



EUROPEAN

POLICY BRIEF



MOBILITY AND CITIZENSHIP IN EUROPE: FROM THE WORKER-CITIZEN TO INCLUSIVE EUROPEAN UNION CITIZENSHIP

Policy scenarios and recommendations from bEUcitizen, a research project on the barriers to realise and exercise citizenship rights by European Union citizens

Written by
Bridget Anderson, Isabel Shutes & Sarah Walker
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INTRODUCTION

This is a policy brief in the bEUcitizen policy brief series. The bEUcitizen project - funded by the European Union - set out to identify, investigate, discuss, and ameliorate the barriers to the active use of rights (and knowledge of duties, the concomitant to rights, in so far as there are any) by European citizens. The project aimed to provide a comparative overview and classification of the various barriers to the exercise of the rights and obligations of European Union citizens in the member states. Simultaneously, the project analysed whether and how such barriers can be overcome and the future opportunities and challenges the European Union and its member states face to further develop the idea and reality of European Union citizenship.

Drawing on research conducted during the project, **this policy brief examines the current status of mobility and access to rights of residence for European Union citizens and non-European Union citizens.** The establishment of European Union citizenship in 1992 entailed the establishment of both the European Union citizen and the 'Third Country National' (the non-European Union citizen). As citizens of European Union member states became European Union insiders, so citizens of non-European Union states were turned into European Union outsiders. However, inclusion and exclusion are, in practice, seldom binaries but marked by shades of difference. Those holding the nationality of a member state may, in principle, all be citizens of the European Union. But they are differentially included in terms of their access to rights under European Union law, including rights to move and reside freely across the member states.¹ Similarly, non-European Union citizens are

¹ See bEUcitizen report *The rights and obligations of citizens and non-citizens in selected countries*, D 10.1, by Anderson, B., Shutes, I. and Walker, S., 2014,

differentially included: some are more advantaged in access to permanent legal residence in a member state, on which basis they can enjoy many of the rights of citizens of that state (though not rights as European Union citizens).

This policy brief focuses on the relationship between citizenship and work. Specifically, it **highlights the ways in which mobility and access to rights of residence for European Union citizens and non-European Union citizens is controlled in relation to work and self-sufficiency**. This has implications for inequalities between particular groups in terms of their relative inclusion within the labour market, and thus their access to citizenship and residence rights. But it also has much wider implications regarding the extent to which European Union citizenship serves to reinforce divisions and inequalities among Europe's populations or to promote greater solidarity.

First, we consider the ways in which work is framed as a right and/or an obligation for European Union and non-European Union citizens in terms of their mobility and access to rights of residence in European Union member states. We highlight the ways in which the 'worker-citizen' model underpinning citizenship in Europe establishes inequalities among European Union citizens and among non-European Union citizens in terms of their relationship to the labour market, placing some groups at greater risk of exclusion from the rights and protections of European citizenship. **Second, we consider two possible policy scenarios as regards the development of a more or less inclusionary European Union citizenship.**

KEY OBSERVATIONS

The status of European Union and non-European Union citizens as 'workers' structures both their mobility into and within Europe and their access to rights of residence in a member state of which they are not a national citizen.

EUROPEAN UNION CITIZENS: WORK AS OBLIGATION

The rights of European Union citizens to free movement are premised on work: on the development of the European Union as a market, with the free movement of labour alongside goods, services, and capital. Notwithstanding the extension of those rights to economically inactive European Union citizens, the rights of the mobile European Union citizen to reside in a member state of which they are not a national citizen, beyond three months, are contingent on work (having the status of worker or self-employed) or self-sufficiency, on having "sufficient resources for themselves not to become a burden on the social assistance system of the host Member State" (Article 7, 1(b), Directive 2004/38/EC). After five years, the right of residence becomes permanent, but this is contingent on the European Union citizen having exercised their rights to free movement and residence for that period as workers and self-sufficient individuals (or being the family member of an European Union citizen worker). For European Union citizens, work is therefore not simply a right but an obligation in order to access rights of residence in another member state, unless they are otherwise able to demonstrate self-sufficiency.

