

ACCESS TO SOCIAL BENEFITS FOR EU MOBILE CITIZENS: “TOURISM” OR MYTH?

Sofia Fernandes | Senior research fellow at the Jacques Delors Institute

SUMMARY

The issue of non-national EU citizens’ access to social benefits has been the subject of fierce political debate in many Member States, although it only concerns a tiny fraction of EU citizens. The debate has moved away from the facts and reality, becoming based on preconceived ideas and fears, in particular the fear of possible “welfare tourism” (or “benefit tourism”) within the EU.

Despite a sharp increase since 2004, **intra-European mobility is currently a phenomenon of limited scope**, less significant than the immigration of third-country nationals. For the most part, mobile EU citizens are young people whose main reason for moving is employment. This explains why their employment rate is greater than that of nationals (70.5% versus 66% in 2015). **Economically inactive mobile citizens** (in particular pensioners, students and jobseekers) **only represent between 0.7% and 1% of the EU’s total population**.

All EU mobile citizens, whether active or inactive, benefit from the coordination of social security systems within the EU and from the principle of equal treatment. However, **access to social benefits - like the right to freedom of movement - is not without conditions**. Safeguard clauses are included in European legislation to prevent inactive citizens from becoming an unreasonable financial burden for the social security system of host countries. Many studies confirm that **mobile EU citizens do not claim benefits more than nationals do**, and in addition have a positive effect on national public finances.

While there is a coordination between social security systems in the EU, these systems are not harmonised. As the European Commission stressed in response to allegations of “welfare tourism” within the EU, **each Member State is responsible for organising its own welfare system and therefore decides which benefits are granted and under which conditions**.

Against this backdrop, several governments have adopted or presented reforms to their welfare system with a view to limiting the probability that EU citizens come to the country with the aim of benefiting from social assistance. European legislation may also change in the future should the United Kingdom (UK) decide to remain in the EU: **the EU-UK deal foresees the indexation of child benefits exported to another Member State to take account of different standards of living and gradual access** (as part of an emergency brake mechanism) **for EU workers to in-work non-contributory benefits**.

Denying the existence of benefit tourism within the EU is not the same as denying difficulties in this field. While some Member States are asking to apply re-entry bans for fraudsters, the Commission must insist on stepping up cooperation between national authorities. Furthermore, while mobile citizens have a positive impact on the national economy and public finances, **this does not rule out that certain municipalities in the host countries experience specific difficulties**. To tackle this issue, an improved, heightened mobilisation of EU funds must be considered.

Lastly, as regards the challenges raised by intra-European mobility, **the debate must be rebalanced as a matter of priority** and as much attention must be paid to the **difficulties experienced by mobile citizens and countries of origin** (exodus of young people and brain drain phenomenon) as to those encountered by host countries.

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INTRODUCTION

The free movement of people within the EU is one of the **key pillars of the European single market**. The right to move around the EU's territory freely was granted as from the start of the European project to workers and was extended by the Treaty of Maastricht, signed in 1992, to all EU citizens, whether or not they are economically active (Article 21 of the TFEU). The free movement of people – alongside the free movement of goods and services – is also, according to the Eurobarometer survey, **the most positive result of the EU in the eyes of Europeans**¹.

Intra-European mobility remains, however, a limited phenomenon: in 2012, only 2.8% of EU citizens were residing in a Member State other than their state of origin. Despite this, a fierce debate has emerged in many host Member States with regard to the **impact of "mobile EU citizens"**² **on national welfare states**. This is partly due to the sharp increase in mobility within the EU since 2004, together with the fact that mobile citizens enjoy access – under certain conditions – to social benefits in the host country.

“CITIZENS' RIGHT TO FREEDOM OF MOVEMENT COMES WITH A PRINCIPLE OF EQUAL TREATMENT”

The rules governing the coordination of social security systems within the EU provide that **mobile EU citizens are covered by the social security system of the country in which they work**³ or, for economically inactive citizens, of the country of habitual residence. In addition, citizens' right to freedom of movement comes with a **principle of equal treatment** under which EU citizens legally residing in another Member State must be treated equally with nationals. This principle concerns access to employment, pay and working conditions, as well as entitlements to social benefits and tax incentives granted by the Member State to its nationals.

Against a backdrop in which **there are major differences between national welfare systems** (with some based on non-contributory assistance benefits rather than on insurance-based contributory benefits), many voices are raised to denounce possible **"benefit tourism"** or **"welfare tourism"** within the EU.

The aim of this policy paper is to shed some light on this complex debate on mobile EU citizens' access to benefits. **The first section** focuses on the **scope of intra-European mobility, the profile of mobile EU citizens and their burden on host countries' welfare system**. **The second section** presents an **overview of the EU's legal framework with regard to mobile citizens' access to benefits** by identifying the provisions concerning workers, economically inactive citizens and first-time jobseekers. **The third section** highlights both the **responsibility of Member States in the organisation of their welfare system** and the recently adopted reforms which limit EU citizens' access to benefits as well as **the modifications** foreseen in the EU-UK deal **to the relevant European legislation**. Lastly, **the fourth section** presents the **challenges to be met and the outlook for the future**.

1. See European Commission, *Standard Eurobarometer 83*, Spring 2015.

2. "Mobile EU citizens" are citizens who have emigrated to another EU Member State, excluding posted workers, cross-border workers and tourists.

3. With the exception of posted workers who pay their social security contributions in their country of origin and are therefore covered by the social security system in this country.

1. Mobile EU citizens: an undue burden for national welfare systems?

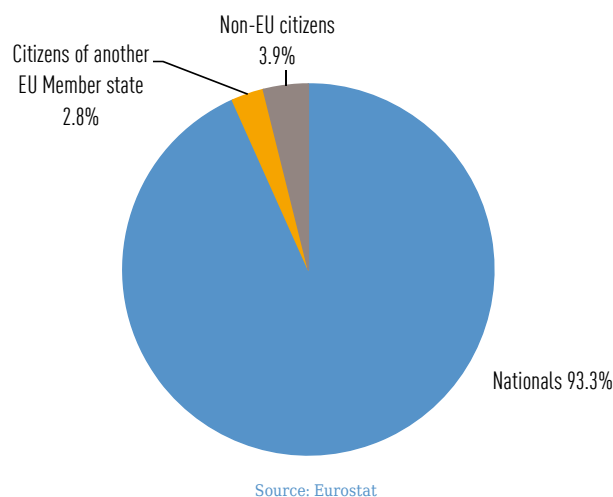
In order to gain a sound understanding of the ongoing political debate within the EU, it is important to grasp the scope of intra-European mobility (1.1) and to have an overview of the characteristics of this set of EU citizens who have decided to reside in an EU Member State other than their country of origin (1.2.). This overview is rounded off by a presentation of the main conclusions of existing studies assessing the burden of mobile EU citizens on host countries' welfare system (1.3.).

1.1. Intra-European mobility in figures: a limited phenomenon despite the increase recorded since 2004

Criticism of the rights enjoyed by EU citizens who reside in a Member State other than their country of origin has gained momentum in the last ten years. However, the first observation to be noted when this issue is analysed is that the **scope of mobility within the EU remains modest**.

According to the European Commission's statistics, out of more than 500 million inhabitants in the EU today, **roughly 14 million are EU citizens residing in a Member State other than their country of origin on a stable basis**. These mobile citizens only account for approximately **2.8% of the EU's total population**, a percentage lower than the statistics for migrants (non-EU nationals) residing in the EU (3.9%) (see Figure 1)⁴.

