

## 12 The EU's Ambiguous Position on Migrant Underage Workers

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### 12.1 Introduction<sup>1</sup>

Independent child migration for purposes of work has received considerable attention over recent years (Camacho 1999; Iversen 2002; Punch 2002; Whitehead/Hashim/Iversen 2007; Yaqub 2009). This body of literature mainly concentrates on internal and international child migration taking place outside the European context. These studies demonstrate that young people under 18 years of age leave their families and communities for a number of reasons. This frequently encompasses work, and often involves a considerable degree of strategic decision-making on the part of parents, children or both (Camacho 1999; Iversen 2002; Punch 2002; Whitehead/Hashim/Iversen 2007). Some argue, therefore, that these migratory dynamics cannot be reduced to human trafficking despite exploitation and abuse taking place (Bastia 2005; Whitehead/Hashim 2005; Huijsmans 2008). Yet, the policy space to address the phenomenon of minors migrating for work autonomously as anything other than human trafficking has been described as “very narrow” (Whitehead/Hashim 2005: 4). This, despite indications that policies stemming from the human trafficking discourses amount to anything but making migration safer for minors (Busza/Castle/Diarra 2004) and do not discourage migrant minors from involvement in work (Dottridge 2006: 11).

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1 Earlier versions of this chapter were presented at a Save the Children Sweden sponsored conference entitled “Focus on Children in Migration – from a European research and methods perspective” (Warsaw, Poland, 2007), at the Annual Conference of the Royal Geographical Society with IBG (London, United Kingdom, 2007), and at a conference entitled “International Migration, Multi-Local Livelihoods, and Human Security”, at the Institute of Social Studies (The Hague, The Netherlands, 2007). This chapter has benefited greatly from the many constructive comments received at these occasions. Remaining errors are however the full responsibility of the author.

This chapter fills a void in studies on child migration for work by focusing on migration by underage workers between member-states of the European Union (EU), given that the literature on child migration has, thus far, concentrated on the South exclusively. The case of the enlarged EU is of particular interest since under its provisions for free movement of workers<sup>2</sup> minors from an EU member-state are legally entitled to work in fellow EU-member states, and are entitled to legal protection equal to that enjoyed by their peers in the host-country (Stalford 2000a; Ackers/Stalford 2004: 90).

EU provisions on free movement of workers were not drawn up with children's rights in mind (Stalford/Drywood 2009: 149). The presence of such a framework can, nonetheless, be far-reaching in that it can provide the legal basis for safe migration approaches for underage migrant workers. Thereby, the issue of underage migrant workers between EU member-states constitutes a fascinating case to critically engage with the emerging notion of ‘safe migration’ which has been coined as a response to the ‘don't migrate message’ propagated by anti-trafficking initiatives (Dottridge 2006).

This chapter addresses legal, conceptual and empirical aspects regarding the issue of migrant minors involved in the world of work in an intra-EU context. The EU provisions for free movement of workers will be presented first, with attention to how they may relate to underage migrant workers. Next, we turn from policies to data in order to explore the empirical state of knowledge on minors' involvement in intra-EU migrant work. The third section reveals the tension between the presence of a legal framework endorsing intra-EU migration for work at a minor age and sparse empirical evidence of the phenomenon on the one

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2 Council of European Communities, 1968: *Regulation (EEC) on Freedom of Movement of Workers with the Community*, 15 October 1968 (No. 1612/68/L257): 0002-0012.

hand, and a dominant view condemning this practice on the other. This view then is contrasted with an analysis of EU youth programmes, showing how forms of mobility promoted under these programmes come close to promoting the involvement of minors in the world of work. The penultimate section returns to the notion of safe migration and theoretically explores the question of the desirability and potential for an EU-wide framework to safeguard migrant minors from abuse and exploitation when they are involved in the world of work within the EU. The chapter concludes with a call for further research on the issue of underage migrant workers in the EU and recommends a move away from the prevailing ambiguity.

## 12.2 EU Provisions on Free Movement of Workers and their Applicability to Underage Migrant Workers

Key to the EU as an economic and strategic project is its principle of free movement of workers. This principle dates back to Article 39 of the founding Treaty of the European Economic Community, the ancestor of the current EU, the Treaty of Rome of 1957. This Treaty remains significant, as visible through the campaign on the ‘Year of the Mobile Worker’ in 2006. The following excerpt illustrates the main motivation behind the prominence attached to the principle of free movement of workers in the EU. “Free movement is a means of creating a European employment market and of establishing a more flexible and more efficient labour market, to the benefit of workers, employers and Member States” (Commission of the European Communities 2002: 3).