NON- EUROPEAN UNION CITIZENS: WORK AS A RESTRICTED

For non-European Union citizens entering European Union states, work is a right that only certain categories can access. For some groups, such as asylum seekers, immigration controls enforce their status as economically inactive by not granting access to the labour market. For other groups, such as work permit holders, immigration controls may place highly restrictive terms and conditions on their participation in the labour market. At the same time, work is

<https://doi.org/10.5281/zenodo.11346> and bEUcitizen report *Exploring the mechanisms for enforcing civil rights with a view to identifying the barriers*, D 7.2, by Granger, M.-P., and Salat, O., 2016, <https://doi.org/10.5281/zenodo.46835>.

RIGHT

also an obligation for non-European Union citizens to access the right to permanent residence in Europe. Under European Union law, access to permanent residence for non-European Union citizens in a member state (after five years of continuous legal residence) is premised on economic independence by having stable and regular resources, sufficient to live “without recourse to the social assistance system of the member state concerned” (Article 5, 1(a), Directive 2003/109/EC). However, the status of worker may be insufficient, in itself, to entitle non-European Union citizens to access rights to permanent residence. For example, national immigration controls may restrict access to the rights of permanent residence on the basis of skills and earnings.

WHO CAN CLAIM THE STATUS OF ‘WORKER-CITIZEN’?

There is no autonomous definition of ‘worker’ in European Union law; rather its interpretation rests on European Union case law. Nonetheless, the Court of Justice of the European Union has developed a much broader ‘Community’ definition of worker than that found in member states’ legislation,² which holds that in the context of Article 45 of the Treaty on the Functioning of the European Union a worker is: “a person who, for a certain period of time, performs real and genuine services for and under the direction of another person in return for which he receives remuneration, to the exclusion of activities to be so small scale as to be considered marginal and ancillary”. Thus to attain worker status, work has to be deemed to be “genuine and effective” and not on such a small scale as to be “marginal and ancillary”.

Some member states have tightened up considerably on the definition of worker in an effort to limit European Union nationals’ access to rights of residence and to social benefits. In the United Kingdom, European Union nationals applying for social benefits are required to demonstrate that they have a ‘right to reside’ in the country as a worker or self-employed person (or as a family member of a worker or self-employed person) under European Union law. In assessing the status of worker or self-employed, a Minimum Earnings Threshold of £150 a week (equivalent to working 24 hours a week at the national minimum wage) was introduced as a measure of whether work is “genuine and effective”.

These sorts of restrictions have resulted in the exclusion of European Union citizens in low-paid and less secure work (e.g. workers on zero-hours contracts) from access to rights of residence and to social benefits.³ Additionally, those engaged in economic activities that are not defined as work, such as begging and au pairing, are excluded from the status of worker.⁴ At the same time, the requirement of work/self-sufficiency as a basis for citizenship rights has excluded European Union citizens providing care from access to those rights.

The differentiation of mobile European Union citizens on the basis of work and self-sufficiency has thus been to create divisions among mobile European Union nationals, excluding some from access to rights of residence and to social security. This has significant implications for extending socio-economic and gender-based inequalities among European Union nationals – as well as between European Union nationals and national citizens – in terms of the

² Rossi dal Pozzo, F. *Citizenship rights and freedom of movement in the European Union*, Kluwer Law International, 2013.

³ See bEUcitizen report *Citizenship and work: Case studies of differential inclusion/exclusion*, D 10.3, by Anderson, B., Walker, S., and Shutes, I., 2016, <https://doi.org/10.5281/zenodo.61788> and bEUcitizen report *Social rights of EU migrant citizens: A comparative perspective*, D 6.1, by Seeleib-Kaiser, M., Bruzelius, C., and Chase, E., 2015, <https://doi.org/10.5281/zenodo.20295>.

⁴ See bEUcitizen report *Citizenship and Work* (2016) case studies; see also bEUcitizen report *Citizenship in the context of migrant care work: regimes, rights and recognition*, D 9.6, by Luppi, M., et al., 2015, <https://doi.org/10.5281/zenodo.20306>.

THE CASE OF
NON-
EUROPEAN
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CITIZENS

relative vulnerabilities of particular groups to risks associated with the labour market.

