



EUROPEAN

# POLICY BRIEF



## REVISITING THE FOUNDATION OF EUROPEAN UNION CITIZENSHIP: MAKING IT RELEVANT TO ALL EUROPEAN UNION CITIZENS

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

Written by  
Marie-Pierre Granger

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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 the research conducted during the project, **this policy brief assesses the current status of the civil right of free movement as the anchor of European Union citizenship.** In democracies, freedom of movement is a core civil right and a privilege of citizens. The European Union is no exception: the nationals of the European Union member states, as European Union citizens, have the right to move and reside in any other member state, and when they do, they should be treated like the nationals of their host states.

This mobility and equal treatment paradigm of European Union citizenship, however, is under growing pressure. As the economic crisis hit hard, in particular in Eastern and Southern European states, their people moved to more wealthy European Union states, where they hoped to find work or ways of making a living. Meanwhile, citizens in Western and Northern Europe worried about what they perceived as increased competition for work and social benefits. Terrorist threats, the refugee crisis, and the rise of far-right, anti-foreigners and anti-

European Union parties further challenge the unrestricted mobility basis of European Union citizenship.

**If mobility no longer constitutes the ‘substance’ of European Union citizenship, then what could replace it? One possible solution is to shift the basis of European Union citizenship from mobility to rights, and rebuild it around the European Union Charter of Fundamental Rights. Such a transformation would flesh up what has so far been criticized as a thin citizenship.**

This policy brief evaluates the current status of the right to free movement as the anchor of European Union citizenship, and develops two main scenarios for the future of European Union citizenship, one based on the current paradigm of mobility and the other based on rights. It then offers a range of policy options, which seek to preserve mobility, as the more likely, although perhaps not the most desirable, basis for the future development of European Union citizenship.

## KEY OBSERVATIONS

The freedom to enter, remain or leave a particular state’s territory is a core civil right and privilege of its citizens. The right to move and settle in another member state of the European Union is the first and the best known of all European Union citizenship rights.<sup>1</sup> Originally based on economic grounds and guaranteed only to those who move across European Union borders to take up jobs or do business (‘market citizenship’), it has been gradually extended through judicial interpretation and successive European Union legislative measures and Treaty reform, to European Union citizens who travel and settle in another member state for other reasons (tourism, studies, retirement, job search, family reunification, medical treatment, etc.). With the formal introduction of the concept of European Union citizenship in the Treaty of Maastricht (1992), all European Union citizens and their close family have the right to move and take up residence in another member state of the European Union (see articles 20(2)a and 21 of the Treaty on the Functioning of the European Union; see also Article 45 of the European Union Charter of Fundamental Rights). Moreover, European Union citizens who exercise their free movement rights must, in principle, be treated like nationals (article 18 of the Treaty on the Functioning of the European Union).

Whilst recognised as a principle, the right to move and reside anywhere across the European Union is regulated and may be restricted. Its exercise is subject to conditions related notably to the European Union citizen’s economic status, length of residence, and family ties. Moreover, member states can impose restrictive measures to protect public order, security, and health.<sup>2</sup>

**Unlike national citizenship, which in constitutional democracies is made up of a carefully crafted ‘package’ of rights and duties, consolidated by numerous artefacts and practices, European Union citizenship is defined primarily by free movement.** Most of the other European Union citizenship rights, such as the right not to be discriminated based on nationality, the right to vote in local elections, and even the rights listed in the European Union Charter, are only activated once one has ‘exercised’ his or her right to move.

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<sup>1</sup>See Flash Eurobarometer 365, *European Union Citizenship*, February 2013, available at [http://ec.europa.eu/public\\_opinion/flash/fl\\_365\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_365_en.pdf), p. 27; see also *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘EU citizenship report 2013 - EU citizens: your rights, your future*, COM/2013/0269 final, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013DC0269>, p. 1.