Thus, the principle of free movement of workers is first celebrated as an economic instrument for its labour market adjusting effects. However, the quote also illustrates that the merits attributed to the idea of free movement of workers are not limited to the logic of economics alone (Ackers/Stalford 1999; Stalford 2000a). Couched in liberal terms, the principle is presented as enhancing individual well-being in several respects: “... mobility of labour within the Community must be one of the means by which the worker is guaranteed the possibility of improving his living and working conditions and promoting his social advancement, while helping to satisfy the requirements of the economies of the Member States.”<sup>3</sup>

The EU provisions on the free movement of workers do not impose age restrictions on the definition of worker. Instead, the definition employed is limited to

qualifying the term work and the employment relation to which the EU provisions apply. Thus, the term worker is defined as follows. A person “who (i) undertakes genuine and effective work (ii) under the direction of someone else (iii) for which he is paid” (Commission of the European Communities 2002: 6).

For details on the extent to which the EU provisions of free movement of workers may apply to minors, one has to turn to the EU Directive on the Protection of Young People at Work 1994 (henceforth ‘The Directive’). This Directive defines “young people at work” as, “any person under 18 years of age having an employment contract or an employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State” (EU 1994: Article 2.1).<sup>4</sup> Importantly, this Article further stipulates that Member States “may make legislative or regulatory provisions for this Directive not to apply, within the limits and under the conditions which they set by legislative or regulatory provision, to occasional work or short-term work involving: (a) domestic service in a private household, or (b) work regarded as not being harmful, damaging or dangerous to young people in a family undertaking” (EU 1994: Article 2.2.).

In its detailed description of the terms and conditions under which young people may be employed, the Directive distinguishes between: 1) a young person; 2) a child; 3) an adolescent. A ‘young person’ is defined as any person under 18 years of age. A ‘child’ is “a young person less than 15 years of age or who is still subject to compulsory full-time schooling under national law”. ‘Adolescent’ is defined as a “young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law” (EU 1994 Article 3). The Directive thus uses the age of 15 years, or the end of compulsory education, as the upper limit for childhood.

Based on the terminology set out above, and which is used in this chapter, the Directive sets out a principal prohibition on the employment of children: “...prohibit their employment and ensure that the minimum working or employment age is not lower

3 Regulation (EEC) on The Council of European Communities: P. 0002-0012. 15 October 1968. See at: <<http://ec.europa.eu/social/main.jsp?catId=458&clangId=en>> (23 April 2010).

4 See at: <[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Directive&an\\_doc=1994&nu\\_doc=33](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=1994&nu_doc=33)> (23 April 2010).

than the minimum age at which compulsory schooling as imposed by national law ends or 15 in any event" (EU 1994). Despite this principal prohibition, the Directive provides for a series of exceptions in which children may be employed. For example, Section 3 of Article 5 states that "in the case of children of at least 13 years of age, Member States may authorize, by legislative or regulatory provision, in accordance with conditions which they shall determine, the employment of children for the purposes of performance in cultural, artistic, sports or advertising activities" (EU 1994). In practice, children may thus under specific terms and conditions, be employed from the age of 13 provided that such work may under no circumstance be detrimental to regular school attendance or prevent full benefit of education.

Such exceptions to a general prohibition on the employment of children below 15 years of age are in line with the international regulations advocated by the International Labour Organization and developed in national level legislation. For example, the Dutch child labour regulations (Ministerie van Sociale Zaken en Werkgelegenheid, 2004) set out in much detail the precise terms and conditions under which children from the age of 13 may be employed.

Once young persons have become adolescents, according to the Directive, their employment is no longer subject to principal prohibition. In fact, the Directive is facilitative to the employment of adolescents in the sense that it provides for protection from adversities related to employment and does not aim to keep adolescents off the work floor. Across the EU, children may thus be employed subject to national legislation under certain terms and conditions from the age of 13, an age at which they are also still subject to compulsory education. Adolescents however, may be legitimately out of school and in work or may combine non-compulsory education with employment (Melchiorre 2004).

This regulatory framework of the Directive sets the contours for national child labour legislation in the EU, and thereby also the terms and conditions under which migrant children and adolescents from one EU-member state may be employed in another member-state. Drawing from Article 1.1 of Regulation (EEC) No. 1612/68 (1968) which specifies that when employing workers from other member-states, the receiving state needs to ensure that the terms of employment are "in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State" (1968). This means in effect that a Dutch employer,

for example, may lawfully employ a Polish or French adolescent or child as long as it is in accordance with Dutch laws and regulations concerning the employment of children and adolescents in the Netherlands.

Furthermore, in the Netherlands young persons, aged 16 and above, from other EU member-states are also entitled to register independently<sup>5</sup> for residency with the *Gemeentelijke Basis Administratie*, something that is required for non-Dutch EU-citizens who reside in the Netherlands for longer than four months within a six month period.<sup>6</sup> Adolescents from other EU member-states who are at least 16 years of age can thus become full-fledged migrant workers in the Netherlands, as they are, under certain conditions, entitled to work and to take up residence in the Netherlands independently.<sup>7</sup>

### 12.3 Intra-EU Underage Migrant Workers: what do the figures have to say?

The few studies that deal with the issue of underage migrant workers in the EU are limited to young people whose national origins are non-EU (Pang/Ghrib/Ghrib/Pollman/Markova/Vicari/Venicz/Mestre 2002; Terrio 2008). The absence of studies on under age people who are of EU origin and who migrate for work between EU member-states may indicate either the fact that the phenomenon does not exist, or that it has not been addressed. This section explores a range of secondary data to find indications of its existence and shows what mechanisms might have contributed to its invisibility, and thereby, its lack of attention.

