

Freedom of Movement and Labour Migration in the Commonwealth of Independent States Comparative Brief on CIS and EU Legislation

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Introduction

Establishment of freedom of movement of persons, as well as free movement of workers in the Commonwealth of Independent States (CIS) are both characterised by the region's Soviet past and the present transition period. Constitutions of the Soviet Union,¹ although referring to some of the fundamental freedoms, did not contain any provisions on free movement. It was a result of secondary legislation that freedom of movement of persons was limited due to residence restriction in rural areas, designed to contribute to the establishment of collective farms (*kolkhozes*), and also by the restriction of exit from the Soviet territory, obliging citizens to ask for a special permit to travel abroad.² The most important means of prohibiting movement was, however, the residential registration (*propiska*) of citizens, an act of recording a place of residence both in passport and at local authority. This registration was compulsory for being offered an occupation, getting married, obtaining social benefits, etc.³ *Propiska* was also a means of limitation for movement to large cities: Moscow and Saint-Petersburg (then Leningrad) authorities registered newcomers only in case of them marrying a local citizen, or having a close relative already registered in the city.

Perestroika brought positive changes to the freedom of movement, with less control over those travelling abroad and those willing to move to urban areas. By the end of the 1980s, with democratisation reforms being brought about by Gorbachev's government, citizens could move to a new place or change a work place more freely. The dissolution of the vast country in the beginning of the 1990s therefore led to the fear of new restrictions to free movement, caused by the emerged borders of newly independent republics. As the long history of the USSR contributed to important ties between ethnic groups populating the Union, multiethnic families at that moment often found themselves on different sides of the borders.

1. The development of legislation on freedom of movement and labour migration within the Commonwealth of Independent States

Not only familial ties, but also a very close interrelation in economic, political, social and cultural areas, influenced the nature of a historical document on the dissolution of the Soviet Union - the Agreement on Creation of **Commonwealth of Independent States**, signed on 8 December 1991. Article 5 of the Agreement guaranteed "*open borders and freedom of movement of*

¹ During the existence of the Soviet Union three constitutions (in 1922, 1936 and 1976) were adopted.

² Polozhenie o v'ezde v SSSR i vyezde iz SSSR ot 5 iyunya 1925 goda, postanovlenie Prezidiuma CIK SSSR (On Entry to the USSR and Exit from the USSR, Decree of the Presidium of the Central Executive Committee of the USSR of the 5 June 1925), Moscow Department of Federal Service for Migration of the Russian Federation, <http://www.fmsmoscow.ru/history.php>

³ Ob ustanovlenii edinoj passportnoy sistemy po SSSR i obyazatelnoy propiske passportov ot 27 dekabrya 1932 goda, Postanovlenie Sovnarkoma i ZIK SSSR (On the Establishment of Unified Passport System in the USSR and on the Compulsory Passport Registration, Decree of the Sovnarkom and the Central Executive Committee of the 27 December 1932), Federal Service on Migration of the Russian Federation, <http://www.fmsrf.ru/5.asp?id=5>

citizens".⁴ With regard to considerable migratory movements foreseen at the time of the signature of the Agreement, Article 7 of the document declared that "*migration policy issues lie in spheres of joint activity of the Member States, in accordance with the obligations undertaken by the Member States under the framework of the Commonwealth*".⁵

In order to implement the freedom of movement provision of the Agreement on creation of the CIS, in 1992 twelve newly independent states (with Baltic republics distancing themselves further from other former Soviet republics) signed the Bishkek Agreement on Free Movement of Citizens of CIS States, which guaranteed the freedom to move to all co-signatories' territories, provided a person was a citizen of one of the parties to the Agreement.⁶

It was then believed the CIS would become a substitute to the USSR, with maintaining close ties as regards economy, whereas foreign and defence policies would lie within the newly independent states' responsibilities. Various ambitions and the euphoria of young republics, while some of them never experienced full autonomy throughout their history, altered the initial intentions of signatories of the Agreement on creation of the CIS.