FIGURE 1 ► Structure of resident population in the EU Member States by group of citizenship, 1 January 2014



The current number of mobile EU citizens therefore remains limited, despite the often cited **sharp increase in intra-European mobility following the EU enlargement waves** of 2004 and 2007. The percentage of EU citizens residing in another Member State **rose from 1.6% of the total population at the end of 2004 to 2.4% four years later (end of 2008), i.e. an increase of almost 50%. The rise was slower between 2009 and 2014 (+0.4 percentage points)** as the economic crisis stalled East-West mobility from 2009 to 2011⁵. The flows of EU workers (accounting for the majority of mobile EU citizens) confirm this **trend of abating mobility from the new EU Member States** as the two main countries of origin, Poland and Romania, recorded a significant decline in the number of workers moving to other EU Member States between 2008 and 2012 (a 41% and 33% drop respectively compared to the 2004-2008 period)⁶. From 2012, intra-European mobility rose

4. Eurostat, "Foreign citizens living in the EU Member States", News Release 230/2015, 18 December 2015.

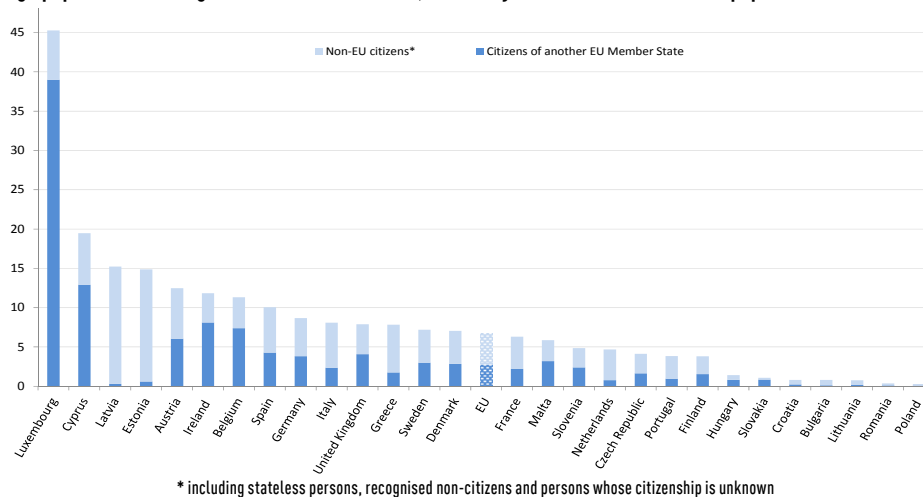
5. European Commission, "Free movement of EU citizens and their families: Five actions to make a difference", Communication of the Commission, COM(2013)837, 25 November 2013.

6. European Commission, "Labour mobility within the EU", MEMO, 25 September 2014.

again (though always remaining at levels lower than those for the 2004-2008 period) with a sharp increase in the number of workers from southern countries moving within the EU (+38%).

This comprehensive view of intra-European mobility is reflected by strongly divergent national realities. **Germany and the United Kingdom are the two main host countries:** together they welcome approximately 40% of the EU's mobile citizens. However, if we analyse the ratio of non-national EU citizens to the total national population, it can be noted that other countries are subject to pressure related to the free movement of EU citizens to a greater extent than Germany and the UK. **In both of these countries, mobile EU citizens account for around 4% of the national population, versus more than 7% in Ireland, Belgium and Cyprus and almost 40% in Luxembourg** (see Figure 2). These four countries also display a situation that is contrary to the European trend: out of the total non-national residents, there are many more citizens from other EU Member States than non-EU citizens.

FIGURE 2 ► Foreign population residing in the EU Member States, 1 January 2014 (% of total resident population)



Source: Eurostat

1.2. Who are the “mobile EU citizens”?

Several studies have been published in recent years to measure statistically whether there is a phenomenon of “benefit tourism” within the EU. In order to assess this, these studies start by **analysing the main characteristics of EU citizens who decide to move to a Member State** other than their country of origin⁷.

A study commissioned by the European Commission in 2013 analysed the results of European surveys and concluded that **work (followed by family reasons) is the main reason why** citizens decide to take up residence in another EU Member State.

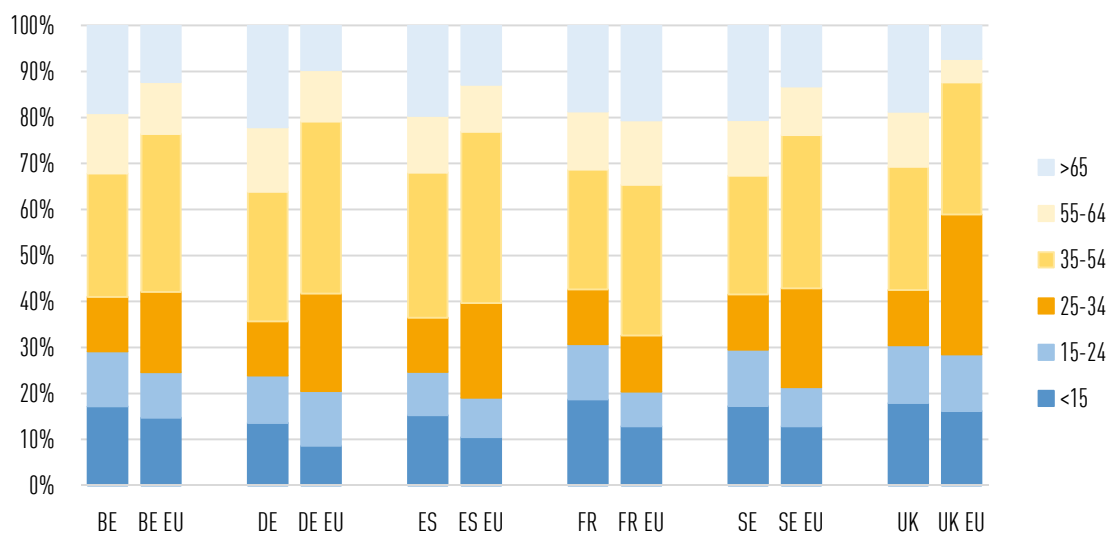
It is, therefore, unsurprising that **in 2012, 78% of EU citizens residing in another Member State were of working age (15-64 years), versus approximately 66% of nationals.**

Young people above all decide to try their luck in another EU country. Figure 3, which presents the breakdown by age of EU citizens and nationals in a selection of Member States, confirms the **overrepresentation of 25-34 year-olds** among mobile EU citizens in relation to nationals.

7. See for example: ICF GHK / Milieu, *A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence*, study commissioned by the European Commission, October 2013; Eurofound, *Social dimension of intra-EU mobility: Impact on public services*, Publications Office of the EU, Luxembourg, 2015; John Springford, *Is immigration a reason for Britain to leave the EU?*, Centre for European Reform, October 2013; Filip Van Overmeiren, Eberhard Eichenhofer and Herwig Verschueren, *Analytical Study 2011. Social security coverage of non-active persons moving to another member state*, Training and Reporting on European Social Security (trESS), 2011; Christian Dustmann, Tommaso Frattini, Tommaso and Caroline Halls, *Assessing the Fiscal Costs and Benefits of A8 Migration to the UK*, Discussion Paper Series N° 18/09, Centre for Research and Analysis of Migration, July 2009.

A Eurofound study, published at the end of 2015, confirms that mobile citizens are younger on average: in the Netherlands and in the United Kingdom the average age of nationals is roughly 40 years of age, versus around 30 years for EU citizens⁸.

FIGURE 3 ► Age distribution of national and EU citizens in a set of EU countries (2015)



Source: Eurostat data (Population on 1 January by five year age group and citizenship)

More mobile EU citizens of working age work or wish to work than nationals, as demonstrated by their **employment rate, which is much higher than the rate for nationals** (70.5% versus 66% in 2015) (see Table 1). Mobile EU citizens face, however, a greater risk of being unemployed, as their unemployment rate (10.4%) is slightly higher than the rate for nationals (9.1%). In spite of this, the situation of mobile EU citizens on the host countries' labour markets is better than that of migrants from non-EU countries, for whom the unemployment rate reaches 19.2%.

TABLE 1 ► Unemployment rate and employment rate of total population, native population, EU citizens and third-country migrants in a set of EU Member states (2015)

	EMPLOYMENT RATE				UNEMPLOYMENT RATE			
	TOTAL	NATIVE BORN	MOBILE EU CITIZENS	THIRD-COUNTRY MIGRANTS	TOTAL	NATIVE BORN	MOBILE EU CITIZENS	THIRD-COUNTRY MIGRANTS
EU-28	65.6	66.0	70.5	53.6	9.6	9.1	10.4	19.2
BE	61.8	62.8	63.2	42.3	8.6	7.6	11.0	24.0
DE	74	75.4	73.9	54.2	4.7	4.2	6.4	12.0
ES	57.8	58.3	59.5	51.3	22.2	21.0	25.2	33.6
FR	63.8	64.8	65.3	44.2	10.4	9.8	12.3	25.6
SE	75.5	77.0	75.4	46.8	7.6	6.6	8.7	30.5
UK	72.7	73	78.8	60.8	5.4	5.3	5.1	8.9

Source: Eurostat data (Employment rate and Unemployment rate by citizenship)

8. Eurofound, *Op. cit.*, page 14. This study analyses the situation of citizens from the 10 Member States of Central and Eastern Europe (EU10) in 9 host countries: Austria, Denmark, Germany, Ireland, Italy, the Netherlands, Spain, Sweden and the United Kingdom.

Economically inactive mobile EU citizens account for a very low proportion - between 0.7% and 1% of the total population of the EU, according to the study commissioned by the European Commission. The study also concludes that, out of these inactive citizens, around 80% reside in a household in which at least one member is employed⁹. In addition, the proportion of inactive citizens is lower among mobile EU citizens than among nationals (39% versus 48% respectively) (see Table 2).