A first indication of the likelihood that EU children and adolescents may migrate and be involved in the world of work within the EU is provided by employment participation and school attendance rates. Eurostat data (Education and Culture/Eurydice/Eurostat 2005: 142)<sup>8</sup> on school participation across EU member-states show that school participation rates drop considerably once the minimum age for leaving

5 Without adult authorization.

6 Registration in the *Gemeentelijke Basisadministratie* is generally translated as "registration with Municipality".

7 The age of majority in the Netherlands is 18 years. Only under special circumstances, e.g. young mothers, and upon request of the young person concerned, is majority status granted from age 16.

8 See at: <[http://eacea.ec.europa.eu/ressources/eurydice/pdf/052EN/004\\_codes\\_052EN.pdf](http://eacea.ec.europa.eu/ressources/eurydice/pdf/052EN/004_codes_052EN.pdf)> (23 April 2010).

**Table 12.1:** EU Enlargements. **Source:** Adapted from Table 1.1 in Kvist 2004, cited in Doyle, Hughes, and Wadensjö (2006: 15), and complemented with data from Europa Nu, n.d.: “Lidstaten Europese Unie”; at: <<http://www.europa-nu.nl/9353000/1/j9vvh6nf08temv0/vh72mb14wkwh>>.

Year	Acceding Countries	Number of EU Countries Prior to Accession	Acceding Populations	
			Absolute (1,000s)	Relative % of EU Population
1973	Denmark, Ireland and United Kingdom	9	64,227.8	30.8%
1981	Greece	10	9,700.8	3.5%
1986	Portugal and Spain	12	48,498.9	16.7%
1995	Austria, Finland and Sweden	15	29,339.3	8.4%
2004	Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia	25	74,100.0	19.5%
2007	Bulgaria and Romania	27	29,689.0	6.1%
<b>Official Candidates:</b>		Croatia, Republic of Macedonia, Turkey		
<b>Potential Candidates:</b>		Albania, Bosnia and Herzegovina, Montenegro, and Serbia		

school is reached, which is 15 years in most EU member-states. It is thus a plausible conclusion that from the age of 15, a significant proportion of EU adolescents are likely to be looking for gainful employment. Surveys on work activities of children and adolescents who attend school in EU member-states show further that being in full-time education by no means prevents children and adolescents from active participation in the labour market (Dorman 2001). In fact, regular surveys of the Dutch secondary school population consistently show that the majority of Dutch school-going adolescents work in addition to full-time school attendance (de Zwart/Warnaar 1995; van de Berg/Boer 2000; NIBUD 2005). These national level data sources indicate that work during childhood and adolescence is widely prevalent in EU member-states, yet, these data sources are silent on the question of underage migrant workers.

A qualitative research with young people in rural communities on both sides of the pre-2004 EU border shows, however, that the young participants encountered, amongst other things, the problem of “no work for young people” in proximity of their border communities (Hipfl/Bister/Strohmaier 2003: 846). This suggests that working elsewhere, within or beyond national borders, may for young people in certain parts of the EU be a realistic response to limited work opportunities in their own localities. It is however impossible to estimate the extent to which such observed realities translate into migrant underage workers because EU statistics on foreign workers are generally collected in an age-aggregated format (FRA 2009: 15).

Data on intra-EU migration flows following the 2004 EU round of enlargement, which are perhaps the best-documented intra-EU migration flows, are slightly more insightful on the issue of underage migrant workers. As Table 12.1 illustrates, in 2004 ten new countries joined the EU, raising the number of EU member-states from 15 to 25 countries, which increased the total EU population by approximately 20 per cent.

The right of free movement of workers was only extended with immediate and unrestricted effect to two (Malta and Cyprus) out of the ten acceding countries following the 2004 round of EU-enlargement. With regard to the remaining eight acceding countries (A-8 countries), the 15 established EU member-states were entitled to restrict access to their labour market for a maximum period of seven years. This policy is called the 2-3-2 scheme and stems from fear that immediate and unrestricted implementation of the free movement of workers provision would, in the case of the A-8 countries, lead to an inflow of cheap labour with detrimental effects for national workers and to ‘welfare tourism’ (Currie 2006; Doyle/Hughes/Wadensjö 2006).