<sup>2</sup>For an overview, see the European Union Commission booklet, *Freedom to move and live in Europe: a guide to your rights as an European Union citizen*, available at [http://ec.europa.eu/justice/policies/citizenship/docs/guide\\_free\\_movement\\_low.pdf](http://ec.europa.eu/justice/policies/citizenship/docs/guide_free_movement_low.pdf)

**This centrality of mobility results in European Union citizenship being practically relevant to only a small portion of the European population, the less than 3% mobile European Union citizens.<sup>3</sup> The reliance of European Union citizenship on mobility as its core benefit and trigger of rights creates some confusion, frustrations, and frictions.** Explain to a Brit why his Korean wife cannot obtain residence in the United Kingdom, whilst her Hungarian neighbour can have her Nigerian partner living with her, or why her British colleague who worked for a few months in Spain could bring her Iranian husband back to London when she returned! Or make a French pensioner who has paid high taxes, social security, and pension contributions all her adult life and still struggles to survive on her pension benefit, understand why a recently arrived Romanian, who has hardly paid any social contributions in France, should have access to the same social benefits and assistance as her. In this sense, European Union citizenship clouds deeply rooted understandings of who is a member of the community, who deserves solidarity, and on what grounds.

## POLICY IMPLICATIONS – TWO SCENARIOS

For lack of any other strong defining element, European Union citizenship remains, first and foremost, a mobility device. This is both its main strength and weakness: mobility is how European Union citizenship, in practice, appeals to its citizens; yet, this is also what makes it irrelevant for the vast majority of them who do not happen, or wish, to move around the European Union.

**With this in mind, the future development of European Union citizenship will largely depend on whether it continues to be centred on cross-border mobility, and if so, how it should be (re-)organised to minimise tensions (Scenario 1); or whether it should redefine itself around a broader range of rights and duties for all its citizens (Scenario 2).**

### SCENARIO 1: SECURE MOBILITY AND RESIDENCY RIGHTS ACROSS MEMBER STATES

Under European Union rules, notably Directive 2004/38 (the ‘Citizens Directive’), European Union citizens can move to and stay in another member state for less than three months, without conditions (Article 6), as long as they do not place an unreasonable burden on the social assistance system of the member state.

European Union citizens who wish to reside in another member state for more than three months must comply with different sets of conditions depending on their economic status. Those who are economically active (workers or self-employed or have retained such status) have a right to reside; job-seekers can reside for six months; students or pensioners have the right to reside if they have sufficient resources and comprehensive health insurance; all others must prove they have sufficient resources and comprehensive health insurance in order not to become a ‘burden on the system of social assistance’ of the host state (Article 7 of Directive 2004/38).

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<sup>3</sup> Eurostat, ‘Eurostat – Statistics explained: European Union Citizenship: statistics on cross-border activities’, April 2013, available at [http://ec.europa.eu/eurostat/statistics-explained/index.php/European\\_Union\\_citizenship\\_statistics\\_on\\_cross-border\\_activities](http://ec.europa.eu/eurostat/statistics-explained/index.php/European_Union_citizenship_statistics_on_cross-border_activities)

Those who work can access most social benefits on the same footing as nationals. Non-economically active European Union citizens are not entitled to social assistance during the first three months of their stay (Article 24(2) of Directive 2004/38); after three months, they may be denied social assistance and benefits, unless these are 'sufficiently integrated' in the host society.<sup>4</sup> After five years of continuous and lawful residence in the host state, European Union citizens become permanent residents and have a quasi-unconditional right of residence and equal treatment (Article 16 of Directive 2004/38). Mobile European Union citizens can be accompanied or joined by their close family members (including Third Country Nationals), who enjoy 'derived' movement, residency, and equal treatment rights (Article 3 of Directive 2004/38).