As regards non-European Union citizens, as noted, access to rights of residence may be contingent on being excluded from the category of worker: **asylum seekers are not permitted to work and may have their asylum claim refused if they engage in work.** Indeed, they may be seen to be undeserving if they are deemed to be ‘economic migrants’ rather than ‘genuine’ refugees. However, the formal exclusion of those seeking asylum from the labour market, and from mainstream social provisions, may have significant long-term exclusionary effects in terms of unemployment once formal inclusion (asylum) has been granted,⁵ as accessing work then becomes more difficult after a prolonged absence from the labour market.

While naturalisation policies may not explicitly require the status of worker, the requirement to be ‘self-sufficient’ in effect requires labour market participation as a condition of naturalisation. Moreover, what counts as evidence of ‘self-sufficiency’ may be subject to different criteria in different countries. In the Netherlands, ‘self-sufficiency’ depends on the circumstances of those applying and ranges between 70% and 100% of the legal minimum wage.⁶ The requirement to demonstrate sufficient resources in effect may exclude those whose labour market participation is confined to lower waged and more precarious forms of work. Likewise, restrictions on access to social assistance – for example, the implications of claiming benefits (where non-European Union citizens are in principle entitled to do so) for the non-renewal or withdrawal of temporary residency status – intersect with length of residence requirements to enforce self-sufficiency through continuous employment as a condition of access to citizenship. Again, the effect is to place those who are most vulnerable to labour market risks at greater risk of exclusion from access to citizenship rights and social protection.

BEING A
WORKER
DOES NOT
CONFER FULL
CITIZENSHIP

As the cases examined in our research for the bEUcitizen project highlight, **inclusion within the labour market – being a worker – does not confer ‘full citizenship’, despite the ideal of the citizen as worker.** Experiences of poverty and relative exclusion, and risk of poverty and exclusion, cut across those in and out of work. They also cut across national citizens who are ‘stayers’, who do not exercise their rights to free movement (the majority of citizens in Europe), and those who are ‘movers’, moving from one member state to another potentially to improve their prospects in the labour market. But European Union citizenship, in practice, is seen as having little or no direct benefit to ‘stayers’ – indeed free movement is often blamed for loss of jobs and social provisions by national citizens in disadvantaged areas. And for ‘movers’, European Union citizenship has stratifying effects, with those most at risk of labour market exclusion least able to access and benefit from the rights of European Union citizenship, including access to national social security provisions.

Below, we outline two policy scenarios, contrasting the worker-citizen, and the divisions that this form of citizenship entails, to a more inclusive European Union citizenship.

⁵ See bEUcitizen report *Citizenship and work* (2016), case study on asylum seekers and refugees.

⁶ See bEUcitizen report *The rights and obligations of citizens and non-citizens* (2014).

SCENARIO 1: RESTRICTED CITIZENSHIP BASED ON WORK AND SELF- SUFFICIENCY

After the departure of the United Kingdom from the European Union, the Brexit, **European Union states continue to advocate free movement as the fundamental principle and right underpinning European Union citizenship and the integration of the European Union as a market.** However, more affluent member states seek to exercise greater control over free movement through limiting access to social benefits. Inequality between as well as within different member states, demographic factors, particularly the ageing population in wealthier states, shifts to more precarious, less protected jobs, and the uneven impact of unemployment and austerity, mean that there are increasing incentives for certain nationals to move. **Those who do move, however, are increasingly polarised in terms of their position in the labour market** – with those most at risk of periods of unemployment and employment in more precarious work being the least able to access rights to residence and social protection. **Those who do not move become ever more isolated from the European project, seeing no substance to their European Union citizenship.**

Significant numbers of non-European Union migrants and refugees continue to enter the Union, many of them from conflict zones, including Syria, Afghanistan and Iraq. While there is some public support, there is also considerable anxiety, particularly in the context of austerity and welfare state retrenchment. **Member states seek to control these movements through increasingly restrictive measures regarding migrants' access to rights, including rights to work and to social assistance.** These measures have detrimental long-term effects on employability, leading to unemployment and social exclusion. The effects in terms of destitution become ever more visible within as well as on the doorstep of Europe, in turn giving rise to conflict and intolerance.