Only Sweden refrained from entering the 2-3-2 scheme and fully opened its labour market and associated social policies without any restrictions or limitations for workers from the A-8 countries immediately after the 2004 round of enlargement. Ireland and the UK also opened their labour market for workers from A-8 countries, yet with restricted access to associated social benefits (Currie 2006). The remaining 12 established EU member-states all entered the 2-3-2 scheme

and put transitional measures in place that seem more drastic, ranging from granting no access at all to their domestic labour market for citizens from A-8 countries to various forms of strictly regulated access.

Out of the three established EU member-states that opened their labour markets to the greatest extent following the 2004 enlargement, two (Sweden and Ireland) present figures on migrant workers from A-8 countries only in an age-aggregated format. Furthermore, in Sweden, effective 30 April 2006, registration was no longer required in cases of migrant workers from A-8 countries who stay for a period of less than three months. Swedish migration statistics thus do not capture temporary and seasonal work by migrants from A-8 countries. Long school holidays, combined with a demand for seasonal labour in several sectors of the economy (e.g. agriculture, tourism, service sector), provide opportunities for employment for many national children and adolescents from EU member-states. Short term and seasonal employment is likely to be similarly important when it comes to migrant children and adolescents; yet, in the case of Sweden and Ireland, aggregate data prevent further exploration (Doyle/Hughes/Wadensjö 2006).

The UK case offers greater scope for analysis than the Swedish and Irish data sources. The UK Home Office has made its data on migrant workers from A-8 countries, based on the Worker Registration Scheme, publicly available and presents the data disaggregated by age-cohorts. Data covering the period May 2004 to March 2006 show that the bulk of migrant workers are young people aged 18–24 (43 per cent), and a small proportion, less than 0.5 per cent are younger than 18 years of age. This means that out of 374,555 registered migrant workers from A-8 countries working in the United Kingdom, less than 1,872 were younger than 18 years. Moreover, the report argues that among young migrant workers there is considerable seasonal variation, with significantly more young migrant workers from A-8 countries registered during the summer months June, July and August (UK Home Office 2006: 10).

A final source that sheds some light on the involvement of children and adolescents who migrate for work within the EU is the data obtained from the Dutch Tax and Customs Administration presented in Table 12.2. It shows the incidence of young persons aged 13–17 with non-Dutch, European nationality employed in tax-paying jobs in the Netherlands.<sup>9</sup> Employment was predominantly of a temporary nature with the exception of some adolescent migrant workers employed for the entire year.

Table 12.2 shows that almost one-half of the non-Dutch young persons working in the Netherlands originate from the two neighbouring countries, Belgium and Germany. In addition, an upward trend in total numbers developed over the four years covered particularly from 2002 to 2004. The data furthermore indicate a marginal gender disparity with slightly more boys and young men employed than girls and young women. In terms of age variation, the dataset includes nine (1 per cent of total) 13-year-olds, five per cent (43) are aged 14 years, 14 per cent (111) aged 15, and the bulk (31 per cent or 254 and 49 per cent or 403) for those aged 16 and 17-years-old respectively. The various second-hand data analysed above are valuable insofar that they confirm that children and adolescents from other EU member-states are employed in the Netherlands and other EU member-states. However, the limitations of the data are considerable. First, the numbers of young persons from one EU member-state working in tax-paying jobs in another, or having complied with registration requirements, are in all likelihood only a partial reflection of the actual magnitude and distribution of the phenomenon (see Currie 2006). Second, neither the UK nor the Dutch data indicate whether these young persons reside in the Netherlands, or the UK, with or without parents or adult relatives. Thus, it cannot be determined whether we look at independent migrant workers of minor age, or at young people who have migrated with their families and stay with them or are accompanied by other adults. Finally, one can only guess about what each single number represents; the actual experiences and stories behind them are not revealed. Nevertheless, this latter aspect is crucial in order to gain a more informed opinion about this little known but highly delicate social reality.

#### 12.4 EU's Position on Migrant Minors Involved in Work: Condemned, but Promoted in Disguise

Despite a legal framework that endorses the employment of children and adolescents from one EU member-state in another and some sparse evidence of its

9 Children with a double nationality, of which one is Dutch, are excluded from the sample. Furthermore, no additional information is available about the legal status of employment of child-aged migrant workers from non-EU countries or from the 2004 and 2007 accession-states included in Table 12.2.

**Table 12.2:** Employment of Non-Dutch Children and Adolescents with European Nationality in the Netherlands, 2002-05 (n=820). **Source:** Dutch Tax and Customs Administration. **Comment:** Sending countries whose total contribution of young persons involved in migrant work in the Netherlands exceeds five per cent are highlighted.

