due sulla libertà di movimento. Prima di tutto, viene presentato il concetto di *holding-together regionalism*, al fine di contestualizzare tutti i risultati seguenti. Questa teoria ci dice che l'integrazione nei paesi post-sovietici segue un percorso diverso dall'integrazione in paesi che non sono stati recentemente sotto la stessa autorità. Per questo motivo, invece di unire una regione, l'Unione Economica Eurasiatica la riunisce più accuratamente dopo una separazione, che porta vantaggi come legami preesistenti su cui costruire, ma può anche portare svantaggi come desideri di protezionismo o nazionalismo di conseguenza di uscire dall'URSS. Poi si confrontano le strutture delle due Unioni, il che dimostra come l'UE sia evidentemente più sovranazionale dell'Unione Economica Eurasiatica, che invece è perlopiù intergovernativa. Per quanto riguarda la libertà di circolazione delle persone, come abbiamo visto, l'EAEU si basa principalmente sul suo trattato per le norme, mentre l'UE ha molteplici fonti, più o meno specifiche e dettagliate. Due sono forse le differenze più grandi tra la libertà di circolazione delle persone nei sindacati che sono immediatamente evidenti. Il primo è il diritto dei cittadini dell'UE a viaggiare sulla base della loro cittadinanza, mentre per i cittadini dell'EAEU la libertà di circolazione delle persone si basa solo sul lavoro. La seconda è la presenza di controlli alle frontiere tra i paesi EAEU, che non sono più in uso nell'UE grazie all'accordo di Schengen. L'UE è anche più integrata sui temi della sicurezza sociale, dell'assistenza sanitaria, dell'istruzione e, soprattutto per lo scopo di questa tesi, della residenza permanente. I cittadini dell'UE hanno infatti diritto a fare domanda per un permesso di soggiorno permanente dopo 5 anni di soggiorno continuativo, mentre l'EAEU non ha stabilito tali norme. Un ultimo dettaglio è che mentre l'UE ha una

legislazione unificata sulla migrazione di cittadini di paesi terzi all'interno dei suoi confini, l'UEE ancora una volta lascia la questione agli Stati membri.

Infine, il cuore della tesi tenta di esaminare la situazione attuale nell'UEE e di considerare qual è l'impatto della legislazione sulla libertà di circolazione del lavoro, quali sono i suoi successi e cosa può essere migliorato in futuro. Inizialmente, viene considerato lo stato attuale della migrazione e della libertà di circolazione delle persone per ciascuno dei paesi membri. Questo è importante in quanto ci consente di vedere che la Federazione Russa è il principale destinatario di migranti per lavoro provenienti dall'Unione. Armenia e Kirghizistan ricevono un numero estremamente trascurabile di migranti dagli altri Stati membri dell'UEE, ma ne inviano una grande quantità, che contribuisce all'economia del proprio paese con ingenti rimesse. La Bielorussia ha un numero simile di immigrazione ed emigrazione in totale, ma non con gli Stati membri dell'UEE, ed è anche una destinazione per migrazioni a breve termine poiché i migranti si spostano a occidente. Infine, anche il Kazakistan ha un gran numero di migranti per lavoro che si trasferiscono in Russia e riceve una quantità discreta di rimesse, ma sperimenta anche un certo grado di immigrazione da altri Stati membri dell'UEE, sebbene i numeri non siano paragonabili a quelli della Russia.

Si prosegue confrontando la legislazione UEE con quella della Comunità degli Stati Indipendenti. Si è concluso che l'ingresso è facilitato per i cittadini UEE rispetto ai cittadini CSI, soprattutto a livello formale. Alcune delle disposizioni contemplate nel trattato UEE sono invece lasciate agli accordi bilaterali, esattamente come quando si tratta di altri stati membri della CSI. In definitiva, tuttavia, i vantaggi per i lavoratori dell'UEE non sono ancora schiacciati rispetto a quelli dei lavoratori della CSI; quindi, questa è sicuramente un'area che ha margini di evoluzione in futuro. Ciò è particolarmente vero perché l'UEE si pone come un progetto più vantaggioso rispetto alla CSI, in termini di mercato comune (in questo caso di lavoro), quindi per ottenere effettivamente una maggiore integrazione si può lavorare di più.

Si esaminano poi le sfide che l'Unione deve affrontare sul tema della migrazione. La prima è alimentata dalle dure politiche migratorie della Federazione Russa, il cui

Ministero dell'Interno ha creato le cosiddette liste nere, che contrastano l'immigrazione. Questi database impediscono alle persone di rientrare nel paese dopo le violazioni, ma sono visti come una misura non proporzionata ed eccessive. I migranti, infatti, vengono immessi nelle liste dopo violazioni anche lievi e la rimozione è molto difficile. L'aspetto più problematico è che i lavoratori non sono consapevoli di trovarsi in questa lista. Un secondo problema è quello dell'istruzione. Questo problema può essere suddiviso in due questioni principali: la equalizzazione dell'istruzione in tutta l'Unione e la mancanza di corrispondenza tra il mercato del lavoro e le qualifiche dei lavoratori. In definitiva, entrambi questi problemi possono essere affrontati in una certa misura promuovendo una migliore armonizzazione del sistema educativo negli Stati membri, sebbene questa prospettiva non sia particolarmente apprezzata dai governi degli Stati membri. Un altro problema è la crisi demografica in Russia. La popolazione continua a diminuire a causa della bassa natalità e della mortalità relativamente alta. Qualcosa che possiamo dedurre è che con una pianificazione più attenta, la migrazione del lavoro legalizzata e ben organizzata può effettivamente essere fondamentale per questa situazione. La crisi demografica richiede più manodopera, e retoriche e voci xenofobe possono opporsi alla migrazione e spingere invece sulla nascita di etnia russa, ma ciò si è dimostrato non sufficientemente efficiente.

Infine, vengono presentate alcune soluzioni per le problematiche descritte, quali norme per l'istruzione, abolizione delle liste nere, permesso di residenza e lungo termine per i cittadini dell'UEE e meno barriere burocratiche e formali per l'entrata di questi cittadini negli stati membri.

Introduction

Regional integration continues to prove itself to be fundamental in the contemporary international arena and is in fact increasing all around the world. Among the numerous ways to strengthen regional bonds, economic integration, in particular, seems to be sought after and successful, as it allows for an allyship towards development in the face of global markets and international competition, seemingly permitting to smaller countries to be pushed forward and strengthening the influence of larger countries in some areas. This happens through the implementation of both physical and institutional infrastructure: countries in fact cooperate both in the creation of trade routes and in the establishment of shared legislation.¹

The processes of post-soviet regional integration have been and still are extremely complex, and this complexity is a consequence of the heterogeneity that characterizes the countries that were once part of the Soviet Union and of their historical background. After the dissolution of the Soviet Union, in fact, it was clear that the fifteen newly formed independent states held a commonality in the form of their shared history in the USSR, but that there was also deep rooted, and sometimes growing resentment. These countries, now independent were experiencing the need to affirm their individual identities and solidify national sentiments. This separation inevitably led to a fracture of territorial and political nature. Some of the former Soviet Republics, in fact, desired to achieve full independence, and in doing so strongly distanced themselves from the USSR, while others still accepted close relationships with the other republics.² This is related to the fact that integration in this region is significantly different from some of the better-known examples, where a group of neighbouring countries decide to establish closer ties to each other. This process, in which countries that operate in the same geographical space and have done so for a significant amount of time unite to form a

¹ Worldbank, Regional Integration.

<https://www.worldbank.org/en/topic/regional-integration/overview> Last Accessed on 20 February 2022

² Aleksandr, Libman, and E. Ju Vinokurov. *Holding-Together Regionalism: Twenty Years of Post-Soviet Integration*. Palgrave Macmillan, 2012.

regional alliance in order to strengthen their bonds and create a shared identity is called *Coming-Together Regionalism*, and it is described by Evgeny Vinokurov. In opposition to that, he defines *Holding-Together Regionalism*, that is what can be observed in the former USSR region. Here, in fact, the post-soviet states were all part of the same federal union, and after its dissolution were forced to find ways to continue to interact with each other.³ Thus, the process of regional integration follows a reverse path, attempting to bring closer independent entities that once were united.

The largest and most immediate organization to be created after the dissolution of the Soviet Union was the Commonwealth of Independent States, established already in 1991, and still existing today. In fact, the agreement that dissolved the Soviet Union was contemporary to the creation of the CIS. Originally composed of Russia, Ukraine, and Belarus, the CIS now counts eleven members: all the former Soviet Republics minus Georgia and the three Baltic republics, Estonia, Latvia, and Lithuania. The CIS was promptly followed by several other different attempts at regional integration in the area, many of which not particularly successful. It started to be clear that what was necessary was the creation of an organization that would have allowed for stable economic ties, such as a Customs Union and a Common Economic Space. The first proposal came from Kazakh president Nursultan Nazarbayev in 1994, and one year later Belarus Kazakhstan and Russia signed the Custom Union Treaty, which was followed by the establishment of the Eurasian Economic Community (EurAsEC). The common customs tariff finally came into effect in 2010. These were the foundations that allowed for the signing of the Eurasian Economic Treaty in May of 2014.⁴

The Eurasian Economic Union had its formal start in 2015, and is currently counts five Member States: Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. The EAEU is composed of four bodies: the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Eurasian Economic Commission, and the Court of the

³ Ibid.

⁴ Treaty on the Eurasian Economic Union, Astana, May 29th, 2014.

https://docs.eaeunion.org/docs/ru-ru/0033610/itia_05062014

Eurasian Economic Union.⁵ The working language is Russian. The main objectives of the EAEU at its creation are, as listed in the statute:

*“to create proper conditions for sustainable economic development of the Member States in order to improve the living standards of their population; to seek the creation of a common market for goods, services, capital and labour within the Union; to ensure comprehensive modernisation, cooperation and competitiveness of national economies within the global economy.”*⁶

In addition to fulfilling the long-desired objective of a custom tariff equalization, the EAEU has also established a common market, allowing thus the free movement of goods, services, capital, and labour. This thesis will focus on the latter, exploring the free movement of persons in the EAEU and its relationship with the aforementioned holding-together integration.

The Treaty on the Eurasian Economic Union⁷ addresses labour migration in its freedom of movement of labour section,⁷ and sets a series of guidelines for the Member States to adopt in that regard. Member States are in fact encouraged to cooperate on a legislation that allows workers to move freely within the EAEU and to be employed without discrimination in all Member States. This has not always been systemically applied in practice, so to allow an effective application of this principle, some norms have been laid out. The migrant workers within the EAEU are to be employed without taking into account the potential protectionist measures in the field of labour. Furthermore, their educational status and previous work experience must be recognised in the state of employment. Finally, workers have a right to enter a member state without registration for 30 days.⁸ All these norms are undeniably reminiscent of those widely applied in the European Union, although on a larger scale.

⁵ Art. 8 of the Treaty on the Eurasian Economic Union

⁶ Art. 4 of the Treaty on the Eurasian Economic Union

⁷ Treaty on the Eurasian Economic Union

⁸ Art. 97 of the Treaty on the Eurasian Economic Union

The European Union also has its origins at first as an Economic Community, with the Treaty of Rome in 1957, and has then evolved into a more comprehensive organisation upon the signing of the Maastricht Treaty.⁹ The free movement of workers and the freedom of establishment were an important objective since the very creation of the European Economic Community and developed into a broader set of rights for all European citizens with the Treaty on the Economic Union. In fact, the objective of the EU has been, since the very beginning, that of creating a more unified European identity, which reflected on the legislation adopted. In opposition to the EAEU, the EU immediately sought to foster integration by promoting naturalization laws, thus allowing citizens to remain permanently in their countries of employment.¹⁰ Although the EU has obviously its fundamental differences with the EAEU both in scope and in the time that they have been operative, the comparison is still fruitful to determine the a priori objectives and goals of the two unions and see how they have been manifesting in practice.

Research Question

The main goal of this work is to understand the impact of migration legislation in the EAEU, what are its goals, its successes, and its failures, and ultimately of the possible consequences that will arise from the present introduction of more rights to intra union migrants. It will be explored whether or not this is an incentive for more long term or short-term migration and on how these migrants are integrated into the existing workforce. It will also be addressed whether or not the migration that is occurring is hindering or aiding the development of the Member States and specifically which States are benefiting from it and which are suffering and the reasons behind it. To do so the question of funds sent back from migrants to their origin countries will be analysed, in an attempt to comprehend whether or not they are impactful in the overall economy. The acquisition of new skills and education that arises from this migration will also be

⁹ European Union, Treaty on European Union (Consolidated Version), Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: <https://www.refworld.org/docid/3ae6b39218.html> [accessed 20 February 2022]

¹⁰ Robert, Schütze, *An Introduction to European Law*. 3rd ed., Oxford University Press, 2020

taken into consideration, in order to understand if migrants then apply the skills they have acquired once they return to their origin countries, if they do return. The roles and qualifications of these workers will be investigated as well, attempting to pinpoint whether there is a movement of skilled workers or unskilled labour, and where and how these workers are moving, both sector wise and geographically. Here as well the parallel with the European Union will play a role in comparing and patterns of movement. Finally, it will be analysed whether or not there are trends towards naturalization of these migrants in their new countries and if this has any impact on integration. All these factors will be interpreted considering the legislation present and to what extent this legislation is successful. To assess this, we will see if it is comprehensive in covering all matters, that is, if all needs of the migrants and all aspects of labour migration are covered by satisfactory laws. We will also evaluate if has as an objective to foster integration, if the Member States are working in that direction. And finally, considerations need to be made about how successful it is in fulfilling its objectives, if the norms are sufficient to achieve the goals they aim towards.

Structure

This thesis will begin by firstly focusing on the freedom of movement under the Soviet Union. This is fundamental to understand how the previous legislation in the countries that are analysed has evolved and what role these past relationships among each other still play in the present. Furthermore, as it may result to be challenging to identify trends arising under the EAEU, because of its recent creation, looking at the history that these countries share and at the relationships they had with each other will certainly be useful. That is also why it is not only important to look at the shared history of these countries in the superstate structures, but also to look at the single one-on-one relations they carried out in the past and present. That is also helpful as to identify in which direction the fluxes of the population have been moving. Of course, the period between the end of the Soviet Union and the creation of the EAEU is fundamental as well, specifically to pinpoint what gaps in the existing legislation has the EAEU been filling and therefore to understand its influence. After the dissolution of the USSR, in fact, many persons lost their residency rights, and new norms and procedures had to be implemented.

Secondly, the journey of the European Union toward a free movement area will be analysed, looking both at treaties and the relationship with the Schengen area. Starting from the creation of the EU up until the present situation, an outline of the current and past legislation will be presented.

The two situations will then be compared in the third chapter, in an attempt to identify what steps were required to achieve the present status. That is another reason why the comparison with the EU is particularly useful: analysing the framework of an already existing and fairly long-lasting union may give some insight on the possible future of the EAEU, depending on what path it will follow and whether or not it will both desire and be able to follow in EU's steps.

Finally, the thesis will delve into its central question, examining the impact of EAEU legislation on workforce migration today and how it has shaped the current scenarios in the Member States. There will be an outline of the rights of the workers at present time under EAEU law, how it compares to the rights of nationals and the characteristics of the workforce. Additionally, there will be an attempt to plot what could possibly be the next steps in this process, moving actively into the question of the efficiency of the solutions so far adopted.

Literature on the Subject

The fairly recent creation of the EAEU is the cause of a limited amount of research that has been conducted on the topic, as it can be based on only 7 years of it being operative. That means that long term analysis of developments, as useful as it can be, cannot be conducted. The other feasible option is to look towards the past of the Member States of the EAEU and their national legislation. On this topic, as well as that of the Soviet Union, the research available is much more extensive and complete, though with obvious differences between the countries, the Russian Federation being the most researched one and the one where more data is available. The literature on the EAEU is mainly of two types: political analysis and legal analysis. Both are functional for the

purposes of the question investigated here, although the legal basis will have a more prominent focus.

With regards to the European Union, the research and source availability for this topic is extensive and complete, both from official EU sources and an array of scholars. Nevertheless, the topic of internal migration between Member State nationals in the EU is not particularly explored, in fact intra EU migration has the basis to be explored further. In opposition, research on third country migrants is much more present and developed, in fact, it is also particularly influenced by the recent migration flows in the Mediterranean and the refugees' crises, which are topics that seem to be more prominent in research.

Significance of the Research

With the consistent influence and importance of regionalism, the EAEU is a project that is most certainly relevant for its territorial extension and for its significance in the post-soviet area. Furthermore, the EU and the EAEU are currently the only two open labour markets in the world.¹¹ This is also the reason why the two are put into relation: the comparison can be drawn because the EU represents an example of successful regional integration, for reasons that will be explored, so it is relevant to analyse the direction in which the EAEU is moving in contrast. Although it does not seem like the EAEU will ever comprise the same scope as the EU, some aspects are still worth putting in juxtaposition.

The choice to focus on the freedom of movement on this very large territory is guided by the importance of migration worldwide and by how now more than ever the movement of people across borders is shaping the new image of a globalized world. The former soviet area in particular has a special relationship with the concepts of citizenship, nationality and migration, that must be analysed in a framework different

¹¹ E. Vinokurov, et al. *Evrazijskij Ekonomičeskij Sojuz, Evrazijskij Bank Razvitija, Centr Integracionnyx issledovanij*, St Petersburg, 2017

from that of the traditional western approach.¹² All of the countries forming the EAEU have interesting and particular demographic characteristics that influence the way the working migration proceeds. Being Russia the largest and most wealthy country out of the five, this shapes the direction of the migrations, making the Russian Federation the main destination for immigration. This perspective is also interesting as the Union has been criticised for being overall a political manoeuvre on the part of the Russian Government to expand and strengthen its control and influence on the former Soviet Republics that are now part of the EAEU. Although there are indeed arguments to support this theory, it is also interesting to look at the situation from the perspective of the workers that in virtue of the EAEU are able to emigrate from their countries to seek more advantageous employment and work conditions. On the flip side of the coin, the phenomenon known as a brain drain may also occur, encouraging the emigration of highly skilled and educated labourers. Interestingly enough, research proves that a significant percentage of migrants send part of their income to their families still residing in their home countries, thus boosting the local economy to some degree with those funds.¹³

The future of these labour migrants is also a crucial point of research, because as of today EAEU legislation does not include legislation concerning permanent residence permits, leaving it thus to national law.¹⁴ It is important to understand what consequence that has and will have, since part of the work migrants claim to desire staying in their new country indefinitely, and only a smaller percentage has expressed the desire to leave, therefore staying only for a specific limited frame of time.¹⁵ Here returns the issue of the length of the existence of this Union, ad its relatively short history that does not really allow for an analysis of long term trends in terms of migration or demographic composition.

¹² Salenko, A. Report on Russia, EUDO Citizenship Observatory, 2012

¹³ Ibid.

¹⁴ Vinokurov, E. Ju. et al. Evrazijskij Ekonomičeskij Sojuz, Evrazijskij Bank Razvitija, Centr Integracionnyx issledovanij, St Petersburg, 2017

¹⁵ Ibid.

Methodology

The methodology for this thesis is partly influenced by the available resources in terms of literature and sources on the topic. Since a relevant part of this thesis will focus on the comparative analysis of bodies of law, it is important to reference primary sources, in order to outline as clearly and accurately as possible the situation in both Unions. The founding treaties and statutes will certainly be fundamental, as well as rulings and acts of the courts. National law of the Member States will be briefly referenced as well for completeness. Overall, the legal acts regarding freedom of movement of labour will be quoted and commented extensively and will pose the foundation for the notions illustrated.

Secondary sources will also be employed, especially in terms of a comparative analysis. They will be also useful to integrate the interpretation of phenomena and to contextualize them accurately. The sources consulted are mainly in English and Russian languages, but coming from international scholars from heterogeneous locations, in order to achieve varied point of views and perspectives.

Finally, there will be made use of references to statistical and analytical data, specifically in the final chapter, to understand the present demography and to add a dimension of quantitative research.

Chapter 1

Brief Outline of the Freedom of Movement in the Soviet Union and Post-Soviet Area

On 25 December 1991 the Soviet flag was permanently lowered on the Kremlin and replaced with the newly adopted Russian tricolour flag. The symbolic moment marked the ending of a three year long process leading to the final dissolution of the Soviet Union. This event led to the formation of numerous regional integration processes in the area, and among them the Eurasian Economic Union. One of the most pressing issues for the population of the area has since then become the possibility to move and settle in the region and face the national borders established. Therefore, in the interest of understanding the EAEU and the impact that labour migration legislation has on its population, it is useful to look first into the history of the area, from the formation of the Soviet Union to present day. This chapter will explore firstly freedom of movement of persons in the USSR, by analysing the constraints of Soviet law on citizenship and migration, attempting to understand the system that ruled movements in the area and its evolution. Secondly, the goal will be to outline the situation immediately after the dissolution of the USSR and the relationships between the newly independent republics covering the years leading up to the signing of the EAEU Treaty. Finally, the focus will be directed at the EAEU and how its formation occurred. The structure and functioning of the Union will be sketched out, and its founding treaty will be examined in order to dissect its freedom of movement of labour legislation with accuracy and outline its main characteristics and constraints.

1.1 Freedom of Movement Under the USSR

The possibilities and constraints of movement in the Soviet Union evolved on multiple occasions in the almost seventy years from its foundation to its dissolution. The rights and liberties of the Soviet citizens have progressively increased with each new statute,

but they never actually achieved a complete freedom of movement: their circulation was strictly regulated and limited by a complex bureaucratic machine, requiring many steps and authorizations even for minor movements. These impediments were not always efficiently enforced due to an array of reasons including the large territory, the lengthy paperwork and the spread corruption of state officials.¹⁶

The pillars of soviet citizenship were the internal soviet passport and the *propiska*¹⁷. These documents regulated the way a citizen was allowed to move and the interaction with the authorities. Passport and propiska ownership determined the practical limitations and their use and evolution will be explored in the next paragraphs, starting from a strict and restraining, but rudimentary legislature, to the progressive increase in openness.

1.1.1 Citizenship

The legislation regulating the citizenship status of the inhabitants of the USSR underwent both partial and significant changes with the adoption of each new constitution. Upon the creation of the Union of Soviet Socialist Republics on 31 December 1922, every person that was living in the territory of the USSR automatically became a citizen of the Soviet Union. This was contingent on the citizen not desiring to prove that they are a citizen of another state. In that case the person could declare it and explicitly decide to renounce Soviet citizenship, otherwise they were assumed to be USSR citizens.¹⁸ The achievement of citizenship was overall relatively informal and

¹⁶ Matthews, M. *Passport and Residence Controls in the Soviet Union*, National Council for Soviet and East European Research, 1991.