The policy challenges for the European Union centre on how to manage the fallout of growing social, economic and political polarisation. This could, potentially, see a re-nationalisation of policy responses, as national governments seek to maintain stability and legitimacy by framing the cause of social problems as external and the solutions as internal. For example, free movement is curtailed – but governments are left with the task of promoting jobs from within while economic growth stagnates. Member states re-inforce their national borders – but conflict continues and governments struggle to develop efficient and effective political solutions in a fragmented Europe.

SCENARIO 2: CITIZENSHIP RE- ENVISIONED AROUND MINIMUM STANDARD OF LIVING

Post-Brexit, **European Union states seek to reframe European Union citizenship to tackle divisions and inequalities that pose ever greater risks to the future of Europe.** Politically, there is renewed emphasis placed on the need to forge greater solidarity within as well as across European Union member states. Greater solidarity among people is seen as the foundation for governments to develop more efficient and effective policy responses to tackle the challenges facing society. Inter-state cooperation is seen as integral to those responses but lacks legitimacy, and governments are faced with finding ways of promoting solidarity among Europe's people as a means of renewing the European project as one that works for all.

Emphasis is placed on the role of social provisions in promoting solidarity and greater security for those marginalised from the European project. This could potentially involve the introduction of a 'European Citizens Income', providing an unconditional basic level of income to all, without the requirement of work or means-testing. Existing legal bases are

used to develop proposals for this measure.⁷ Such a scheme acts to **provide direct benefits of European Union citizenship to all, enabling a European Union capacity to provide social protection to citizens across the member states, financed by a European Union-wide tax.**⁸ More disadvantaged citizens, at greater risk of unemployment, poverty and social exclusion, experience the benefits of European citizenship in a very direct way without moving, and for some citizens the necessity to move diminishes. Those who do move are able to do so without exposure to the risks that dependence on the status of worker entails. The interconnections between work and care in people's lives are recognised and supported through this system, reinforcing the principle of gender equality as central to an inclusive European Union citizenship.

Significant numbers of non-European Union migrants and refugees continue to enter Europe, many of them from conflict zones, including Syria, Afghanistan, and Iraq. **European Union member states increase efforts to develop a common policy for the settlement of refugees, enabling and supporting immediate access to the labour market, utilising the skills some bring.** This prevents poverty and unemployment in the short and longer term, and the associated costs not simply to social security budgets but to social cohesion in Europe.

MOVING FORWARD The crises facing Europe at present bring to the fore an urgent need to promote a more inclusionary model of EU citizenship as central to a renewed convergence within Europe. **While free movement has been a central principle to the development of the EU and EU citizenship over the past, and to facilitating intra-European mobility, the challenges of the present and future require a model which does not rely on the market as the basis for inclusion. With the development of a European Pillar of Social Rights, there is the potential for a renewed European citizenship that supports access to improved living standards for all people living in Europe, irrespective of their position in the labour market and irrespective of their place of residence.**

RESEARCH PARAMETERS

OBJECTIVES OF THE PROJECT

bEUcitizen is a European Union-funded research project focused on the barriers that still exist to realise and exercise citizenship rights of European Union citizens. The project aims to:

- understand the problems European citizens experience when they try to exercise the rights provided - or perform the duties required - by the legal concept of European citizenship;
- examine where, when, and why they run into hindrances and explain their nature thereof;
- identify the causes of the existence of these barriers, both direct and indirect

⁷ Milevska, T. 'EU "has the power" to put in place a universal basic income', 14 April 2014. For further discussion on support for this scheme, see the European Economic and Social Committee hosted conference on an Unconditional Basic Income in Europe <https://www.euractiv.com/section/social-europe-jobs/news/eu-has-the-power-to-put-in-place-a-universal-basic-income/>. For further discussion on a Citizens Income, see Atkinson, A. *Inequality: What Can Be Done?* Harvard University Press, 2015.

⁸ Examples of an EU-wide tax, which could provide a source of finance, include existing EU proposals for a financial transaction tax (COM(2011) 594 final). For further discussion on the potential for a transnational tax e.g. on wealth, see references above and Piketty, T. *Capital in the Twenty-First Century*, Harvard University Press, 2014, chapter 15.