Nationality	2002	2003	2004	2005	Total	per cent
Austrian	1	3	4	4	12	1.5%
<b>Belgium</b>	<b>25</b>	<b>42</b>	<b>36</b>	<b>41</b>	<b>144</b>	<b>17.6%</b>
Bosnië-Herzegovina	3	5	2	3	13	1.6%
<b>British</b>	<b>23</b>	<b>17</b>	<b>19</b>	<b>18</b>	<b>77</b>	<b>9.4%</b>
Bulgarian		2	5	5	12	1.5%
Croatian		1	1		2	0.2%
Danish	2	2	6	3	13	1.6%
Estonian				3	3	0.4%
Finnish	2			1	3	0.4%
French	8	11	11	7	37	4.5%
<b>German</b>	<b>43</b>	<b>43</b>	<b>47</b>	<b>43</b>	<b>176</b>	<b>21.5%</b>
<b>Greek</b>	<b>8</b>	<b>16</b>	<b>20</b>	<b>17</b>	<b>61</b>	<b>7.4%</b>
Hungarian			1	3	4	0.5%
Irish	2	1			3	0.4%
Icelandic		1	2	2	5	0.6%
Italian	3	1	4	10	18	2.2%
Latvian			2	1	3	0.4%
Lithuanian			3	1	4	0.5%
Norwegian		1	1	2	4	0.5%
<b>Polish</b>	<b>6</b>	<b>10</b>	<b>19</b>	<b>25</b>	<b>60</b>	<b>7.3%</b>
<b>Portuguese</b>	<b>15</b>	<b>16</b>	<b>16</b>	<b>20</b>	<b>67</b>	<b>8.2%</b>
Romanian	3	3	5	3	14	1.7%
Russian	1	3	11	14	29	3.5%
Slovenian			3		3	0.4%
Slovakian			1	1	2	0.2%
Spanish	7	8	5	5	25	3.0%
Swedish	1	1	2	2	6	0.7%
Swiss	1	1		1	3	0.4%
Yugoslavian	5	2	5	5	17	2.1%
<b>Total</b>	<b>159</b>	<b>190</b>	<b>231</b>	<b>240</b>	<b>820</b>	<b>100%</b>

empirical existence, this co-exists with a dominant view that condemns the involvement of migrant minors in work. The Dutch argument for enacting age-based criteria for issuing work permits to A-8 workers

after the 2004 EU round of enlargement illustrates this well. "...it is not desirable that young people under the age of 18 leave their home country for the Netherlands with the main purpose of obtaining paid employment".<sup>10</sup> A similar view emerges from Dottridge's analysis of anti-trafficking initiatives in countries neighbouring the EU: "Some organizations that target young women have progressed from the 'don't migrate' message to offering information about how to check whether job offers abroad are safe and how to migrate abroad without being trafficked. Relatively few of these initiatives have been aimed at adolescents under the age of 18, apart from general advice to graduating students [on] how to look for and apply for jobs" (Dottridge 2006: 11).

These examples serve to illustrate that discussions on migrant minors involved in work fall far below the level of maturity that has now become the norm in debates on child labour. In child labour studies working children are now increasingly seen as "capable *as well as vulnerable*" [emphasis in original] (Ennew/Myers/Plateau (2005: 52), and work during childhood and adolescence is regarded as potentially "fulfilling and developmental *as well as harmful and exploitative*" [emphasis in original] (Ennew/Myers/Plateau 2005: 52). In various studies on work by children and adolescents in EU member-states this nuanced position is empirically demonstrated (Van Beckhoven 1991; Morrow 1994; Frederiksen 1999; Leonard 2002; Hungerland/Liebel/Liesecke 2007). Moreover, this theoretical position has contributed to a gradual shift in focus of child labour policies. It is thus increasingly recognised that the problem of child labour is not the involvement of children and adolescents in work, but the harm this work may inflict on them (White 2005: 332). Hence, it is argued that harmful or exploitative working conditions ought to be the focus of intervention, rather than efforts to ban all sorts of work before a certain age (Bourdillon/White/Myers 2009). The debate on underage migrants involved in the world of work is not so nuanced, as involvement in any sort of migrant work is generally seen as undesirable in case of minors.

Ironically, the EU constitutes a rare case in which the legal framework reflects greater sensitivity to varied realities, than the all-or-nothing constructs in which issues and positions are pre-fixed. Underlying

10 "Brief SZW inzake Wet arbeid vreemdelingen" (Letter from Social Affairs and Employment regarding Law on Employment of Foreigners) in: *The Netherlands* (27 022, Nr 14), 31 August 2000. Translation by author.

the discursive representation is a dichotomous conceptualization of adulthood and childhood, which hinges on the age of 18 years, the point at which young people cease to be children according to the 1989 *United Nations Convention on the Right of the Child* (UN-CRC).<sup>11</sup> Based on this dichotomy, certain forms of migration involving minors appear benign, as they are generally associated with dominant ideas of what constitutes a proper childhood. This includes migration for purposes of learning or family formation and reunification (Stalford 2000a, 2000b; King 2002; Welbourne 2002; King/Ruiz-Gelices 2003; Baláz/Williams 2004; Bhabha 2006: 1530). Excluded is migration for purposes of work, because work is generally associated with adulthood. In addition, separation from parents is regarded as potentially traumatic for children. Importantly however, an adult-child dichotomy set in the inflexible format of chronological age fails to acknowledge important differences in this regard between, for example, six-year-olds and 16-year-olds.