Barriers to the exercise of free movement result from European Union rules themselves, which provide for conditions such as those listed above or allow restrictions where the personal conduct of a person represents 'a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society' or to prevent abuse; they are also the consequences of restrictive or wrongful national implementation and applications.<sup>5</sup>

#### MOBILITY: A WEAK BASIS FOR EUROPEAN UNION CITIZENSHIP

**Mobile citizens have diversified over the years; yet, they remain a very small minority. Citizenship rules directly benefit only 3% of the European Union population, and free movement rules have (perceived) adverse effects on those who do not move.** In the last decade, structural unemployment in Southern and Eastern Europe as well as income inequalities have further transformed the nature of intra-migration, with a dramatic increase in mobility from poorer countries to regions which have a stronger economy. European Union movers are situated on either ends of the social spectrum: on the one hand, upper middle class, high-skilled 'expatriates' with linguistic abilities in the pursuit of more prestigious study tracks, rewarding jobs, lucrative business opportunities, or sunny retirement place;<sup>6</sup> on the other hand, poor and unskilled migrants, including from ethnic minorities facing discrimination at home. Locals view intra-European Union migration as threatening their jobs and social services, whilst brain-drain effects put under stress core social services in Southern and Central and Eastern Europe.<sup>7</sup>

#### CONTINUOUS CONTESTATION

**Under the circumstances, European Union citizenship as a mobility device is likely to be increasingly contested. The recent Brexit referendum brings the point home. A mobility-centred European Union citizenship therefore offers limited prospects for the future of European Union citizenship; yet, in the absence of any realistic alternative, it should be seriously considered.**

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<sup>4</sup> For a detailed analysis, see bEUcitizen report *EU citizenship and social rights – A comparative report*, D 6.2, by Pennings, F., Heeger-Hertter, S., 2016, <https://doi.org/10.5281/zenodo.56092>; see also Pennings, F. 'European Union citizenship: access to social benefits in other European Union member states' *International Journal of Comparative Labour Law and Industrial Relations* 28(3), pp. 307–334, 2012.

<sup>5</sup> See bEUcitizen report *Exploring obstacles in exercising core European Union citizenship rights*, D 7.3, by van Eijken, H., and Phoa, P., 2016, <https://doi.org/10.5281/zenodo.61777>.

<sup>6</sup> On the skill level of European Union migrants, see Kahanec, M. 'Labor mobility in an enlarged European Union' in Constant, A.F. and Zimmermann, K.F. (eds.) *International handbook on the economics of migration*, Edward Elgar Publishing, 2013, pp. 137–152.

<sup>7</sup> See interview with Günter Danner, 'The dark side of healthcare mobility', 9 May 2013, available at <http://www.healthcare-in-europe.com/en/article/11072-the-dark-side-of-healthcare-mobility.html>.

## SCENARIO 2: EUROPEAN UNION CITIZENSHIP BASED ON THE CHARTER OF FUNDAMENTAL RIGHTS

European Union citizenship does not have to be only, and mostly, about mobility; in fact, it is not. European Union citizenship also includes other rights which can be exercised without moving to another member state (e.g. the right to vote in European elections, to take part in a European Citizen Initiative, to petition the European Parliament, to receive consular protection from other member states). However, these rights are limited, marginal, and generally not known and underused. European Union citizenship pales in comparison to national citizenships and their substantial package of rights and duties, culture, and traditions. It could, however, take a sharp turn and shift from market building to community-building around common values. Civil rights, as core citizenship rights, have been under attack across the European Union.

**The time may be right for following a different model of citizenship, based on the protection of fundamental rights. If the ultimate purpose of European integration goes beyond market-making, the protection of fundamental rights can offer a promising foundation for European Union citizenship.**

## EUROPEAN UNION CITIZENSHIP AS THE FUNDAMENTAL STATUS OF NATIONALS

On a few important occasions, the Court of Justice of the European Union signalled that European Union citizenship is meant to be more than a mobility device, that it was 'destined to be the fundamental status of nationals of the member states'.<sup>8</sup> In later rulings, it confirmed that European Union citizenship could also protect European Union citizens who have not exercised their free movement rights.<sup>9</sup> Over the last few years, however, the Court has displayed a growing reluctance to further detach European Union citizenship from its mobility element.<sup>10</sup>