- explore whether these barriers can be reduced or even lifted;
- investigate which actors have already taken initiative to do so and assess how successful have they been;
- evaluate the unintended and perhaps unwanted consequences of some possible solutions to reducing these barriers.

METHODOLOGY OF THE PROJECT

The research into the rights of European Union citizens and the barriers to them exercising these is pursued within a multidisciplinary and multidimensional approach. By combining normative and empirical disciplines, bEUCitizen also integrated diverse methodological paradigms, tools and instruments. Taking into consideration that European Union citizenship is not only a legal principle but also a social practice as well as a historical process, the project raises mutual multidisciplinary understanding on the multidimensional character of citizenship, formulates linguistic and conceptual principles that enforce this mutual understanding and exchanges methodological approaches that improve mutual understanding.

The research is carried out in clusters and employs the following approaches:

- a horizontal approach, dividing citizenship rights into policy domains, i.e. economic, social, civil and political rights, recognising the multidimensionality of rights;
- a vertical approach, starting from the premise that citizenship rights and duties affect various categories of citizens differently, recognising the multitudinous effects of rights on different categories of citizens;
- comparisons over time and space, providing a comparative and historical approach;
- a cross-sectoral and conceptual approach, running like a red thread through all work packages—from the beginning to the end.

PROJECT IDENTITY

PROJECT NAME	All Rights Reserved? Barriers towards EUropean CITIZENship (bEUCitizen)
COORDINATOR	Professor Sybe de Vries, Utrecht University, Utrecht, The Netherlands, s.a.devries@uu.nl
CONSORTIUM	Aalborg Universitet, Aalborg, Denmark Boğaziçi Üniversitesi, Istanbul, Turkey Democritus University of Thrace, Komotini, Greece Göteborgs Universitet, Gothenburg, Sweden Hans-Böckler-Stiftung, Düsseldorf, Germany Institut Barcelona d'Estudis Internacionals, Fundació Privada, Barcelona, Spain Johann Wolfgang Goethe-Universität, Frankfurt (Main), Germany Københavns Universitet, Copenhagen, Denmark Közép-európai Egyetem, Central European University, Budapest, Hungary London School of Economics and Political Science, London, United Kingdom Masarykova Univerzita, Brno, Czech Republic Sveučilišta u Zagrebu, Zagreb, Croatia Tartu Ülikool, Tartu, Estonia The Hebrew University of Jerusalem, Jerusalem, Israel

Universidad de Oviedo, Oviedo, Spain
Università degli Studi di Torino, Turin, Italy
Università degli Studi di Trento, Trento, Italy
Universität Siegen, Siegen, Germany
Universität Zürich, Zurich, Switzerland
Universitat Pompeu Fabra, Barcelona, Spain
Université Paris 8 Vincennes-Saint-Denis, Saint-Denis, France
Universiteit Antwerpen, Antwerp, Belgium
Universiteit Utrecht, Utrecht, Netherlands
University College Dublin, National University of Ireland, Dublin, Ireland
University of Oxford, Oxford, United Kingdom
Uniwersytet Jagielloński, Kraków, Poland

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WEBSITE <http://beucitizen.eu/>

FOR MORE INFORMATION Author contact:
Professor Bridget Anderson, Centre on Migration, Policy, and Society (COMPAS), University of Oxford, bridget.anderson@compas.ox.ac.uk

General contact:
Professor Sybe de Vries, Utrecht University, Utrecht, The Netherlands, s.a.devries@uu.nl

FURTHER READING bEUcitizen report *The rights and obligations of citizens and non-citizens in selected countries*, D 10.1, by Anderson, B., Shutes, I. and Walker, S., 2014, <https://doi.org/10.5281/zenodo.11346>.

bEUcitizen report *Analysis of European datasets on employment, inactivity and unemployment rates*, D 10.2, by Anderson, B., Walker, S., and Shutes, I., 2015, <https://zenodo-dev.cern.ch/record/46836>.

bEUcitizen report *Citizenship and work: Case studies of differential inclusion/exclusion*, D 10.3, by Anderson, B., Walker, S., and Shutes, I., 2016, <https://doi.org/10.5281/zenodo.61788>.