The regional integration of newly independent republics being compromised by different degrees of economic and political instability, the leaders tried to contain disintegration processes by elaborating and adopting in January 1993 the "constitution of the CIS" - the Charter of the Commonwealth of Independent States. Freedom of movement again found its reflection in the document, namely in Article 2, which previewed the "*Member States' assistance to the citizens of the CIS states with regard to free movement within the CIS*".⁷ The Charter also re-declared that "*questions of social and migration policy lie in spheres of joint activity of the Member States, in accordance with obligations undertaken by the Member States under the framework of the Commonwealth*".⁸ The Charter was simultaneously the first document, after the dissolution of the CIS, where the economic constant of freedom of movement was mentioned. According to Section V of the Charter, describing the cooperation in economic, social and legal spheres, "*Member States shall exercise a joint activity in the formation of common economic space on the basis of market relations and free movement of goods, services, capital and labour*".⁹

It is surprising that only by 1993 the former Soviet republics signed the Treaty on Economic Union, with the goal of creating a free-trade zone. With economy entirely controlled from Moscow by the time of the USSR's demise, common currency and fully harmonised trade legislation, it would have been relatively easy to maintain these advantages and to "rewrite" the then existing economic integration into a treaty on economic union. The 1993 Treaty however seemed to be "reinventing the wheel" with its goal of gradually creating a free-trade zone within the CIS. The Treaty provided for visa-free regime within the Union, as well as for free movement of goods, services, capital and labour.¹⁰

⁴ Art. 5 of The Agreement on Creation of Commonwealth of Independent States , http://memory.loc.gov/frd/cs/belarus/by_appnb.html

⁵ Idem, Art. 7.

⁶ 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), <http://www.zatulin.ru/institute/sbornik/010/07.shtml#Приложение>

⁷ Art. 2 of the Charter of the Commonwealth of the Independent States, <http://www.therussiasite.org/legal/laws/CIScharter.html>

⁸ Idem, Art. 4.

⁹ Idem, Section 5, Art. 19.

¹⁰ Dogovor o sozdanii ekonomicheskogo soyuza SNG, 24 sentyabrya 1993 goda (Treaty on Creation of the CIS Economic Union of 24 September 1993), <http://sng.rian.ru/688/news251177.html>

The development of legislation on freedom of movement in the framework of the CIS, however, lost momentum by the end of the 1990s. The Bishkek Agreement lost its validity in 2001, with the Russian Federation withdrawal from the agreement due to increased illegal labour migration from other CIS countries. As for the creation of common market in the CIS, previewed by the Treaty on Economic Union, the enthusiasm of its members quietened gradually, hindered also by often opposite ambitions of the CIS states.

A. The CIS legislation on labour migration

Regular Migration

The first administrative organ for labour migration issues, the Consultative Council on Labour, Migration and Social Security of Citizens of CIS States, was created in November 1992, one year after the dissolution of the Soviet Union. The intentions of the CIS country leaders, which signed an agreement on creation of the Consultative Council, reflected the outcome of migratory movements of the early 1990s. Most of them being the return of ethnic Russians to their homeland, favourable conditions for the newcomers' further employment (until obtaining new citizenship) had to be secured. The Consultative Council, consisting of ministers for labour of the CIS members, had therefore the main goal of elaborating a comprehensive agreement on labour migration in the CIS.

The Agreement on Co-operation in the Field of Labour Migration and Social Protection of Migrant Workers,¹¹ adopted in April 1994, was the result of two-year long consultations between the CIS member states. The document, based on ILO principles, concerned only legal migrant workers and members of their families. The Agreement contained provisions on mutual recognition of diplomas and years of experience, on rules of employment in the receiving country and elimination of double taxation. As for equal treatment, only the medical care provision referred to this condition. Migrant workers were also entitled to social security, in accordance with the legislation in the receiving country, and to free transfer of their savings.

The implementation of the Agreement provisions had to be fulfilled through bilateral agreements between member states and quota mechanism. Twelve CIS members ratified it, although bilateral agreements between all of the members are not yet concluded. The largest number of bilateral agreements with other CIS countries was to date concluded by Armenia (with Russia, Belarus and Ukraine), Belarus (with Moldova, Russia, Ukraine, and Kazakhstan) and the Russian Federation (with Kyrgyzstan, Tajikistan and Ukraine).¹²

An amendment to the Agreement was included in November 2005: taking into consideration increasing short-term cross-border migration, a notion of "cross-border migrant workers" was added to the document, with a simplified regime to be provided for these workers by receiving countries. Since all the abovementioned bilateral agreements had been concluded before 2005, the amendment is still to be ratified by signatories, the cross-border workers thus being unable to enjoy the simplified procedure.