## THE LIMITED SCOPE OF APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS

In many member states, European Union citizens' rights to privacy, and the protection of their personal data in particular, but also their freedom of expression or information, religious freedom, the right to property or right to a fair trial, have been under threat. Sometimes, the European Union itself imposes or calls for measures which restrict the exercise of core fundamental rights. At other times, national authorities are to blame.<sup>11</sup>

The European Union has its own Bill of Rights, the European Union Charter of Fundamental Rights, which has the same legal value as the Treaties. The problem is that it is not always respected by public authorities at both European Union and national level, and not vigorously enforced by European Union and national courts; moreover, its scope of application is limited. For example, when member states do away with fundamental liberties, the European Union finds it difficult to stop them, as recent developments in Hungary or Poland demonstrate.<sup>12</sup>

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<sup>8</sup> C-184/99 *Grzelczyk* ECLI:European Union:C:2001:458,

<sup>9</sup> It protects them against the loss of national (and thus European Union) citizenship (C-135/08 *Rottman* ECLI:European Union:C:2010:104), restrictions on their right to vote in European elections (C-650/13 *Delvigne* ECLI:European Union:C:2015:648) and the denial of 'the effective enjoyment of the substance of the rights attached to the status of citizen of the European Union' (C-34/09 *Zambrano* ECLI:European Union:C:2011:124).

<sup>10</sup> C- 202/13 *McCarthy* ECLI:European Union:C:2011:277; C-356/11 O and S ECLI:European Union:C:2012:776; C-256/11 - *Dereci* ECLI:European Union:C:2011:734; C-86/12 *Alokpa and Moudoulou* ECLI:European Union:C:2013:645.

<sup>11</sup> See bEUcitizen report *Exploring the mechanisms for enforcing civil rights* (2016); see also European Parliament report on the situation of fundamental rights: standards and practices in Hungary (2012/2130(INI)) known as the 'Tavares report' (25 June 2013), and the recent Commission Opinion on the Rule of Law in Poland (1 June 2016), MEMO 16/2017.

<sup>12</sup> See bEUcitizen report *Exploring obstacles* (2016) and bEUcitizen report *Exploring the mechanisms for enforcing civil rights* (2016).

**LINKING  
EUROPEAN UNION  
CITIZENSHIP AND  
THE CHARTER**

The problem partially lies with the limited scope of application of the Charter, which only applies to member states when they implement European Union law (Article 51.1 of the European Union Charter of Fundamental Rights). What those situations are, however, remains far from clear.<sup>13</sup>

**As matters currently stand, a rights-based European Union citizenship is a source of confusion. The protection of the rights of European Union citizens and Third Country Nationals who live in the European Union is ensured through complex, overlapping, and competing rights frameworks operating at different levels.**<sup>14</sup> These include, in particular, national constitutional and legislative instruments, the European Convention on Human Rights and Fundamental Freedoms, and the European Union Treaties (including the Charter) and legislation (e.g. European Union legislation on non-discrimination or data-protection). With each set of legal instruments come different, and more or less accessible and effective enforcement mechanisms.

The Court has, so far, refrained from bringing under the scope of application of European Union law, and thus of the Charter, all situations in which European Union citizens have exercised their mobility rights,<sup>15</sup> let alone when they have never crossed a border in their life.<sup>16</sup>

**Shifting the foundation of European Union citizenship from an (economic) mobility to a rights-based approach would require tightening the link between European Union citizenship and the Charter. It would position the European Union as the ultimate ‘protector’ of its citizens’ rights, but would require further transfer of competence to the European Union, and a complete overhaul of the European Union political and legal system towards a more federal structure.**

### RECOMMENDATIONS FOR POLICY-MAKERS

How can we preserve European Union citizenship, either based on mobility or on rights, and what policy actions could be taken to achieve this purpose? We provide concrete policy options for each scenario.