¹⁷ *Propiska* (Прописка), that literally can be translated with *inscription* or *registration*, was a Soviet residency permit that contained information about the citizen's residency, their whereabouts and kept track of their movements. The full extent of the characteristics of the propiska will be explored and outlined in detail in the next paragraphs.

¹⁸ Polents, O. E. in Korovin, E. A. *Международное право (Mezhdunarodnoe parvo, international law)* Moscow, 1951, p. 233.

uncomplicated, partly due to the absence of a structured bureaucracy and partly due to the desire on the USSR's part to attract citizens.¹⁹

Although citizenship was implemented on a federal basis, an indication of one's nationality²⁰ was also present on the passport. This indication was mostly symbolic, as it did not result in practical differences between the nationals of the republics in front of the government or before the law. The question of nationality was dependent on the ethnic background of the individual, and thus was passed on from the parents (in cases of different nationality of the parents, a choice between the two was possible), while citizenship described the legal status. It was not, therefore, strictly linked with a territorial border: being born or living in one of the republics did not necessarily determine the nationality of the citizen.²¹ Furthermore, the Soviet citizenship also implied the citizenship in the Soviet Republic of permanent residence.²² The indication of this republic could change at the desire of the citizens, so it was not especially significant either. No dual citizenship was allowed, as per 1936 Constitution, that stated that no soviet citizen could be at the same time a foreigner.²³ Citizenship was transmitted by marriage and birth but as opposed to most other citizenship laws of the period, where the citizenship of a woman had to follow that of her husband as a result of the marriage, in the case of a soviet woman marrying a non-Soviet man, her citizenship remained unchanged: she did not have to adopt that of her husband.²⁴

¹⁹ Salenko, A. Report on Russia, EUDO Citizenship Observatory, 2012.

²⁰ The Soviet Union kept a formal distinction between the ethnicity of an individual and their legal citizenship, that was the factual indicator for all administrative matters. Nationality (Национальность, Natsional'nost') can therefore be defined as ethnicity, not as the concept of nationality bound to a formal tie with a country. Citizenship (гражданство, grazhdanstvo), instead, is the formal tie between the individual (citizen) and the government. This distinction is still maintained in many former Soviet countries, especially in the cultural perception.

²¹ Salenko, A. Report on Russia, EUDO Citizenship Observatory, 2012

²² The indication was mostly symbolic, no official documents were issued to attest this specific citizenship, just an indication.

²³ Constitution of the Soviet Union, 1936

²⁴ Belkovets, L.P. The acquisition of the Soviet citizenship by foreigners, Russian Legal Journal nr.6 2010.

The soviet authorities were also allowed to deprive a person of their citizenship in what were defined as exceptional cases, that is when the person had acted in a way that threatened the honour or security of the Soviet Union. The judgement was to come from the Presidium of the Supreme Soviet of the USSR.²⁵ This was a very drastic and dangerous tool, as it is possible to envision its uses as a means of political instrument for oppression.

1.1.2 Passport

To first tackle the importance and the functioning of the Passport in the USSR it is relevant to address a common misconception: the document designated as a passport in the Soviet Union is different from what is widely imagined as the blueprint for a passport in the present. The document most commonly defined as Passport was called the USSR *foreign passport* and it served exactly the function of an identity document that allowed citizens to travel abroad (although of course those travels were severely limited).²⁶

The Soviet Passport, also known as an *internal passport*, was a document first introduced in 1932 and it had mainly the function of an identity document. It contained thus information about the anagraphic details of the individual, but also about their social status (such as student, worker, pensioner, etc.) and their residence information (*propiska*).²⁷ The passport was not granted to all USSR citizens at first. In fact, in the early years, it was compulsory to possess it only for the citizens located in the urban settlements, while the countryside remained outside of the identification system for decades.²⁸ In absence of a passport, the rural citizens were registered in village lists by local militia, obtaining a temporary certificate valid for three months. They were also able to obtain one-year passports if they were to move in order to reside in controlled

²⁵ Vitruk, N.V. *The theory of the legal status on an individual in the socialist society*, Human Rights Quarterly, Vol. 4, No. 1, Moscow, 1979, pp. 124-136.

²⁶ Matthews, M. *Passport and Residence Controls in the Soviet Union*, National Council for Soviet and East European Research, 1991.

²⁷ Ibid.

²⁸ Ibid.

areas. This meant that persons living in the countryside had an even more limited freedom of movement than those who lived in the cities. Moving from one's village was incredibly difficult, and that was also instrumental in controlling the density of the population in the cities, as it constrained peasants to be unable to massively move to urban centres to pursue new working opportunities. It also ensured a constant agricultural class of workers that was necessary to implement the production system envisioned. As we can observe, this distinction that really mattered was not made on a republic-to-republic basis, but on a territorial and population one: it was thus not as important which republic a citizen came from as it was the area where they lived and the role that they occupied.²⁹

The introduction and enforcement of the passport system allowed the government to possess information about more and more of the population on the USSR territory. In 1933 the passport system became organised at the oblast level, while still responding to the central organization in Moscow, an oblast is an administrative region roughly corresponding to a region or a province. Towns with a population of over ten thousand inhabitants had their own passport office.³⁰ In 1937 every citizen was required to submit two pictures along with the passport, one of which was for the passport itself, and the other to be kept by the militia. With time passports also came to include information about one's employment dates, marital status, and military service obligations.³¹

After the death of Joseph Stalin in 1953, some other characters of the passport were modified, and mostly loosened in strictness, such as:

- the period of validity: initially passports were valid for 5 years, but this period had been extended to 10 for persons over 20 years old and it became permanent for citizens over 40 years of age.

²⁹ Salenko, A. Report on Russia, EUDO Citizenship Observatory, 2012

³⁰ Sobranie Zakonov 1937 no. 70, article 328

³¹ Ugolovny kodeks RSFSR, Moscow, 1957, pp. 87, articles 195-196.

Sobranie Zakonov 1935, no. 41, article 343.

- The validity of the temporary certificate: the certificates became valid for six months instead of three.
- Rural inhabitants were still passport less, but new permits were introduced, allowing them to travel to controlled areas for up to thirty days. These permits (*spravki*) required permission by rural soviets in order to leave home.
- Information about the employment of the citizen was no longer required to appear on the passport.
- The right to passports was granted to persons released from places of confinement on the basis of their release papers", which implied some restrictions.³²

The final statute was introduced in 1976, although it was first written in 1974. The passport became permanent, requiring only a change in the photograph between the ages of 20 and 45. There was no longer a need to indicate the social status.³³ The most prominent change present in it was the obligation for all citizens to possess a passport. That meant that citizens living in the rural parts of the USSR were able to obtain a passport, as opposed to the previous temporary certificates.³⁴ This was an important shift towards increased mobility for individuals, not only in terms of physical mobility but also of social mobility, as the right to a passport finally allowed them to be able to pursue education and more employment opportunities. Until then this stratum of the population was completely excluded from that.

This also provided the government with a more comprehensive overview of the composition of the citizens. It was now able to map out the number of persons living within the borders of the USSR as well as be in possession of their personal information.

³² Matthews, *M. Passport and Residence Controls in the Soviet Union*, National Council for Soviet and East European Research, 1991.

³³ *Ibid.*

³⁴ *Ibid.*

An updated internal passport identification system is still maintained within the Russian Federation today.

1.1.3 Propiska

The *propiska* was a tool for establishing and cataloguing the residence of USSR citizens, and the *propiska* status of a citizen was visible on their passport. The term is roughly translated to *registration* and no Soviet citizen was allowed to live or move in the Soviet territory without a valid *propiska*. This system was an effective and harsh limitation on freedom of movement. Other than that, the system was extremely bureaucratically complex and difficult to track. The number of documents needed to present a *propiska* request was significant: including both documents about the applicant and details about the house they were moving into (such as the area of the living space, the number of rooms, the number of persons already registered there, etc.), as well as information about the inhabitants of said house³⁵: in fact, most proposals were granted on the basis of a movement with the goal of reaching familial relationship with the

The *propiska* usually referred to private housing, but there were exceptions. Persons could register in hostels, and thanks to a further authorization could obtain a *propiska* without the *propiska* in their location of origin. That mostly was the case of students or medium-term workers, who had to reside somewhere for a long enough period to warrant *propiska*, but not permanently. Another case was that of shorter stays in places like hospitals or rest homes. Finally, there were also arrangements for registrations for holidays.

It was much more difficult to obtain a *propiska* for big cities such as Moscow or St. Petersburg's.³⁶ This prompted the spread of false marriages, celebrated only with the goal of obtaining a permanent *propiska*. In fact, the easiest (and sometimes the only)

³⁵ Ibid.

³⁶ Ibid.

way to obtain a *propiska* was through familial bonds.³⁷ Relocating in order to move in with one's family was in fact allowed by *propiska* law.

The need for a *propiska* also depended on the length of the stay in the new location. The briefest movements, that is those which resulted in a stay shorter than three days in the new location did not warrant any registration procedure. On the other hand, for medium length stays, those between three and forty-five days, citizens needed to notify the authorities and obtain a temporary registration. Finally for long stays, that exceeded forty-five days, a new *propiska* was needed: that meant annulling the original *propiska* by formally carrying out the aforementioned procedure of *vipiska* and proceeding to create a new one in the new place of residence.³⁸

The final provisions, and the most impactful changes, were introduced during the perestroika, when Gorbachev abolished the *propiska* altogether. In fact, the *propiska* was recognised to be restrictive of the right of freedom of movement by the USSR Constitutional Supervision Committee, and thus being in contrast with basic human rights.³⁹

1.2 Post-Soviet Geopolitical Landscape and the Freedom of Movement

Following the fall of the USSR, the population of the former Soviet Union found itself in a complicated position, shifting from being citizens of one large federal state to citizens of newly independent republics. The borders that the population was familiar with were no longer the same, nor was their ability to cross them. Many found themselves away from their homeland, as it was not unusual: in 1989 10,6% of USSR

³⁷ Resolution of the Council of Ministers of the USSR of 08/28/1974 No. 677

³⁸ Matthews, *M. Passport and Residence Controls in the Soviet Union*, National Council for Soviet and East European Research, 1991.

³⁹ Decision of the Committee of Constitutional Supervision of the USSR of October 26, 1990 N 11 (2-1) "On legislation on registration of citizens" <https://base.garant.ru/183584/>

inhabitants resided in a republic different from where they were born.⁴⁰ This meant that once these republics became independent the citizens were faced with the decision of whether or not to move back to the location of their origin. The next paragraphs will explore the ways in which the republics of the former Soviet Union were able to maintain some degree of freedom of movement among each other and how this transition took place. To analyse this, it is important to look at the forms of regional integration in the area and their character.

1.2.1 Commonwealth of Independent States (CIS)

With the dissolution of the Soviet Union, the main regulator of post-soviet relationships was the Commonwealth of Independent States (CIS), both on the matter of norms related to the freedom of movement and overall. In fact, the CIS was set up contemporarily to the termination of the USSR with the objective of creating a connection between former Soviet Republics, despite the inevitable dissolution of the USSR. An agreement (the Belovezha Accords, or Agreement Establishing the Commonwealth of Independent States) was first signed by Russia, Ukraine, and Belarus, that established the CIS and declared the dissolution of the USSR at the same time.⁴¹ The agreement was then signed by Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Tajikistan, and Uzbekistan, and two years later by Georgia.

The objectives of the Commonwealth are, as stated in the agreement:

- *achieving cooperation in political, economic, environmental, humanitarian, cultural and other fields;*

⁴⁰ Choudinovskikh, O. Denisenko M. *Migration between CIS countries*, in XIV Апрельская международная научная конференция по проблемам развития экономики и общества: в 4-х книгах. Книга 2 (XIV Aprel'skaja mezdunarodnaja naucnaja konferencija po problemam razvitija ekonomiki i obschestva: v 4-kh knjigax. Kniga 2), НИУ ВШЭ (Niu Vše), 2014, pp. 151 - 162.

⁴¹ Article 5 of The Agreement on Creation of Commonwealth of Independent States

- *comprehensive and balanced economic and social development of the member states within the framework of the common economic space, interstate cooperation and integration;*
- *ensuring human rights and fundamental freedoms in accordance with generally recognized principles and norms of international law and OSCE documents;*
- *cooperation between member states in ensuring international peace and security, implementation of effective measures to reduce arms and military expenditures, eliminate nuclear and other types of weapons of mass destruction, achieve general and complete disarmament;*
- *assistance to citizens of the member states in free communication, contacts and movement in the Commonwealth;*
- *mutual legal assistance and cooperation in other spheres of legal relations;*
- *peaceful settlement of disputes and conflicts between the states of the Commonwealth.*⁴²

These objectives delineate an image of autonomy for the single countries, but still maintain a strong common thread of cooperation. The CIS never actually had effective supranational powers, and the agreements that the Member States had to sign were limited in number. Not even the CIS Charter was compulsory to sign, which led the organization distinguished between members (those who have ratified the treaty) and associates (those who did not) for this reason. Member States refused most of the agreements proposed, an action that was possible specifically due to this lenient structure.⁴³

With regards to freedom of movement, the CIS presents provisions that showed themselves to be more open than those that had existed during the soviet period. In 1992 the then 12 members of the CIS signed the Bishkek Agreement on Free Movement of Citizens of CIS States. This agreement granted to the citizens of any of the parties to the

⁴² Article 2 of The Agreement on Creation of Commonwealth of Independent States

⁴³ Vinokurov, E. Ju. Introduction to the Eurasian Economic Union. Palgrave Macmillan, 2018.

Agreement to move to all the territories of the other parties.⁴⁴ The first Article states, in fact, that:

Citizens of the Parties have the right to drive, leave and move on the territory of the Parties without visas in the presence of the documents proving their identity or confirming their nationality.

The procedure for entrance, departure and movement of the foreign citizens and stateless persons who are constantly living in the territory of the Parties is regulated by the legislation of each of the Parties.

By the national legal system of the Parties introduction of restrictions for movement on their territory of the citizens of the Parties, foreign citizens and stateless persons mentioned above can be provided.⁴⁵

The flexible freedom of movement laws in the CIS launched a migration flux of resettlements: 92 percent of all immigrants inside the CIS territory came from other post-soviet countries and 75 percent of emigrants moved to post soviet countries as well, with Russia being the largest destination.⁴⁶

This large influx of migrants became an issue in 2000, when the Russian Federation decided to withdraw from the Bishkek agreement.⁴⁷ In the official statement, the reason given for this decision was the aim to prevent criminal activity such as terrorism, drug trafficking and organised crime.⁴⁸ Regardless of that, this was perceived as a political

⁴⁴ Soglashenie o bezvizovom peredvizhenii grazhdan gosudarstv SNG po territorii ego uchastnikov ot 9 octyabrya 1992 goda (Agreement on Visa-free Movement of Citizens of the CIS Members within the CIS of the 9 October 1992)

⁴⁵ Agreement on visa-free movement of citizens of the states of the Commonwealth of Independent States on the territory of his participants

⁴⁶ Choudinovskikh, O. Denisenko, M. *Migration between CIS countries*, 2014

⁴⁷ *Russia: Withdrawal from CIS Accord Has Political Motives*, Radio Free Europe/Radio Liberty, 09/09/2000

<https://www.rferl.org/a/1094679.html> Last accessed on 20 February 2022

⁴⁸ Ibid.

move, aimed at developing a better control over the relations with the individual CIS countries. This perception was supported by the fact that following this decision, Russia's Foreign Affairs Ministry announced that the country would have negotiated agreements with the individual members of the CIS.⁴⁹ The tense relations Russia already had with Ukraine and Georgia at the time may have also factored in this decision, that put a strain on the confidence for CIS success in continuing the path of regional integration. The organization, already weak in its premises, seemed unable to fulfil its objectives because of their general nature.

1.2.2 After 2000

In 2000, the same year in which Russia left the Bishkek Agreement, the Eurasian Economic Community (EurAsEc) was established⁵⁰: it was composed of Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan.⁵¹ The main goal of the EurAsEc was to operate as a customs union. This idea has long been proposed and imagined: the economic cooperation between post-soviet countries has always been a matter of interest. In fact, the foundation of the EurAsEc was followed by the signing of the Agreement on the creation of a single customs territory and the formation of a Customs Union⁵².

As a consequence of Russia's abandonment of the Bishkek norms, an agreement was concluded between Russia and each one of the EurAsEc signatories, allowing all

⁴⁹ Bernstein, J. Socor, V. Foye, S. *Russia withdraws from visa-free travel agreement*, Monitor, Volume: 6 Issue: 163, 2000.

<https://jamestown.org/program/russia-withdraws-from-visa-free-travel-agreement/> Last accessed on 20 February 2022

⁵⁰ Agreement on the Foundation of the Eurasian Economic Community, Worldbank

<https://wits.worldbank.org/GPTAD/PDF/archive/EAEC.pdf>

⁵¹ Vinokurov, E. Ju. *Introduction to the Eurasian Economic Union*. Palgrave Macmillan, 2018.

⁵² This was a major shift from the soviet conception of citizenship and the procedures to obtain it, and had started to be developed already by the end of the USSR

signatory nationals to travel to Russia without a visa and vice versa.⁵³ Armenia, the only current EAEU country that was not a member of the EurAsEc at the time, was nevertheless significantly tied to Russia in its international policies, and signed a bilateral agreement with the Russian Federation allowing visa-free travel for up to 90 days.⁵⁴

The withdrawal from the Bishek agreement was not the only news for Russia. In 2002 a change in citizenship legislation occurred in the country. In 1991 the Russian Federation had introduced a complex citizenship law that prevented many Russian-based former citizens of the USSR from obtaining citizenship.⁵⁵ The new law introduced in 2002 (Nr. 62-FZ) was even harsher, placing former USSR citizens in the same category as any other foreigner, and depriving them of the advantages they previously held.⁵⁶ People found themselves in a position of being illegal immigrants in their native country: from one side they were no longer protected by the legislation, from the other the naturalization process that would have allowed them to gain more rights was made more difficult by the same law.

1.3 Freedom of movement of labour in the EAEU

The next section will serve as an illustration of the Eurasian Economic Union. For this purpose, it contains a brief introduction to the formation and evolution of the Union, the structure of the Bodies that it is composed of, and the structure of its treaty. Once these

⁵³ Agreement between the Government of the Republic of Belarus, the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic, the Government of the Russian Federation, and the Government of the Republic of Tajikistan on mutual visa-free travel of citizens, Minsk, November 30, 2000.

⁵⁴ Agreement Between the Government of the Russian Federation and the Government of the Republic of Armenia on mutual visa-free trips of citizens of the Russian Federation and citizens Republic of Armenia

⁵⁵ Salenko, A. Report on Russia, EUDO Citizenship Observatory, 2012

⁵⁶ Federal Law No. 62-FZ of 31 May 2002 "On Citizenship of the Russian Federation"

factors are clear, it will proceed to delve into the details of the current legislation regarding freedom of movement on its territory.

1.3.1 History of the EAEU

The formation of the Eurasian Economic Community is the culmination of a two-decade long process of economic integration in the region. We can see the beginning of this process in 1995, when Belarus, Kazakhstan and the Russian Federation signed the Treaty on the Customs Union. The main objective of this treaty was to establish free economic cooperation between the countries, free trade and fair competition in order to encourage development. On February 26, 1999, the presidents of Belarus, Kazakhstan, the Kyrgyz Republic, the Russian Federation and Tajikistan signed the Treaty on the Customs Union and Single Economic Space.⁵⁷ One year later, in order to realise their goal, these countries founded the Eurasian Economic Community (EurAsEc)⁵⁸, which would eventually lead to the EAEU. The idea of creating a Eurasian Union was already circulating and being discussed in informal meetings ever since 1994⁵⁹. In 2003 Belarus, Kazakhstan, Russia and Ukraine signed a Treaty on a Single Economic Space and in 2007⁶⁰, the same countries minus Ukraine signed an agreement to create a Customs Union.⁶¹ The Eurasian Customs Union was effectively created on 1 January 2010, while on 1 January 2012 the Eurasian Economic Space was established with the mention of free movement of capital and labour and the foundation of the Eurasian Economic Commission.⁶² After more negotiations, the Treaty on the Eurasian Economic Union was signed on May 29, 2014 by the Presidents of Belarus, Kazakhstan and Russia. October 10, 2014, Armenia signed the Agreement on Accession to the EAEU, and on December 23, 2014 the Kyrgyz Republic signed it as well. The EAEU treaty officially entered into force on 1 January 2015, giving origin to the Union.

⁵⁷ Treaty on the Customs Union and Single Economic Space

⁵⁸ Agreement on the Foundation of the Eurasian Economic Community

⁵⁹ Vinokurov, E. Ju. Introduction to the Eurasian Economic Union. Palgrave Macmillan, 2018.

⁶⁰ Agreement on Customs Union (soglasheniye o tamozhennom soyuze)

⁶¹ Agreement on the creation of the Common Economic Space (soglasheniye po sozdaniyu yedinogo ekonomicheskogo prostranstvo)

⁶² Agreement on the Eurasian Economic Commission

1.3.2 Structure of the EAEU

The EAEU is composed of four bodies: the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Eurasian Economic Commission, and the Court of the Eurasian Economic Union. Most of these bodies are the bodies of the Single Economic Space that were retained.