EU programmes concerning young persons and migration sidestep this adult-child dichotomy by employing the terms *youth* and *mobility*. It is worth noting however, that the EU definition of youth includes all young persons whom the Directive defines as 'adolescents', as well as a proportion of those whom the Directive defines as 'children'. According to the new EU 'Youth in Action Programme' (2007-2013), youth includes young people aged 13-30 years, a departure from the 15-25 age group, which the original EU White Paper on youth defined as youth (EU 2001).

Constructed in terms of youth and mobility, EU policy papers leave no room for doubt about the importance it attaches to exposing its young population to intra-EU cross-border experiences: "...mobility must become an integral part of learning *from a very early age*. Programmes must therefore be accessible to all young people regardless of their socio-economic or geographical origin" (italics added by author, EU 2001: 55). The EU's current stock of youth is its future stock of flexible and mobile EU workers. Moreover, early involvement in intra-EU mobility will, it is assumed, stimulate the formation of a European identity and European consciousness (King/Ruiz-Gelices 2003: 233-234). Hence, stimulating intra-EU mobility at an early age is vital for realizing the economic and strategic objectives underlying the EU as a project.

Programmes designed to facilitate mobility of EU youth include studying abroad, traineeships, working abroad (seasonal work during holidays as well as longer term), au pair arrangements, volunteering and exchanges.<sup>12</sup> In cases of 'working abroad', it is clear that the mobility experience involves working in another EU member-state. However, in other forms of youth mobility this is less obvious. Here, work or elements of work are disguised. For example, au pair arrangements are presented in terms of 'learning' and 'helping' (see for example the definition employed in: Government of the United Kingdom 2007)<sup>13</sup>, yet, in practice the ways in which au pair arrangements may differ from work performed by a live-in migrant care worker or child-minder is frequently unclear. Furthermore, while 'volunteering', 'traineeships' and 'exchanges' connote ideas of learning, which is compatible with the idea of a proper childhood, these practices also contain work-like elements.

A further case in point is studying in another EU member-state. Although studying is a type of work generally regarded as the ideal type of occupation during childhood and youth, it is argued above that full time schooling is often combined with involvement in paid employment. This appears little different when it comes to studying abroad. Migrant students frequently combine their studies with part-time work as [Table 12.3](#) illustrates (see also King 2002: 99). The data presented in [Table 12.3](#) are collected through an anonymous online poll (n=24,114) on the European Youth Portal website (European Union), which unfortunately does not allow for any form of disaggregation. [Table 12.3](#) underscores the prevalence of involvement in the world of work amongst young EU citizens in EU member-states of which they are not nationals. It shows that more than half of all respondents worked abroad in some way or another.

Pointing out that EU youth mobility programmes border on migrant work, contain elements of work, or allow for involvement in migrant work, is not to discredit these forms of mobility. Rather, it serves to bridge an artificial gap, which analytically sets EU youth mobility programmes apart from EU migrant minors involved in non-institutionalized forms of work.<sup>14</sup> Making this analytical connection between

11 In some specific articles, the UN-CRC employs an age-based disaggregation, without however connecting this to different terms as with the Directive.

12 It is important to note that each specific form of mobility offered by EU programmes comes with its own eligibility criteria, including age.

13 Government of the United Kingdom, 2007: *The Accession (Immigration and Worker Authorisation) Regulation 2006* (London: Statutory Instrument 2006 No. 3317).

**Table 12.3:** EU Youth Poll: Have you ever Worked Abroad? **Source:** Adapted from European Youth Portal website; at: <[http://europa.eu/youth/index.cfm?l\\_id=en](http://europa.eu/youth/index.cfm?l_id=en)>.

As an intern / stagier	6.7%
As an au pair	5.3%
While studying abroad	17.2%
During holidays	6.5%
Employed full time	21.8%
Employed part time	2.5%
Never	40.0%

these seemingly different forms of mobility and migration foregrounds the important question of why certain forms of underage mobility and migration are presented as benign and others condemned without any apparent need for testing these assumptions empirically. Overcoming this artificial distinction is particularly important for arriving at an informed position on underage migrants involved in forms of work that are not so easily classified as good or bad. This includes work experiences of migrant minors that do not resonate the human trafficking narratives, but are also not part of EU youth mobility programmes.

## 12.5 Desirability and Potential of a Legal Framework Endorsing Underage Migrants' Work

Since EU youth mobility programmes already offer scope for migrants at minor age to be involved in the world of work within the EU, albeit in disguised terms, it may be argued that there is no need for an additional wide-ranging framework endorsing non-institutional avenues through which migrant minors may become involved in the world of work. In fact, it may be argued that EU youth mobility programmes (due to their institutional nature) offer far more scope for protection from potential abuse and exploitation for under age migrants involved in different forms of migration for work within the EU, than the unregulated alternatives provided by EU provisions under the

principle of free movement of workers. On these grounds a claim could be made that a safe migration approach would constitute promoting EU youth mobility programmes and discouraging, possibly facilitated by prohibiting, employment of underage migrant workers through non-institutionalized channels within the EU.

