

EUROPEAN UNION LAW

AN OVERVIEW OF THE 4 FREEDOMS

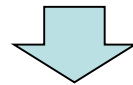
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e-mail: mlamanna@liuc.it

**SPECIAL FOCUS ON FREE
MOVEMENT OF PERSONS AND
SERVICES**

Table of References

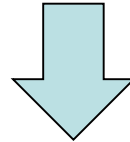
- Arts. 45-48 ➡ *workers*
- Arts. 49-55 ➡ *establishment*
- Arts. 56-62 ➡ *services*



**Prohibition on the nationality-based
discrimination**

Right-bearers and duty-holders

Purely internal situations fall outside the scope of the internal market



A transboundary element is always needed

*Does this mean a national
is never in the position to
invoke one of the
freedoms vis à vis his
home State???*

Normative Frame of Reference for the Free Movement of Persons

*Art. 45
TFEU*

Ecj Case-Law

*Arts. 20§2a)
21§1
TFEU*

*Secondary
Legislation*

Free Movement of Persons, between primary and secondary legislation

Persons › Workers



The Institution of a citizenship of the European Union has severed the link between movement and the performance of economic activities!



It is now an autonomous right of citizens!

Workers: *What's in a Name?*

Is the Notion of '*worker*' borrowed from member States? No Way!

«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»

ECJ, Lawrie-Blum, case 66/85, 1986, para. 17.



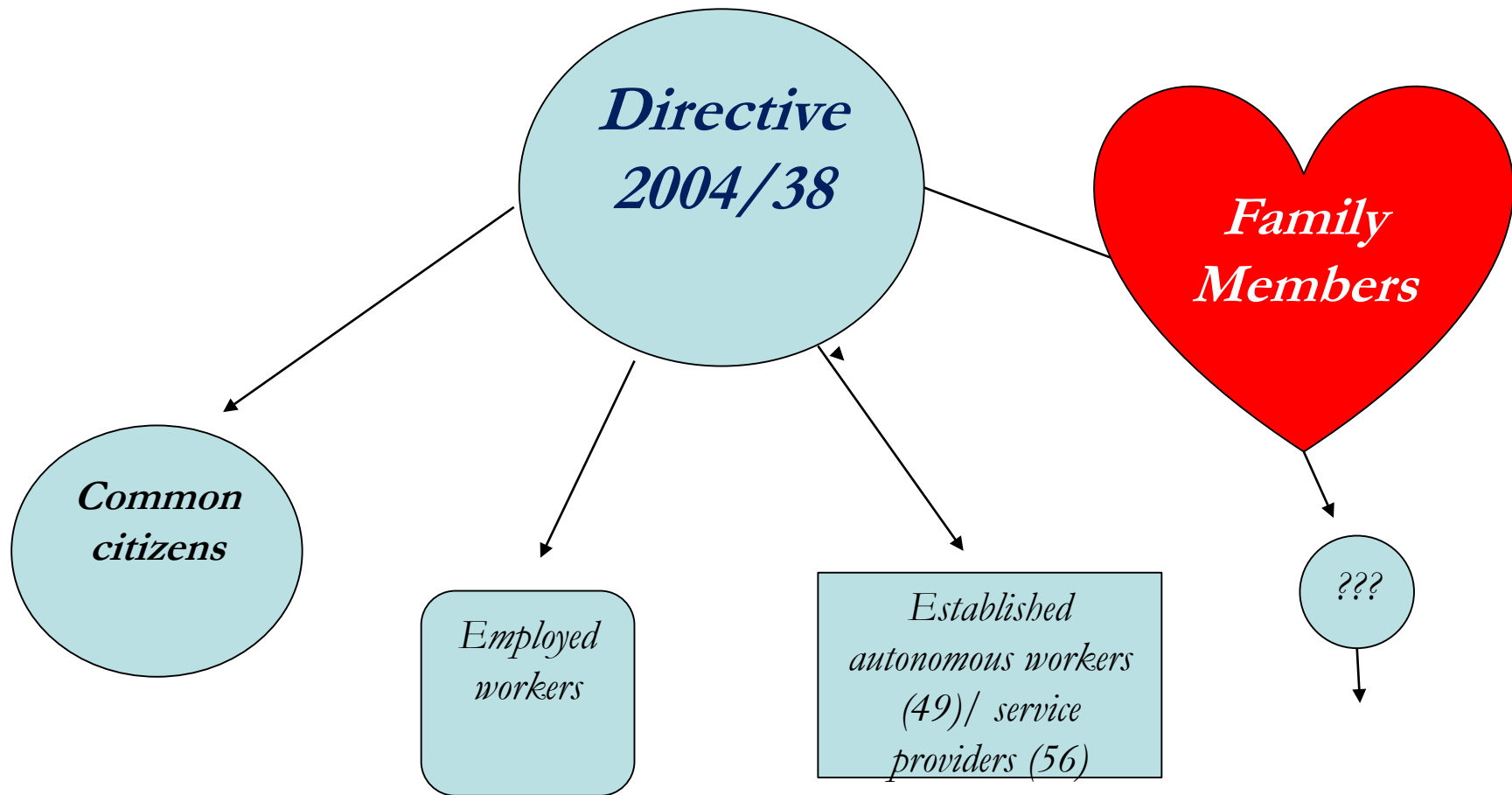
- *Employment relationship*
 - *Duration*
 - *Remuneration*

The Boundaries of the Notion: *Workers and Quasi-Workers*

...what about former workers?