The Supreme Eurasian Economic Council is the highest body of the EAEU. It is composed by the heads of state of the member states and all the decisions are taken by consensus.⁶³ The Supreme Council holds meetings at least once a year and it has got multiple powers in several areas: it regulates the composition and powers of the other bodies of the EAEU, such as the commission, and it can also establish new ones; it manages the budgetary questions; it appoints the judges of the Court; it is responsible of the relations of the Union with third countries.⁶⁴

The Eurasian Intergovernmental Council is composed of the heads of the government of the member states.⁶⁵ The intergovernmental council meets at least twice a year, and a chairman is appointed.⁶⁶ The Intergovernmental Council shall ensure that the Treaty is implemented and control its performance, as well as to consider issues that did not reach consensus in the Commission or to suspend decisions of the Council or the Board of the Commission.⁶⁷

The Commission of the Eurasian Economic Union is composed of a Council and a Board: decisions in the Council are taken by consensus, while those in the Board require a qualified majority. The Council is made up of Government Officials of each of the

⁶³ Article 10 of the Treaty on the Eurasian Economic Union

⁶⁴ Article 12 of the Treaty on the Eurasian Economic Union

⁶⁵ Article 14 of the Treaty on the Eurasian Economic Union

⁶⁶ Article 15 of the Treaty on the Eurasian Economic Union

⁶⁷ Article 16 of the Treaty on the Eurasian Economic Union

Member States, the Board, instead has the presence of commissioners independent from the government, two for each Member State. The Commission issues decisions, dispositions and recommendations on the suggestion of the Supreme Council, that presents a list of topics to discuss.⁶⁸

The Court of the Eurasian Economic Union is the permanent judicial body of the Union.⁶⁹ It is composed of ten judges appointed by the Supreme Council on the proposal of the member states, two from each, with a mandate of 9 years. A Chairman and Deputy Chairman is elected, they must be nationals of different states and they both have a mandate of three years. The role of the Court is to resolve disputes related to the implementation of the Treaty of the EAEU, of international treaties within the EAEU, and of decisions of the Bodies of the Union. It can do so at the request of a Member State or of an economic entity. Member States present disputes on compliance of an international treaty within the Union, observance of the Treaty, and on compliance regarding decisions of the Bodies of the Union.⁷⁰

1.3.3 Treaty on the EAEU

The Treaty on the EAEU is the most important legal document of the Union: it is composed of 118 articles divided in four parts and has 33 appendices.

The first part is introductory, and it is divided into four sections. The main aspects covered by this section are the general provisions about the EAEU (establishing the legal personality, the terms and the definitions), the basic principles, main objectives, jurisdiction and law, describing the bodies of the union and the budget.⁷¹

Part two centres around the Customs Union within the EAEU. It starts with a section on information exchange and statistics, then proceeds to illustrate the functioning of the

⁶⁸ Article 18 of the Treaty on the Eurasian Economic Union

⁶⁹ Article 19 of the Treaty on the Eurasian Economic Union

⁷⁰ Appendix

⁷¹ Treaty on the Eurasian Economic Union

Customs Union, addresses the regulation and circulation of medical products as well as sanitary quarantine measures. It goes on to describe the foreign trade policy, illustrates the principles of technical regulation and consumer protection.⁷²

Part three is about the Single Economic Space within the Union, and it is the most interesting for the purpose of this research. The first sections deal with regulating macroeconomic and monetary policy in order to ensure balanced growth. The following ones focus on the financial aspect, tackling trade in services, incorporation, activities and investments, regulating financial markets and taxation, other topics covered are the rules of competition, natural monopolies, energy industry, transport, state procurement, intellectual property, manufacturing industry, agricultural sector, and finally, labour migration, which will be discussed in detail.⁷³

Part four is the final part that formally concludes the treaty, and as such, focuses on transitional and final provisions such as ones about entry into force, reservations, and withdrawal.⁷⁴

1.3.4 Labour Migration in the EAEU

The EAEU allows for the freedom of movement of goods, services, capital and labour and the labour migration is regulated by Part 3, Section XXVI of the Treaty on the EAEU: the rights and regulations regarding migrant workers are listed in the articles 96, 97 and 98 of the Treaty. They partially use the previous legislation as a starting point, referencing measures already in place such as registration and migration cards, and introduce some improvements or new labour right and conditions for migrant workers, covering the essentials but not detailing too deeply. Importantly, they leave some manoeuvring room to national legislation as well, and the importance of national governments over EAEU legislation will be addressed more in detail further on in this thesis. With all of this in mind, let us analyse the content of these articles.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

Article 96 is about the cooperation of the member states in the sphere of labour migration and sets the tone for the subsequent provisions. It is an introductory article that encourages Member States to collaborate and sets some ground criteria for how to do it. Paragraph 3 is perhaps the most interesting, and it lists the ways in which member states shall apply this cooperation, that are the following:

- 1) *agreement of common principles and approaches in the sphere of labour migration;*
- 2) *exchange of regulatory legal acts;*
- 3) *exchange of information;*
- 4) *implementation of measures aimed at preventing the spread of false information;*
- 5) *exchange of experiences, internships, seminars and training courses;*
- 6) *cooperation in the framework of advisory authorities.*⁷⁵

Paragraph 4 states that other forms of cooperation are possible, with the consent of all parties involved. This article also defines the terms used, such as *state of entry, state of employment, customer, migration card, employer, social security, employment, worker of a Member State and family member.*⁷⁶

⁷⁵ Article 96(3) of the Treaty on the Eurasian Economic Union

Original text: Сотрудничество государств-членов в сфере трудовой миграции в рамках Союза осуществляется в следующих формах: 1) согласование общих подходов и принципов в сфере трудовой миграции;
2) обмен нормативными правовыми актами;
3) обмен информацией;
4) реализация мер, направленных на предотвращение распространения недостоверной информации;
5) обмен опытом, проведение стажировок, семинаров и учебных курсов;
6) сотрудничество в рамках консультативных органов.

⁷⁶ Ibid.

Article 97 is *Employment of Workers of the Member States*. It gives some indications and guidelines for the actions of the workers and employers. These guidelines are not overly specific, but they do provide for a general overview of what the Union is attempting to achieve.

Firstly, the article states that workers from the Member States may be employed regardless of the national market protection limitations, and that member states are not allowed to impose limitations of this sort, with the exception of sectors of strategic importance that may threaten national security and order.⁷⁷ This norm has not always been easy to implement because of the tendency of the countries to lean towards conservative policies to advantage their nationals. One of the cases that emerged, as an example of this, is that of professional athletes: because of an instance in which the Russian Federation preferred its nationals over Armenian basketball players, the EAEU Court, at the request of the EAEU Commission, clarified that athletes are included in article 97(2)⁷⁸

Another important aspect that the article also addresses is related to education. Indeed, it provides some degree of equalization in terms of recognition of schooling, as it grants that the official certificates attesting the education of a worker must be recognized in all Member States, without the need for further confirmation procedures. Nonetheless, that is not valid for all fields, it in fact specifies that the workers applying for educational, legal, medical or pharmaceutical spheres are not exempt from the confirmation procedure.⁷⁹ It can be inferred that the formal aspect of recognition of educational

⁷⁷ Article 97 of the Treaty on the Eurasian Economic Union

⁷⁸ Official website of the Eurasian Commission

<http://www.eurasiancommission.org/en/nae/news/Pages/11-12-2018-1.aspx> Last accessed on February 2022

⁷⁹ Article 97(3) of the Treaty on the Eurasian Economic Union

Original text: В целях осуществления трудящимися государств-членов трудовой деятельности в государстве трудоустройства признаются документы об образовании, выданные образовательными организациями (учреждениями образования, организациями в сфере образования) государств-членов, без проведения установленных законодательством государства трудоустройства процедур признания документов об образовании. Трудящиеся одного

certificates is made simpler by the diffusion of the Russian language in all Member States. However, if the language was to represent an issue, a translation of the documents may be asked.⁸⁰

The article delineates the duration of the stay next, by defining its limits. The criteria are coherent with the nature of the stay, that is strictly related to work. The duration shall therefore depend on the length of an employment contract of the worker and in most cases expires as soon as the contract does. This condition is extended to the family members of the worker as well.⁸¹ The article also sets in place some provisions to simplify the administrative procedures for the movement of EAEU workers, that can be a relevant factor in the facilitation of safe and legal movement. It in fact mentions registration, that is generally in place for citizens of CIS Member States, in the first 30

государства-члена, претендующие на занятие педагогической, юридической, медицинской или фармацевтической деятельностью в другом государстве-члене, проходят установленную законодательством государства трудоустройства процедуру признания документов об образовании и могут быть допущены соответственно к педагогической, юридической, медицинской или фармацевтической деятельности в соответствии с законодательством государства трудоустройства. Translation In order to enable workers of the Member States to conduct labour activities in the state of employment, education certificates issued by educational organisations (educational institutions, organisations in the sphere of education) of the Member States shall be recognised without carrying out by the state of employment the procedures of recognition of education certificates determined by their legislation. Workers of a Member State applying for employment in educational, legal, medical or pharmaceutical spheres in another Member State shall undergo the procedure of recognition of education certificates determined by the legislation of the state of employment and shall be admitted to such educational, legal, medical or pharmaceutical activities in accordance with the legislation of the state of employment.

⁸⁰ Ibid.

⁸¹ Article 97(5) of the Treaty on the Eurasian Economic Union

Original text: Срок временного пребывания (проживания) трудящегося государства-члена и членов семьи на территории государства трудоустройства определяется сроком действия трудового или гражданско-правового договора, заключенного трудящимся государством-членом с работодателем или заказчиком работ (услуг). Translation: The period of temporary stay (residence) of a worker of a Member State and his/her family members on the territory of the state of employment shall depend on the duration of an employment contract or a civil law contract concluded by the worker with the employer or customer of works (services).

days of entry Nationals and their family members do not have an obligation to register themselves with the authorities. After this period has passed, the registration must occur in compliance with the national law of the state of entry.⁸²

Another bureaucratic advantage granted to the citizens of the EAEU is that workers are not required to use migration cards (that are otherwise compulsory) if their stay in the country is no longer than 30 days. The migration card is a document that contains information about a foreign citizen or stateless person entering or arriving in the Russian Federation, the Republic of Kazakhstan or the Republic of Belarus and the period of their temporary stay in the country, confirming the right to enter and remain there, and it serves as a form of control for temporary stays.⁸³ The Treaty defines them as “a document containing information about a national of a Member State entering the territory of another Member State used for registration and control of his/her temporary stay on the territory of the state of entry”.⁸⁴ The EAEU citizen is obliged to cross the border by simply presenting a valid ID document instead. For stays longer than 30 days a migration card shall be asked depending on the national legislation of the country of destination.⁸⁵ In the case of an early termination of the contract, the worker may stay in

⁸² Article 97(6) of the Treaty on the Eurasian Economic Union

Original text: Граждане государства-члена, прибывшие в целях осуществления трудовой деятельности или трудоустройства на территорию другого государства-члена, и члены семей освобождаются от обязанности регистрации (постановки на учет) в течение 30 суток с даты въезда. В случае пребывания граждан государства-члена на территории другого государства-члена свыше 30 суток с даты въезда, эти граждане обязаны зарегистрироваться (встать на учет) в соответствии с законодательством государства въезда, если такая обязанность установлена законодательством государства въезда. Translation: Nationals of the Member States entering the territory of another Member State for employment and their family members shall be exempt from the obligation to register within 30 days from the date of entry. If a national of a Member State stays on the territory of another Member State for more than 30 days from the date of entry, this national shall be required to register in accordance with the legislation of the state of entry, if such a requirement is determined by the legislation of the state of entry.

⁸³ Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation". Chapter I. General Provisions (Art. 1 - 15.1). Garant. Last Accessed on 20 February 2022.

⁸⁴ Article 96(5) of the Treaty on the Eurasian Economic Union

⁸⁵ Article 97(7) of the Treaty on the Eurasian Economic Union

the country for 15 more days in order to find a new contract, but only if the loss of the job happens within 90 days from when the individual has entered the country.⁸⁶

Article 98 is centred around the rights and obligations of the workers of the Member States of the Union. It includes more specific provisions about what the workers may and must do, as well as some norms for the employers. Overall, its main feature is that it often equates EAEU migrant workers to local ones regarding what rights are accessible to them and on the working conditions. The main points that are relevant to analyse are several, so the interesting sections of the article will be broken down next. Firstly, the article states that a worker from a Member State is entitled to be employed in compliance with their specialization and qualifications, according to their education certificates that testify it and are recognized by the treaty and the state of employment.⁸⁷

Original text: Граждане государства-члена при въезде на территорию другого государства-члена в случаях, предусмотренных законодательством государства въезда, используют миграционные карты (карточки), если иное не предусмотрено отдельными международными договорами государств-членов. Translation: Nationals of the Member States, when entering the territory of another Member State in cases provided for by the legislation of the state of entry, shall use migration cards, unless otherwise provided for by international treaties of the Member States.

⁸⁶ Article 97(9) of the Treaty on the Eurasian Economic Union

Original Text: В случае досрочного расторжения трудового или гражданско-правового договора после истечения 90 суток с даты въезда на территорию государства трудоустройства трудящийся государства-члена имеет право без выезда с территории государства трудоустройства в течение 15 дней заключить новый трудовой или гражданско-правовой договор. Translation: In the event of early termination of an employment contract or a civil law contract after the expiry of 90 days from the date of entry into the territory of the state of employment, the worker of a Member State shall be entitled, without departure from the territory of the state of employment, to enter into a new employment contract or a civil law contract within 15 days.

⁸⁷ Article 98(1) of the Treaty on the Eurasian Economic Union

Original Text: Трудящийся государства-члена имеет право на занятие профессиональной деятельностью в соответствии со специальностью и квалификацией, указанных в документах об образовании, документах о присуждении ученой степени и (или) присвоении ученого звания, признаваемых в соответствии с настоящим Договором и законодательством государства трудоустройства. Translation: A worker of a Member State shall be entitled to engage in professional activities in accordance with their specialisation and qualifications specified in their certificates of education and documents on awarding a scientific and/or academic degree, to be recognised in accordance with this Treaty and the legislation of the state of employment.

Another point clarified is that the workers of the Union and their family members are allowed to possess property, use it, protect it, and dispose of it. They also have the right to transfer their funds freely.⁸⁸

Social security, a relevant topic, is also addressed: workers and their families are entitled to the same social security conditions as the nationals of the state of employment.⁸⁹ These refer to compulsory insurance against temporary disability and maternity insurance, compulsory insurance against occupational accidents and diseases and compulsory health insurance.⁹⁰ The article makes a point to explicitly exclude pensions from this right, but the situation has evolved in the last few years: there have been frequent discussions on the topic of pensions from the Member States, and a clear

⁸⁸ Article 98(2) of the Treaty on the Eurasian Economic Union

Original text: Трудящийся государства-члена и члены семьи осуществляют в порядке, установленном законодательством государства трудоустройства, право: 1) на владение, пользование и распоряжение своим имуществом; 2) на защиту собственности; 3) на беспрепятственный перевод денежных средств. Translation: In accordance with the procedure determined by the legislation of the state of employment, workers of a Member State and their family members shall exercise the rights to: 1) possess, use and dispose of their property; 2) protection of property; 3) free transfer of funds.

⁸⁹ Article 98(3) of the Treaty on the Eurasian Economic Union

Original text: Социальное обеспечение (социальное страхование) (кроме пенсионного) трудящихся государств-членов и членов семей осуществляется на тех же условиях и в том же порядке, что и граждан государства трудоустройства. Трудовой (страховой) стаж трудящихся государств-членов засчитывается в общий трудовой (страховой) стаж для целей социального обеспечения (социального страхования), кроме пенсионного, в соответствии с законодательством государства трудоустройства. Пенсионное обеспечение трудящихся государств-членов и членов семьи регулируется законодательством государства постоянного проживания, а также в соответствии с отдельным международным договором между государствами-членами. Translation: Social security (social insurance) (except pensions) of workers of the Member States and their family members shall be ensured on the same conditions and in the same manner as those of the nationals of the state of employment. Employed (pensionable) service of workers of the Member States shall be included in the total employed (pensionable) service for the purposes of social security (social insurance), except for pensions, in accordance with the legislation of the state of employment. Pension benefits of workers of the Member States and their family members shall be governed by the legislation of the state of permanent residence, as well as by an international treaty between the Member States.

⁹⁰ Article 96(5) of the Treaty on the Eurasian Economic Union

desire to establish a common pension fund has been evident. The pension issue, in fact, has been finally addressed and the Eurasian Economic Commission developed the agreement on the provision of pensions to workers of the EAEU countries. The agreement was signed by the heads of the EAEU states on December 20, 2019 and was ratified by all EAEU Countries by January 1, 2021. Its objective is the structuring and implementation of EAEU labour migrant workers' pension rights on the same conditions as citizens of the state of employment.⁹¹

Another important factor is healthcare, that is contained in annex 30. Overall workers and their families are entitled medical care, in fact it states that:

*The state of employment shall provide medical treatment to workers of the Member States and members of their families in accordance with the procedure and under the conditions that are determined by the legislation of the state of employment and by international treaties.*⁹²

*Emergency medical care and rescue emergency care shall be provided to workers of the Member States and their family members by medical organisations of the state and municipal healthcare systems of the state of employment free of charge, regardless of the availability of a health insurance policy.*⁹³

The worker is entitled to an array of labour rights, such as that of being able to join trade unions with the same conditions as the nationals of the Member State of employment.⁹⁴ The worker is furthermore entitled to be fully informed on their occupation, and therefore to receive details about the conditions of their employment and have access to the legislation regarding their rights and obligations. In relation to

⁹¹ Agreement on Pension Provision of Workers of the EAEU Member States

⁹² Annex 30 of the Treaty on the Eurasian Economic Union

⁹³ Annex 30 of the Treaty on the Eurasian Economic Union

⁹⁴ Article 98(5) of the Treaty on the Eurasian Economic Union

Original text: Трудящийся государства-члена имеет право вступать в профессиональные союзы наравне с гражданами государства трудоустройства. Translation: A worker of a Member State shall be entitled to join trade unions on a par with the nationals of the state of employment.

that, the worker has a right to obtain a certificate containing relevant information about their employment.⁹⁵

The inclusion of family members in the provisions of the article also accounts for potential young children of the worker. Their right to formation is also considered, in fact they may receive education and attend pre-school according to the laws of the Member State of employment.⁹⁶

On the side of the obligations of the worker, it is stated that the individual must respect the legislation of the state of employment, as well as culture and traditions of the people.⁹⁷ It is interesting to note the mention of culture and traditions, as the rest of the section is practical and technical, we can see a concept of cultural integration side by side the economic one.

⁹⁵ Article 98(6) of the Treaty on the Eurasian Economic Union.

Original text: Трудящийся государства-члена имеет право на получение от государственных органов государства трудоустройства (к компетенции которых относятся соответствующие вопросы) и работодателя (заказчика работ (услуг)) информации, касающейся порядка его пребывания, условий осуществления трудовой деятельности, а также прав и обязанностей, предусмотренных законодательством государства трудоустройства. Translation: A worker of a Member State shall be entitled to receive from the state authorities of the state of employment (having the respective jurisdiction) and the employer (customer of works (services)) any information relating to the conditions of his/her stay and employment, as well as the rights and obligations provided for by the legislation the state of employment.

⁹⁶ Article 98(8) of the Treaty on the Eurasian Economic Union

Children of a worker of a Member State residing together with the worker on the territory of the state of employment shall be entitled to attend pre-school institutions and receive education in accordance with the legislation of the state of employment.

⁹⁷ Article 98(9) of the Treaty on the Eurasian Economic Union.

Original text: Трудящиеся государства-члена и члены семей обязаны соблюдать законодательство государства трудоустройства, уважать культуру и традиции народов государства трудоустройства, нести ответственность за совершенные правонарушения в соответствии с законодательством государства трудоустройства. Translation: Workers of a Member State and their family members shall be required to comply with the legislation of the state of employment, respect the culture and traditions of the people of the state of employment, and be liable for offences under the legislation of the state of employment.

Finally, taxation is briefly addressed by stating that the income earned by the worker in their employment state is taxable according to international treaties.⁹⁸

Overall, the articles in the charter outline a baseline idea of the direction taken regarding freedom of movement of labour. The legislation is now evolving via provisions of the EAEU and a more critical analysis of the pros and cons of the legislation will be carried out in the last chapter.

⁹⁸ Article 98(10) of the Treaty on the Eurasian Economic Union

Original Text: Доходы трудящегося государства-члена, полученные им в результате осуществления трудовой деятельности на территории государства трудоустройства, подлежат налогообложению в соответствии с международными договорами и законодательством государства трудоустройства с учетом положений настоящего Договора. Translation: Income of workers of a Member State generated as a result of employment in the state of employment shall be taxable in accordance with international treaties and legislation of the state of employment subject to the provisions of this Treaty.

Chapter 2

Freedom of Movement of Persons in the European Union and the European Economic Area

The European Union is a prime example of successful regional integration in most matters, but especially when it comes to an area of free movement for its inhabitants, so it is impossible to not address it when looking at the state of affairs of the EAEU. This chapter will analyse the evolution and current state of the freedom of movement in the European Union legal system. Starting from the bases for the foundation of the EU to its freedom of movement. First a brief history of the European Union will be outlined, underlying then its journey towards freedom of movement and what steps were crucial to its achievement,⁹⁹ and which ones are still relevant for how the situation is in the present day. Subsequently, the pertinent legislation on the matter will be presented in detail, and ultimately a small parenthesis on the Schengen area will highlight its full functions and characteristics, as well as the differences from the workers' rights and freedoms.

⁹⁹ The historical outline presented focuses on events and steps relevant to the scope of this thesis. For a more comprehensive and extensive history of the European Union, the following books are recommended and were consulted:

McCormick, John. *Understanding the European Union: A Concise Introduction*. 7th edition, Palgrave Macmillan, 2017.

Ziller, Jaques. *Advanced Introduction to European Union Law*, Cheltenham, Edward Elgar Publishing
Schütze, Robert, *European Union Law*, 2 nd Ed., Cambridge, CUP, 2018

Schütze, Robert. *An Introduction to European Law*. 3rd ed., Oxford University Press, 2020. Hodson, D., & Peterson, J. (Eds.). (2017).

The institutions of the European Union. Oxford University Press. Kenealy, D., Peterson, J. and Corbett, R. (Eds.) (2018)

The European Union: How does it work? Fifth Edition. Wallace, H., Pollack, M. A., & Young, A. R. (Eds.). (2020) *Policymaking in the European Union*. 8th edition. Oxford University Press.

Other sources include the Treaty of Rome, the Treaty on the European Union, the Treaty on the Functioning of the European Union

2.1 The European Union

The next paragraph will trace a brief outline of the steps leading to the formation of the European Union, especially focusing on its journey towards freedom of movement of persons and its importance since the beginning of the integration project. We will identify where the Union had its start and how it developed, throughout the analysis of norms and measures taken for its implementation.

2.1.1 History of the EU

After the end of the Second World War, a desire for cooperation materialized and solidified itself in Europe. It was recognized that to avoid future conflicts practical steps needed to be taken collectively. There was a recognised need to prevent more nationalism, to programme post-war economic development and stability and to achieve security, especially regarding the situation of Europe in the context of the Cold War.¹⁰⁰ Europe found itself witnessing the interaction between two major global powers, the Soviet Union and the United States and necessitated to affirm itself and find regional support in order to hold its ground.¹⁰¹ The goal was to create a supranational entity rather than an intergovernmental one, and to make future conflicts not only undesirable, but materially impossible.