At this point, studies on intra-EU student mobility are insightful. Intra-EU student mobility is a particularly heavily promoted form of EU youth mobility, which can be traced back to the late 1980's with ambitious, yet unrealized, goals of one in ten EU students studying at a university in an EU member-state of which she/he is not a national (King 2002: 99; King/Ruiz-Gelices 2003: 232-233). King and Ruiz-Gelices (2003: 231-232, 236) observe that students whose parents perform manual work and whose parents do not have an international profile are under-represented in intra-EU student mobility. This illustrates that involvement of EU students in study abroad programmes is characterized by an elitist tendency, despite significant effort on the part of the EU to promote this form of mobility amongst all EU students in an undifferentiated manner.

Research would have to demonstrate whether other components of EU youth mobility programmes, particularly those involving the youngest within the category 'youth', fare any better in this respect. However, if King and Ruiz-Gelices' work (2003) is taken as indicative of participation patterns in EU youth mobility programmes other than study, it follows that these programmes may offer scope for protection for some minors involved in certain forms of intra-EU migration, yet, this is a highly select few. In other words, as an avenue for safe migration, EU youth mobility programmes seem limited and selective in scope and therefore, in terms of potential coverage, by no means supplant the regulations stemming from EU provisions on free movement of workers, which under certain terms and conditions apply to all migrant minors from EU member-states.

The question remains whether it is desirable to sanction minors' involvement in non-institutionalized forms of work as migrants. It may be argued that sanctioning non-institutional forms of work contributes to bringing migrant minors into situations with an inherent risk of exploitation and abuse. The argument that there is an inherent risk of harm to underage migrant workers is based on the claim that these workers lack protection from their parents or adult caregivers while working in an unfamiliar context. Familiarity with the social context in which work is situ-

14 Note that there is no legal gap here. The new definition of youth corresponds at its lower limit (13 years) with the absolute minimum age set out in The Directive at which children may under specific circumstances start doing some light work.



ated and residing with parents or adult caregivers undoubtedly safeguards most young workers from exploitation and abuse better than any legal framework could achieve. Moreover, classical development psychology depicting adolescence as a time of storm and stress would add that it is particularly during this time that young people need the proximity of their parents and local community to mitigate risk-taking behaviour associated with adolescence.

Could a theoretical case be made to distinguish legally between children and adolescents working within national borders and children and adolescents working beyond these borders, and on this basis, pursue an argument in favour of outlawing employment of underage migrants based on their own best interests?<sup>15</sup> After all, the legal framework that endorses intra-EU underage migrant workers follows from the Directive on the Protection of Young People at Work, which is primarily designed to guide national child labour legislation in EU member-states, thus concerning member-states' children and adolescents and not migrant children and adolescents.

Given the limitations of available data on underage migrant workers within the EU, it is not possible to address this question empirically. What remains is therefore a theoretical exploration. Without denying the protective qualities that accompany residing with parents or adult caregivers in most cases and with work situated in a wider social context familiar to the young worker, it does not necessarily follow that in cases where minors work abroad they stay isolated from networks and contexts with such protective qualities, and are therefore by default, victims of exploitation and abuse as the human trafficking discourse suggests. Qualitative and quantitative research on independent child migration in a series of developing countries shows that even if children migrate with-

out their parents or adult caregivers their migrations are usually facilitated by networks of kin, peers or other relations (Iversen 2002; Whitehead/Hashim/Iversen 2007). These networks often, but not necessarily, provide some level of protection, and ease young migrants' integration in the social context at migration destination (e.g. finding a job). Moreover, these studies have shown that underage migrants are active agents in migration processes and do make strategic, yet often constrained, decisions that frequently amount to minimizing risks.

The reference above, to Stanley Hall's development psychology, which depicts adolescence as a period of storm and stress (Arnett 2006), questions the amount of faith one should have in the agency of adolescents. To be precise, this line of thought would not deny that underage migrants exercise agency; yet, it would not attribute the same qualities to this as to adults' agency. In fact, it suggests that adolescents' agency amounts to anything but risk-minimizing behaviour. Based on this view adolescents need the corrective proximity of, ideally, committed parents to mitigate their inclination towards risk-taking behaviour. This constitutes an argument against legislation that endorses adolescent involvement in non-institutionalized work through migration within the EU, based on their best interests.