TABLE 2 ▶ Proportion of non-active persons in the total population, EU migrant population and national population aged 15 and above, by MS (2012)

	% OF NON ACTIVES IN EU CITIZENS	% OF NON-ACTIVES IN NATIONAL POPULATION
EU 27	39	48
EU 15	39	48
AT	33	41
BE	48	50
DE	35	43
DK	32	41
EL	49	60
ES	52	56
FI	33	45
FR	50	48
IE	40	50
IT	36	57
LU	35	51
NL	30	38
PT	43	49
SE	36	34
UK	30	43

Source: Own elaboration on the basis of available data on the study ICF GHK / Milieu, [A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence](#), page 19.

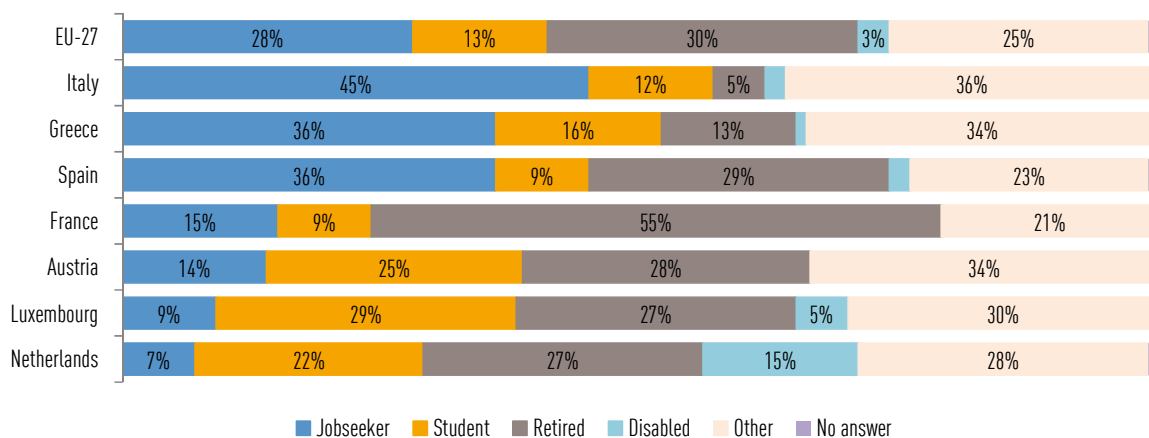
According to the aforementioned study, inactive EU citizens include **jobseekers (28%), students (13%) and pensioners (30%) (the remaining 29% is made up of a heterogeneous set of citizens, in particular family members of mobile citizens - such as for example stay-at-home mothers or fathers - and persons with disabilities)**. These figures for the EU as a whole reflect very different national realities (see Figure 4).

Data available in the study demonstrates that the proportion of jobseekers out of the total inactive mobile EU population tends to be larger in countries with higher unemployment rates. For instance, **in the Netherlands, only 7% of inactive EU citizens are jobseekers, versus 45% in Italy**¹⁰.

9. ICF GHK / Milieu, *Op. cit.*, summary.

10. France is an exception in this field as, combining an unemployment rate corresponding to the EU average, only 15% of the mobile EU citizens it hosts are jobseekers (a figure almost two times lower than the EU average). This can be explained in part by the very high numbers of EU citizens who are pensioners residing in France, which account for 55% of inactive EU citizens. The data for the UK and Germany is not available in the study.

FIGURE 4 ► Non-active EU mobile citizens by category (2012)



Source: Own elaboration on the basis of data available on the study ICF GHK / Milieu de 2013 (op. cit.), page 22.

1.3. The hypothesis of “welfare tourism” confronted with empirical evidence

Given the characteristics of mobile EU citizens as presented above, qualifying them as benefit tourists is a misnomer to say the least, as the majority are workers. But, in spite of that, is it plausible that mobile EU citizens select their host country on the basis of the relative generosity of its welfare system (**welfare magnet hypothesis**)? Do they claim social benefits more than nationals do (**welfare abuse hypothesis**)? We present below the results of the main studies to have analysed these assumptions.

The “**welfare magnet**” hypothesis has been tested by several researchers who have studied the correlation between migration flows and the generosity of welfare states. As underscored in a note from the Commission’s DG for Employment, the resulting conclusion is that the impact of the generosity of welfare states on migration flows is low or inexistent¹¹. Along these lines, Corrado Giulietti explains that when an impact was identified, **its importance was limited when compared to other determining factors of mobility**, such as the unemployment and wage differentials between the countries of origin and host countries, the presence of a social network or geographical proximity¹². It is hardly disputable that while Germany and the United Kingdom attract many mobile citizens (as they attract asylum seekers in a different context), it is mainly because they offer good employment prospects, as Germany and the UK are among the three EU Member States with the lowest unemployment rates (4.3% and 5% respectively in January 2016, versus a European average of 8.9%¹³).

The “**welfare abuse**” hypothesis is based on the idea that mobile EU citizens claim benefits more than nationals do. However, many studies published in the last ten years actually attest to the contrary: **EU citizens residing in another Member State do not claim social benefits, considered as a whole, more than nationals do**¹⁴.

The 2015 Eurofound study presents an analysis that focuses more specifically on any social benefits and services claimed by (active and inactive) mobile citizens from the EU10 countries.

11. Márton Medgyesi and Péter Pölöskei, “Access of mobile EU citizens to social protection”, Research note n° 10/2013, DG Employment of the European Commission, February 2014.

12. Corrado Giulietti, “The welfare magnet hypothesis and the welfare take-up of migrants”, IZA World of Labour, 2014.

13. According to the data available on Eurostat on 2 May 2016. The third Member State with the lowest unemployment rate is the Czech Republic, at 4.3%.

14. See in particular Christian Dustmann, Tommaso Frattini and Caroline Halls, “Assessing the Fiscal Costs and Benefits of A8 Migration to the UK”, Discussion Paper Series N° 18/09, Centre for Research and Analysis of Migration, July 2009; and John Springford, *Is immigration a reason for Britain to leave the EU?*, Centre for European Reform, October 2013.

EU10 MOBILE CITIZENS ARE MUCH LESS LIKELY TO CLAIM SICKNESS/DISABILITY BENEFITS AND PENSIONS, AND THEY USE HEALTH SERVICES LESS THAN NATIVES¹⁵

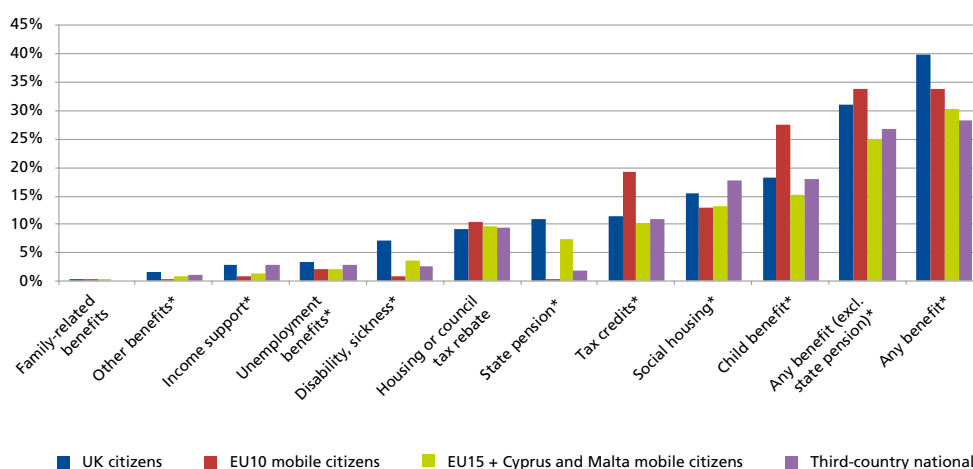
The study finds that **EU10 mobile citizens are much less likely - due to their youth and health - to claim sickness/disability benefits and pensions, and they use health services less than natives.** They also have reduced access to social housing due to the deterrent effect of the long waiting lists.

On the other hand, they are slightly more likely to claim certain work-related benefits than nationals. Given their less favourable position on the labour market (their unemployment rate is higher and a large proportion are in jobs for which they are overqualified and experience wage penalties due to the often precarious nature of their jobs), they are slightly more likely to claim unemployment benefits and other work-related benefits than nationals (in particular those on low incomes)¹⁵.

The age structure of EU10 mobile citizens explains why they are more likely to have young children (the number of dependent children per family is slightly higher than the number for nationals - 0.77 versus 0.5 respectively). This also explains their **increasing use of education services**, in particular for young children.