On 18 April 1951 Belgium, France, Italy, Luxemburg, The Netherlands, and Western Germany signed the Treaty of Paris, creating the European Coal and Steel Community (ECSC).¹⁰² The cooperation in the fields of coal and steel was proving itself to be promising, which pushed the member states to look for new ways of integration. In 1957, after lengthy negotiations, the Treaty of Rome was signed, giving origin to the European Economic community (EEC).¹⁰³ The main objectives of the EEC were: the

¹⁰⁰ McCormick, John. *Understanding the European Union: A Concise Introduction*. 7th edition, Palgrave Macmillan, 2017. Pages 56 - 63

¹⁰¹ Ibid.

¹⁰² Treaty establishing the European Coal and Steel Community

¹⁰³ Treaty of Rome

creation of a common market; gradual removal of restrictions on internal trade; the introduction of a common external tariff for the Member States; free movement of goods, service and people within the EEC; common transport and agricultural policies; the creation of a European Social Fund and a European Investment Bank.¹⁰⁴ This was not the first time that freedom of movement of persons in the European area was discussed, but it was the first concrete and legal step towards it. It was significant as it laid the initial significant groundwork that formed the roots of what the free movement of persons is currently.

In the following decades the European Union underwent a significant expansion in the number of its members. In 1986 the Single European Act was signed. Its main goals were to achieve the steps necessary for a single market by 1992. This implied creating an area without physical or formal barriers, and allowing the free movement of goods, services, and people.¹⁰⁵ Finally the promise of free movement of labour seemed to be materialising in a practical manner. In 1989 the Charter of Fundamental Social Rights for Workers promoted the free movement of workers among other issues.¹⁰⁶ Finally in 1991 the Maastricht treaty was signed and once again stressed the importance of achieving freedom of movement for workers of the Union.

2.1.2 Road towards Freedom of movement of persons

The free movement of individuals has been a fundamental goal of the European project since its very beginning. The first aim European integration as of the Treaty of Rome was that of economic development, and freedom of movement was also developed in that perspective, with the goal of allowing work to circulate across borders. That is why the focus was primarily on the free movement of workers in the area, which was introduced alongside the free movement of goods, services, and capital in the Treaty of Rome. Article 3, in fact, called for “the abolition, as between Member States, of

¹⁰⁴ Ibid.

¹⁰⁵ Single European Act

¹⁰⁶ Charter of Fundamental Social Rights for Workers

obstacles to freedom of movement for persons, services and capital”¹⁰⁷. Articles 48 to 51 addressed the workers specifically¹⁰⁸, and articles 52 to 58 were dedicated to the right of establishment, that will be addressed in the next section.¹⁰⁹ The core points of these articles are now still present in the Treaty on the Functioning of the EU (TFEU), that is in fact the present-day evolution of the Treaty of Rome.¹¹⁰

Other key pieces of legislation were acts such as directives and regulations, in fact, there is the Directive 68/360/EEC on the abolition of restrictions on movement and residence¹¹¹, that has been integrated in current legislation, and the Regulation 1612/68 on the freedom of movement of workers¹¹², the fundamental principles of which were then maintained in the directive 2004/38/EC, that has since become a fundamental guide and that will be explored in detail in next sections.

The largest evolution has been an addition to this underlying economic reasoning behind the right, in the transition from being an economic union and for that reason shaping the legislation on workers, to granting the individuals on the territory a common European citizenship, that brought along a new series of rights and liberties as well as a shared identity.

2.2 Sources of Law for the Freedom of Movement of Persons in the EU

The EU currently has a wide range of sources for the right to free movement of individuals, that each cover a different aspect of it and complement and integrate each other. The right to freedom of movement of persons is currently present in both

¹⁰⁷ Article 3 of the Treaty of Rome

¹⁰⁸ Articles 41 to 51 of the Treaty of Rome

¹⁰⁹ Articles 52 to 58 of the Treaty of Rome

¹¹⁰ Treaty on the Functioning of the European Union

¹¹¹ Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

¹¹² Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

fundamental treaties of the EU: the Treaty on the European Union (TEU), and the Treaty on the Functioning of the EU (TFEU). It is also present in multiple directives, regulations, as well as in instances of case law. We will now be looking at those that are the most salient.

Before diving into the specifics of bodies of law that are more fleshed out on the subject, let us look at two articles that broadly deal with freedom of movement as a right for all EU citizens. First, the Treaty on the European Union, addresses the issue in article 3, affirming that:

*The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.*¹¹³

The other statement worth mentioning is the one present in The Charter of Fundamental Rights of the European Union, which in the article 45 ‘Freedom of movement and of residence’ affirms:

- 1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.*
- 2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.*¹¹⁴

2.2.1 Freedom of Movement of Workers in the Treaty on the Functioning of the European Union

The TFEU is the most important document that considerably addresses freedom of movement in the EU: article 26 upholds that “the internal market shall comprise an area

¹¹³ Article 3(2) of the Treaty on European Union

¹¹⁴ Article 45 of the Charter of Fundamental Rights of the European Union

without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.”¹¹⁵ More specifically, we can say that the free movement of persons is regulated upon three axes: right of movement of the workers, right of establishment, both under freedom of labour, and rights that come with citizenship. The first refers to subordinate workers who work under an employer. The second refers to self-employed workers and businesses. The third refers to the special rights granted to the nationals of the Member States of the EU in virtue of their shared European citizenship. We will now see how each of these cases are regulated.

Workers

When delving into the TFEU articles regarding the rights of the workers within the EU the definition of “worker” must first be addressed. Given the indeterminate nature of the word and of the concept of employment, the Court of Justice of The European Union has taken it upon itself to define the term in case of controversies and not leave that liberty to the single Member States. More generally, in the Lawrie-Blum Case the definition was given of:

*That concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.*¹¹⁶

The fundamental premise that workers are allowed freedom of movement in the EU is immediately stated in article 45. The workers are also not to be discriminated against in the fields of employment, remuneration and working conditions. They have a right to work, move within the territory of the member states, stay in the state of employment,

¹¹⁵ Article 26 of the Treaty on the Functioning of the European Union

¹¹⁶ Lawrie-Blum v. Land Baden-Württemberg, Case 66/85, [1986] ECR 2121.

and remain in the state of employment for a period after the termination of said employment. The only exception to these measures lies in employment in public service, where these norms do not apply.¹¹⁷

Article 46 proceeds to declare that the European Parliament and the European Council shall ensure that measures for allowing the actualization of freedom of movement are present. This can be done by ensuring cooperation between national employment services; removing bureaucratic practices that limit or delay liberalization of movement; removing limitations or conditions that are posed on workers of other member states but not on one's state nationals; establishing methods of communication between job demand and supply between the member states, in order to achieve a balance more easily.¹¹⁸ Article 47 is focused on the integration of the younger population, and stresses that the Member States shall encourage the exchange of young workers with joint programmes.¹¹⁹ Article 48 addresses social security and states that the European Parliament and Council shall ensure to the workers the payment of benefits and the rights of aggregation (in order to allow discussion regarding said benefits) for them to achieve complete freedom.¹²⁰

Establishment

While articles 45 to 48 focus on employed workers, articles 49 to 55 cover the norms regarding self-employed individuals, that is individuals who do not work under an

¹¹⁷ Article 45 of the Treaty on the Functioning of the European Union

¹¹⁸ Treaty on the Functioning of the European Union

¹¹⁹ Article 47 of the Treaty on the Functioning of the European Union

¹²⁰ Article 48 of the Treaty on the Functioning of the European Union

employer, but instead produce goods or services independently.¹²¹ The two categories, dependent worker, and self-employed person, are mutually exclusive.¹²²

In article 49, the section immediately begins with the prohibition on the restrictions on the freedom of establishment, and sets the right of the citizens to engage in working activities as self-employed individuals.¹²³ Article 50 suggests that the Parliament and the Council shall aid this right by prioritising activities that encourage freedom of movement, ensuring cooperation between the Member States in the matter, abolishing needlessly complex administrative practices, and allowing EU nationals to buy and use land and buildings across the whole territory.¹²⁴ On the topic of facilitations, Article 53 states that diplomas, degrees and other documents attesting education or qualifications shall be recognised, where possible.¹²⁵ Just like article 45 of the previous section, article 51 also excludes activities involved with public service and the exercise of official authority, even on occasion.¹²⁶

Citizenship

Every citizen of a member state is also a citizen of the EU, which constitutes an additional citizenship to the national one and not a replacement. EU citizens are granted various movement rights on the sole basis of their citizenship, which has been a groundbreaking and so far unique introduction. This is, however, a residual right that can only

¹²¹ This section also refers to both natural and legal persons, such as firms or companies. Although present in the articles, the latter are not addressed in the text of this work as they are not fully relevant to the scope of this thesis.

¹²² Schütze, Robert. *An Introduction to European Law*. 3rd ed., Oxford University Press, 2020. Hodson, D., & Peterson, J. (2017). Page 250

¹²³ Article 49 of the Treaty on the Functioning of the European Union

¹²⁴ Article 50 of the Treaty on the Functioning of the European Union

¹²⁵ Article 53 of the Treaty on the Functioning of the European Union

¹²⁶ Article 51 of the Treaty on the Functioning of the European Union

be invoked in the case that none of the other specific cases we have seen apply to the citizen.¹²⁷

Article 21 grants to all EU citizens the right to move and reside within the territory of the Union, and underlines that the European Parliament and the Council may adopt provisions to facilitate the exercise of these rights and concerning social security or social protection.¹²⁸ The citizens have not only a right to movement and residence within the territory of the EU, but also political rights such as the right to vote and to run for elections to the European Parliament and in municipal elections of their state of residence; the right to diplomatic and consular protection and the right to use any of the official Treaty languages when addressing and receiving replies from the EU institutions.¹²⁹ The right to free movement is a fundamental citizenship right, and therefore does not depend on the economic status of a person (as opposed to labour movement rights), and can be invoked against national law. European legislation that limits disproportionately this right shall be subject to judicial review and can be nullified in light of article 21.¹³⁰

2.2.2 Freedom of Movement of Persons in EU Legal Acts

Another fundamental source of law on the matter are the many regulations and directives that were formulated on the subject of free movement and workers' rights. Three main documents are chosen to be analysed next, based on their relevance: the Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, the Regulation 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union, and the

¹²⁷ Baumbast and R v. Secretary of State for the Home Department, Case C-413/99, [2002] ECR I-7091

¹²⁸ Article 21 of the Treaty on the Functioning of the European Union

¹²⁹ Article 20 of the Treaty on the Functioning of the European Union

¹³⁰ Schütze, Robert. An Introduction to European Law. 3rd ed., Oxford University Press, 2020. Pages 251

Regulation 2019/1149 of the European Parliament and of the Council establishing a European Labour Authority.

Directive 2004/38/EC

This directive is the most detailed document on the topic of the right to free movement or residence of EU citizens and it consolidates and amends previous directives, creating a comprehensive outline. It addresses provisions regarding both EU nationals and their family members, and in doing so broadens the definition of family member, that are here listed as:

- (a) the spouse;*
- (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;*
- (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);*
- (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);¹³¹*

The right to exit and right of entry are tackled in articles 4 and 5. It is affirmed that all citizens with a valid ID or passport have the right to leave the territory of a Member State and enter the territory of another without the obligation of an entry visa or an equivalent measure.¹³² The same measures apply to their family members as well.¹³³

¹³¹ Article 3 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

¹³² Article 4 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

Article 6 addresses the length of permanence: it states that the citizens of the Union as well as the family members accompanying or joining the citizen are allowed to reside on the territory of another Member State for up to three months without further formal conditions.¹³⁴

Article 7 states that EU citizens have a right of residence if they fall into one of three macro categories described. First, if they are workers or self-employed individuals in the host State.¹³⁵ This not only applies to people currently employed, but also to former workers who are temporarily unable to work due to an accident or illness; workers who are involuntarily unemployed after more than one year of employment, or those who have registered in an employment office in search of work or are on vocational training.¹³⁶ Secondly, those who are in possession of enough resources for themselves and their family members that allow them not be a burden on the social assistance system of the host State during their period of residence, and furthermore are covered by health insurance.¹³⁷ Lastly, a citizen is allowed to remain if they are enrolled in a course of study, including vocational training.¹³⁸

¹³³ Article 5 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

¹³⁴ Article 6 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

¹³⁵ Article 7 (1a) 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

¹³⁶ Article 7 (3) 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

¹³⁷ Article 7 (1b) 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

¹³⁸ Article 7 (3d) 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

Family members of those who satisfy these criteria are also granted the right to residence, even those who are third country nationals. They also have the right to work in the host State.¹³⁹

Article 8 sets out formal guidelines for registration: EU citizens may be required to register themselves with the authorities of the host state for permanence after the granted 90 days period. In order to proceed, a proof of employment or enrolment in education may be required. Family members who are EU nationals may also be required to present relevant documents (id or passport; a document attesting family relationship or partnership). The citizens and family members shall receive a registration certificate.¹⁴⁰

Articles 9, 10 and 11 outline provisions concerning family members who are not EU nationals: they are required to obtain a residence card if intending to stay for more than 90 days.¹⁴¹ The card is valid for 5 years.¹⁴² In case of death of the EU citizen, the family member still has a right to residence, as long as they have been residing in the host State for at least one year.¹⁴³ The spouse of the EU citizens enjoys some protection even in the eventuality of a divorce, they in fact retain their rights to permanence if they too are a citizens of member. In case they are a third country national, instead, they still have

¹³⁹ Article 23 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

¹⁴⁰ Article 8 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

¹⁴¹ Articles 9, 10 and 11 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

¹⁴² Article 12 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

¹⁴³ Ibid.

the possibility to be protected, but they shall satisfy more criteria to maintain the residence rights.¹⁴⁴

Article 16 disposes provisions for permanent citizenship, an important feature for long term workers. It states that citizens and their family members who have five years of continuous legal residence are entitled to permanent residence in the host State. This residence shall not be interrupted by any period abroad lasting longer than six consecutive months. Furthermore, if the citizen spends more than two consecutive years outside the host State, the permanent residence shall be lost.¹⁴⁵ The exception to this is the case in which the citizen is of pensionable age and has one year of residence, then they can obtain a permanent residence as well. They can also acquire permanent residence if after at least two years of work they become permanently incapable to work.¹⁴⁶

The provisions of the directive are to be applied in the entire territory of the EU, limitations can be imposed only if they equally affect nationals of that State, and all

¹⁴⁴ According to article 13 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 the criteria are the following:

- (a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership, it has lasted at least three years, including one year in the host Member State;
- (b) by agreement between the spouses or the partners or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children;
- (c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting;
- (d) by agreement between the spouses or partners or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.

¹⁴⁵ Article 16 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

¹⁴⁶ Article 17 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

citizens and their family members who are covered by the directive are entitled to equal treatment with regards to nationals of the host state.¹⁴⁷

Restrictions may be enforced by Member States in severe circumstances, such as cases of concern for: public policy, public security or public health.¹⁴⁸ The latter has been put to practice in recent years as response to the Covid-19 pandemic. In fact, article 29 states:

*The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation.*¹⁴⁹

This explains the lawfulness of the unprecedented measures adopted since early 2020, that restricted freedom of movement in exceptional ways and introduced border controls and quarantine periods. As for what concerns workers, their free movement was restricted, but exceptions were made by the Commission for health professionals, seasonal workers and later, in October 2020 essential workers, for whom the quarantine requirements were suspended. Some more restrictions were introduced in January 2021 in light of the developments of the situation. Overall, the struggle has been that of

¹⁴⁷ Article 24 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

¹⁴⁸ Article 27 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

¹⁴⁹ Article 29 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

balancing the rights of the citizens to move and to work with the dangers that are faced.¹⁵⁰

Regulation 492/2011

Regulation 492/2011 guarantees freedom of movement without discriminations to workers in the EU. It begins by stating first and foremost that any EU national may have the right to be employed in any EU Member State and may do so with the same priority as the nationals of that State.¹⁵¹ This means that citizens may apply for and offer employment, conclude and perform contracts without being discriminated against.¹⁵² It also underlines that they shall receive the same assistance in the employment search as granted to the Member State nationals.¹⁵³

There are multiple further non-discrimination provisions. Article 3 affirms that Member States shall not limit the right of other EU nationals to seek out and enter employment and cannot restrict applications for and offers of employment on the basis of nationality. This is both forbidden in reference to explicit measures, and to subtle barriers. For example, employers cannot set special recruitment procedures or tweak the advertisement of vacancies to make them specifically less accessible for nationals of other EU Member States¹⁵⁴. They also shall not require from foreigners' additional features, and set medical, vocational or other criteria that do not also apply to its own

¹⁵⁰ Official Website of the European Parliament - Free movement of workers

<https://europarl.europa.eu/factsheets/en/sheet/41/free-movement-of-workers>

Last accessed on 20 February 2022

¹⁵¹ Article 1 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁵² Article 2 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁵³ Article 5 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁵⁴ Article 3 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

nationals.¹⁵⁵ Restrictions on the number or percentage of foreign employees are also not allowed.¹⁵⁶

Once employed, foreign workers must not be treated differently from national workers in the matters of remuneration, dismissal, reinstatement or re-employment.¹⁵⁷ They shall enjoy the same social and tax benefits as national workers, have access to training in vocational schools and retraining centres, and be able to become a member of a trade union.¹⁵⁸ Workers are entitled to housing, including house ownership with the same conditions as national workers.¹⁵⁹ The children of the workers who reside in the territory of the host State shall have the right to the general education, apprenticeship, and vocational training courses in the State of employment.¹⁶⁰

The Member States and the Commission shall ensure freedom of movement by monitoring the state of employment and unemployment and opportunities for workers,¹⁶¹ as well as communicating with each other about the issue by sharing up to date information.¹⁶²

¹⁵⁵ Article 6 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁵⁶ Article 4 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁵⁷ Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁵⁸ Article 8 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁵⁹ Article 9 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁶⁰ Article 10 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁶¹ Article 11 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁶² Article 12 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

The regulation also sets up the European Coordination Office within the Commission, responsible for coordinating vacancies between member states and aiding national employment services for this goal.¹⁶³ The underlying rationale is to have a simpler and more effective connection between citizens in need of employment and employers searching for employees across EU countries, in order to balance the demand and supply for labour. Directive 2016/589 has since replaced the European Coordination Office with the European Employment Service (EURES) that it established.¹⁶⁴ The main goals set for the Coordination Office have in fact been maintained by EURES.

Regulation 2019/1149

In order to fulfil the objective of improved labour mobility, Regulation 2019/1149 establishes the European Labour Authority with the goal of guaranteeing improved enforcement of EU laws through the collaboration of Member States on shared measures.¹⁶⁵ The Authority works along with Member States and the Commission, coordinates security systems and cooperates with specialised agencies and bodies.¹⁶⁶ To aid mobility across the territory, the Labour Authority uses a series of practical measure. It has an informative function, as it works on providing more accessible information regarding labour migration within the Union for what concerns rights and obligations.¹⁶⁷ It also connects the Member States by promoting joint inspections to ensure cooperation within the Union.¹⁶⁸ In cases of conflict on the matters of its scope it acts as a mediator

¹⁶³ Article 18 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

¹⁶⁴ Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets

¹⁶⁵ Article 1 of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

¹⁶⁶ Article 1 of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

¹⁶⁷ Article 2(a) of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

¹⁶⁸ Article 2(b) of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

between the Member States facing disagreements.¹⁶⁹ Finally, it encourages collaboration in order to tackle the issue of undeclared work.¹⁷⁰

The Labour Authority also manages the European Coordination Office of the aforementioned European Employment System.¹⁷¹ Apart from the Labour Authority EURES also cooperates with the European Commission, employment services in the EU Member States (both public and private) and with the countries of Iceland, Liechtenstein, Norway and Switzerland. It provides information and services to aid workers in the search for an occupation, but also provides a platform for employers to offer positions.¹⁷²

Case law

Case law can be useful to clarify open ended wording in the norms, and to confirm their correct interpretation. There is also a database created by the European Commission containing the relevant cases for free movement.¹⁷³ The Court of Justice of the European Union has had a pivotal role in affirming freedom of movement of persons with its acts. Arguably the most significant case in this matter is that of *Baumbast and R v. Secretary of State for the Home Department*¹⁷⁴, where it comments on article 21 of the TFEU, and interprets it as applicable to all citizens of the Union regardless of employment status. A relevant excerpt says:

¹⁶⁹ Article 2(c) of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

¹⁷⁰ Article 2(d) of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

¹⁷¹ Article 6 of Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

¹⁷² Official Website of the EURES

https://ec.europa.eu/eures/public/index_en Last accessed on 20 February 2022

¹⁷³ Official website of the European Parliament

<https://www.europarl.europa.eu/factsheets/en/sheet/41/free-movement-of-workers>

¹⁷⁴ *Baumbast and R v. Secretary of State for the Home Department*, Case C-413/99, [2002] ECR I-7091.

*The Treaty on European Union does not require that citizens of the Union pursue a professional or trade activity, whether as an employed or self-employed person, in order to enjoy the rights provided in Part Two of the [TFEU], on citizenship of the Union. Furthermore, there is nothing in the text of that Treaty to permit the conclusion that citizens of the Union who have established themselves in another Member State in order to carry on an activity as an employed person there are deprived, where that activity comes to an end, of the rights which are conferred on them by the Treaty by virtue of that citizenship.*¹⁷⁵

Here we can see the full extent of the right to movement based on citizenship in action, explicitly laid down. This was a fundamental step, as it was the confirmation of the true value of EU citizenship in the context of freedom of movement.

Other notable inputs from the CJEU include the court weighting in on the deflection of “worker”, in *Kempf v. Staatssecretaris van Justitie*¹⁷⁶ and in *Lawrie-Blum v. Land Baden-Württemberg*¹⁷⁷. There are also various cases significant in achievements about social security and benefits,¹⁷⁸ as well as the period of permanence in a Member State while seeking a job.¹⁷⁹

2.3 The Schengen Area

So far, the formal and legal basis for freedom of movement in the European Union has been observed, but what does the concrete movement of individuals across those borders look like and how is it regulated? The long-awaited abolition of national

¹⁷⁵ Ibid.