**SCENARIO 1:  
PRESERVE A  
MOBILITY-BASED  
EUROPEAN UNION  
CITIZENSHIP**

The policy option which consists in abandoning free movement is not considered here; however, according to Article 50 of the Treaty on European Union, it is always available to individual member states in the form of leaving the European Union (e.g. Brexit). One of the main challenges with the exit option is to determine the status of European Union citizens who had exercised their right to free movement before the country exits the European Union. We can envisage a number of policy options which could help retain the current essence of European Union citizenship, based on mobility, but with less or more equal treatment involved.

**The core issue is thus to determine the scope and limits of mobility and the level and source of solidarity supporting mobility. The options outlined below go from no solidarity to full solidarity. In all policy options, free movement is broadly guaranteed, but states may deny entry or expel European Union citizens on public security, public order, or public grounds, as is currently the case.**

<sup>13</sup> Cf. case C-617/10 *Åkeberg Fransson* ECLI:European Union:C:2013:280 and C-333/13 *Dano* ECLI:European Union:C:2014:2358.

<sup>14</sup> See bEUcitizen report *Exploring the mechanisms for enforcing civil rights* (2016).

<sup>15</sup> See C-333/13 *Dano* ECLI:European Union:C:2014:2358.

<sup>16</sup> C-34/09 *Zambrano* ECLI:European Union:C:2011:124, C-256/11 - *Dereci* ECLI:European Union:C:2011:734, C-40/11 *Iida* ECLI:European Union:C:2012:691

**NO SOCIAL ASSISTANCE**

The right to move and reside abroad is maintained, but without any social assistance/benefits for European Union citizens who are not nationals of the host state. It would make moving to another member state risky and unattractive, outside a 'comprehensive expatriate package' with strong economic incentives. It would require Treaty and legislative reform at European Union level. It would sign the death act of the European Union 'market citizenship.'

**SOCIAL SUPPORT ONLY FOR THE ECONOMICALLY ACTIVE**

The right to move and reside abroad is secured, but without guarantees of any social assistance or benefits to those who are not economically active. The main challenge is to define who 'qualifies' as economically active. More precise European Union guidance, and checks, on who qualifies as a worker or self-employed person is necessary. Non-economically active individuals on the move can purchase some protection on the private insurance market, but currently the offers are out of reach for a majority of less wealthy European Union migrants. This alternative constitutes a step back, and requires at least legislative, and possibly Treaty reform. This option assumes that European Union citizenship is, after all, nothing more than a market citizenship, or a mobility device for an elite.

**HOME STATE 'SAFETY NET' FOR THE NON-ECONOMICALLY ACTIVE**

Mobility and residency rights are secured, but not accompanied with equal treatment with host state citizens in terms of social assistance and access to social benefits. European Union citizens will eventually gain equal access to the host state's welfare system once they are 'sufficiently integrated'; in the meanwhile, they receive basic protection from their home state. In many ways, this represents the status quo, except that there is no home 'safety net'. This option would require Treaty change, since member states are those to define the level of social benefits they provide.

**The European Union legislator could intervene to define more precisely what social benefits should be included in a home 'safety net', which types of social benefits should be available, how levels of benefit should be set (should they be commensurate to the costs of living in the home or host country, or set at an European Union average level?), etc. The current regime of export of unemployment or pension benefits, or the cross-border healthcare regime, offer insightful precedents.**

The main difficulty resides in that the majority of non-economically active European Union migrants come from countries with weaker social protection systems. The home country benefits would not suffice to survive in higher-cost countries, and home countries would not be able to afford more generous social support to their nationals residing in other European Union states; if they were forced to do so under European Union rules, they may be forced to further reduce the provision of basic social services to locals. Moreover, in-kind benefits (e.g. housing, healthcare, education, etc.) are not exportable. There would be difficulties where European Union citizens have moved across different countries throughout their lives, without going back to their home state.

**GRADUATE AND SELECTIVE ACCESS TO SOCIAL ASSISTANCE (STATUS QUO)**

This option consists in consolidating the status quo: free movement coupled with graduate and selective access to social assistance, depending on length of residence, status and resources, degree of integration, and sustainability of the host state welfare system. Further clarity and certainty can be brought into the current regime, by the Court of Justice of the European Union and the Commission.<sup>17</sup> It helps both European Union citizens and national administrations know where they stand.