While compelling, and in line with widespread contemporary discourses about adolescence, this line of thought finds little support in contemporary work on adolescents' risk-taking behaviour:

...[t]he best demographic, crime, and health statistics show that adolescents do not take excessive risks compared to adults, adolescent risks are associated much more significantly with conditions of poverty and corresponding adult behaviors than with uniquely adolescent factors, and middle-aged adults exposed to the same high poverty levels as American youth display similar or higher levels of crime, violent death, firearms mortality, traffic fatalities, and other behaviours conventionally associated with adolescents (Males 2009: 3).

In sum, an observable elitist bias in participation in EU youth mobility programmes suggests, that as a potential avenue for safe migration, such institutionalized migrations and mobilities are limited and selective in scope, and therefore not comparable with the potentially wide-reaching framework the EU provisions of free movement of workers present. Furthermore, the idea that harm is inherent to underage migrant work and that the only safe form of work at minor age is *non-migrant* work, which would imply outlawing and discouraging migrant underage work, is found unsubstantiated. This can be justified neither

15 Note here also the contradiction between the Universal Declaration of Human Rights and the UN-CRC. States Parties to the UN-CRC committed to protecting any child working on their soil from, amongst other things, 'economic exploitation' and 'hazardous work', since Article 2 of the UNCRC stipulates that States Parties shall respect and ensure the rights set forth in the UN-CRC to each child within their jurisdiction (1989: Art 2), including migrant minors. However, this awkwardly co-exists with a legal reality in which there is no such thing as a right to migrate. To be precise, the Universal Declaration of Human Rights states in Article 13 that "everyone has the right to leave any country, including his own, and to return to his country" (1948). Importantly, it does not include a right to enter a country other than one's own.

based on theories of ‘the adolescent brain’, nor on the claim that underage migrants work in social settings in which they lack protective potential of social networks. It remains unclear whether evidence from developing countries will hold for the context of the EU. However, at a theoretical level this section suggests that the EU provisions of free movement of workers provide – by endorsing the right of migrants at minor age to work and making it subject to national level labour law – a framework with the potential of making involvement of migrants at minor age in the world of work safer, by targeting exploitation and abuse and not the phenomenon itself.

## 12.6 Conclusion

This chapter explained how the EU provisions on free movement of workers relate to children and adolescents. It has shown that underage EU nationals may under specific conditions be lawfully employed in other EU member-states and, when doing so, fall under the protection of the labour laws of their host countries. A review of available data on the involvement of underage migrants in the world of work inside the EU yielded evidence that this is not only a theoretical possibility, but also an empirical reality. The EU-wide legal framework, which endorses migrant minors’ involvement in work within its territory, co-exists with a general view that condemns this very practice. The exception is constituted by a series of EU programmes which, using the terms ‘youth’ and ‘mobility’, present to EU minors the opportunity to participate in institutionalized forms of mobility that border on work, contain elements of work, or that are often combined with involvement in the world of work as migrants.

Available data on participation in EU youth mobility programmes suggest an elitist tendency. Hence, the idea of “shrinking of a borderless Europe” (King 2002: 101), which these programmes convey, is a reality for only a select few. Furthermore, although EU provisions on free movement of workers are not born out of any children’s rights concerns, this framework nonetheless presents a legislative framework that applies to a much wider range of migrant minors involved in a much greater variety of work in the EU than the institutionalized EU youth mobility programmes. The potential this framework offers to a children’s rights approach to safe migration is supported by a theoretical argument, which claims that statements suggesting that abuse and exploitation are

inherent to involvement of underage migrants in the world of work are unsubstantiated, whether they are based on theories of the adolescent brain, or assumed characteristics of work among underage migrants. Outlawing the practice, to the extent that this would be effective at all, and thereby distinguishing between involvement of underage migrants in the world of work within and between EU member-states, seems to have little to offer if the objective is to avoid harm.

Since the EU is a constantly enlarging entity (see [Table 12.1](#)) with an increasingly uneven socio-economic landscape, a wide-reaching framework seems appropriate and timely, and a solid basis on which to found the emerging notion of safe migration. However, it must be stressed that it cannot be assumed that the legal provisions stemming from the EU provisions on free movement of workers alone affect the lived experience of migrant minors involved in the intra-EU world of work in any meaningful way. This remains subject to empirical investigation. Yet, research on minors involved in forms of intra-EU migration for work has focused predominantly on worst-case scenarios (human trafficking research), and institutionalized forms of migration (EU youth mobility programmes). The impact that the EU provisions of free movement of workers has, or may have, on making migration safer is likely to be greatest in the grey area constituting forms of migration for work involving minors, which lie somewhere between those scenarios depicted by the human trafficking narratives and EU youth mobility programmes. We know least about these sorts of activities, both qualitatively and quantitatively. Furthermore, whatever protective potential may lie in this legal framework remains largely dormant until EU children and adolescents are sufficiently aware of it. This of course is a policy question that first requires that the EU itself, and its member-states, take a less ambiguous position on minors’ migration within the EU for work. Again, this particularly concerns the forms of migration for work which cannot be easily classified as good or bad.