It is to be underlined that since 2003 the Consultative Council on Labour, Migration and Social Security has also been elaborating a draft Convention on Legal Status of Migrant Workers - Citizens of CIS Members and Their Families.

¹¹ Soglashenie o sotrudnichestve gosudarstv uchastnikov SNG v oblasti trudovoy migrazii i sozial'noy zashity trudovyh migrantov, 14 aprelya 1994 goda (The Agreement on Co-operation of the CIS Member States in the Field of Labour Migration and Social Protection of Migrant Workers of 14 April 1994), <http://www.cis.minsk.by/main.aspx?uid=7742>

¹² *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*, OSCE, 2006, p. 201.

Illegal migration

It should be born in mind that with changes in nature of migratory flux within the CIS by the end of the 1990s, with decrease in return of ethnic minorities to their homelands and growing number of labour migration to more economically stable countries of the CIS, illegal migration issues have been affecting CIS legislation in the field ever more than the proceedings of regular labour migration.

The Agreement on Co-operation between Member States of the Commonwealth of Independent States in Combating Illegal Migration,¹³ signed on 6 March 1998, declared that joint action should be undertaken in combating illegal migration, namely in the spheres of:

- migration control,
- registration of third-country citizens, persons without citizenship and citizens of the Parties to the Agreement, illegally entering the territories of the Parties and persons prohibited from entering the Parties' territory,
- elaboration of illegal migrants' deportation mechanisms,
- harmonisation of national laws of the Parties' as regards illegal migrants' responsibility and those assisting illegal migration,
- exchange of information on illegal migration,
- and training of personnel responsible for combating illegal migration.

The Agreement, however, did not envisage any effective mechanisms to address the problem: for instance, it did not preview financial funds for better equipment of border guards, neither the establishment of border guards' consultative mechanisms, as it was implemented at the EU eastern borders.

In 2002 on the initiative of CIS countries a Regulation on Creation of Database on Illegal Migrants and Persons Prohibited from Entering the Territories of Parties According to their National Laws, and on the Exchange of Information on Illegal Migration¹⁴ has been adopted by the CIS members. Similar to the SIS I and SIS II¹⁵ of the Schengen area, the database should provide the necessary information on illegal migration within the CIS, and be in common use of the CIS border guards.

Neither the Agreement on Co-operation in the Field of Labour Migration, nor the Agreement on Co-operation in Combating Illegal Migration are currently fully effective. The first was downplayed by further disintegration between the CIS members and different positions *vis-à-vis* favourable conditions for migrant workers; the second was not enforced by technical co-operation, being subsequently hindered further by "visa wars", for instance, those between Russia and Georgia, Uzbekistan and Kyrgyzstan.¹⁶

¹³ Soglashenie o sotrudnichestve gosudarstv-uchastnikov SNG v bor'be s nezakonnoy migratsiey, 6 marta 1998 goda (The Agreement on Cooperation between Member States of the Commonwealth of Independent States in Combating Illegal Migration of 6 March 1998), <http://www.cis.minsk.by/main.aspx?uid=7744>

¹⁴ V. ZUBKOV, "Pravovye osnovy regulirovaniya protivodeystviya nezakonnoy migratsii", *Zhurnal mezhdunarodnogo prava i mezhdunarodnyh otnoshenii*, ("Basics on Legal Regulation on Prevention of Irregular Migration", *Journal of International Law and International Relations*), № 1, 2005, http://evolutio.info/index.php?option=com_content&task=view&id=732&Itemid=113

¹⁵ Information on the Schengen Information System II, <http://europa.eu/scadplus/leg/en/lvb/l33183.htm>

¹⁶ Russia's explanation of visa requirements for citizens of Georgia was Chechen extremists' alleged transit to Russia via Georgia. Uzbekistan's similar action towards Kyrgyzstan reflected Uzbek government's concern about religious extremists' easily entering Uzbek territory from Kyrgyzstan. Turkmenistan, following its closer to the outer world, introduced visa regime for all the CIS countries' citizens.