¹⁷⁶ *Kempf v. Staatssecretaris van Justitie*, Case 139/85, [1986] ECR 1741; *Bettray v. Staatssecretaris van Justitie*, Case 344/87, [1989] ECR 1621.

¹⁷⁷ *Lawrie-Blum v. Land Baden-Württemberg*, Case 66/85, [1986] ECR 2121

¹⁷⁸ *Grzelczyk* Cases C-184/99, *D’Hoop* C-224/98

¹⁷⁹ *Antonissen* Case C-292/89

borders between the European countries has ultimately been achieved thanks to the Schengen Agreement, that is at present the largest international area in the world with no border control.

The Schengen Treaty was signed in 1985 by France, Germany, Belgium, Luxemburg, and the Netherlands, but it only started being fully implemented in 1995.¹⁸⁰ The rationale behind the Schengen Accords is that of removing controls at the borders between the signatory states, and at the same time to implement and guarantee a uniform series of controls for their external borders regarding third country nationals, and as a consequence issuing a single Schengen visa that allows entry in the entire territory covered by the treaty. This has therefore a twofold function: it allows European citizens a boundary-free movement, but also confers to the Union a single approach to third-country immigration.¹⁸¹

In 1999 the Schengen agreement, at the time completely independent from the EU, was incorporated into the legislation of the Union with the Treaty of Amsterdam, article 1 of which proclaims:

“From the date of entry into force of the Treaty of Amsterdam, the Schengen acquis, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted before this date, shall immediately apply to the thirteen Member States.”¹⁸²

As we can see, the article mentions thirteen member states out of the fifteen that composed the EU at the time, thus excluding Ireland and the United Kingdom, that were not and are still not part of Schengen. Schengen, in fact, does not coincide with the EU: not every signatory is an EU member state, and not every member state of the EU has

¹⁸⁰ Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders

¹⁸¹ Official Website of the European Commission https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/schengen-area_it Last accessed on 20 February 2022

¹⁸² Article 1 of the Treaty of Amsterdam

signed it. At present day most EU members are part of the Schengen Area, with the exception of Cyprus and Ireland. Meanwhile Bulgaria, Croatia and Romania have commenced to implement the measures but are still in the process of formally joining it.¹⁸³ The Schengen accords are not exclusively for EU Member States, a number of non-EU countries are also present among the signatories, namely: Iceland, Norway, Switzerland and Liechtenstein.¹⁸⁴ Since 1999 Schengen has been integrated with the legislation, being included in multiple acts of the EU.¹⁸⁵

¹⁸³ Official Website of the European Commission https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/schengen-area_it Last accessed on 20 February 2022

¹⁸⁴ Ibid.

¹⁸⁵ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, Regulation (EU) No 610/2013 Regulation (EU) No 1051/2013, Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen

CHAPTER 3

Comparison Between EAEU and in the EU in the Freedom of Movement Perspective

Can a Kyrgyz worker move to Russia on the same terms and with the same ease as an Italian worker to Germany? We have thus far analysed the rights and possibilities of individuals living and working in the EAEU and in the EU, but how do they compare? This chapter will illustrate the state of affairs of the EAEU in the light of that of the EU and what the differences and similarities between the two entities can tell us about them. The approach chosen will mostly be legal but also partly structural and political. First, to understand where the two entities stand, we must analyse the pre-existing relationships between the countries that form them. To do so, the theory of holding-together regionalism is particularly suited, so it will be presented and outlined. After comparing the general structure of these two very different Unions, we will determine how their legal systems differ overall and what impact and powers they have over the Member States, as well as how intricate they are. After that, finally the provisions on freedom of movement will be compared between the two Unions, constituting the heart of this chapter.

3.1 Holding-together Regionalism

Before delving into the differences between the legislation and structure of the two Unions, it is important to comprehend their dimension regarding the form of regional integration that shapes their existence. Libman and Vinokurov state that the EAEU (as most post-soviet integration projects) presents a form of holding together integration, that is defined as:

Holding-together integration is regional integration initiated by a group of countries that until recently were part of a single political or economic union (a

*unitary state or a colonial empire) and maintain a high level of economic, political, and cultural ties.*¹⁸⁶

The theory of holding-together integration fundamentally proposes the idea that the proximity of the Member States of a union before the formation of said union constitutes grounds for a different approach to integration compared to those that have been mostly independent from each other, like in the case of the EU.

There are mainly two types of dynamics that take place right after the dissolution of an entity: first, regionalization can immediately help to maintain the existing bonds for either a long period or just in the beginning; otherwise, after an initial shock and strong distancing, the new states get closer with time. The latter is often a consequence of a conflictual dissolution and does not happen in the same manner for coming-together integration. Another difference is that regular integration tends to struggle to arise in periods of economic difficulty, while in the case of holding-together integration that is actually an incentive: since holding-together is about maintaining what is already somewhat existing, the cost of distancing during a recession would be higher. Furthermore, as a consequence of a recent dissolution, the countries involved often face the task of nation-building, which is hindered by the economic crisis, because it associates the new national identity with an unprosperous circumstance. This leads these countries to recourse to regional help, and addressing familiar partners is safer and simpler during an emergency, rather than creating new ties.¹⁸⁷

For what concerns the EAEU specifically, all member-states, as we have seen, are former members of the Soviet Union, and this left a specific heritage. This consists of similarities in culture, institution, and ties that are economic and most importantly infrastructural. This is very interesting applied to our subject, the freedom of movement, as its achievement has been significantly aided by the past ties of the EAEU Member States. Where the European Union had to establish completely new legislation and

¹⁸⁶ Libman, Aleksandr, and E. Ju Vinokurov. *Holding-Together Regionalism: Twenty Years of Post-Soviet Integration*. Palgrave Macmillan, 2012. Page 148.

¹⁸⁷ Ibid.

border arrangements, the EAEU can count on not only the heritage of the but also on that of the other integration projects such as CIS or EurAsEc. From this point of view, in fact, the grounds for a successful work migration were favourable. It is also important to note that the EAEU institutions were not created from scratch but inherited by the previous integration projects and therefore the legal system they provide is based on existing provisions. Another useful trait is that of the shared language: a significant portion of non-Russian EAEU population speaks Russian, which is also the working language of the Union.¹⁸⁸

3.2 Structure and Law of the EU and of the EAEU

A comparison between the EU and the EAEU is a spontaneous step, given the striking similarities in the structures of the two organizations, which especially suggests that the EAEU is to some extent following in the steps of the EU. At the same time, scholars on multiple occasions have underlined the impossibility to compare the two on equal grounds, giving the recent creation of the EAEU and its more modest objectives.¹⁸⁹¹⁹⁰¹⁹¹ The main difference is the economic nature of the EAEU compared to the comprehensive one of the EU. Both entities were created as a customs union first, and then developed a single economic space. The EU, then, made a further step developed a higher level of integration, also on a political level. The EAEU therefore can generally be said to be at a similar position that was the EEC. It is not possible to know if it will additionally evolve, but signs seem to be pointing to an economic union status being currently sufficient for the Member States. Regardless of these considerations, it is very

¹⁸⁸ R. Petrov, P. Kalinichenko, *On Similarities and Differences of the European Union and Eurasian Economic Union Legal Orders: Is There the 'Eurasian Economic Union Acquis?'*, *Legal Issues of Economic Integration* 2016, pp 295-307

¹⁸⁹ Cambien, Nathan, et al. *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges*. Koninklijke Brill NV, 2020. Page 516.

¹⁹⁰ Pimenova, Oxana. *Legal Integration in the European Union and the Eurasian Economic Union: Comparative Analysis*. *International Organizations Research Journal*. Vol. 14. No 1 2019. Page 83

¹⁹¹ Vinokurov, Evgeny. *Introduction to the Eurasian Economic Union*. Springer International Publishing, 2018.

interesting for the purpose of this research to analyse the two organisations next to each other, and to do so effectively the next paragraphs will first compare the structure, with regard to the bodies and their functions and powers and subsequently the characters of their legal systems.

3.2.1 Structure

The bodies of the EAEU seem to be loosely modelled after those of the European Union, making it immediate to see the similarities in the way the two entities act, as well as the differences. As already mentioned, the EAEU bodies are the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Eurasian Economic Commission (EEC), and the Court of the Eurasian Economic Union.¹⁹² As for the European Union, the relevant bodies for our scope are: The European Parliament, The European Council, The Council of the European Union, The European Commission and the Court of Justice of the European Union.¹⁹³

Both organizations have two Councils, but they serve different purposes. In the EAEU we find the Supreme Eurasian Economic Council and the Eurasian Intergovernmental Council, and their composition reflects the political structure of the Member States: the choice to represent both the Heads of the States and the Heads of the Governments within the bodies of the Union is in line with the more presidential leaning systems of the EAEU Member States.¹⁹⁴ Both these bodies are given legislative power. The decisions and directives of the two Councils are binding but not directly applicable, since they must be in accordance with national law and do not have supremacy over it. These acts are also adopted by consensus. The decisions of the Supreme Council have priority over those of the Intergovernmental Council in case of a conflict arising between them. Both the Supreme and the Intergovernmental Council have priority over

¹⁹² Treaty on the Eurasian Economic Union

¹⁹³ I have here chosen to present and focus on the bodies relevant for the comparison, not all the bodies of the EU.

¹⁹⁴ Pimenova, Oxana. *Legal Integration in the European Union and the Eurasian Economic Union: Comparative Analysis*. International Organizations Research Journal. Vol. 14. No 1 2019. Page 83.

the Eurasian Economic Commission.¹⁹⁵ As for what concerns the EU, we have the Council of the EU and the European Council, and only the former has actual legislative powers. The European Council is composed of the Heads of the Government or State and its function is to determine the political agenda and the priorities of the Union.¹⁹⁶ The Council of the EU, instead, is composed of the Ministers of the Member States, and has different conformations depending on which Ministers are relevant to the topic discussed.¹⁹⁷ The Council works along with the European Parliament, the other legislative body of the EU. The European Parliament is directly elected by the citizens of the EU¹⁹⁸, which is relevant both for matters of direct political representation and for a European political identity: in fact, the voting rights that as we have seen accompany European citizenship consolidate the importance of the concept of an EU citizenship in the first place. The EAEU, instead, does not have a parliament, nor noteworthy steps for the establishment of one have been made thus far. The absence of an electoral body is once again reflective of the economical rather than political nature of the Union: a half-way solution to this could be a connection between the EAEU and the Parliaments of the Member States, given that a similar connection already exists between the EU and national parliaments, although not in substitution of the European Parliament.¹⁹⁹

A Commission is also present in both Unions. The European Commission is formed by a college of Commissioners, one for each Member State, who are politically independent. This factor makes the Commission a fully supranational body. Its role is to draw up proposals, implement, and enforce EU legislation.²⁰⁰ The Commission promotes the general interests of the EU, and in order to do so it has the right to propose legislative acts, which is its paramount power and a fundamental base of the working of EU law.²⁰¹ Another purpose of the Commission is to guarantee the application of the

¹⁹⁵ Article 6 of the Treaty on the Eurasian Economic Union

¹⁹⁶ Article 15 of the Treaty on the European Union

¹⁹⁷ Article 16 of the Treaty on the European Union

¹⁹⁸ Article 14 of the Treaty on the European Union

¹⁹⁹ Pimenova, Oxana. *Legal Integration in the European Union and the Eurasian Economic Union: Comparative Analysis*. International Organizations Research Journal. Vol. 14. No 1 2019. Page 83

²⁰⁰ Article 17(2) of the Treaty on the European Union.

²⁰¹ Ibid.

Treaties, both a legislative and executive power. This can be done by adopting secondary legislation directly derived from the Treaties or, by virtue of powers delegated by the Union legislature.²⁰² In certain areas the Commission has also the executive power to fine entities that infringe the EU measures. Finally, the Commission monitors the application of EU law by inspecting cases of violations of it and bringing them before the Court of Justice of the EU.²⁰³ These are all considerable powers that are significantly more influential than those of the Eurasian Commission. The structure of the Eurasian Commission is in itself divided into a Council and a Board.²⁰⁴ The Council of the Commission is composed of officials of the Member States' Governments, while the Board of the Commission is composed of two commissioners for each state, and similarly to the European Councillors, they are independent from the members states and act following the interests of the EAEU, which makes them the sole supranational component.²⁰⁵ This means that the powers of the Eurasian Commission are much more limited in respect to those of the European Commission, because of this significant presence of national representatives in contrast with the limited presence of independent actors.

As for what concerns the Courts of the two Unions, The European Court of Justice is composed of, in order of hierarchy: the Court of Justice, the General Court and specialized courts.²⁰⁶ This division has been implemented due to the large number of cases brought before the court. The jurisdiction of the Court of Justice of the European Union is compulsory but limited to the powers conferred to it by the Treaties, therefore it is not inherent.²⁰⁷ The CJEU mainly rules on cases brought by Member States, institutions, natural and legal persons and gives preliminary rulings.²⁰⁸ It is tasked with direct actions, those brought before it first-hand, and indirect actions, brought to the Court by national courts. The Court may also impose fines and penalties to the Member

²⁰² Article 106(3) of Treaty on the Functioning of the European Union.

²⁰³ Article 258 of Treaty on the Functioning of the European Union.

²⁰⁴ Treaty on the Eurasian Economic Union

²⁰⁵ Article 18 of the Treaty on the Eurasian Economic Union

²⁰⁶ Article 19 of the Treaty on the Functioning of the European Union.

²⁰⁷ Article 13(2) of the Treaty on the European Union.

²⁰⁸ Article 19 of the Treaty on the Functioning of the European Union.

States that do not implement its rulings, the Commissioner's directives, or does so over the time limit.²⁰⁹ The main task of the Court of the EAEU is to guarantee that the EAEU law is applied correctly by settling disputes at the request of a Member State or a business entity.²¹⁰ Member States can address the Court for disputes with respect to the compliance of other treaties within the Union with the EAEU Treaty; concerning the compliance of other members with the legislation of the Union (the EAEU Treaty, international treaties within the Union, decisions of the EAEU bodies); concerning the compliance of an EEC decision with EAEU Legislation (EAEU Treaty, international treaties within the EAEU, decisions of the Union's bodies); to question the actions of the EEC. Business entities, instead, can address the Court only in case they affirm that the EEC has violated their rights and legal interests. The weaknesses of the Court are that, as opposed to the EU Court, it does not have the power to give preliminary rulings. Another weakness is that contrary to the CJEU, no material compensation can be ruled by the Court, hindering its influence. Finally national law of the Member States is prioritised over the law of the EAEU in case of them being conflicting. This is not always necessarily negative, as it can in some cases encourage an evolution of Union law toward improvement, as in the case of the early European Community,²¹¹ but at present it does significantly undermine the activity of the EAEU Court. Overall, the EAEU Court can be described as an administrative court, whereas that of the EU can also be constitutional.²¹²

3.2.2 *Legal Aspect*

The EU has a very structured system of law, so much so that the study of it has become a discipline in itself, no longer strictly under international law. The extended time frame in which the Union has existed has certainly allowed for an evolution and development,

²⁰⁹ Article 260 of the Treaty on the Functioning of the European Union.

²¹⁰ Clause 49 of Chapter IV of the Statute of the Court of the EAEU

²¹¹ Vinokurov, Evgeny. *Introduction to the Eurasian Economic Union*. Springer International Publishing, 2018. Page 56

²¹² R. Petrov, P. Kalinichenko, "On Similarities and Differences of the European Union and Eurasian Economic Union Legal Orders: Is There the 'Eurasian Economic Union Acquis'?", 43(3) *Legal Issues of Economic Integration* (2016), 295-307

making it a dynamic system.²¹³ Although the EAEU surely regards the EU *acquis* as an example, its founding treaty is more a codification of previous relations between the Member States rather than a constitution creating a new system,²¹⁴ whereas the EEC Treaty created a legal system of its own that integrated itself into the legal systems of its Member States and achieved supremacy over them.²¹⁵

As we have seen, one of the focal separation points between the two Unions in terms of law is that the European Union has well established and active supranational powers, while the EAEU does have supranational aims, but they are limited and not explicitly mentioned within the founding treaty. The decision making of EAEU is strongly influenced by the national governments, and the EAEU mostly functions as an arena that allows these governments to interact within its bounds.²¹⁶ The way in which the EU works, instead, is by mechanism of delegation. EU Member States delegate authority over their national legislation to the EU, but not entirely and boundlessly, only concerning some specific competences that must be present in the founding treaties. If a topic is not present directly in the treaties, then it unquestioningly belongs to the

²¹³ Ziller, Jaques. *Advanced Introduction to European Union Law*, Cheltenham, Edward Elgar Publishing
Schütze, Robert, *European Union Law*, 2 nd Ed., Cambridge, CUP, 2018

Schütze, Robert. *An Introduction to European Law*. 3rd ed., Oxford University Press, 2020. Hodson, D., & Peterson, J. (Eds.). (2017).

The institutions of the European Union. Oxford University Press. Kenealy, D., Peterson, J. and Corbett, R. (Eds.) (2018)

Policymaking in the European Union. 8th edition. Oxford University Press.

²¹⁴ R. Petrov, P. Kalinichenko, “On Similarities and Differences of the European Union and Eurasian Economic Union Legal Orders: Is There the ‘Eurasian Economic Union *Acquis*’?”, 43(3) *Legal Issues of Economic Integration* (2016), 295-307

²¹⁵ Case C-6/64, *Flaminio Costav*. E.N.E.L. Available at: https://curia.europa.eu/jcms/jcms/j_6/en/ Last accessed on 20 February 2022

²¹⁶ Strezhneva M. *Nadnatsional'nost' i printsip subsidiarnosti v ES i za ego predelami* (Nationality and the Principle of Subsidiarity in the EC and in Ego Predecessors) *Mirovaia ekonomika i mezhdunarodnye otnosheniia* (World Economy and International Relations), vol. 60, no 6, 2016 pp. 5–12.

Member States' national competence.²¹⁷ Let us now see which are the sources that regulate the tasks and powers of the two entities.

Both the EU and the EAEU rely on their founding treaties as fundamental source of law. The EAEU also relies on the treaties between the Union and other organisations. Another important source are binding decisions and acts of the EAEU bodies: all EAEU bodies have the power to emit acts of different nature. The Eurasian Economic Council is at present day the body that produces the largest number of acts in the Union. It emits binding decisions but also produces non-binding recommendations.²¹⁸ The Supreme Council and the Intergovernmental Council adopt binding decisions and directives, but they must be in compliance with the national law of the member states.²¹⁹ Finally, the acts of the Court are binding, and they decide on the controversies on the implementation of EAEU law.²²⁰

The EU on the other hand relies on treaties as primary law, while as secondary law these are the main acts:

- Regulations are acts proposed by The Commission and approved by The Parliament and The Council. They are binding in all countries and enter directly into national law.²²¹
- Directives are also acts proposed by The Commission and approved by The Parliament and The Council. They indicate an objective, a goal to achieve, but it is up to the Member states to decide the details. They must be transposed into national law within an established period.²²² The problem with directives is that

²¹⁷ Pimenova, Oxana. *Legal Integration in the European Union and the Eurasian Economic Union: Comparative Analysis*. International Organizations Research Journal. Vol. 14. No 1 2019. Page 83

²¹⁸ Article 18 of the Treaty on the Eurasian Economic Union

²¹⁹ Article 19 of the Treaty on the Eurasian Economic Union

²²⁰ Ibid.

²²¹ Article 288 of the Treaty on the Functioning of the European Union

²²² Ibid.

each Member state implements them in a different manner, rendering necessary to monitor, and when needed, to sanction the transgressors.²²³

- Decisions are binding and addressed to specific member states or persons (legal or natural).²²⁴
- Recommendations are non-binding acts used to express the point of view of an EU institution on a matter.²²⁵
- Opinions are non-binding acts that usually comment on the work of other EU institutions.²²⁶
- Delegated acts are legally binding and are used by The Commission to amend non-essential parts of other acts.²²⁷
- Implementing acts are legally binding and are used by the Commission to ensure the application of EU laws in specific areas.²²⁸

A compelling difference between the two Unions is direct applicability: the EU has the direct applicability with regards to regulations, that can enter the law of the Member States without the need of being reviewed by the domestic legal system.²²⁹ For what regards the EAEU, the acts of the Eurasian Economic Commission are in fact directly applicable, but it is important to note that there are a number of setbacks. First, the Member States can object to these decisions, rendering the direct applicability significantly less effective.²³⁰ The Treaty on the EAEU was originally supposed to grant a stronger power in terms of applicability to the Union, but the negotiations of the Member States ultimately settled on the current, more autonomous, system.²³¹ In second

²²³ Pimenova, Oxana. *Legal Integration in the European Union and the Eurasian Economic Union: Comparative Analysis*. 2019. Pages 80 - 81

²²⁴ Article 288 of the Treaty on the Functioning of the European Union

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Article 290 of the Treaty on the Functioning of the European Union

²²⁸ Article 290 of the Treaty on the Functioning of the European Union

²²⁹ Article 13 of Annex I to the EEU Treaty

²³⁰ Art. 5 of the Treaty on the Eurasian Economic Commission

²³¹ Vinokurov, Evgeny. *Introduction to the Eurasian Economic Union*. Springer International Publishing, 2018. Page 52.

place, as we have seen, the European Commission is far more independent and supranational than the Eurasian Commission, is another factor that makes EAEU acts more nationally oriented and reduces their supranatural significance. A final predicament is that as we have seen the decisions of the Commission are subordinate to those of the Supreme and Intergovernmental Councils.²³²

3.3 Freedom of Movement of Labour

After seeing how the two Unions compare with respect to the functioning of their legislation, it is now finally time to delve into the character of their legislation on freedom of movement of persons. The economic nature of the freedom of movement inside the EAEU has been addressed numerous times. What grants it to Member State citizens and legitimises it are the provisions of free movement of labour, making the persons free as an extension of the market. In fact, the reference in the legislation is to workers, bound to a contract that delimits their permanence and its characters. It is also affirmed in an advisory opinion of the court about the interpretation of the Treaty that the free movement of persons is one of the elements of the functioning of the internal market.

*A systemic interpretation of the said norms of the Treaty allows us to conclude that the free movement of persons is one of the elements of the functioning of the internal market.*²³³

²³² Treaty on the Eurasian Economic Union Section III

²³³ Advisory opinion of the Grand Collegium of the Court dated December 7, 2018 on the application of the Eurasian Economic Commission on clarification of the provisions of the Treaty on the Eurasian Economic Union (Консультативное заключение Большой коллегии Суда от 7 декабря 2018 года по заявлению Евразийской экономической комиссии о разъяснении положений Договора о Евразийском экономическом союзе)

translation of: “Системное толкование указанных норм Договора позволяет сделать вывод, что свободное передвижение лиц является одним из элементов функционирования внутреннего рынка.”

