

## Chapter 11

### Internal Market: Persons

#### **1. Free Movement of Workers**

- (a) Personal Scope: Workers and “Quasi-workers”
- (b) Material Scope: Discrimination and Beyond

#### **2. Freedom of Establishment**

- (a) Personal Scope: Self-employed Persons (and Companies)
- (b) Material Scope: Discrimination and Beyond

#### **3. European Citizenship: A General Right to Move and Stay?**

- (a) Article 21(1): A Direct Source of Movement Rights
- (b) Directive 2004/38: Rights and Limitations

#### **4. Justifying Restrictions on (Self-)employed Persons**

- (a) Express Justifications and (Implied) Imperative Requirements
- (b) In particular: The Public Service Exception

#### **Conclusion**

### Introduction \*

Apart from goods, the European Treaties also aim to ensure the free movement of certain categories of persons. The constitutional choice for an internal “market” in persons was originally informed by an economic rationale. The market-building philosophy behind the European Treaties thus limited the right to move to economically active persons.

The Treaties thereby distinguished between two classes of economic migrants, namely: “employed” and “self-employed” persons; and the Treaty title dealing with persons consequently addresses “Workers” in Chapter 1 and the “Right of Establishment” in Chapter 2. Each of the two chapters contains a central prohibition, whose wording outlaws restriction on the “import” of persons by the (host) State. Yet the Court has found that both provisions will equally apply to restrictions on the free movement of persons by the “exporting” (home) State. Both chapters also contain a number of legislative competences for the Union. These competences have been widely exercised in the past; and for this reason, European law on the free movement of persons is a rich mixture of primary and secondary law. But the complexity within this area is due to a second factor: the existence of European citizenship rights. Article 20 TFEU grants every European citizen the “right to move and reside freely within the territory of the Member States”. This general

\* All footnotes omitted.

movement right is however a residual right. It must “be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder”. Yet the general provisions on European citizenship have themselves had an effect on the specific movement rights for economically active citizens. This symbiotic relationship is embodied in the “Citizenship Directive”.

This Chapter looks into the complex constitutional arrangements governing the free movement of persons in four sections. Sections 1 and 2 analyse the special free movement rights for economically active persons, that is: workers and the self-employed. Section 3 investigates the general rights to free movement granted to all European citizens. Finally, Section 4 explores the various possible justifications to restrictions on the free movement of persons.