The case in the United Kingdom is a good example of the differences in the access to social benefits between nationals and mobile citizens (see Figure 4). EU10 mobile citizens practically do not claim sickness and disability benefits or pensions, while their use of tax credits for low incomes (19%) and child benefits (28%) is greater than that of British nationals (12% and 18% respectively).

FIGURE 5 ▶ Take-up of different benefits, by citizen groups, (population aged 18-69 years), UK, 2013



Notes: Population aged 18–69 years; weighted estimates; * indicates that the difference between EU10 citizens and UK nationals is significant at least at the 5% level.

Source: UK Labour Force Survey, 2013 Q2

Source: Eurofound, page 48 (data from the "UK Labour Force Survey, 2013 Q2")

While the "welfare abuse" hypothesis is not confirmed by the analysis of all mobile EU citizens, what are the findings when only inactive citizens are considered? The study commissioned by the European Commission duly performs this assessment. It analyses these citizens' access to special non-contributory cash benefits (such as social pensions, disability allowances and non-contributory job-seekers allowances financed by general taxation rather than contributions by the individual concerned, see Box 1). The authors conclude that **inactive EU citizens account for a very small share of beneficiaries** and that the budgetary impact of such claims on national welfare budgets is very low. They represent less than 1% of all recipients in six countries

15. Eurofound, *Op. cit.*, page 67.

studied (Austria, Bulgaria, Estonia, Greece, Malta and Portugal), between 1 and 5 % in five other countries (Finland, France, Germany, the Netherlands and Sweden) and more than 5% in Belgium and Ireland¹⁶.

“WORKERS FROM OTHER MEMBER STATES ARE NET CONTRIBUTORS TO THE PUBLIC FINANCES OF THE HOST COUNTRY”

In conclusion, on the basis of the findings of existing results, the European Commission attests that: “(...) **workers from other Member States are net contributors to the public finances of the host country.** EU workers from other Member States usually pay more into host country budgets in taxes and social security than they receive in benefits because **they tend to be younger and more economically-active** than host countries’ own workforce”¹⁷. For instance, a study of the Centre for Research and Analysis of Migration published in 2009 concludes that for the 2008/2009 budget year, citizens from the eight Central European States that joined the EU in 2004 accounted for 0.91% of the total UK population, but accounted for 0.96% of total government revenues while only representing 0.6% of total government spending¹⁸.

2. Freedom of movement and social benefit entitlement: the current EU legal framework

“THE FREE MOVEMENT OF PEOPLE IN THE EU IS NOT AN UNCONDITIONAL RIGHT”

The free movement of people is a right, but not an unconditional one. To be able to reside for more than three months in a host country, EU citizens must work in the host country or, **if they are economically inactive, have sufficient resources for themselves and their family members** not to become a burden on the social assistance system of the host Member State and have comprehensive sickness insurance cover (article 7(1) of Directive 2004/38/EC). **EU citizens and their family members who have resided legally for a continuous period of five years shall have the right of permanent residence** (see Table 3)¹⁹.

Along these lines, access to social benefits is also based on conditions. Legislation provides for **different provisions according to the citizen’s status in the host country and the various types of social benefits** (see Box 1).

Those who denounce benefit tourism within the EU express fears concerning **mobile EU citizens’ access to non-contributory (assistance-based) benefits, for which eligibility is based on applicants’ needs and not on prior contributions (contributory or insurance-based benefits).**

Below, we will highlight the conditions of access to social benefits for workers (2.1.), economically inactive citizens (2.2.) and jobseekers (2.3.).

16. ICF GHK / Milieu, *Op. cit.*, page 65. For Ireland, the figures are estimates calculated on the basis of applications.

17. European Commission, *European Commission upholds free movement of people*, Memo 13-1041, 25 November 2013.

18. Christian Dustmann, Tommaso Frattini and Caroline Halls, *Op. cit.*, page 17.

19. This right to free movement may only be “subject to limitations justified on grounds of public policy, public security or public health” (article 45 of the TFEU). For further information see Jérôme Quéré and Martina Menghi, “Free movement of persons, taking stock of a misunderstood right”, *Studies and Reports No. 112*, Jacques Delors Institute, to be published.

BOX 1 ▶ Type of social benefits

- Social security benefits – mainly contributory benefits (paid in return for contributions) such as sickness, maternity, work-related accidents and unemployment benefits and pensions. These benefits also include universal benefits such as family benefits. The rules concerning the access to these benefits for mobile EU citizens are established in Regulation n° 883/2004.
 - Social assistance benefits – non-contributory benefits (paid with no contribution requirements), contingent to applicants' needs. These benefits are "subsistence benefits" and typically consist of benefits paid to cover minimum living expenses or assistance paid for special circumstances in life. The rules concerning the access to these benefits for mobile EU citizens are established in the Directive 2004/38/CE
 - Special non-contributory cash benefits (SNCBs) – mixed benefits, between social security and social assistance. These benefits are intended to provide "supplementary, substitute or ancillary cover against the risks covered by the branches of social security [...] and to guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned". These benefits are foreseen in Article 70 of Regulation (CE) n° 883/2004. At the Annex X of this Regulation, every Member states listed the benefits which under their legislation respond to the criteria defined in Article 70.
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2.1. Non-national EU workers' access to social benefits

The coordination of Member States' social security systems – provided for in Regulations 883/2004 and 987/2009²⁰ - is at the heart of citizens' mobility within the EU. This coordination ensures that mobile EU citizens remain covered by a social security system and are not penalised by the loss of entitlements and rights acquired in their country of origin should they decide to reside in another Member State.

According to European provisions, **European citizens and their dependents are covered by the social security system in the country where they work**, once they start to contribute to its financing through their social security contributions and taxes.

However, regulations (EC) n° 883/2004 and n° 987/2009 only concern social security benefits and special non-contributory cash benefits (SNCB) (see box 1). For their part, social assistance benefits (non-contributory) are covered by the Directive 2004/38/CE. Under the equal treatment principle foreseen in article 24 of this Directive (see Box 2), **EU workers (employees or self-employed) enjoy the right to social assistance benefits under the same conditions as nationals of that Member state.**

BOX 2 ▶ The principle of equal treatment for mobile EU citizens

Article 24 of Directive 2004/38/EC entitled "Equal treatment" states that:

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.
 2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.
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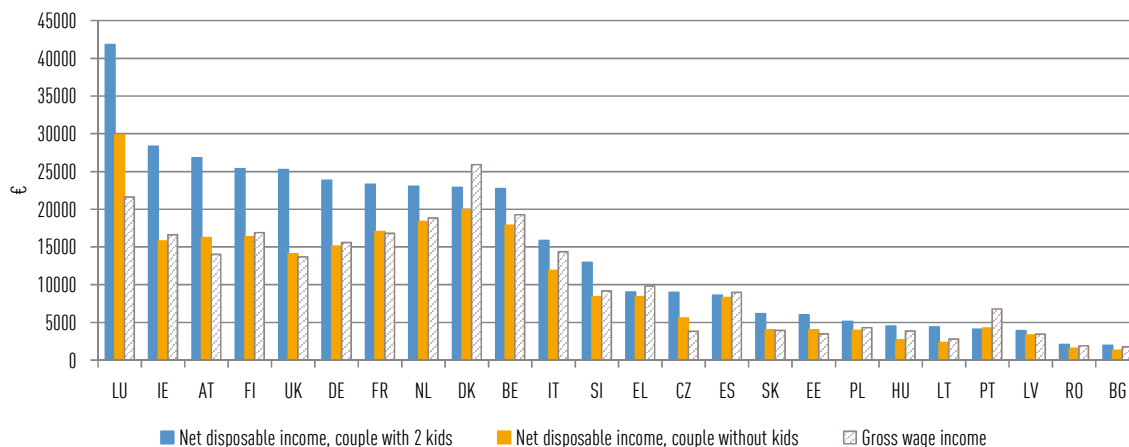
It is important to underline that European legislation foresees that EU citizens who become involuntarily unemployed after having worked in the host country for more than one year - and who have registered as jobseekers with the relevant employment office - retain their status of worker. Those who find themselves involuntarily unemployed before completing a year of work retain their status of worker for at least six months (Article 7(3) of Directive 2004/38/EC). This status of worker means that they are not considered to be inactive and the conditions of sufficient resources do not apply to them.

²⁰ Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. Regulation (EC) No. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems.

Mobile workers' access to social benefits is naturally less of a thorny issue than access for inactive citizens. In spite of this, the issue of **EU workers' access to in-work non-contributory benefits** is currently hotly debated.