The EEC had economic motives behind the creation its freedom of movement laws as well, but the situation in the present-day European Union is vastly different. EU citizens are free to travel inside its borders in virtue of not only their status as workers, but also their European citizenship.

We will next analyse some legislation already presented in the previous chapters in order to outline the character of the freedom of movement laws in both unions, with a specific focus on the free movement of labour, that is the common ground that allows us to specifically review some norms.

3.3.1 Legal Basis and Enforcement

The legal basis for the freedom of movement of persons in the European Union is Article 3 of the Treaty on European Union, Article 21 of the Treaty on the Functioning of the European Union (TFEU), and Article 45 of the Charter of Fundamental Rights of the European Union. Other sources of movement law are directives and regulations. The most important of which is directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU.²³⁴ The freedom of movement

²³⁴ Other relevant acts seen in this thesis are: Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union Text with EEA relevance, Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, regulation (EC) No 81/2009 of the European Parliament and of the Council of 14 January 2009, Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013, Regulation (EC) No 296/2008 of the European Parliament and of the Council of 11 March 2008, Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen

of EAEU workers is expressed mainly in the Section XXVI of the Treaty on the EAEU, that addresses labour migration, other provisions can be found in the acts of the bodies of the EAEU, but they are more used to extrapolate relevant information about specific aspects of the conditions of freedom of movement of labour, rather than actual comprehensive documents.

Regarding enforcement, the directive 2019/1149 establishes a European Labour Authority that is set to guarantee the enforcement of EU labour laws and help Member States to cooperate on shared measures. The Labour Authority has a management board that sends annual reports about the activities to the EU bodies. There is also a stakeholder group, with the presence of representatives from the trade unions, employer organisations, and the Commission.²³⁵ As for the EAEU, the EEC Department of Labor Migration and Social Protection is responsible for issues related to labour migration. This department is split in two divisions: a division on workers and a division on migration. Under the Board of the Commission there are the Advisory Committee for Migration Policy and the Advisory Committee for Social Security, Compliance with Pension Rights, Medical Care Provision and Professional Activity of Workers of the Member States of the Eurasian Economic Union. These bodies monitor the implementation of Union legislation in the field of labor migration. They also counter illegal migration, control the development and implementation of bilateral agreements in the area, and are responsible for informing the workers of the EAEU Member States about their rights and duties.²³⁶

acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen.

²³⁵ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority

²³⁶ Aliyev S. *Labor Migration and Social Welfare of Workers in the Eurasian Economic Union* (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

Starostin, A. "Freedom of movement of labor resources in the EAEU by 2025", Russian International Affairs Council.

3.3.2 Rights and Duties of the Workers

Let us now compare the differences and similarities among the actual mobility measures that are prescribed and adopted and how they affect the workers, as well as their rights and their duties under the respective legislations.

The first difference we can discern is that, as opposed to the TFEU, the Treaty on the EAEU immediately supplies a series of definitions for the terms used in the following articles²³⁷. That is a constant trait of the EAEU Treaty, that provides the terms of discussion in most contexts. This is also reasonable when considering what we observed about the two legal systems: the EU can afford to leave the matter to the discretion of the CJEU, because it has more freedom than the Court of the EAEU and it can decide on the settlement of the disputes on its own. This is possible by virtue of the powers that the CJEU has over EU legislation.²³⁸ An example of this is in the definition of “worker”. The EAEU defines it in article 96, although quite generically as someone “lawfully engaged in labour activities”²³⁹ while as we have seen, the only indication in

<https://russiancouncil.ru/analytics-and-comments/analytics/svoboda-peremeshcheniya-trudovykh-resursov-v-eaes-k-2025-godu/> Last Accessed on 20 February 2022

²³⁷ Article 96 of the Treaty on the Eurasian European Union

Contains the definitions of the following: state of entry, state of permanent residence, state of employment, certificates of education, customer of works and services, migration card, employer, social security, social insurance, employment, worker of a Member State, family member.

²³⁸ Cambien, Nathan, et al. *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges*. Koninklijke Brill NV, 2020. Page 514

²³⁹ Article 96 states: «трудящийся государства-члена» – лицо, являющееся гражданином государства-члена, законно находящееся и на законном основании осуществляющее трудовую деятельность на территории государства трудоустройства, гражданином которого оно не является и в котором постоянно не проживает.

«трудовая деятельность» – деятельность на основании трудового договора или деятельность по выполнению работ (оказанию услуг) на основании гражданско-правового договора, осуществляемая на территории государства трудоустройства в соответствии с законодательством этого государства;

Translation: “worker of a Member State” means a person who is a national of a Member State lawfully residing and lawfully engaged in labour activities in the state of employment, of which he or she is not a national and where he or she does not permanently reside;

EU law is extrapolated from some of the acts of the EU Court of Justice.²⁴⁰ The difference is also interesting because the Treaty on the EAEU only references workers specifically, while the TFEU has also a section dedicated to the freedom of establishment. This means that Self-employed workers are then not explicitly covered by the EAEU law. However, it is interesting to note that Russian Federation national law allows EAEU citizens to officially register as self-employed. In an attempt to introduce a tax regime for the self-employed, experimentally EAEU citizens have the same duties and privileges as Russians.²⁴¹

Another aspect worth addressing is that of the norms concerning the length of permanence of the workers on the territory of the Member States. Both Unions grant to their citizens a period of permanence that does not require registration on the territory of another Member State. For the EU that frame is of 90 days²⁴², while for the EAEU only 30²⁴³: once this period has elapsed, the citizens of both Unions must register with the competent authorities²⁴⁴. Both the Unions allow some time for the worker to stay after the unexpected loss of their job: the EAEU authorizes the worker to stay on the territory of the host state for 15 days after the early termination of a contract, as long as that

“employment” means activities performed under an employment contract or in execution of works (services) under a civil law contract carried out on the territory of the state of employment in accordance with the legislation of that state.

²⁴⁰ Lawrie-Blum v. Land Baden-Württemberg, Case 66/85, [1986] ECR 2121

Kempf v. Staatssecretaris van Justitie, Case 139/85, [1986] ECR 1741.

Betray v. Staatssecretaris van Justitie, Case 344/87, [1989] ECR 1621.

Trojani, Case C-456/02.

²⁴¹ Official Website of the Federal Tax Service of the Russian Federation

https://www.nalog.gov.ru/rn77/news/activities_fts/8261361/ Last accessed on 20 February 2022

²⁴² 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.

²⁴³ Article 97 of the Treaty on The Eurasian Union

²⁴⁴ 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.

Article 97 of the Treaty on The Eurasian Union

happens within 90 days of their entry.²⁴⁵ EU workers have a right to residence upon the condition that they can demonstrate that they are actively searching for a new employment.²⁴⁶

Neither of the Unions poses limits to the possible length of permanence of the worker, or better, regarding the length or number of contracts that legitimise their stay. At the same time, the EU has set in place provisions for the citizens to obtain permanent residence,²⁴⁷ while the EAEU has not.²⁴⁸ We may attribute this choice to a lack of foresight: the EAEU has currently only been operative for seven years, but that is bound to be an issue in the future, when workers will have lived in another Member State for several years. This approach, in fact, does not contribute to integration, as by allowing citizens to work, but not setting structures for them to be able to integrate in the society of the host state it creates an atmosphere of precariousness. The citizens of the EU, on the other hand, have the legislation on their side: after five years of continuous residence, they are entitled to permanent residence.²⁴⁹ An interesting matter related to this are the rights of the family members of the migrants. EU and EAEU laws are here alike in the idea that workers have implicitly a right to family.²⁵⁰ Both the Unions allow family members to reside with the migrant. While the directive 2004/38/EC defines clearly the criteria for family members, the EAEU charter leaves more authority to the Member States directly, and in fact defines a family member as

²⁴⁵ Article 97 of the Treaty on The Eurasian Union

²⁴⁶ 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.

²⁴⁷ Ibid.

²⁴⁸ Cambien, Nathan, et al. *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges*. Koninklijke Brill NV, 2020. Page 516

²⁴⁹ 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

²⁵⁰ Cambien, Nathan, et al. *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges*. Koninklijke Brill NV, 2020. Page 527

*a spouse of the worker of a Member State, as well as their dependent children and other persons recognised as members of their families in accordance with the legislation of the state of employment.*²⁵¹

We can find a contradictory reasoning in the EAEU not providing measures for a permanent residence and at the same time allowing the family members to not only move with the workers, but also grant them education and social security, that suggest a perspective of long-term permanence.²⁵²

The attention that the EU has for its younger population is also not equally reflected in the legislation of the EAEU, for example article 47 of the TFEU states that “Member States shall, within the framework of a joint programme, encourage the exchange of young workers.”²⁵³ The most similar statement that we find in the Treaty of the EAEU in in Article 96, that affirms that the Union encourages “exchange of experiences, internships, seminars and training courses.”²⁵⁴

As for what concerns measures to help workers, both Unions promote non-discrimination on the basis of citizenship. Protectionist measures that privilege local nationals and exclude or disadvantage workers from other member-states are prohibited by both legislations, although the EAEU does make an exception for “sectors of strategic importance”, a very broad and non-specific case²⁵⁵. The Unions also recognise the education certificates of the workers, allowing them to work in their sector of competence.²⁵⁶ Exceptions to these measures are made in specific fields such as educational, legal, medical or pharmaceutical spheres for the EAEU.²⁵⁷ The EU has improved its previous provisions on the recognition of professional qualifications in the

²⁵¹ Art 96 Treaty on the EAEU

²⁵² Cambien, Nathan, et al. *European Citizenship under Stress: Social Justice, Brexit, and Other Challenges*. Koninklijke Brill NV, 2020. Page 527

²⁵³ Article 47 of Treaty on the Functioning of the European Union

²⁵⁴ Article 96 of the Treaty on the Eurasian Economic Union

²⁵⁵ Article 97 of The Treaty on the Eurasian Economic Union

²⁵⁶ Article 97(3) of The Treaty on the Eurasian Economic Union

²⁵⁷ Ibid.

directive 2013/55/EU recognising for example architects and several professions in the health sector.²⁵⁸ Another important exception that both the Unions make is that of employment in public service, in fact, they both have provisions that exclude the field from the application of the norms described.

Both Unions also reserve the right to enforce restrictions of the movement of the workers. The EAEU mentions national security and public order as reasons and relies on national legislation of the Member States for further details. The EU talks about public policy, public security but excludes economic reasons. In the assessment, the principle of proportionality must be used, and all measures must be exclusively based on the personal conduct of the individual. The workers cannot be expelled on the basis of general prevention.²⁵⁹ Proportionality was also mentioned by the EAEU Court in an advisory opinion, where it also clarified that no discrimination or trade restriction is justified.²⁶⁰ Another ground for restrictions listed in the directive is that of public health, that we have already seen with the example of the COVID-19 pandemic.²⁶¹ Sergey Ryazantsev, Director of the Institute of Demographic Studies of the Federal Research Sociological Center of the Russian Academy of Sciences has expressed in the March 2021 meeting of The Eurasian Economic Commission how the pandemic has hindered the situation of migrant workers.²⁶²

²⁵⁸ Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

²⁵⁹ Article 27 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.

²⁶⁰ Court of the Eurasian Economic Union, advisory opinion of 30 October 2017, case CE-2-2/2-17-BK, Eurasian Economic Commission (Free Movement of Goods Restrictions)

²⁶¹ Article 29 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.

²⁶² Official Website of the Eurasian Economic Commission

<http://www.eurasiancommission.org/ru/nae/news/Pages/15-03-2021-04.aspx> Last accessed on 20 February 2022

On the subject of medical care, the EAEU grants to its workers and their families free emergency care regardless of their insurance status but leaves all other matters to the discretion of the Member States.²⁶³ In the EU, the coordination rules guarantee that workers will access healthcare in accordance with national legislation, granting them the same treatment as the nationals of that Member State²⁶⁴. European citizens also have access to the European Health Insurance Card, that allows them to acquire medical care during a temporary residence in any EU Member State, and can be received before the departure, since they are issued by the national health insurance provider of the citizen's home state.²⁶⁵

Both Unions grant to their citizens social security within the territory on the same terms as the national of the state where they reside.²⁶⁶ Neither of them implements a new comprehensive social security system to replace the national ones, but simply allow to the migrant workers to enjoy the same rights in this field.²⁶⁷ The EU relies on principles of equal treatment, non-discrimination and exportability. The citizens pay contributions in only one country, their benefits accumulate regardless of the country, and they can receive them no matter where they ultimately reside.²⁶⁸

²⁶³ Annex 30 of the Treaty on the EAEU

²⁶⁴ Official Website of the European Commission - Employment, Social Affairs & Inclusion <https://ec.europa.eu/social/main.jsp?catId=857&intPageId=974&langId=en> Last accessed on 20 February 2022

²⁶⁵ Official Website of the European Commission - European Health Insurance Card <https://ec.europa.eu/social/main.jsp?catId=559&langId=en> Last accessed on 20 February 2022

²⁶⁶ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

Annex 30 of the Treaty on the Eurasian Economic Union

²⁶⁷ Ibid.

²⁶⁸ Official Website of the European Commission <https://ec.europa.eu/social/main.jsp?catId=849> Last accessed on 20 February 2022

As for the EAEU, in the beginning of 2022, the president of Kyrgyzstan Sadyr Japarov has expressed his belief in the fact that more work is needed for the Union to achieve true equality in the field of social security:

*“It is important this year to pay attention to resolving the issue in the area of providing social security, including medical assistance to workers of the Member States and members of their families in the state of employment on the same conditions as citizens of the state of employment.”*²⁶⁹

The EAEU has very recently introduced the Pension Provision for Workers of the EAEU Countries, to fill the legislative gap of article 98 of the Treaty on the EAEU, that did not include pension provisions. The Act, entered into force on January 1, 2021, was long awaited and discussed: Armenian prime minister Nikol Pashinyan even called it “*a significant progress in creating conditions for the effective functioning of the Union common labour market*”.²⁷⁰ The agreement, developed by the Eurasian Economic Commission along with the Member States aims at the formation, preservation and implementation of the pension rights of workers on the same conditions as citizens of the state of employment. It defines the procedure and mechanism for transferring pensions from one Union country to another and allows to aggregate the years of work

²⁶⁹ Глава Киргизии просит партнеров по ЕАЭС облегчить жизнь трудовым мигрантам (Glava Kirgizii prosit partnerov po EAES oblegchit' zizn' trudovym migrantam, Head of Kyrgyzstan asks EAEU partners to make life easier for labor migrants), Regnum, 11.01.2022

<https://regnum.ru/news/economy/3473464.html> Last Access ed on 20 February 2022

Original quote: Важно уже в этом году уделить внимание разрешению вопроса в области оказания социального обеспечения, включающего медицинскую помощь трудящимся государств-членов и членам их семей в государстве трудоустройства на тех же условиях, что и граждан государства трудоустройства

²⁷⁰ Official Website of the Eurasian Economic Commission

<http://www.eurasiancommission.org/en/nae/news/Pages/20-12-2019-4.aspx> Last accessed on 20 February 2022

Original Quote: “*значительным прогрессом в процессе создания условий для эффективного функционирования единого рынка трудовых ресурсов Союза*”

experience in the EAEU Member States in order to determine the pension.²⁷¹ Furthermore, the procedure of medical examination when assigning a disability pension has been produced.²⁷²

A last compelling matter to observe, is that the EU bears no mention to culture in its legislation, while the EAEU does. The EU mentions a set of shared values and ideals, as well as has ratified a Charter of Fundamental Rights, but the wording of the EAEU Treaty is too vague and can result detrimental for integration.²⁷³ That is because paired with the lack of long-term perspectives for workers, the clause about culture reads more like a limitation than a genuine attempt at cooperation.²⁷⁴

All above considered, it is interesting to note that despite the many differences seen, freedom of movement is one of the topics where we can possibly find more similarities, among those covered by the two legislations. The EU and the EAEU provide overall not too dissimilar rights to the communitarian workers on their territory.

3.3.3 Third Country Nationals

A significant difference in the migration legislation between the EU and the EAEU are the norms regarding third country nationals. The EU has got a single uniform legislation for them, while in the case of the EAEU it is left to the single Member States to rule over it. For the EU articles 79 and 80 of the Treaty on the Functioning of the European Union regulate immigration policy, article 79 states:

The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-

²⁷¹ Соглашение о пенсионном обеспечении трудящихся государств - членов Евразийского экономического союза (Soglaşenie o pensionnom obespečenii trudjaščixsja gosudarstv, Agreement on the pension provisions for the labourers of the Member States of the Eurasian Economic Union)

²⁷² Ibid.

²⁷³ Article 98 of the Treaty on the Eurasian Economic Union

²⁷⁴ Cambien, Nathan, et al. European Citizenship under Stress: Social Justice, Brexit, and Other Challenges. Koninklijke Brill NV, 2020. Page 527

*country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.*²⁷⁵

Short stays are covered in the regulation 810/2009 establishing a Community Code on Visas, that also takes into account the Schengen accords, that established a common visa for the adhering Member-States.²⁷⁶ A third country national with a Schengen visa may travel across all EU countries for 90 days per 180-day period. Holders of residence permit in one Schengen EU country may travel to the others with a purpose and sufficient resources, while for stays longer than 90 days, they need a residence permit for the second country.²⁷⁷

As for the EAEU, the Advisory Committee for Migration Policy contains among its objectives the formation of a contractual and legal framework for the implementation of a unified migration policy and the development of measures to promote the organized recruitment and involvement of migrant workers on the territory of the Member States for their labour activities.²⁷⁸ The Committee also develops proposals for improving migration control, increasing the effectiveness of interaction between migration and the bodies of the Member States that are concerned in ensuring the protection of the rights of migrant workers and members of their families, and preventing the illegal use of the labour of migrant workers.

²⁷⁵ Article 79 of the Treaty on the Functioning of the European Union

²⁷⁶ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)

²⁷⁷ Official website of the European Commission

https://ec.europa.eu/immigration/general-information/already-eu_en Last accessed o 20 February 2022

²⁷⁸ Starostin, A. *Freedom of movement of labor resources in the EAEU by 2025*, Russian International Affairs Council. 15.06.2017

<https://russiancouncil.ru/analytics-and-comments/analytics/svoboda-peremeshcheniya-trudovykh-resursov-v-eaes-k-2025-godu-/> Last Accessed on 20 February 2022

The only shared laws about third country nationals that we can derive from the EAEU legislation are those regarding the family members of the workers: it is never explicitly mentioned in the Treaty, but it can be deduced that measures for family do not vary depending on the nationality of the family member. The EU, instead, has a series of specific provisions for non-communitarian family members that are contained in Directive 2004/38/EC.

CHAPTER 4

Present Day State of the Freedom of Movement of Labour in the EAEU

The creation of the EAEU occurred during a difficult time for the post-Soviet area, due to the economic crisis that the Russian Federation was facing due to a series of factors, among which were also the sanctions imposed on it.²⁷⁹ Regardless of that, labour migration continued to grow steadily.²⁸⁰ The goal of this chapter is to determine the extent of this migration by describing the situation in the area at the time of the formation of the EAEU and until present day, as much as possible. It is difficult to assess the migration situation from 2020 to the present because of how the Covid 19 pandemic and its restrictions have affected the way persons move and their ability to do so, therefore the data regarding this period reflect a situation of exceptional nature. The future perspectives that will be hinted at must also be interpreted in a context of a post pandemic situation, where freedom of movement of persons is restored to a larger degree.

The first facet to analyse in order to conceive what the migration has looked like in the last couple years are the data regarding the movements of the workers. Next, the situation in each of the Member States will be addressed and the importance of remittances will be explored. We will also briefly delve into the advantages that the EAEU brought as compared to the CIS. Then the problems that challenge the Union in terms of migration will be looked into. We will dedicate our attention to blacklists, education, and the Russian demographic crisis. Lastly, we will see how these, and other

²⁷⁹ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.
<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175> Last accessed on 20 February 2022.

²⁸⁰ Starostin, Alexei, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

problems could be tackled in the future, and what are the provisions already on the way to address them and to continue improving the freedom of movement of labour.

4.1 Migrant Workforce in the EAEU

We have seen in the previous chapters the legal basis for the working of migration in the EAEU, but how has this influenced the citizens? An overview will be presented on how migrants are spread in the territory, and it will introduce the groundwork for all future analysis. Then, more detail about the approach to migration of the single Member States will be provided. Finally, the economic and financial aspect will be explored by looking at remittances. Unfortunately, up to date statistics are not always exhaustive and readily available, so the reading of the trends will have to be performed to the possible extent. Another similar issue is that of unregistered migration, which leaves gaps in the analysis. Despite that, sufficient conclusions can be drawn.

4.1.1 Overview of the Labour Migration in the EAEU

The EAEU Treaty has opened better prospects and opportunities for the citizens of its Member States, measures that have been influenced by the already present degree of freedom of movement in the area, leading to wonder what are the main trends and if changes occurred. Most of the migration in the Union is majorly directed towards the Russian Federation. The second country with the most labour immigration in the Union is Kazakhstan, but the numbers are significantly smaller in comparison.²⁸¹ According to the report of the International Centre for Migration Policy Development (ICMPD), in 2017, the Russian Federation received 377.000 labour migrants from Kyrgyzstan, 232.000 from Armenia, 125.000 from Belarus and 88.000 from Kazakhstan. Kazakhstan, instead, received 4.500 labour migrants from Russia, 3.000 from Armenia,

²⁸¹Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

1.500 from Kyrgyzstan and 1.000 from Belarus.²⁸² Russia has always received a large proportion of migrants from Central Asian countries, but the EAEU measures allow Kyrgyz and Kazakh citizens to undergo leaner bureaucratic procedures and puts them at an advantage. Figure 1 illustrates the number of labour migrants for each EAEU member state, comparing between the years 2014, just before the entry into force of the EAEU Treaty, and 2019, the latest significant year before the pandemic driven changes. It is observable that for all member states migration towards Russia has increased, dramatically in the case of Kazakhstan and Belarus, and moderately for Armenia and Kyrgyzstan, that however still maintain the highest number of migrants both in proportion and in absolute measure.