....do people seeking
employment benefit of the
freedom under art. 45 TFEU?

Workers and Co: Directive 2004/38. Ordinary vs. secondary rights



Freedom of Establishment under art. 49 TFEU

Beneficiaries: *self-employed persons* and companies

*natural and
legal persons*

autonomous workers

*Primary and secondary
establishment*

***Stable and
continuous basis***

ECJ, Gebhard, C-55/94

*Direct/indirect
discrimination:
also non
discriminatory
measures*

The Main Features of the Free Movement of Services

- The basic premise: the twin provisions in art. **56-57**

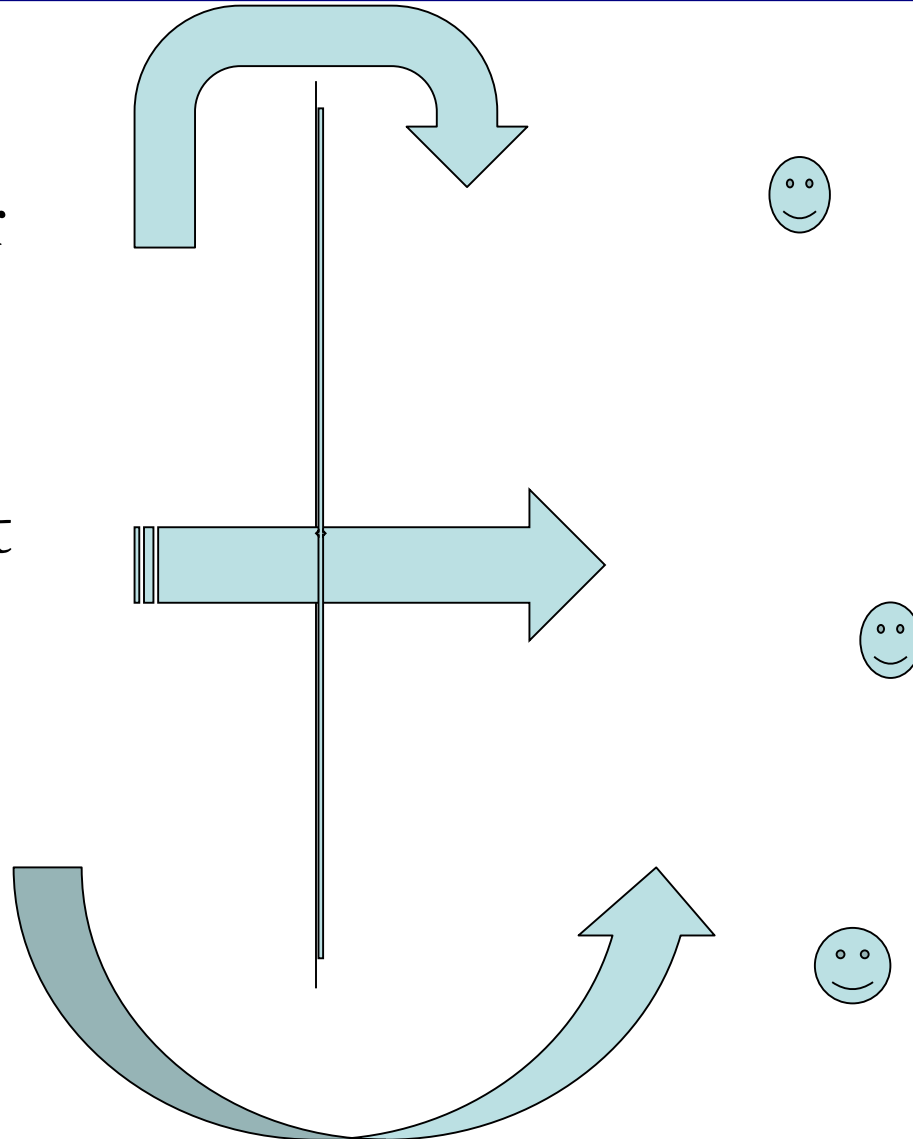


What is the actual object of the freedom: the **activity (i.e. the service itself)** or the **person of the provider???**

- The predominance of positive integration: the paramount role of the EU legislator —————> The *Services* directive (*Bolkestein-liberalization-social dumping?*)
- The **temporary nature** of the activity as opposed the stability and continuity requirements envisaged with reference to the freedom of establishment (self-employed services providers temporarily providing a service in another member State)

A Number of Beneficiaries, a Number of hypotheses

- Service provider
- Service recipient
- Service itself



The Scope of art. 56: prohibited measures under the *Säger* Formula

«It should first be pointed out that Article 59 of the Treaty requires not only the elimination of all discrimination against a person providing services on the ground of his nationality but also the **abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State** where he lawfully provides similar services».

ECJ, C-76/90, *Säger v. Dennemeyer*, 1991, para. 12

Free Movement of Capitals: the Weak Child?

- Art. 63-66 TFEU