Immediate access to these benefits for EU workers (who have never previously contributed to financing the welfare state) could, according to some, have a magnet effect on mobile citizens. This question arises in particular in the UK, where these in-work benefits are important. According to these claims, these citizens would select the United Kingdom as a host country, counting on social benefits to top up their low incomes. However, as Frank Vandembroucke stresses, although in-work non-contributory benefits are significant in the United Kingdom - particularly for couples with children -, another factor must be considered in the analysis, namely that the UK has the lowest minimum wage out of all the other EU-15 countries, with the exception of Greece, Spain and Portugal. Therefore, if we compare the net disposable income of a couple, one of whom is employed full-time on minimum wage, with two children, it can be observed that this income is higher in Luxembourg, Ireland, Austria and Finland than in the UK (see Figure 5). As Frank Vandembroucke concludes, **"so conceived, the UK is not an exceptional 'welfare magnet'"**²¹.

FIGURE 6 ▶ Gross minimum wage income and net disposable income of couples (with one full-time earner on minimum wage)



Source: Frank Vandembroucke, "Social benefits and cross-border mobility", *Tribune*, Jacques Delors Institute, June 2016 (data from CSB-MIPI)

2.2. Economically inactive citizens: the principle of equal treatment versus "sufficient resources"

The Regulation concerning the coordination of social security systems provides that **economically inactive citizens are covered by the social security system in their country of residence**, as long as stringent checks of habitual residence prove that there is in their case a real link with the host country (see Box 3). Among social security benefits, inactive EU citizens can only have access to universal benefits (such as family benefits), as they are by definition excluded from contributory benefits.

21. Frank Vandembroucke, "Social benefits and cross-border mobility", *Tribune*, Jacques Delors Institute, June 2016.

BOX 3 ► Definition of "habitual residence" for economically inactive citizens

The notion of habitual residence has been defined on a European level as the place where the concerned citizen has determined the habitual centre of his/her interests (the place of residence of the citizen's family and fiscal residence in particular are taken into account). In 2013, the European Commission adopted a guide which sets out the assessment criteria for habitual residence²², providing a common instrument for Member States that guarantees that social security benefits are only granted to citizens with substantiated habitual residence in the Member State²³.

Since 2004, the United Kingdom has required EU citizens to sit a test prior to the habitual residence test. This is the right-to-reside test, which must allow officials to determine whether the citizen under assessment complies with the provisions of European law in order to enjoy the right to reside in the country.

EUROPEAN LEGISLATION PROVIDES FOR A DEROGATION TO THE PRINCIPLE OF EQUAL TREATMENT"

It is thus the issue of inactive citizens' access to non-contributory benefits and to SNCB that is at the centre of the debate on possible "benefit tourism". Indeed, these citizens benefit from the equal treatment principle and can as a consequence have access to some social benefits, without ever having contributed to the financing of the country's welfare state. However, in order to protect host Member States from an undue financial burden and to limit the incentives to welfare tourism within the EU, European legislation provides for a derogation to the principle of equal treatment: **Member States are not obliged to provide non-contributory social assistance benefits to economically inactive European citizens** for the first three months of their residence (article 24(2) of Directive 2004/38/EC).

Following residence of three months, the principle of equal treatment is applicable, although, in practice, **inactive EU citizens are not likely to be able to claim social assistance benefits for the first five years of residence**. Given the fact that, in order to reside in the host Member State for more than three months, these citizens must have sufficient resources so as not to become an excessive burden for the host country's welfare system, submitting a claim for social assistance benefits may be considered as proof of insufficient resources and result in the loss of this right of residence.

It is true, however, that national authorities cannot automatically refuse to grant non-contributory social benefits to an inactive EU citizen (article 14(3) of Directive 2004/38/EC) **or automatically consider that a citizen having recourse to a social assistance benefit does not have sufficient resources** to enjoy the right to reside in the host country.

This was confirmed by the case law of the Court of Justice of the European Union (CJEU), in particular by the Brey case²⁴ (see Box 4). **National authorities are obliged to conduct a case-by-case assessment of applications for non-contributory benefits and special non-contributory cash benefits (SNCBs)** from inactive EU citizens. This analysis must consider a number of factors, in particular the amount of the benefit, the duration, the temporary nature of the difficulty and the overall burden for the social assistance system.

This case-by-case approach has resulted in a relatively heavy administrative burden for national authorities, particularly as the assessments are based on quite ambiguous notions such as "sufficient resources" and "unreasonable burden". Member States cannot set the amount of resources that they consider sufficient, they must consider the circumstances of each individual situation. In any case, pursuant to article 8(4) of Directive 2004/38/EC, the amount deemed necessary to consider an EU citizen self-sufficient may not be "higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State".

22. European Commission, *Free movement: Commission publishes guide on application of "Habitual Residence Test" for social security*, 13 January 2014.

23. Further information on the habitual residence test and the right-to-reside test in the United Kingdom.

24. Brey Judgment of the CJEU dated 19 September 2013 (Case C-140/12).

In addition, the notion of "unreasonable burden" is not defined and implies that inactive European citizens may represent a burden for the host country, as long as this burden is not excessive. It is up to Member States to define what they deem to be an "unreasonable burden".²⁵

BOX 4 ► The Brey case (2013)

Mr Brey is a German citizen with an entitlement to a German pension. He went to live in Austria and applied there for a compensatory supplement to top up his pension, an application which was rejected. This social benefit, which is a special non-contributory cash benefit for which eligibility is based on the criterion of habitual residence, is granted to Austrian citizens in the same situation as Mr Brey. However, in order to prevent pensioners from other EU countries who have never been taxpayers in Austria from claiming this benefit, Austrian law provided that only persons residing legally in Austria were entitled to claim this benefit, and that legal residence in Austria was only possible for inactive citizens with sufficient resources. This automatically implies that a citizen does not fulfil the condition of sufficient resources simply because a claim for a social benefit has been submitted.

In its judgment, the Court of Justice opposed this Austrian regulation which excluded under all circumstances and in an automatic manner the eligibility of an economically inactive citizen of another Member State for a benefit on the grounds that the citizen does not fulfil the conditions of legal residence. The Court added that access to special non-contributory cash benefits must be based on an assessment of the European citizens' individual situation, taking into account "the amount and the regularity of the income which he receives, (...) and the period during which the benefit applied for is likely to be granted to him", in order to assess the extent of the burden of such a payment on the national social assistance system.

“ THE RESTRICTIONS
ONLY CONCERN PERIODS OF
RESIDENCE OF LESS THAN
FIVE YEARS”

Lastly, let us stress that the restrictions concerning inactive mobile citizens' access to non-contributory benefits only concerns periods of residence of less than five years. **After five years, EU citizens having established a right to permanent residence can claim the host country's non-contributory benefits under the same conditions as nationals, with no derogations authorised under European legislation.**

2.3. Jobseekers: a (limited) right of residence but no equal access to social benefits

The issue of right of residence and access to social benefits for EU citizens moving to another Member State to find employment (jobseekers) is a thorny one in relation to the free movement of people. **European law grants them a (limited) right of residence but no equal access to social assistance benefits.**

European legislation has specific provisions for **first-time jobseekers** in the host country. Like all European citizens, these people enjoy a right to reside in the host country for three months. After this time, if they are not able to provide evidence that they have sufficient resources (the condition for the right of residence of inactive citizens), they may not be expelled from the country if they can prove that **they are continuing to seek employment and that they have a genuine chance of being engaged** (article 14(4)(b) of Directive 2004/38/EC). This provision is based on CJEU case law which established in 1991 in its Antonissen judgment²⁶ that a six-month period seems reasonable for EU citizens to find employment in the host country, but that following this period the citizens may not be expelled from the country if they can prove that they are continuing to look for a job and have a genuine chance of finding one. National authorities must **conduct case-by-case studies of the situation of first-time jobseekers** and prove, in order to launch expulsion measures against them, that they are not actively seeking employment and/or do not have a genuine chance of finding work.

As regards these citizens' access to non-contributory social assistance benefits, European legislation provides that **Member States are not obliged to confer eligibility for these benefits to first-time jobseekers during the period in which they are seeking employment in the host country** (article 24(2) of Directive 2004/38).

25. See Paul Minderhoud, "Access to social assistance benefits for EU citizens in another Member State" in *Online Journal on Free Movement of workers within the EU*, n°6, June 2013.

26. CJEC, 26 February 1991, *The Queen v. Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen*, Case C-292/89.

The CJEU, however, stated in the cases of Collins (on the allocation of the income-based jobseekers' allowance in the UK) and Vatsouras and Koupatantze (on the German basic benefit for jobseekers) that due to European citizenship, European first-time jobseekers who have established genuine links with the host country's labour market **enjoy the principle of equal treatment when claiming a benefit of financial nature intended to facilitate access to the labour market**²⁷. For the Court of Justice, entitlement to this benefit does not run counter to EU secondary legislation, as this benefit is not considered as social assistance as stated in its judgment concerning the Vatsouras and Koupatantze case: "Benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to the labour market cannot be regarded as constituting 'social assistance' within the meaning of Article 24(2) of Directive 2004/38"²⁸.