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<sup>17</sup> Judicial decisions would make the clarifications binding, but they should be consolidated in accessible and targeted guidance documents released by the Commission.

Further instructions are given on what qualifies as contributory or non-contributory benefits, what constitutes an ‘abuse of right’, what amounts to ‘a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society’, what should be considered as an ‘unreasonable burden’ on the social security system, etc.<sup>18</sup> European Union institutions could also release guidelines on how citizens should establish length of residence; alternatively, the European Union could impose registration requirements, which can provide the framework for establishing residency claims.

The European Union institutions have already published concrete instructions on the practical exercise of free movement rights, and provided a framework for determining what qualifies as ‘sufficient resources’, ‘marriage of convenience’ (between European Union citizens and Third Country Nationals),<sup>19</sup> or ‘dependency’.<sup>20</sup> On procedural aspects, the Court has also recently clarified that member states can refuse social assistance to European Union migrants who are not workers, self-employed (or retained that status) or their family members, without the need to carry out an individual assessment.<sup>21</sup>

**European Union institutions could take further action to raise awareness of existing information, advice, and problem-solving mechanisms. In order to address the risk of social tourism, as well as the widespread perception that the system is open to abuse,<sup>22</sup> both of which undermine the legitimacy of European Union citizenship, European Union institutions would intensify their information and communication efforts through the more targeted use of mass and social media, and online information and advice tools.**

#### ENHANCED ABUSE PREVENTION REGIME

Full mobility and residency rights are guaranteed, but the framework limits incentives to ‘abusing’ European Union free movement rights. Member states could limit access to social benefits for a significant period of time (a few years) and deny residence to Third Country Nationals who use European Union mobility rules to go around restrictive national immigration rules.<sup>23</sup> This option is very close to the existing status quo, and would have been applied, had the United Kingdom voted to remain in the European Union and the February 2016 Deal had been implemented.<sup>24</sup>

#### BASIC ‘SAFETY NET’ BY HOST STATE UNTIL SUFFICIENT INTEGRATION

Mobility is preserved, and the host state offers a basic ‘safety net’ for movers, to enable them to start a new life in another member state in decent conditions. European Union citizens would eventually gain access to full equal treatment in the host state, once ‘sufficiently integrated’; in the meanwhile, they are entitled to basic social protection from the host state. This would, like the ‘home’ safety net option, most likely require Treaty change and some transfer of competence to the European Union in social security matters.

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<sup>18</sup> E.g. case C-67/14 *Alimanovic* European Union:C:2015:597.

<sup>19</sup> The Commission also released a *Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens*, September 2014, available at [http://ec.europa.eu/justice/citizen/files/swd\\_2014\\_284\\_en.pdf](http://ec.europa.eu/justice/citizen/files/swd_2014_284_en.pdf)

<sup>20</sup> C-456/12 *O and B*. ECLI: European Union:C:2014:135, O. and S., para 50 to 57.

<sup>21</sup> C-299/14 *García-Nieto* ECLI: European Union:C:2016:114.

<sup>22</sup> This despite evidence to the contrary: see bEUcitizen report *EU citizenship and social rights* (2016); see also <http://www.cream-migration.org/>

<sup>23</sup> See the Commission’s Declaration in the context of the United Kingdom’s Deal on the abuse of the right of free movement of persons, which proposes an amendment to Directive 38/2004 to ‘reverse’ the *Metock* case in which the Court interpreted the Directive as allowing European Union citizen to bring to the host state Third Country Nationals who did not have lawful residence in another member state (C-127/08 *Metock* ECLI: European Union:C:2008:449).

<sup>24</sup> The proposal is available at <http://www.consilium.europa.eu/en/press/press-releases/2016/02/02-letter-tusk-proposal-new-settlement-uk/>.