Country of citizenship	Country of entry >>>	Armenia	Belarus	Kazakhstan	Kyrgyzstan	Russia
Armenia	2014		387	272	2	194,684
	2019		397	2,676	0	210,460
Belarus	2014	0		598	6	86,234
	2019	38		1,336	0	163,410
Kazakhstan	2014	0	1,034		130	58,744
	2019	61	597		0	136,208
Kyrgyzstan	2014	0	48	798		371,656
	2019	7	126	5,808		453,702
Russia	2014	0	4,546	8,672	370	
	2019	3,289	6,741	30,158	0	

Figure 1: Statistic Information About the EAEU, Eurasian Economic Commission

²⁸² State Migration Service of the Ministry of Territorial Administration and Development of the Republic of Armenia; Ministry of Internal Affairs of the Republic of Belarus; Ministry of Education and Science of the Republic of Kazakhstan, Ministry of Health and Social Development of the Republic of Kazakhstan; Ministry of Internal Affairs of the Republic of Kazakhstan State Migration Service under the Government of the Kyrgyz Republic.

http://www.eurasiancommission.org/ru/act/finpol/migration/Pages/statistical_data.aspx

Las accessed in February 2022

In the medium long run, not accounting for significant and unforeseen shocks, it is reasonable to believe that Russia will continue to be the main destination for migration and to increase its migrant population, Kazakhstan and Belarus might keep a generally neutral migration gain, and Kyrgyzstan and Armenia will most likely keep a negative migratory net balance.

4.1.2 Labour Migration the Member States of the EAEU

Having considered the overall trends and statistics in the region, let us look at the peculiarities of the situation of the labour migration and demographic in each of the Member States. The state of affairs varies between them for historical, cultural and economic reasons that ultimately contribute to define and shape the current landscape of EAEU migration.

Russian federation

The Russian Federation is not only the main recipient of migrants in the EAEU, it is also one of the countries that attracts the largest total number of migrants in the world.²⁸³ The federation has been regularly receiving unskilled labour from countries of the post-soviet area, but in recent years it is also attempting to attract a more qualified labour force.²⁸⁴ The situation of labour migration in Russia will be one of the main focuses of this chapter, explored more in depth in the next paragraphs, with sections dedicated to its demographic crisis and the measures adopted to handle migration, from patents to black lists.

²⁸³ International Organization for migration, World Migration Report

<https://worldmigrationreport.iom.int/wmr-2022-interactive/> Last accessed on 20 February 2022

²⁸⁴ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175> Last accessed on 20 February 2022

Kazakhstan

Kazakhstan to some extent both receives and sends out labour migrants.²⁸⁵ Ever since the dissolution of the USSR the country has placed a particular attention on migratory issues, pursuing a goal of reconstructing an ethnic identity that was lacking at the time. For this purpose, particular attention was placed to the repatriation of ethnic Kazakhs into the country, who also received its citizenship regardless of the period of permanence.²⁸⁶ This was accompanied by efforts to reintegrate them into the society by setting up employment programs, training, courses of Kazakh language, and some fundamentals of the local legislation.²⁸⁷ The country is gradually moving towards a transformation into a mono ethnic state.²⁸⁸ Many Russian speaking citizens, instead, left the country, also thanks to the increased freedom of movement, that proved to be particularly advantageous to them.²⁸⁹ As for foreign migrants, Kazakhstan has an influx of workers from nearby countries such as China, Turkey and Uzbekistan.²⁹⁰ The recent political situation of Kazakhstan also leaves an uncertain position for predictions of possible future implications.

²⁸⁵Aliyev S. *Labor Migration and Social Welfare of Workers in the Eurasian Economic Union* (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, *trudovaya migaciya i social'noe obespečenie trudyasčixsya v Evrazijskom ekonomičeskom sojuze*), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

²⁸⁶ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

²⁸⁷ Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

²⁸⁸ Russian Exodus. Will Kazakhstan become a Mono-Ethnic State? stanradar.com

<http://www.stanradar.com/news/full/20720-russkij-ishod-stanet-li-kazahstan-monoetnicheskimgosudarstvom.html> Last accessed on February 2022

²⁸⁹ Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

²⁹⁰ Ibid.

Belarus

Belarus finds itself in a very peculiar position, geographically. Its location is between Russia and the European Union member states, which makes it almost like a transit corridor between the EAEU and the EU. This means that the country experiences a lot of temporary and transitory migration, and the number of people entering and exiting is very close (for example, in the first half of 2015 2093 million people immigrated, and 2026 million emigrated, and in the first half of 2016 the number of both entries and exits was around 4 million).²⁹¹ On the other hand, it is not rich in permanent foreign workers, just 54,000 in 2016. Belarus is also the EAEU member state that is most integrated with Russia. The recent political instability of the country, though, makes it difficult to foresee any certain future developments.

Armenia

Armenia has a complex demographic situation, as it is finding itself in the midst of a demographic crisis. Not unlike Russia, it is facing an ever-aging population with insufficient birth rates to sustain growth²⁹², but at the same time it experiences neglectable immigration, while continuing to lose population to emigration. Most Armenian emigrants travel to Russia, for example, 631,746 Armenian nationals were registered with the migration service in 2016. Overall, around 40,000 people leave the country annually, that corresponds to 1–1.5 percent of the country's total population.²⁹³ These numbers are understandable both in the perspective of Armenia's economic situation and considering the diasporic history of the Armenian People. Even before EAEU norms Armenian presence has been significant in Russia: in 2010 there were

²⁹¹ Ibid.

²⁹² Demographic Specialist: A Critical demographic situation is developing in Armenia // *Novosti-Armenia*, July 11, 2016.

<http://www.newsarmenia.am/news/armenia/v-armenii-slozhilas-kriticheskaya-demograficheskaya-situatsiya-demograf> Last accessed on 20 February 2022

²⁹³ Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

1,182,388 ethnic Armenians on the territory (although unofficial sources estimate a higher number), when, for reference, in the Republic of Armenia there was a total population of 2,8 million people.²⁹⁴ We can see the latest progression of the total population in Figure 2, noticing the steady decrease.

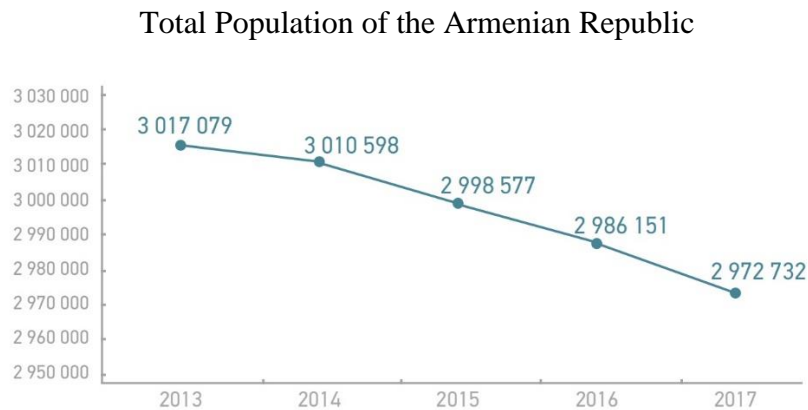


Figure 2: ICMPD Migration Observatory: Collection of publications 2018-19

Kyrgyzstan

The Kyrgyz Republic is probably the EAEU Member State that most relies on labour migration in terms of labour force export. Its accession to the EAEU allowed many citizens to emigrate in a legal and organized manner, and the number of workers leaving for Russia and Kazakhstan increased.²⁹⁵ In fact, Kyrgyz work migrants have always been a steady presence in these countries, but often faced bureaucratic and legal barriers, especially in Russia. Despite the significant migration rates, the population of Kyrgyzstan continues to grow consistently.²⁹⁶ Although emigration does not impact population growth and brings notable remittances, it does have some negative consequences. One that is consequential is the outflow of qualified specialists: doctors, skilled workers and engineers, intellectuals, relocate to Russia or Kazakhstan and hinder

²⁹⁴ World Bank, Total Population of Armenia

²⁹⁵ Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

²⁹⁶ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

the possible development in the country, depriving it of intellectual potential.²⁹⁷ This leads to consequences such as a shortage of doctors and teachers in rural areas.²⁹⁸ It is expected that the trend towards an increase in the number of workers who leave the country will continue.

4.1.3 Remittances

After seeing the quantitative entity of the population on the territory, we shall move on to the economic impact that migrants have on the countries through remittances. The data regarding the number of workers moving across borders is relevant because it is indicative of the demography of the Member States, but in order to have an even more comprehensive overview on the influence on migration it is important to look at the financial flows of the workers transferring money they earned to their native countries. Remittances are defined as “the sum of: personal transfers; compensation of employees who are employed in an economy in which they are not resident and of residents employed by non-resident entities; capital transfers between households; social benefits payable under social security funds and pension funds from abroad.”²⁹⁹ Through these transactions citizens can support their families in their native countries by working abroad, and impacting not only the personal scope but also the economy of the country as a whole. Remittances for example helped many EAEU states to manage the difficult economic situation arising in the region around 2015.³⁰⁰

Between 2015 and 2016 remittances across the EAEU increased by 24.7% (from 6.980 billion dollars to 5.065 billion).³⁰¹ Armenia Kazakhstan, and Kyrgyzstan all have advantages of significant scale, while Belarus does not benefit from remittances from

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ International Monetary Fund, *Balance of Payments Manual*, 6th edition, 2013.

³⁰⁰ Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

³⁰¹ Annual report of the Central Bank of the Russian Federation.

Russia as much as the other three EAEU countries. In fact, Belarusian migrants are estimated to send around \$950 million home per year, which constitutes nearly 2% of the country's GDP. This figures, though, refer to the total amount of remittances derived from all countries where Belarus workers emigrate, not just Russia.³⁰² On the opposite side of the spectrum, the Member State that most benefits from the money transfers of labourers is the Kyrgyz Republic. The economy of Kyrgyzstan strongly depends on remittances, since they account for 30% of the GDP, making labour migration an important means for economic development.³⁰³ It is in fact estimated that remittances have reduced the national poverty rate by 6 to 7%.³⁰⁴ Although among the EAEU countries net remittances were the highest for Kyrgyzstan, Kazakhstan had the biggest growth in remittances since the formation of the Union, increasing by 43 percent between 2014 and 2015.³⁰⁵ Finally, remittances are very important for Armenia too, and contribute to 21% of the country's GDP.³⁰⁶ Households tend to have only one migrant family member and almost 40% of them are long term migrants. A large amount of the remittances is used to cover the immediate needs of the families, while a part is employed in solving some of their financial problems.³⁰⁷

³⁰² Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

³⁰³ United Nations Development Programme About Kyrgyz Republic.
Available at <http://www.kg.undp.org/content/kyrgyzstan/en/home/about-us.html>. Last accessed in February 2022.

³⁰⁴ Ibid.

³⁰⁵ Kazakhstan received \$318 million in 2015, Kyrgyzstan \$1.083 billion 37.8%
Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

³⁰⁶ Starostin, A. "Freedom of movement of labor resources in the EAEU by 2025", Russian International Affairs Council.
<https://russiancouncil.ru/analytics-and-comments/analytics/svoboda-peremeshcheniya-trudovykh-resursov-v-eaes-k-2025-godu/> Last Accessed on 20 February 2022

³⁰⁷ Migrant Remittances to Armenia: the Potential for Savings and Economic Investment and Financial Products to Attract Remittances / ILO Subregional Office for Eastern Europe and Central Asia, International Labour Office. - Moscow: ILO, 2009.

4.2 Comparison Between the Freedom of Movement of Labour of the Workers of the Eurasian Economic Union and the Commonwealth of Independent States

As we have seen in the first chapter, the body intensively regulating interborder migration in the post-soviet area was and to some extent still is the Commonwealth of Independent States. Let us now compare what a CIS citizen and a EAEU citizen must do respectively to work in Russia. The choice to explore this in the case of the Russian Federation is due to the fact that as we have seen Russia is the first and largest destination for work migrants in the EAEU.

The most important difference is that CIS citizens are required to obtain a patent in order to be able to work in the Russian Federation.³⁰⁸ That is not necessary for the citizens of the EAEU. The patent requires a serious amount of paperwork and documents to present.³⁰⁹ Furthermore, for migrants to work in the Russian Federation they are required to obtain medical insurance, to undergo a medical examination, and to pass an exam on knowledge of the Russian language, history and legislation.³¹⁰ As for

³⁰⁸ Aliyev S. Labor Migration and Social Welfare of Workers in the Eurasian Economic Union (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

³⁰⁹ Copy of the Passport, Notary Certified Passport Translation, Copy of the Migration Card, Copy of the Registration, Registries made by mail are not accepted, it should be registered on legal UVM which is computer based, 2 color photographs, Health Certificate, Obligatory Health Insurance - DMC (Dobrovolnoe Meditsinskoe Strahovanie), Individual has to pass the exams of Russian language, Russian history and Russian Federation legal legislation and certificates proving that they have full knowledge of these subjects. INN Document - Individual Tax Number

[https://www.visaforrussia.ru/russian-work-patent-for-cis.php#:~:text=CIS%20\(The%20Commonwealth%20of%20Independent,stay%20legal%20and%20to%20work](https://www.visaforrussia.ru/russian-work-patent-for-cis.php#:~:text=CIS%20(The%20Commonwealth%20of%20Independent,stay%20legal%20and%20to%20work). Last accessed on February 2022

³¹⁰ Aliyev S. Labor Migration and Social Welfare of Workers in the Eurasian Economic Union (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, трудовая

the period of permanence, the citizens are allowed to remain within the Russian territory in compliance with the length of their patent, and leave once it is expired. EAEU citizens, instead refer to the duration of the contract of employment.³¹¹ With regards to the registration procedure, while EAEU members are granted the 30-day span, for CIS citizens this is not universal, and it is regulated by bilateral agreements between Russia and their country of origin. The income of EAEU citizens is taxed on the same way as that of Russian citizens, while CIS citizens pay their taxes in advance relative to their patent. In order to obtain the patent, in fact, the worker shall pay an Individual Income Tax (*налог на доходы физических лиц, nalog na doxody fizičeskix lic*) that must be paid each month for a maximum of one year per patent. The minimum amount is 4500 roubles³¹² a month.³¹³

A last issue is the recognition of diplomas and qualifications, that is direct for EAEU citizens but must be performed in accordance with the legislation of the state of employment for CIS citizens.³¹⁴

Overall, citizens of the Member States of the EAEU enjoy some facilitations and rights that workers coming from CIS countries do not, but at the same time the advantages are not drastic and could surely be improved. And there is the desire to set EAEU citizens apart thanks to their position.³¹⁵

migacii i social'noe obespečenie trudyasčixsya v Evrazijskom ekonomičeskom sojuze), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

³¹¹ Article 96 of the Treaty on the Eurasian Economic Union

³¹² Roughly 60USD as of February 2022

³¹³ Aliyev S. Labor Migration and Social Welfare of Workers in the Eurasian Economic Union (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, *trudovaya migacii i social'noe obespečenie trudyasčixsya v Evrazijskom ekonomičeskom sojuze*), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

³¹⁴ Ibid.

³¹⁵ Aliyev S. Labor Migration and Social Welfare of Workers in the Eurasian Economic Union (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, *trudovaya*

4.3 Challenges of the Present Migratory State

Freedom of movement of labour in the EAEU is as recent as the Union itself, but it is also constantly evolving with the goal is to continue to improve its efficiency and foster higher integration. This means that there are constant challenges to be faced at national and supranational level, that must be detected and addressed. We will now see an exposition of which are the main issues that hinder the possibility of a smooth and unified labour market.

4.3.1 Blacklists in Russia

A significant challenge to labour migration in the Russian Federation is posed by the so-called “blacklists” enforced by the Russian Federal Migration Service. These consist of a list of people inside an electronic database of the Russian Ministry of Internal Affairs, and they contain the data of foreign nationals whose entry to Russia has been restricted for a series of reasons.³¹⁶ Individuals are added to this list in case they have violated the statutory period of stay in Russia of 90 days within six months, did not issue a patent and illegally carried out labor activities, or committed any other form of violation of the Russian migration legislation.³¹⁷ These persons will not be able to enter the country for 3, 5 or 10 years, depending on the severity of the offenses. A large issue with this measure is that the individuals are not notified of the ban. They usually discover it when attempting to reenter the country. Measures are being taken, after several complaints,

migacia i social'noe obespečenie trudyščixsya v Evrazijskom ekonomičeskom sojuze), Eurasian Economic Commission, Moscow, 2016.

³¹⁶ Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

³¹⁷ Aliyev S. Labor Migration and Social Welfare of Workers in the Eurasian Economic Union (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, trudovaya migacia i social'noe obespečenie trudyščixsya v Evrazijskom ekonomičeskom sojuze), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

for the workers to be able to digitally access the lists and be able to discover if they have been included in them.³¹⁸ In order to revoke this entry ban a request to the Russian Ministry of Internal Affairs must be filed, justifying the infraction. If the issue does not get resolved a court can be contacted. The issue, other than the dubious probabilities of success, is also the time required for these procedures.³¹⁹ Documents such as patents are currently not necessary for the EAEU citizens, but in the first years of the formation of the Union, some Armenian and Kyrgyz citizens were still on the list because of the violations committed prior to the signing of the EAEU Treaty. As for present day, EAEU citizens may actually find themselves at an advantage with respect to other Central Asian migrants, as their chances of being on a blacklist have drastically reduced, as they now need less formalities in order to work, and need two offenses, not one, to get blacklisted.³²⁰

4.3.2 Education and Employment

The role of education is crucial in the effective planning and development of the common labour market in order to obtain economic growth. The countries of the Union need a long-term perspective for the needs of the common market in terms of personnel and by taking that into account, coordinate the education fields. The EAEU Treaty does not extensively mention education, it only specifies that education certificates can be valid across the EAEU but does not add much more.³²¹ An interesting perspective on the issue, though, is that of considering education as a service, and as such it would benefit from being standardized in a way that allows more integration: the ability of the workers to move across borders means that the education of citizens in one country can

³¹⁸ Проверка паспортов мигрантов из стран СНГ в черном списке ФМС, Turimm.

<https://turimm.com/immigratsiya/chernyj-spisok-fms.html> Last accessed on 20 February 2022

³¹⁹ Ibid.

³²⁰ Aliyev, S. Labor Migration and Social Welfare of Workers in the Eurasian Economic Union (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, trudovaya migaciya i social'noe obespechenie trudyashchixsya v Evrazijskom ekonomičeskom sojuze), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

³²¹ Article 96 of the Treaty on the EAEU

ultimately be beneficial for the citizens of any other Member State.³²² Even just considering professional training for individuals working for the Union's institutions and in development. However, Kazakhstan and Belarus in particular, seem to be adamant to this shift, because of the fear of losing too many local students to Russian universities.³²³

A second problem is the gap between market needs and education of workers. The education of the migrant workers, in fact, does not always correspond with the requirements of the local job market, in this case the Russian market specifically. An example of this are workers from the Kyrgyz Republic. Nearly 27% of the total Kyrgyz working-age population has a higher education degree, which is a satisfactory percentage.³²⁴ Kyrgyz migrants are generally trained in services, health care, social welfare, or education. Meanwhile, the Russian labour markets require specialists in social sciences, business, law, humanities, design, manufacturing, or construction.³²⁵ This means that many Kyrgyz migrants do not actually utilize their qualifications for their employment. The migrants prefer to employ the skills and competences acquired by practice in Russia. Many even decide to willingly ignore their qualifications, in fact, only 62% of them presented an education certificate upon entering in Russia.³²⁶ This leads both Kyrgyzstan and Russia to an underutilization of its intellectual labour capital, is holding back potential growth. This is where the aforementioned coordination of education and labour market across the entire union must come into play.

³²² Alexei Starostin, EAEU Development Prospects up to 2025. Working Paper. Special Issue Russian International Affairs Council 2017

³²³ Ibid.

³²⁴ World Bank (2013).

³²⁵ Yun, Sergei. *Prospects for Education Integration in the EAEU up to 2025*. EAEU Development Prospects up to 2025. Russian International Affairs Council. 2017.

<https://russiancouncil.ru/en/activity/workingpapers/eaeu-development-prospects-up-to-2025/> Last accessed on 20 February 2022.

³²⁶ Ibid.

4.3.3 Demographic Crisis in Russia

Ever since the dissolution of the Soviet Union, the Russian Federation has been facing issues of demographic nature. The issue is not uncommon in many regions of the world at present but let us see which are the specific characteristics of the Russian state of affairs. The country entered a stage of negative population growth at the end of the 1980s, when the fertility rate dropped dramatically, finding itself below 1,5.³²⁷ As we can see the fertility rate saw a moderate increase in the beginning of the 2010s, as a consequence of the government's policies that provided financial help as a way to encourage population growth by increasing natality with modest success. An uncommon factor that is interesting to note is that unlike in most Western countries, the average age of the parents at birth has not increased but has actually dropped.³²⁸

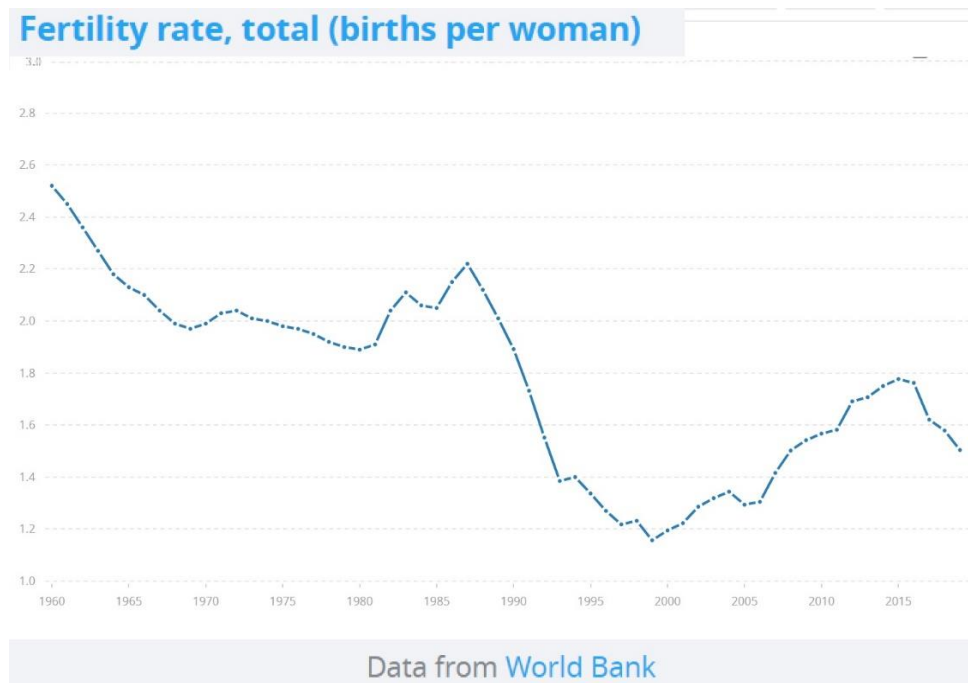


Figure 3, World Bank, 2021

³²⁷ Adamson, David M. and Julie DaVanzo, Russia's Demographic 'Crisis': How Real Is It? Santa Monica, CA: RAND Corporation, 1997.

https://www.rand.org/pubs/issue_papers/IP162.html. Last accessed on 20 February 2022.