However, in its Alimanovic judgment of 2015, the CJEU excluded EU jobseekers from access to social benefits granted to national jobseekers in cases where their main objective was not to facilitate access to the labour market but to ensure their means of subsistence. For instance, in the UK, non-national EU jobseekers enjoy access to the income-based jobseekers' allowance while in Germany they cannot access the basic SGB II benefit granted to jobseekers in order to ensure their means of subsistence.

BOX 5 ► The Dano case (2014)

Ms Dano, of Romanian nationality, has been living with her son in Germany since 2010, residing with Ms Dano's sister, who provides for them. She claims basic insurance benefits for jobseekers and is refused by the German social assistance centre.

In its judgment, the Court of Justice stresses that Ms Dano does not fulfil the conditions for right of residence in another Member State as defined in Directive 2004/38. When the period of residence is greater than three months but less than five years (the period in question in the Dano case), the Directive conditions the right of residence on economically inactive citizens having their own sufficient resources or, if they have moved to the host country to find employment, they must provide evidence that they are actively seeking employment and have a genuine change of being engaged. Yet, Ms Dano did not have sufficient resources to claim a right to residence and no evidence indicated that she was seeking employment in Germany ("*She has not been trained in a profession and, to date, has not worked in Germany or Romania*").

As a result, the Court confirmed that Ms Dano was not eligible to claim basic insurance benefits for jobseekers in Germany and considered, in a more general sense, that, in accordance with European law, a citizen moving to another Member State without working in a professional capacity but with the sole aim of claiming social benefits is not covered by the principle of equal treatment and may therefore be excluded from a grant of certain social benefits.

“EUROPEAN CITIZENS CAN ONLY CLAIM EQUAL TREATMENT IF THEIR RESIDENCE IS IN COMPLIANCE WITH THE CONDITIONS SET OUT IN DIRECTIVE 2004/38/EC”

On November 2014, the Court of Justice provided clarifications on inactive citizens' access to social benefits in its **Dano judgment**, reminding that **European citizens residing in another Member State can only claim equal treatment with nationals of that Member State if their residence is in compliance with the conditions set out in Directive 2004/38/EC**. This

is not the case for a citizen, who, as in the Dano case, does not have sufficient resources and can provide no proof of seeking employment in the host country. In such a situation, the EU citizen cannot claim special non-contributory benefits, including those intended to facilitate access to the labour market. In this judgment, the Court of Justice concluded – subject to much coverage in European press as curbing benefit tourism in Europe²⁹ – that “A Member State must therefore have the possibility [...] of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence. (...) To deny the Member State concerned that possibility would [...] thus have the consequence that persons who, upon arriving in the territory of another Member State, do not have sufficient resources to provide for themselves would have them automatically, through the grant of a special non-contributory cash benefit which is intended to cover the beneficiary's subsistence costs”³⁰.

27. Collins judgment of the CJEU dated 23 March 2004 (Case C-138/02), paragraph 63 and Vatsouras and Koupatantze judgment of the CJEU dated 4 June 2009 (Case C-22/08), paragraph 40.

28. Vatsouras and Koupatantze judgment of the CJEU dated 4 June 2009 (Case C-22/08), paragraph 45.

29. See for example the Euractiv article, “EU judges rule against ‘welfare tourists’ in nod to Cameron” dated 12 November 2014.

30. Dano judgment of the CJEU dated 11 November 2014 (Case C-333-13).

This Dano case illustrates a paradox: while the CJEU concluded that Ms Dano did not comply with the conditions of Directive 2004/38/EC to enjoy the right to reside in Germany, this citizen did enjoy access for several years to child benefits as she established her habitual residence in Germany. It is therefore possible for an EU citizen to establish habitual residence in another EU Member State and **have access to universal social security benefits (such as child benefits) even when the conditions governing the right of residence are not met.**

“THE UNITED KINGDOM INTRODUCED A “RIGHT-TO-RESIDE ASSESSMENT” WHICH PRECEDES THE HABITUAL RESIDENCE TEST”

The CJEU recently provided clarifications on this issue in its Commission/United Kingdom judgment. To prevent situations such as that of Ms Dano, the United Kingdom introduced a “right-to-reside assessment” which precedes the habitual residence test (in order to **check that the EU citizen wishing to establish habitual residence in the UK does meet the conditions governing the right of residence under Directive 2004/38/EC**).

The Commission considered this test to be discriminatory against EU citizens and submitted the question to the CJEU. The Court validates the United Kingdom’s initiative in its judgment, stating that “there is nothing to prevent, in principle, the granting of social security benefits to Union citizens who are not economically active being made conditional upon those citizens meeting the necessary requirements for obtaining a legal right of residence in the host Member State”³¹. Following this judgment of the CJEU, it will not be surprising should other EU Member States wishing to limit mobile EU citizens’ access to social benefits adopt measures similar to those implemented in the UK.

31. Commission/United Kingdom judgment of the CJEU dated 14 June 2016 (Case C-308-14).

TABLE 3 ► Right of residence and entitlement to social benefits in the host country for mobile EU citizens

		RESIDENCE OF LESS THAN 3 MONTHS	RESIDENCE BETWEEN 3 MONTHS AND 5 YEARS			RESIDENCE OF OVER 5 YEARS
		ALL CITIZENS	WORKERS*	INACTIVE CITIZENS (E.G. STUDENTS, PENSIONERS)	JOBSEEKERS	ALL CITIZENS
Right of residence		Unconditional Possible limitations on grounds of public policy, public security and public health	Condition: to be in employment or to have the status of worker as defined in EU law	Condition: to have sufficient resources and a comprehensive sickness insurance cover	Condition: the citizen must be able to prove that he/she is actively seeking employment and has a genuine chance of being engaged	Unconditional
Entitlement to social benefits	Social security benefits (contributory and universal)	Workers are subject to the same conditions as nationals. MS have no obligation to grant these benefits to inactive citizens and jobseekers.	Like national citizens	Condition: habitual residence in the host country	Condition: habitual residence in the host country	Like national citizens
	Social assistance benefits (non-contributory)	Workers are subject to the same conditions as nationals. MS have no obligation to grant these benefits to inactive citizens and jobseekers.	Like national citizens	Condition: habitual residence in the host country. But eligibility is not likely as the right of residence is subject to the "sufficient resources" criterion (assessed on a case-by-case basis)	MS have no obligation to grant these benefits to jobseekers	Like national citizens
	Special non-contributory benefits	Depends on habitual residence so it is therefore unlikely that citizens become eligible prior to three months of residence	Like national citizens	Condition: habitual residence in the host country. But eligibility is not likely as the right of residence is subject to the "sufficient resources" criterion (assessed on a case-by-case basis)	Access to the benefits intended to facilitate access to the labour market	Like national citizens

* EU citizens who become involuntarily unemployed after having worked in the host country for more than one year retain their status of worker (the status is retained for at least six months if the citizen has worked for less than one year).

Source: Own elaboration on the basis of European legislation and case law regarding the free movement of people.

3. Mobile citizens' access to social benefits: from national reforms to changes to European legislation

“MEMBER STATES HAVE THE SOLE RESPONSIBILITY FOR THE ORGANISATION OF THEIR WELFARE SYSTEM”

In response to the voices raised to denounce “welfare tourism” within the EU, the European Commission reminds that, going beyond the lack of statistical evidence to confirm the existence of this phenomenon, **Member States have the sole responsibility for the organisation of their welfare system**³². Thus, while some welfare models offer easier access to social benefits for EU citizens than others, it is up to Member States to put this right, if so required. Against this backdrop, **many countries have been implementing reforms since the 2000s in order to limit mobile EU citizens' access to social benefits**. The United Kingdom and Germany provide the best examples of this (3.1).

Similarly, the renegotiation on the UK's participation in the European project was also an opportunity for this Member State to convince the European Commission and its European partners of its specific situation, marked by a considerable influx of mobile citizens in recent years together with eligibility for significant in-work non-contributory benefits. As a result, the EU-UK agreement dated **19 February 2016** provides for a few modifications to the European legislation concerning mobile EU citizens' access to social benefits. **These changes, presented hereafter, will be implemented should British citizens decide to remain in the EU** (3.2).

3.1. Member States' responsibility for the organisation of their welfare system and recent reforms

Within the EU, there is a great disparity between welfare systems, which draw inspiration from two traditional concepts of welfare. Firstly, the **Bismarckian concept**, which favours an insurance-based approach (social benefits are paid to workers who are insured against a risk). Secondly, the **Beveridgian concept**, which rests on an assistance-based approach (benefits are paid out to individuals in need of them).