**A EUROPEAN  
UNION SAFETY  
NET**

The European Union legislator would intervene to define what the host state safety net should include for different categories of European Union movers (in particular those not economically active), how levels of benefit should be set (at a minimum, they should be commensurate to the costs of living, or with the level of benefits paid in the home state), etc. The thorny issue would be its financing by the host state, and the pull effect that it may exercise on migration from poorer towards more wealthy countries. This policy option assumes basic cross-border social solidarity, a notion which is not widely accepted.

**Free movement and residence rights are secured through reliance on social assistance from the European Union. The European Union itself would offer a range of social security benefits to mobile European Union citizens. It may not require European Union Treaty reform, since it aims to secure citizens' Treaty rights, and would not affect national social policy systems, which would remain as they are for those who are not mobile.** The European Union legislator would intervene to define what these benefits should be, the levels at which they should be set, and the conditions of eligibility, and to decide how it should be financed.

This scheme could be financed from the general European Union budget, based on national contributions and part of the VAT tax, and thus by all European Union tax-payers including the 97% who do not move; or by a special European Union mobility fund, consisting of special tax/contributions to be paid by European Union migrants. One could even envisage a 'mandatory' European Union social security system, to which all those who move across European Union borders contribute (at least beyond a certain income threshold), and which provide for minimum protection against basic social risks (health, invalidity, unemployment, pensions, etc.) and offer social benefits (e.g. family support, housing allowance, etc.). This could be supplemented by optional/complementary contributions which would offer a higher level of coverage.

The new European Union RESAVER scheme, which sets up an European Union wide pension fund for mobile researchers, could serve as a model. As things currently stand, individuals can insure themselves against various social risks on the private market. However, these are tailored to the income level of high-earning expatriates, with expensive premiums which are often partially paid by their corporate employers, and unaffordable for low-to-medium level income households. Such a scheme would also suit the needs of the (few) European Union citizens who move for professional/family reasons to European Union countries with weaker social policies, and who, if things go wrong, may also become 'stranded'.

This option has the advantage of engaging the European Union directly with welfare provisions, which could develop a greater sense of allegiance and loyalty to the European Union on the part of mobile European Union citizens. It would, however, further amplify the gap between mobile and sedentary European Union citizens.

**FULL EQUAL  
TREATMENT WITH  
HOST STATE  
CITIZENS**

Free movement and equal treatment with 'locals' are guaranteed, irrespective of European Union citizens' economic status or resources. This option relies on the premises that social tourism is not a significant driver of migration, and that migration is overall beneficial to those who move, as well as to the home and host states. It assumes a high level of transnational social solidarity. The expectation is that from the moment a citizen and her family settle in another member state, they can have access to the full range of social benefits available to nationals of that state.

Reliance on social assistance would not necessarily start from Day 1, in order to exclude temporary visitors, but could, for example, start after a few months, as is currently the case, with access to a range of social security benefits (Regulation 883/2004). It may be combined with one of the 'safety net' options for the first three months.

**This scenario requires the adoption of new legislation and/or revision of European Union legislation, as well as respective adjustment of the European Union case law. The risk is that member states reduce the overall welfare package available to nationals and European Union citizens in order to become less attractive to European Union citizens seeking better welfare support, and to contain public expenditures.** If such race-to-the-bottom in welfare matters materialised, it would affect negatively the legitimacy of European Union citizenship. If states maintain welfare standards, it would come at important costs for the social security systems of countries who host a large number of unemployed or low income European Union migrants and their families, and would fuel concerns over 'social benefit tourism', which right-wing populist parties use as campaign arguments against governing politicians or European Union membership, and growing resentment against 'abusing foreigners'. For these reasons, it appears largely foreclosed, at least until economic prosperity returns.

