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**Towards a principle of ‘mutual internal recognition’ in
European (labour and social security) law?**

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Abstract

One of the main purposes of European law is to create an area without internal frontiers. This principle, to be found in article 14, paragraph 2 of the EC Treaty, is an element of inspiration for the European Court of Justice (ECJ). In its case law the principle of open internal borders in order to create an area that almost resembles an intrastate situation is regularly referred to. What does ‘an area without internal frontiers’ mean literally? Is this notion limited in its effect to the borders between the member states? The ECJ regularly deals with the surrection of new internal borders within the member states. This and these examples of case law mostly concern federal or federalizing states. Case law is often related to financial advantages in the area of taxation, social security, other social advantages and study allowances.

In this respect the notion of ‘reverse discrimination’ is of importance. Citizens who are going to or have made use of their right to ‘free movement’ within the EU are protected by Community law. National citizens who do not move within the EU are not protected by the four freedoms. Moreover, the more topics the EU regulates and harmonizes, less room for reverse discrimination will remain. This dynamic trends in the end may lead to a principle of ‘mutual internal recognition’ so that even sub state entities or federal entities may not regulate freely the rights of the citizens who live on their territory without taking into account EU elements.

The question is whether this principle can be constructed. Because the EU is only competent in the area of interstate relations, there is a competency problem as well. The ECJ continues constructing, but usually stops short of a complete acceptance of a principle of 'mutual internal recognition'. The ECJ increasingly uses the fundamental economic freedoms and European citizenship in a human rights context. Examples of case law are *Petit* (C-153/91) and *Government of the French Community, and Walloon Government versus Flemish Government* (C-212/06). What are the consequences of this case law?

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