The UK is the cradle of the Beveridgian model. The assistance-based approach of the British welfare model provides easier access to social benefits for mobile EU citizens. In response to this, the UK has adopted a set of new provisions since 2004 with a view to limiting access to social benefits for inactive EU citizens. These reforms, in the UK or elsewhere, are in compliance with European legislation as long as the principle of equal treatment between nationals and EU citizens is respected.

The United Kingdom has in particular implemented the safeguards provided for in the European legislation: **social assistance benefits can no longer be claimed by economically inactive EU citizens during their first three months of residence**³³. The same goes for universal social security benefits (family benefits) as to be entitled to them the citizen must be considered an “habitual resident”, and this requires at least three months of residence in the UK.

32. Intervention of Viviane Reding to the Justice and Home Affairs Council on 5 December 2013: “[...] the directive on free movement gives the possibility to Member States not to grant social assistance benefits to EU citizens before they become habitual resident. Those safeguards exist in EU law and they shall be used to their full extent. The concerns are a consequence of your national regulatory systems. As you know, social security is not harmonised at EU level, each and every Member State decide on its own social security and assistance rules. Each and every Member State also decide under which conditions it grants access to this or that benefit to non-nationals”.

33. Eurofound (2015), *Op. cit.*, page 35.

The British government has also adopted a set of measures aimed at ensuring compliance with European legislation by placing **the burden of proof on citizens themselves** (thereby reducing the administrative workload for authorities). Therefore, for example³⁴:

- Before sitting the habitual residence test, EU citizens must complete an **"assessment of their right-to-reside"** to ensure that they meet the necessary conditions for residence in the UK.
- **After six months, jobseekers lose their right to residence** (and therefore access to their income-based jobseekers' allowance), unless they can provide "compelling evidence" that they are likely to find employment (for example a pledge of employment).
- **To enjoy the status of "worker"**, EU citizens must have earned at least £150 per week over the previous three months, failing which they will be subject to an individual assessment to check whether their work is "genuine and effective".

In addition, the British government wishes to cut the budget cost of social allowances that top up low incomes by increasing the minimum wage. The Chancellor of the Exchequer stated in 2015 that the government aimed to **"Move from a low wage, high tax, high welfare economy to the higher wage, lower tax, lower welfare country."**³⁵ For this purpose the living wage was increased by 7.5% in 2016 and is set to reach £9 per hour by 2020, which could represent a 13% rise in real terms in comparison to the 2015 level³⁶. In return, social benefits will be significantly cut (savings of several billion pounds are projected by 2020), and in particular work-related benefits.

However, the United Kingdom is far from being the only EU Member State to tighten welfare benefit eligibility criteria for inactive EU citizens.

Germany is following the same trend as the UK. Economically inactive EU citizens' access to basic benefits aimed at covering primary needs and facilitate employment is at the centre of the debate. While in a ruling dated December 2015 the German Federal Social Court in Kassel deemed that jobseekers may not be refused access to certain social benefits in Germany after a residence of six months, the German Labour Minister presented a bill aimed at limiting this access in the spring of 2016. **The draft legislation plans to prohibit access to social assistance benefits for jobseekers (who have never worked in Germany or have worked there for less than a year and thus retain their status of worker for only six months) for the duration of their first five years of residence**³⁷. While this bill may be contestable in principle, as it raises the question of unequal treatment between EU citizens and nationals, it is not in breach of European legislation, which provides that Member States are not obliged to grant social assistance benefits to jobseekers as they look for employment in the host country.

“THE SIGNIFICANCE OF THESE REFORMS IS MORE POLITICAL THAN ECONOMIC”

These reforms, whether adopted or planned, demonstrate the responsibility that each Member State has with regard to organising its welfare state. **Their significance is more political than economic, in that they aim to reassure native citizens.** The savings the governments stand to gain are modest and in Germany the Minister herself stated that the bill was above all a preventative measure³⁸.

34. Michael Blauburger and Susanne K Schmidt, "Welfare migration? Free movement of EU citizens and access to social benefits", in *Research and Politics*, October-December 2014, pages 1-7.

35. Article in *Le Monde* newspaper, "Le Royaume-Uni coupe les aides sociales et augmente le salaire minimum" (in French), 8 July 2015.

36. The cost of this minimum wage increase for companies is partly offset by corporation tax relief. This tax has already dropped from 28% in 2010 to 20% today and will fall further to 18% by 2020.

37. See Paul-Jasper Dittrich and Nathalie Spath, "De Jure freedom of movement and de facto mobility in the EU internal market", *Policy paper n°161*, Jacques Delors Institut – Bertin, 18 April 2016.

38. Minister Andrea Nahles quoted in an article from the "World socialist website", *German labour minister cuts social assistance to EU immigrants*, dated 3 May 2016.

3.2. The EU-UK deal and planned changes to European rules

The British Prime Minister has made access to social benefits for EU citizens one of the key issues of the new settlement regarding the UK's participation in the EU. Against this backdrop, **the agreement dated 19 February 2016 provides for a set of changes to European legislation in line with the specific situation in Britain.**

An "alert and safeguard mechanism" may be activated to "respond to situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time [...] on a scale that affects essential aspects of its social security system, including the primary purpose of its in-work benefits system"³⁹. The creation of this alert mechanism (3.2.1.) comes together with a revision of the rules governing the exportation of child benefits (point 3.2.2).

3.2.1. Gradual access to in-work non-contributory benefits

The conditions under which a Member State may activate this alert mechanism are not set out in the EU-UK deal. However, the Commission has adopted an official declaration in which it states that the UK is currently in a demographic situation- due to the high influx of EU citizens in recent years - that would enable it to activate this alert mechanism.

The implementation of the alert mechanism would allow the Member State submitting the request to **limit newly-arrived EU workers' access to tax-funded benefits granted to workers on low incomes (in-work non-contributory benefits) for a total period of up to four years** as from the start of employment.

This will not prevent EU citizens from continuing to try their luck in the UK but should, according to David Cameron, "reduce the financial incentive for lower-paid, lower skilled workers to come to Britain" by limiting the alleged pull factor **caused by the in-work benefit scheme.**

This alert mechanism only partly meets what David Cameron wanted. Although the Commission and Member States have agreed on the implementation of an alert mechanism, workers will not have to wait four years to earn their entitlement to in-work non-contributory benefits. **The restriction is set to be gradual:** workers are to be fully excluded from eligibility for these benefits initially, but will have gradual access to them as they become part of the labour market in the host Member State.

This mechanism may only be applied following an authorisation from the Council and for a seven-year period - i.e., as Bertoncini, Dauvergne and Vitorino remind, "the exact duration of the **safeguard clause which the UK enjoyed from 2004 to 2011** to restrict the free movement of Central European workers, although it never once used it"⁴⁰.

“OTHER MEMBER STATES ARE NOT LIKELY TO USE THIS ALERT MECHANISM”

While **the creation of this mechanism was tailored to the UK's concerns, it is, in theory, open to all Member States.** However, other Member States are not likely to use it, for two reasons. This mechanism can only be activated following a positive opinion of the European Commission and, above all, as Paul-Jasper Dittrich and Nathalie Spath underscore, "tax-financed supplementary benefits for low-wage earners exist mainly in the United Kingdom"⁴¹.

39. European Council, *Annexes I to VII of the European Council Conclusions*, 18 and 19 February 2016.

40. Yves Bertoncini, Alain Dauvergne and António Vitorino, "The EU-UK agreement: much ado about (almost) nothing?", *Tribune*, Jacques Delors Institute, 25 February 2016, page 2.

41. See Paul-Jasper Dittrich and Nathalie Spath, *Op. cit.*, page 6.

3.2.2. The indexation of child benefits

In their 2015 Manifesto⁴², the Conservatives expressed their desire to exclude families with children residing outside the UK from the payment of child benefits and eligibility for child tax credits.

In principle, it is questionable to call into doubt this right for mobile citizens, as it is in breach of the principle of equal treatment enjoyed by EU citizens. As the Polish Minister for Foreign Affairs commented: "If Britain gets our taxpayers, shouldn't it also pay their benefits? Why should Polish taxpayers subsidize British taxpayers' children? (...) What about British children abroad?"⁴³. In compliance with the principle of equal treatment, this proposal would have to apply to all children residing outside of the UK, including British children.

“THIS MEASURE WOULD ONLY HAVE A LIMITED IMPACT”

In addition to being questionable, **this measure would only have a limited impact**. While the Eurofound study shows that EU10 mobile citizens are more likely to claim these benefits than nationals, only a very small portion of these benefits is granted to families with children residing in another Member State. According to Bruegel's calculations based on statistics from the House of Commons, only 0.26% of total UK child benefit claims are paid to mobile EU citizens with children residing in another Member State. Only 0.09% of all child tax credit claims are made by families with children residing outside the UK⁴⁴.