³²⁸ Ibid.

Another concerning element that is dissimilar to the situation in most developed countries are the mortality rates. In many cases, low birth rates are usually accompanied by more and more growing longevity, but life expectancy in Russia is still relatively low, and has been increasing very slowly. Men especially tend to die younger, with study even finding that 37% of Russian men did not live to the age of 55 years old in 2005.³²⁹

A final concerning factor is that the growing number of migrants that we observed is not sufficient to completely make up for the constant loss of population, especially considering that Russia still experiences non neglectable rates of emigration, especially from young and qualified individuals, that happens both for economic and sometimes political reasons.³³⁰

The Covid 19 Crisis has also played a role in changing the populational landscape of the world, other than that of Russia. The pandemic has further exacerbated the demographic problem, both in terms of mortality and movement of persons. Since 2020 approximately 334.039 Russians lost their lives due to the pandemic, and the number is still unfortunately growing.³³¹ The total population of the country declined by 997,000 people between October 2020 and September 2021.³³² Furthermore, because of the safety norms in place, such as the closing of borders and limitations to movement, very

³²⁹ Zaridze, David, et al. Alcohol and Mortality in Russia: Prospective Observational Study of 151 000 Adults. *The Lancet*, vol. 383, no. 9927, Apr. 2014, pp. 1465–73. *DOI.org (Crossref)*, [https://doi.org/10.1016/S0140-6736\(13\)62247-3](https://doi.org/10.1016/S0140-6736(13)62247-3). Last accessed on 20 February 2022.

³³⁰ Demintseva, Ekaterina, Understanding Russia’s Brain Drain in the 2010s, *Problems of Post-Communism*. Vol. 68, Issue 6. 2021, pp. 521-530.

³³¹ World Health Organization

<https://covid19.who.int/region/euro/country/ru> Last Accessed on 20 February 2022

³³² Sauer, Pjotr. “Russia’s population undergoes largest ever peacetime decline, analysis shows”, *The Guardian*, 13/10/2021
<https://www.theguardian.com/world/2021/oct/13/russias-population-undergoes-largest-ever-peacetime-decline> Last accessed on 20 February 2022

little migration occurred.³³³ It is still uncertain how the evolution of the crisis will continue.

4.4 Possible Measures Towards Improving Freedom of Movement of Labour in the EAEU

We have seen the present situation and we have seen what the main issues and challenges are. This next section will attempt to outline some necessary steps towards solving these issues and overall improving the quality of migration. We will both see the approaches that are already being taken in the direction of facilitating freedom of movement of individuals, and what other potential measures might be desirable for the future.

A first solution should regard a deeper attention towards the registration method and timing. The objective of increasing the registration period to 90 days is already being considered, in order to allow citizens to deal with paperwork and bureaucracy more comfortably and have more time to settle on an occupation. The idea of abolishing registration altogether in order to substitute it with a system based on tax payment and not on residence has also been suggested.³³⁴ This would help, for Russian Federation especially, to progress toward a system less rooted in the Soviet heritage of the *propiska*, that is for some aspects outdated. The tax-based system could also be helpful to bring more transparency. Another idea that is being debated is that of widening the range of documents accepted at entry and transit in the Member States, in order to accommodate all national IDs and internal passports of the member states.³³⁵ These

³³³ Russian Federal State Statistic Service (Федеральная служба государственной статистики, Federal'naja sluzhba gosudarstvennoj statistiki)

<https://rosstat.gov.ru/folder/12781> Last accessed on 20 February 2022

³³⁴ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

³³⁵ Aliyev S. *Labor Migration and Social Welfare of Workers in the Eurasian Economic Union* (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, trudovaya

measures would not be too complex to implement, and would at the same time grant some serious advantages to migrants and their families. Another convenient and leaner suggestion is releasing citizens from the obligation to fill out a migration card when crossing the borders of the Union Member States, still monitoring the entrances and exits, but on a notification-based system.³³⁶ Ensuring priority crossing of the borders of the Member States by EAEU citizens in the location of passport control at the borders and in passenger transportation terminals at airports is also an objective that would contribute to simpler migration procedures.³³⁷ Given the current state of affairs a Schengen-style solution, with the abolition of border controls between the Member States, is definitely too ambitious to be considered at present and in the near future, although its desirability can be argued, especially in the context of holding together integration.

Another fundamental issue is that, already addressed, of long-term permanence of the migrants, thus of the necessity of introducing a form of permanent residence for long term workers thanks to a permit no longer strictly dependent on the length of the contract, even mirroring to some degree that of the EU.

An issue often discussed is the problem of coordination in the fields of social security and medical care. Although steps for a uniform pension provision have been taken, many areas still remain uncovered by legislation, leaving the citizens deprived of basic protections. A common system to cover the medical insurance of workers would be

миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

³³⁶ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

³³⁷ Aliyev S. *Labor Migration and Social Welfare of Workers in the Eurasian Economic Union* (Трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе, трудовая миграция и социальное обеспечение трудящихся в Евразийском экономическом союзе), Eurasian Economic Commission, Moscow, 2016.

<http://www.eurasiancommission.org/ru/Documents/spreads.pdf> Last Accessed on 20 February 2022

especially useful and desired. Not only do the workers need assistance, but they also often happen to find themselves in conditions that may pose a risk to their health (inadequate housing, long hours of physically demanding labour...) ³³⁸ and therefore may specifically need their health to be monitored. This is also a danger for the spread of infectious diseases. More accessible care and periodic controls (such as those obligatorily implemented for the Russian work patent) will allow for safer conditions for all. ³³⁹ An informal market of medical services has formed because of the issue

On the topic of rights, more emphasis on the protection of the human rights of migrant workers is an important element, considering the exploitation that many undergo when working. ³⁴⁰ Working towards legalization of migrant work, that is to allow migrants to work under regular, legal contracts, is important, since the issue of illegal labour is still present, despite the measures. For example, according to a 2016 survey, while 71% of Kyrgyz migrants in Russia has a formal contract of employment, a much smaller percentage of them received their salary officially. Almost half of the workers, the 43%, did not register their salary formally, and often upon the decision of the worker. ³⁴¹ We can see the distribution of it in Figure 4.

³³⁸ Poletayev D.V. *Analysis of the Labor Market Situation in the RF for Effective Employment of Migrant Workers from the KR and the RT*, Tien-Shan Analytical Center of the American University in Central Asia (AUCA TAC), Bishkek, 2016.

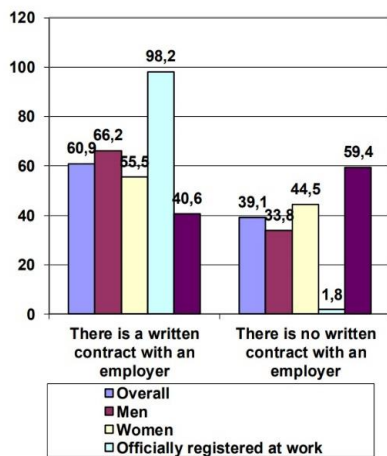
³³⁹ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

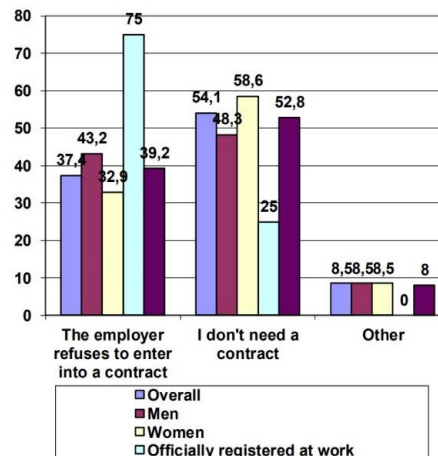
³⁴⁰ Ibid.

³⁴¹ Poletayev D.V. *Analysis of the Labor Market Situation in the RF for Effective Employment of Migrant Workers from the KR and the RT*, Tien-Shan Analytical Center of the American University in Central Asia (AUCA TAC), Bishkek, 2016.

Distribution of respondents –by the presence of a written contract with an employer, %



Distribution of respondents by the absence of a written employment contract with the employer, %



Analysis of the Labour Market Situation in the Russian Federation for Effective Employment of Migrant Workers from the Kyrgyz Republic and Republic of Tajikistan, Tian Shan Policy Centre AUCA, 2017.

Another issue difficult to tackle that is broadly related to this is that of the widespread xenophobia that these migrants face, especially in the Russian Federation and in Kazakhstan.³⁴² The complexity of the problem renders this a long-term objective, that should be supported by education and promotion of minority rights in all Member States of the Union. The Russian Federation, being not only the main destination for migrants, but also a multi-ethnic state, with around 193 ethnic groups, composing the 19% of the population³⁴³ should be the focus of these solutions. Post-Soviet xenophobia is present and has not been decreasing in the country, with severe consequences such as growing violence, racial profiling, increasing nationalism and radicalisation.³⁴⁴ Still on the topic of human rights, other rights that should be protected are those of the vulnerable family members of the migrants, such as children left behind in the country of origin by their labour migrant parents.³⁴⁵

³⁴² Ibid.

³⁴³ Russian population census 2010 - Population by nationality, sex and subjects of the Russian Federation". Demoscope Weekly. 2010.

http://www.demoscope.ru/weekly/ssp/rus_etn_10.php Last accessed on 20 February 2022

³⁴⁴ Sevortian, Anna. *Xenophobia in Post-Soviet Russia*. The Equal Rights Review, Vol. Three (2009)

³⁴⁵ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

As we have seen, coordination in the field of education is also strongly desirable. We have seen that although the recognition of education certificates is certainly important, it is not sufficient for full integration. EAEU countries have remarkably different educational systems,³⁴⁶ and harmonizing them at least at the higher education level could encourage more movement of students across borders. For example, In Russia, instead of a specialist degree, bachelor's and master's degrees were introduced, while in Kazakhstan all three levels operate, including doctoral studies (PhD degree), and Candidate and doctoral degrees have been abolished. In Belarus only a mass transition to a two-level system of bachelor's and master's programs are planned.³⁴⁷ If movement between students of the Union was encouraged, a positive integration effect could be achieved, but for that a simpler transferability of career is needed, as well as incentives and concrete exchange projects. This could also be a first step towards addressing the problem of the lack of correspondence between the market and the qualifications of the workers. Still in this context, the education of the children of the migrant workers also plays a role. In fact, 63% of parents from Kyrgyzstan and 59% of parents from Armenia wish for their children to pursue college education in Russia, while in Kazakhstan 31% of migrant children from Kyrgyzstan intend to attend university there.³⁴⁸

Finally, the question of backlists necessitates to be addressed and discussed. Blacklisted individuals should be entitled to information about their status and an amnesty needs to be considered.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

³⁴⁶ Yun, Sergei. *Prospects for Education Integration in the EAEU up to 2025*. EAEU Development Prospects up to 2025. Russian International Affairs Council. 2017.

<https://russiancouncil.ru/en/activity/workingpapers/eaeu-development-prospects-up-to-2025/> Last accessed on 20 February 2022.

³⁴⁷ Ibid.

³⁴⁸ Poletayev, Dmitry. *Analytical Report Addressing the Challenges of Labour Migration within the EAEU*. ICMPD, Prague Process. 2019.

<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=175>

Conclusion

Throughout this thesis the freedom of movement of labour was placed at the centre of the discussion, since in a globalised world that is facing ever growing migration, recognising its characteristics in a region as complex as the EAEU is a way to understand the issues of the population of the countries involved. The course of action was to analyse the context in which the EAEU arose, by inspecting the past relationships of the Member States, that is the Soviet Union and the subsequent integration projects. Then the European Union was Then a comparison and in the end the question was addressed.

The first chapter showed the conflicting nature of freedom of movement of persons in the Soviet Union: citizens were legally equal in all the republics that composed the Union, and national borders were not especially influential. However, freedom of movement of individuals was still limited, strongly at first, and less later. The citizens moved from one city to another with difficulty, and countryside inhabitants struggled with mobility most of all. The *propiska* was in place, the registration system that tracked individuals and was necessary to move. After the dissolution of the USSR the Soviet Republics became independent and in order to allow the citizens to move across these new borders, the countries created provisions that regulated these movements. The main body that allowed freedom of movement of individuals was, and to some degree still is, the Commonwealth of Independent States, an organization created simultaneously with the dissolution of the USSR. As for the present day, the Eurasian Economic Union was created as a culmination of the Customs Union and the Eurasian Economic Community. The Member states of the EAEU are Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia. The Treaty on the Eurasian Economic Union includes norms regarding the free movement of goods, services, capital, and labour. The norms for the free movement of labour are those which allow the citizens of the Member States to move and to work with more ease and protections. The stay and conditions that are permitted to the individual are dependent on their employment contract. The EAEU Treaty aids citizens in the phase of their entry into the country by allowing them to have a registration period of 30 days and by not requiring a migration card for short stays. It also prohibits

discrimination, allows for recognition of educational certificates and provides some basic guidelines for the granting of social security benefits to the workers. The family members of the workers are also allowed to reside with them and enjoy most of the rights of the workers themselves. These provisions are surely important, because they indicate a desire for integration of the labour market and allow for more widespread movement, but are still to some degree basic and not developed in detail, leaving many of the decisions to the discretion of the Member States.

The second chapter introduces the European Union, outlining the original project for the organization and underlining the early desire for integration and for free movement of individuals across the territory. The basis for freedom of movement of individuals is present in the Treaty of The European Union, but main provisions are contained in the Treaty on The Functioning of the European Union. Here, the rights are divided as deriving from citizenship, work, or establishment. The free movement of workers is, as in the case of the EAEU, dependent on an employment contract. The worker enjoys several rights, that are briefly described and mostly consist of labour and non-discrimination rights. Freedom of establishment applies to self-employed workers, who enjoy protections and freedoms similar to those of employed workers. The free movement of citizens is possibly the most interesting aspect of EU mobility law. Is a principle of the EU and it is dependent on a shared European citizenship that allows for movement. However, this right is to be invoked only if none of the others apply. This right has been especially validated by the CJEU, which had an important role in confirming that EU citizens do in fact have a right to movement independent of their occupational status. Arguably the most comprehensive among the pieces of legislation on the topic is the 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. It is an extensive document that details the conditions of free movement of workers much more extensively than the TFEU. It contains indications on the length of permanence, potential residence permits and formal procedures, family members of the workers, who can be both EU nationals and third country nationals, and labour rights. Finally, the Schengen Area is outlined. The advantages of Schengen are immediately evident: all individuals on the territory of

the signatory state enjoy movement in a customs free area, and even third country nationals have benefits, such as a single visa to access all of the countries participating in Schengen. This is arguably one of the most evident culminations of the objectives of a unified Europe and of free movement.

The third chapter compares the EAEU with the EU and specifically juxtaposes the positions of the two on freedom of movement. Firstly it addresses the concept of holding together regionalism, in order to contextualise all following findings. The idea of holding-together regionalism tells us that integration in the post soviet countries follows a different path from integration in countries that were not recently under the same authority. For that reason, instead of uniting a region, the EAEU is more accurately reuniting it after a separation, which brings advantages such as pre-existing ties to be built on, but can also bring disadvantages such as desires for protectionism or nationalism as a consequence of emerging from the USSR. Then the structures of the two Unions are compared, which shows how the EU is significantly more supranational than the EAEU, that is instead mostly intergovernmental. The strong suits of the EU in this regard are the presence of a European Parliament, that the EAEU does not have, and the composition of the Commission, that is fully not dependent on the governments of the Member States. The Court of Justice of the EU is also more powerful than the Court of the Eurasian Economic Union. Concerning freedom of movement of individuals, as we have seen the EAEU mostly relies on its treaty for the norms, while the EU has multiple sources, more or less specific and detailed. Two are possibly the largest differences between freedom of movement of persons in the Unions that are immediately noticeable. The first is the right of EU citizens to travel on the basis of their citizenship, while for the EAEU citizens, freedom of movement of people is only based on labour, so it is freedom of movement of workers. The second is the presence of border controls between the EAEU countries, which are no longer in use in the EU thanks to the Schengen Agreement. The EU is also more integrated on the topics of social security, healthcare, education, and, most importantly for the scope of this thesis, permanent residence. EU citizens are in fact entitled to pursue a permanent residence permit after 5 years of continuous residence, while the EAEU has established no such norms. A last detail is that while the EU has a unified legislation on the migration of

third country nationals inside its borders, the EAEU once again leaves the matter to the Member States.

At last, the fourth chapter delves into the most pressing questions of this thesis, taking into consideration all factors from what has been researched. The chapter attempts to look at the present-day situation in the EAEU and consider what is the impact of freedom of movement of labour legislation, what are its successes and what can be improved moving forward. Initially, it displays the significance and state of migration and freedom of movement of persons for each Member State, one by one. This is important as it allows us to see that The Russian Federation is the main recipient of labor migrants from the Union. Armenia and Kyrgyzstan receive an extremely neglectable number of migrants from the other EAEU Member States, but send out a large amount of work migrants, who contribute to the economy of their country with substantial remittances. Belarus has similar numbers of immigration and emigration in total, but not mainly with EAEU Member States, and it is also a destination for short term migration as migrants move west. Finally Kazakhstan also has a large number of labour migrants moving to Russia, and receives a reasonable amount of remittances, but also experiences some degree of immigration from other EAEU Member States, although the numbers are not nearly comparable with those of Russia. The chapter goes on to compare EAEU legislation with that of CIS. It was concluded that the entry is facilitated for EAEU citizens, especially on the formal level. A number of the provisions addressed in the EAEU treaty are left to bilateral agreements instead, when it comes to CIS Member States. Ultimately, however, the benefits for the workers from the EAEU are still not overwhelmingly larger than those of the CIS workers, so this is surely an area that has room for evolution in the future. That is especially true because the EAEU poses itself as a more advantageous project than CIS, in terms of common market (in this case of labour), so to actually achieve stronger integration more work can be done. The chapter then looks at the challenges that the Union faces on the topic of migration. The first is fuelled by the harsh migration policies of the Russian Federation, the Ministry of The Internal Affairs of which has created so called blacklists, that contrast immigration. These databases keep individuals from re-entering the country after violations, but are seen as not proportionate and excessive. They in fact

are issued after even minor violations and are very difficult to waive. The most problematic aspect is that workers are not aware of being on these lists. A second problem is that of education. This problem can be divided into two main issues: the equalization of education across the Union, and the lack of correspondence between the labour market and the qualifications of the workers. Ultimately both of these issues can to some extent be addressed by promoting a better harmonization of educational system across the Member States, although this perspective has not proven itself to be particularly popular with the governments of the Member States. The next issue seen is that of the demographic crisis in Russia. The population continues to decrease due to low natality and relatively high mortality. Something we can infer is that with more careful planning, legalised and well organised labour migration can actually be pivotal for this situation. The demographic crisis calls for a need of more labor, and xenophobic rhetorics and voices may oppose migration and push on the births of ethnic Russians instead, but that has proven to be not sufficiently efficient. Kyrgyzstan and Kazakhstan are also not facing any demographic loss, as the population is growing. The only ambiguous case is that of Armenia, who benefits from emigration financially, but not demographically.

The final part of chapter four leaves us with some future perspectives, that are based on the current ideas and situations, and that is a central point to address some of the most important questions raised by the thesis since the beginning. The initial research question gravitated towards some key points. So let us try to answer the questions raised or to see the possible alternatives.

An initial question was whether or not regional integration is really strengthened by the EAEU, especially through the freedom of movement of labour, and the improvement of its conditions. We can say that integration is fostered on a political level, with the ties between the governments of the Member States, and that surely the levels of migration are considerable. Having said that, the individuals still face the many issues we have seen: not enough protection in social security, de facto discrimination, bureaucratic procedures that are still too complex. There is an apparent desire of evolving the

landscape of the free market of labour in the Union, but bolder steps need to be taken in the following years.

Another question regarded economic development, and whether or not more freedom of movement of workers was significant in the matter of improving the economic situation of the Member States. Given the findings of this thesis, that seems to be the case, at least to some extent. Countries who supply the labour force are rewarded with remittances, and although they do lose some degree of qualified labour that could be useful for their own labour market, the workers tend to acquire skills in the destination countries that could be useful in case of a return. These remittances also tell us that a large number of migrants tends to move and migrate on their own and not with their family, and this can be interpreted as both a difficulty and an unfriendly environment for family migration, and as strong ties with home countries, implying a desire to return to them at one point. This topic could benefit from further research, analysing more in depth the motivation of the migrants and their problems, possibly even with interviews to accompany statistical data.

Some questions would benefit from further research, that is important to lead in the field of analysis of the demographic of the Member States in detail, since many sources are incomplete or not properly updated resulting in findings that are limited and not detailed enough. We have talked on numerous occasions about a lack of long-term plans for the permanence of these workers, such as permits and documentation that is no longer exclusively tied to the length of the contract. It would be interesting, in relation to that, to conduct a further analysis on how the EAEU has influenced these workers on their desires to stay in Russia. If these workers plan a long-term permanence, are some of them already on their way to apply for citizenship, skipping the permit entirely, or would they benefit from laws to implement some sort of indeterminate time permit? Here the problem of what are the long-term prospects of the migrants presents itself again. The problem is that the EAEU would have to cooperate with the governments in order to find better ways to accommodate long term needs of migrants.

One last interesting aspect is that of the countries of Tajikistan, that was a Member of the EurAseEc, and is now considered a prospect EAEU member, and of Uzbekistan, also a prospect member. Both are former Soviet states and have important stakes with regards to migration to EAEU countries, and access to the same rights as EAEU workers would surely be of impact for their citizens, who already move to EAEU Member State for work. These cases have the potential of being very interesting if influenced by future developments.

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