B. Multi-speed integration within the CIS region. Regional organisations and creation of legal framework on freedom of movement and labour migration

The independence from the Soviet Union increased disintegration among the former Soviet Republics. Various development paces, often worsened by internal civil conflicts, as in Tajikistan and Georgia in the early 1990s, unavailability of natural resources, and influence of outside actors, placed the newly independent states on different sides as regards their common future. While Ukraine and Georgia hesitating more on their ties with Russia, shifting regularly towards the European Union and NATO, Turkmenistan's self-isolation, and Uzbekistan's (until 2005) strategic partnership with the US, the future of the CIS as of a regional integrating organisation, seems undefined. Georgia, for instance, withdrew from one of the organisation's executive organ,¹⁷ the Council of Defence Ministers, as result of the Georgian president's pro-occidental policy. Turkmenistan, in accordance with the "neutrality concept", downgraded its participation in the CIS to the "associate member" status. The implementation of important provisions with regard to further integration is therefore being hindered.

It is noteworthy in this context that the intentions of some of the CIS leaders to continue with "variable geometry" of integration found support of those countries that still consider the post-soviet space as a regional pole of attraction, capable to contribute positively to their further economic development as well as to political stability.

The Eurasian Economic Community

The leaders' will led to creation in October 2000 of the **Eurasian Economic Community (EurAsEC)**, consisting of the Russian Federation, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan.¹⁸ The organisation's aim included the establishment of customs union (in August 2006), common market, united transport system, standardised currency exchange, equal opportunities for production and entrepreneurs. Beside the economical constant of the organisation, there are harmonisation and provision of equal rights previewed in the area of social and educational policies.

Co-ordinated migration policy and freedom of movement are also among the aims of the EurAsEC. In order to ensure the freedom of movement within the community, in November 2000 its five members signed an Agreement on Visa-free Movement of Citizens of the EurAsEC Members within the Community. According to Article 1 of the Agreement, visa is not required for a citizen of one EurAsEC country to enter the territory of other EurAsEC member, except for periods of increased security concerns on the territories of the member states.¹⁹

The Interparliamentary Assembly of the EurAsEC, an organ responsible for the formation of the legislative policy of the EurAsEC and harmonisation of its members' legislation, elaborated a draft Model-law on Migration and a draft Law on Inner Migration in 1999.²⁰ Through the beginning of the 2010s members of the EurAsEC based the amendments to their migration legislation on these model projects.

¹⁷ "Georgia Considers Withdrawing from CIS", *ISN Security Watch*, Centre for Security Studies, ETH Zurich, Switzerland, 3 May 2006, <http://www.isn.ethz.ch/news/sw/details.cfm?id=15687>

¹⁸ These were initial member-states of the organisation.

¹⁹ Soglashenie o bezvizovom peremeshenii grazhdan gosudarstv EurasEs po territorii soobshstva (Agreement on Visa-free Movement of EurAsEC Citizens within the Community), <http://www.evrazes.com/ru/main/faqpage/13/>

²⁰ The Interparliamentary Assembly of the EurAsEC took as a basis for the Model Law on Migration the document elaborated already in 1999, in the framework of the CIS Interparliamentary Assembly. Model'nyi zakon o migratsii (Model Law on Migration), <http://www.ipaeurasec.org/docsdown/MPK8-13A.pdf>

According to the Interparliamentary Assembly, the most important need with regard to migration is an intergovernmental treaty on co-ordination of migration policy of the EurAsEC members. As there was no intergovernmental legislation on migration within the EurAsEC, in 2003 the Interparliamentary Assembly urged the EurAsEC members:

- to elaborate unified conditions for employment,
- to guarantee the mutual recognition of diplomas,
- to create a unified entry document for citizens of EurAsEC members,
- to establish favourable regime for migrant workers from the community,
- to conduct a legalisation of migrant workers from one EurAsEC country already residing on the territory of the other,
- to prevent forced and illegal migration,
- to create a research centre on prospects for economic development and its implications for potential labour migrants,
- to create a Eurasian bank on labour migrants' data²¹.