Ultimately, the UK did not prevail on this point and had to be satisfied with the option of **indexing child benefits exported to another Member State on the prevailing conditions in the country in which the child resides** (standard of living and level of child benefits)⁴⁵. This provision will only be initially applicable to new child benefit claims before being extended as from 2020 – for Member States who so wish – to existing child benefit claims already exported by EU workers.

42. The 2015 Conservative Party Manifesto.

43. Tweet by the Polish Minister for Foreign Affairs following one of David Cameron's first declarations on this issue, quoted on the Open Europe blogpost, *A childish row which benefits no one*, dated 6 January 2014.

44. Uuriintuya Batsaikhan, *Child benefits for EU migrants in the UK*, Blogpost, Bruegel, 18 February 2016.

45. This provision would imply a modification to Regulation (EC) No. 883/2004 of the European Parliament and of the Council on the coordination of social security systems.

4. Outlook: which solutions to which challenges?

Putting the debate on EU citizens' access to social benefits into perspective does not rule out specific problems to be dealt with in host countries. There are indeed difficulties that must be resolved (4.1). However, **other, more important, challenges regarding intra-European mobility are receiving much less attention. The debate must be balanced as a priority.** This implies that at least as much attention must be paid to the current challenges facing mobile EU citizens and countries of origin as to those facing host countries (4.2).

4.1. Specific issues to be dealt with in host countries

“THERE CAN BE SPECIFIC DIFFICULTIES IN CERTAIN AREAS OF HOST COUNTRIES”

While, on a national level, mobile EU citizens have a positive impact on the economy and public finance, **this does not mean that there are not specific difficulties in certain areas of host countries.** As Bruzelius, Chase and Seeleib-Kaiser underscore, it is clear that today **some municipalities in the UK and in Germany are under pressure due to the high number of mobile EU citizens** submitting social benefit claims and using public services⁴⁶. The Eurofound study of December 2015 also stresses that the concentration of mobile citizens in certain geographical areas is putting the public services in these areas under significant pressure, in particular as regards education services, which may result in tensions between nationals and EU citizens. To meet this challenge, some experts, and Catharina Sorensen in particular, propose the creation of a “mobility fund” – inspired by the “European Globalisation Adjustment Fund” – which would allocate European financial assistance to municipalities under particular pressure as a result of a high influx of EU citizens (with a view to, for example, contributing to funding for education services)⁴⁷. Without necessarily requiring the creation of a new European fund, **the Commission could incite Member States to an improved/heightened mobilisation of funds from the European Social Fund to meet this issue.**

In addition, while empirical evidence does not suggest the existence of benefit tourism, this does not rule out **the existence of situations of misuse and fraud by mobile citizens, just as this exists among the population of nationals.** Denying the existence of the phenomenon is not the same as denying the existence of citizens who move to a country in order to enjoy its social assistance. Moreover, in response to a letter from the four Ministers of the Interior of Austria, Germany, the Netherlands and the United Kingdom requesting a revision of mobile citizens' conditions of access to social benefits, the Ministers of the Visegrád countries have acknowledged that “(...) generous national welfare systems can and have been subject to abuse by some”⁴⁸ and added that “(...) such abuses must and can, as a priority, be tackled effectively under the existing EU legal framework”.

In order to limit these situations, the Commission also recently adopted criteria to define European citizens' habitual residence. This remains insufficient, even as in certain Member States including the UK and Germany, voices have been heard in favour of the enforcement of re-entry **for fraudsters.** This re-entry ban is currently only authorised in the event of a threat to public order or security. **Extending it to other cases would be worrying for at least two reasons.** As Yves Pascouau explains, “Firstly, it is [re-entry bans] currently applicable to third country nationals, subject to expulsion measures. Extending this mechanism to EU citizens would put them on a par with third country nationals. Secondly, entry bans measures are “workable” at the external borders. It is hard to implement it inside the Schengen area without reintroducing internal border checks, and consequently profoundly affecting the principle of freedom of movement”⁴⁹.

46. Cecilia Bruzelius, Elaine Chase and Martin Seeleib-Kaiser, *Op. cit.*, page 9.

47. Sorensen, Catharina, *Some solutions for the EU social benefits debate*, EU observer, 10 June 2014.

48. Joint Statement by the Foreign Ministers of the Visegrád Countries – Czech Republic, Hungary, Poland and Slovakia – on the free movement of persons, 4 December 2013.

49. Yves Pascouau, “Strong attack against the freedom of movement of EU citizens: turning back the clock”, *Commentary*, EPC, 30 April 2013.

The Commission must assume its responsibilities and consider **new measures with a view to improving administrative cooperation between Member States on this matter**. Naturally, Member States have a key role to play. The EU-UK deal provides for a **reinforcement of information exchanges and administrative cooperation between Member States in order to combat abuses of rights and fraud more effectively** as regards the free movement of people and entitlements to social benefits.

Furthermore, the Commission must also tackle the reasons why some citizens leave their country of origin to establish residence in another Member State without having any job prospects in this country. There is in particular the issue of discrimination and the lack of qualifications experienced by certain communities, in particular the Roma, in their countries of origin.

4.2. Rebalancing the debate: challenges for mobile citizens and countries of origin

Contrary to preconceived ideas, mobile EU citizens **all too often lack access to all of the social or fiscal advantages to which they may be entitled due to a lack of information**⁵⁰. In addition, many mobile EU citizens face difficulties on the labour market: they are often in jobs for which they are overqualified, receive lower wages for the same work as nationals (or work longer hours) and are more likely to have precarious contracts (fixed-term or part-time contracts). It is in the interest of all- EU citizens and nationals alike – that Member States must commit to finding solutions to these difficulties.

The European institutions are working on this: in 2014 they adopted a Directive aimed at facilitating the exercise of rights conferred on mobile workers, in particular access to training, employment and social and tax advantages (Directive 2014/54/EU). It remains to be seen how it will be implemented in each Member State (the Directive was supposed to be transposed by Member States by the end of May 2016). This initiative is a step in the right direction but is not enough. It is in particular necessary to have more qualifications recognised automatically and to lift the barriers established by regulated professions⁵¹.

“ INTRA-EUROPEAN
MOBILITY IS A MAJOR
CHALLENGE FOR
COUNTRIES OF ORIGIN ”

Lastly, despite its advantages, intra-European mobility **is a major challenge for countries of origin**. These countries are faced with the **departure of their young people and qualified workforces** which, despite a short-term positive impact on lowering the unemployment rate in these countries, raises two major difficulties. Firstly, these countries have invested in the education of young people who will conduct their profession in another Member State. Losing a large proportion of their most talented young workers may significantly and adversely impact the competitiveness of these countries' economies. Secondly, it worsens the challenge of the ageing populations in these countries and the issue of welfare systems' ability to support the burden, as it is proving increasingly difficult to maintain spending on healthcare and pensions when the number of contributors is falling⁵². These questions are indeed more central to the future of these countries than the cost of social benefits granted to mobile EU citizens in host countries.

50. See for instance Corrado Giuliotti, *Op. cit.*

51. For further information, see Paul-Jasper Dittrich and Nathalie Spath, *Op. cit.*

52. See David Rinaldi, "A new start for social Europe", *Studies & Reports No. 108*, Jacques Delors Institute, February 2016.

CONCLUSION

The free movement of people offers many advantages, both for the individuals in question (professional, cultural and linguistic enrichment) and for the economy. Intra-European mobility helps to address workforce shortages and to combat skills mismatches by providing a more effective allocation of human resources throughout the EU.

In spite of this, debates concerning possible "benefit tourism" and alleged "social dumping" within the EU are fuelling the increasing disinclinations with regard to intra-European mobility. Without claiming to deny the existence of difficulties, we can, however, only conclude, in view of the analysis of facts and realities, that **the debate on "benefit tourism" is clearly exaggerated**. The preconceived ideas and negative perceptions related to this alleged phenomenon are actually more worrying than the problem of possible abuse and fraud in itself.

“ A NEW POSITIVE
NARRATIVE ON INTRA-
EUROPEAN MOBILITY MUST
BE BUILT UP AS A PRIORITY”

A new positive narrative on intra-European mobility must be built up as a priority. This intra-EU mobility is an opportunity, not a threat. Its advantages must be highlighted and its challenges addressed in a comprehensive way. This involves finding compromises between countries of origin and host countries to achieve a fair mobility within the EU⁵³.

53. See Lázsló Andor, "Fair Mobility in Europe", *Social Europe Occasional paper*, Friedrich Ebert Foundation, January 2015.

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