

Extract from:  
Martina Menghi, Jérôme Quéré, "  
"Free movement of Europeans - Taking stock of a misunderstood right",  
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## SUMMARY

**T**he free movement of persons within the European Union is the subject of many erroneous assumptions. This fundamental freedom often falls under debate, pulled between its enthusiastic defenders and its sworn opponents. Preconceived ideas are deeply rooted in the collective imagination, such as the Polish plumber exploiting the directive on posted workers, or poor citizens who exercise their right to free movement solely in order to obtain another Member State's social benefits, commonly referred to as "social tourism".

It is necessary to moderate the debate and to analyse EU law to determine what is truth and what is fiction.

### **1. Historic and contextual elements of a freedom currently under scrutiny**

The free movement of workers, established by the Treaty of Rome (signed in 1957), has progressively evolved and now applies to all citizens. We no longer speak of intra-European migration, but of mobility, as this involves rights that are very different from those for third State nationals. This mobility takes place between the EU Member States, independently of their belonging to the Schengen Area.

### **2. Broad access to the territory but a conditional right of residence**

EU citizens and their families benefit from the right to move and reside freely within the territories of the Member States. This right however is not without conditions, and differentiates between workers and other European citizens. Job seekers receive specialised treatment that allows them to try to find employment, but without becoming an unreasonable burden for the host country. This right is also limited in order to ensure the security of Member States' territories and the sustainability of their social welfare systems.

### **3. Access to employment**

EU citizens should not be discriminated against when it comes to employment in a Member State other than their own. Their family members, even if they are third country nationals, may have the right to work in the State where the EU citizen is working. However, there are some exceptions for certain types of employment in the public sector, and for citizens of new Member States going through transitional periods. The case of posted workers, who are often criticized in the debate, will receive particular attention.

### **4. Access to social advantages**

Equal treatment is not guaranteed for citizens using their freedom of movement. It is conditional upon acquiring the right of residence and limited to the fact that it does not lead to the citizen becoming an unreasonable burden for the host State. Access to benefits and social welfare varies greatly depending on the citizen's situation, i.e. whether (s)he is considered to be a worker or an economically inactive person. The allocation of unemployment benefits has been adapted so that it does not penalise a worker having used his or her freedom of movement.