The Common Economic Space

In this regard the creation of **Common Economic Space (CES)** between the Russian Federation, Ukraine, Kazakhstan and Belarus in February 2003 resulted in more extensive co-operation aimed at integration. The Common Economic Space, as the leaders of the four countries stated in February 2003, is to be "*established gradually, following the example of the European Economic Community*".²² It previews the creation of the common market with the elimination of trade barriers, common trade policy with regard to third countries, as well as free movement of capital, goods, service and labour. Taking into account that exportations from these four CIS members to each other constitute about 60% of their total export,²³ the decision on further economic integration reflects a need to preserve the already existing ties between the four countries and to facilitate trade exchange, by harmonising legislation and creating simplified trade regimes.

As a common market previews the free movement of labour, the Working Group on Movement of Labour of the CES has already submitted in April 2005 (1) a draft Agreement on Free Movement of Citizens of the CES Members, (2) a draft Agreement on Legal Status of Migrant Workers - Citizens of the CES and Their Families, and (3) a draft Agreement on Co-operation Between the CES Members in the Area of Protection of their Markets from the Labour Migration from Third Countries.²⁴ It appears that the abovementioned documents, although still subject to approval, are the most comprehensive legislation on labour migration in the post-Soviet area. For instance, the (1) draft Agreement on Free Movement of Citizens of the CES Members previews:

- a visa-free regime for the citizens of the CES members on the territories of the CES members,

²¹ The recommendation sets the European Job Mobility Portal (EURES) as an example.

²² Zayavlenie prezidentov Respubliki Belarusii, Respubliki Kazakistan, Rossiiskoy Federazii (Declaration of the Presidents of Belarus, Kazakhstan, Russian Federation and Ukraine), 19 September 2003, <http://www.eepnews.ru/record/m2028>

²³ R. AKHMETOV, "Zachem nam nuzhen Tamozhenny Soyuz?" ("Why Do We Need a Customs Union?"), *APN Kazakhstan*, 17 August 2006, <http://www.apn.kz/opinions/article5378.htm>

²⁴ Soglashenie o svobode peremesheniya grazhdan gosudarstv-uchastnikov EEP (Draft Agreement on Free Movement of Citizens of the CES Members),

Soglahenie o pravovom statuse trudyashihsya-migrantov i chlenov ih semey gosudarstv-uchastnikov EEP (Draft Agreement on Legal Status of Migrant Workers - Citizens of the CES and their Families),

Soglashenie o sotrudnichestve gosudarstv-uchastnikov EEP po zashite nazional'nyh rynkov truda ot nelegal'noy trudovoy migrazii tret'ih stran (Draft Agreement on Co-operation between the CES Members in the Area of Protection of their Markets from the Labour Migration from Third Countries), <http://www.eepnews.ru/manpower/>

- a possibility to enter the CES members' territories with internal passports or identity cards,
- a possibility to spend ninety days without registration on the territory of other CES member, provided a person has a migration card with this CES member's customs stamp on it.²⁵

The draft (2) Agreement on Legal Status of Migrant Workers - Citizens of the CES Members and Their Families, consequently contains provisions on creation for foreign workers and their families of the regime equal to the treatment of national workers. The legal status of the CES migrant workers and their families shall contain rules of engagement to work, salary, work experience, social security and other benefits. The draft agreement previews:

- the elimination of preliminary work authorisation for migrant workers,
- the elimination of quota mechanism,
- a possibility to search for work within the period of ninety days,
- a possibility to remain on the territory of receiving CES member for ninety days after the termination of contract.

The provisions of the document, however, contain a condition that the implementation of the agreement shall not worsen the inner market situation in the CES countries. It means the signatories would have a room for manoeuvre as regards issuing their inner limitations to admission of migrant labour force.

The draft (3) Agreement on Co-operation between the CES Members in the Area of Protection of their Markets from the Illegal Labour Migration from Third Countries is designed to co-operate the activities of the CES members with regard to illegal labour migration from the third countries by:

- co-ordination of means of preventing illegal labour migration,
- harmonisation of standards and legislation of the CES countries with regard to protection of their markets from the illegal labour migration, with accordance to the international and regional norms, including those of the EU,
- harmonisation of national legislation of the CES members as regards the responsibility of the employers engaging illegal migrant workers,
- migration control,
- permanent exchange on information on illegal labour migrants, creation of database on illegal migrants from third countries,
- training of personnel.

Despite the fact that these draft agreements have been elaborated in 2005, there is no progress on their adoption. The development is strongly connected with the impasse within the CES, resulting from the political reshuffle in Ukraine. With the pro-occidental Viktor Yushchenko becoming Ukrainian president in December 2003, the issues of integration processes in the CES were regularly removed from the Ukrainian foreign policy agenda. It remains to be seen whether the remaining three CES countries, Russia, Belarus and Kazakhstan, would continue with further integration, regardless of the inactivity from the Ukrainian counterparts.

Difficulties in the implementation and adoption of proposed legislation elaborated both within the Common Economic Space and the Eurasian Economic Community are due to inactivity of their members. It is to note that many declarations were not followed by actions with regard to areas of integration. It is also evident the two integrating blocs have similar aims and institutional frameworks. Therefore, recent announcements of possible merge of the CES and the EurAsEC

²⁵ Despite the visa-free regime for most of the CIS members' citizens entering the Russian Federation, in November 2003 Russia introduced "soft" visa regime, i.e. "migration card" designed to record the entry and exit of a foreign citizen to and from the Russian territory.

could help their members to come out of the impasse. As it was mentioned, a "variable geometry" may be applied to further integration without Ukraine's participation. Since for Kyrgyzstan and Tajikistan, two members of the EurAsEC, which are not members of the CES, a co-ordinated migration policy is not necessarily an issue of "multi-speed" integration: it largely concerns just the two countries²⁶, and is not that difficult to achieve in comparison to some elements of a single market. It is also evident from the EurAsEC Interstate Council meetings that the two countries are more concerned by labour migration issues than by other areas of integration.²⁷

2. Comparative overview of the CIS regional blocs' regime on freedom of movement and labour migration and the EU norms

Considering the development of legal framework on freedom of movement and migrant workers' rights in phases, its first generation would be the creation of satisfactory legal base, with second generation being consecutive secondary legislation and its implementation, and third generation being the enshrinement of freedom of mobility as part of heritage.²⁸

While Professor O'Keeffe of the UCL states *"the third generation stage needs to be accelerated in the EU, to make mobility an essential heritage"*,²⁹ the CIS countries are at the early stages of developing their first generation - a legal base for free movement of persons and labour migrants.

In the aftermath of the USSR dissolution the freedom of movement framework in the CIS appeared to deal more with persons *tout court* than with persons as economic actors, if compared with the European Economic Community (EEC), where a notion of "a worker as a factor of production" was for a long time criticized in the view of establishing freedom of movement of persons in the EEC. Within the CIS it was only by the end of the 1990s that the emphasis was put on the economic factor of movement.

In comparison with the European Union, there is practically no case-law on freedom of movement and labour migration in the CIS. Law development in the area is at its early stages, illustrated occasionally by some requests for interpretation as in the case of the Secretariat of the CIS address to the Economic Court of the CIS with the request for interpretation of the term "migrant". The reason of the request had been the letter of Kazakh president concerning Kazakh citizens that decided to move permanently to Russia, who were registered there as "refugees" or "forcibly displaced persons", while they considered themselves migrants. The president asked for the interpretation of the terms "refugee", "forcibly displaced person" and "migrant", in order to *"avoid misunderstanding in the media and in bilateral Russian-Kazakh relations"*.³⁰

²⁶ Remittances account for about 25% of Kyrgyzstan's GDP, and 23.3% of Tajikistan's GDP. In: Y.SADOVSKAYA, "Labour Migration and Remittances in Central Asian Countries: New Challenges and Solutions", *Central Asia's Affairs*, # 3, 2006, <http://www.kisi.kz/site.html?id=1106>

²⁷ "Kyrgyz and Tajik PM Call for More Favourable Regime for Their Citizens Working in Other EuAsEC Countries", *Daily Developments in Central Asia*, 19th April 2007, EC Delegation to Kazakhstan, p.1.

²⁸ D. O'KEEFFE, "Freedom of Movement for Workers in Community Law. Accomplishments and Prospects," in J.-Y. CARLIER and M. VERWILGHEN, *Thirty Years of Free Movement of Workers in Europe: Proceedings of the Conference, Brussels, 17 to 19 December 1998*, European Communities, 2000, p. 19.

²⁹ *Idem*.

³⁰ Reshenie Ekonomicheskogo Suda SNG ot 11 sentyabrya 1996 goda, Ekonomicheskii Sud SNG, (Court Decision # C-1/14-96, The Economic Court of the Commonwealth of Independent States, 11 September 1996), <http://www.jurportal.com/consult/viewyurpract.php?id=98&PHPSESSID=6ec715e38acdc854d4c5c5b5ca5a6153>

As for important areas of legislation on freedom of movement and labour migration, Table 1³¹ indicates comparison of the EU, the CIS, the CES and the EurAsEC development in the field. It is evident from the table that while the former Soviet countries already tried to create areas with freedom of movement, they still have to progress more with regard to labour migration, and to start paying attention to specific issues (as self-employed persons, family rights, non-discrimination). The states participating in integration processes within the CIS have to find political will in order to pursue with the integration, even if in the framework of "variable geometry", facilitating therefore free movement of their citizens within the region.

Conclusion

The initial will of CIS leaders in the early 1990s on maintaining border-free regime for their citizens fell short due to lack of political action, continuous disintegration between former Soviet republics, security concerns and various levels of economic development, resulting in irregular migration to economically stable CIS members. The actions of some CIS members, interested in further integration, seem to demonstrate their concern about the creation of better conditions for freedom of movement and labour migration. This will, however, is often hindered (as in the case of Ukraine) by undefined position of parties to agreements with regard to further integration. It is therefore to believe that the integration in the framework of common market, with the participation of the Russian Federation, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan, might be the most efficient one with regard to free movement of their citizens and favourable regime for migrant workers.

³¹ See Annex.

	CIS	CES	EurAsEC	EU
Freedom of movement	Bishkek Agreement on Free Movement of CIS citizens (1992), <u>ineffective</u>	<u>draft</u> Agreement on Free Movement of Citizens of the CES Members	Agreement on Visa-free Movement of EurAsEC Citizens within the Community (2000)	Article 39 (ex 48) of the Treaty of Rome, Regulation 1612/68, Directive 68/360
Right of residence after the end of work contract	-	<u>draft</u> Agreement on Free Movement of Citizens of the CES Members	-	Article 39(2)d (ex 48(2)d) EEC
Labour migration	The Agreement on Co-operation in the Field of Labour Migration and Social Protection of Migrant Workers (1994)	<u>draft</u> Agreement on Legal Status of Migrant Workers - Citizens of the CES and their Families	-	Article 39 (ex 48) of the Treaty of Rome, Regulation 1612/68, Directive 68/360 EEC
Irregular migration	The Agreement on Co-operation between Member States of the Commonwealth of Independent States in Combating Illegal Migration (1998)	<u>draft</u> Agreement on Co-operation between the CES Members in the Area of Protection of their Markets from the Labour Migration from Third Countries	-	Communication from the Commission to the Council and European Parliament <u>COM(2001) 672</u>
Non-Discrimination	-	<u>draft</u> regime equal to the treatment of national workers	-	Article 39(2) (ex 48(2)) EEC
Limitations	-	-	security concerns (preliminary announcement required)	Directive <u>64/221/EEC</u>
Self-employed	-	-	-	Articles 43-48 (ex 52-58) and Articles 49-55 EEC
Family rights	<u>draft</u> Convention on legal status of migrant workers - citizens of CIS members and their families	<u>draft</u> Agreement on Legal Status of Migrant Workers - Citizens of the CES and their Families	-	Directive <u>68/360/EEC</u>

Annex

Table 1. Comparison of areas related to freedom of movement and labour migration in the EU, the CIS, the CES and the EurAsEC