**Out of all the policy options, the option consolidating the status quo by providing graduate and selective access to social assistance, as well as the option envisaging mobility with a European Union-wide safety net and social security, appear as the most attractive choices.**

## SCENARIO 2: LINK EUROPEAN UNION CITIZENSHIP WITH THE CHARTER OF FUNDAMENTAL RIGHTS

The idea here is to redefine what constitutes the 'substance' of the rights attached to the status of European Union citizenship around the fundamental rights protected under the European Union Charter of Fundamental Rights. Its modern and comprehensive package of civil, political, economic, and social rights would offer a substantial foundation to European Union citizenship, similar to national bills of rights. It should also be supplemented by civic duties.

**Redesigning European Union citizenship around the Charter would, however, challenge the current division of competences and the relationship between the European Union and member states, and call for a reorganisation along federal lines.** Comparative examples (e.g. United States, Canada, Switzerland) may assist though. More problematically, by imposing European-wide standards (and not just minimum standards) for fundamental rights, and balancing of the values represented by different rights, it could seriously threaten national and local diversity and identities, in a manner which may not be acceptable to the vast majority of the European Union population.

If desirable, the transition to rights-based citizenship could be achieved either through judicial interpretation or Treaty reform.

## CHARTER-BASED CITIZENSHIP THROUGH JUDICIAL INTERPRETATION

The move could, technically, be realised through expansive interpretation of current European Union Treaty provisions on European Union citizenship and the Charter by the Court of Justice of the European Union. It would, however, go against a literal reading of those texts, and the Court of Justice of the European Union has, in recent years, showed little inclination in that direction. The degree to which European Union institutions could, and should, monitor and sanction member states' respect for the Charter's right is open to debate. One of the most prominent proposals, inspired by the Court of Justice of the European Union *Zambrano* ruling, suggests that the Court of Justice of the European Union apply a 'reverse Solange test'.<sup>25</sup> The member states remain autonomous in ensuring respect for human rights when they act outside the scope of European Union law,

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<sup>25</sup> See Von Bogdandy, A. et al 'Reverse Solange—Protecting the essence of fundamental rights against European Union member states', *Common Market Law Review*, 49(2), pp. 489–519, 2012.

as long as the presumption holds that they respect the substance of European Union citizenship, defined as the essence of the fundamental rights protected under Article 2 of the Treaty on European Union and the Charter. If the presumption is rebutted, then European Union control is initiated. This arrangement is one of the less-intrusive ones: more far-reaching options would provide for more day-to-day Charter-based monitoring of European Union and member states' measures and practices, and require the setting-up of dedicated European Union institutions (e.g. a special unit of the Commission, or the European Union Fundamental Rights Agency, under an amended status).

Even if the Court of Justice of the European Union would be willing to interpret existing European Union treaties to provide for this kind of human rights' monitoring, it would be hard to reconcile with the Treaty provisions which limit the scope of application of the European Union Charter (Article 6(2) of the Treaty on the Functioning of the European Union, Article 51(2) Charter). Such a radical and fundamental departure from the status quo should therefore better be achieved through Treaty revision.

#### CHARTER-BASED CITIZENSHIP THROUGH INCLUSIVE TREATY REFORM

The repositioning of the Charter at the core of European Union citizenship could be achieved through formal and inclusive Treaty reform. According to Article 48 of the Treaty on European Union, the Convention-method for Treaty revision would be activated. Ideally, the motion should not be initiated by the European Union institutions but would respond to a European Citizen Initiative, with strong popular support. European Union citizens would have the opportunity to participate in the Treaty reform process, possibly through national referendums approving the required Treaty change.

#### MOVING FORWARD

**Placing fundamental rights at the core of European Union citizenship could make it more relevant and meaningful to all European Union citizens; however, it also risks undermining national diversity and sense of identity, which could significantly damage European integration as a social and political project.** It would, in any case, require a radical transformation of the European Union legal and political system, and take core competences and powers away from the member states. **The decision should not be left to the courts, but made by member states' governments, national parliaments and citizens, in the context of an inclusive Treaty reform process.**

A few years ago, the mood seemed right for a transition from mobility, or market-based-citizenship, towards a more comprehensive, rights-based notion of European Union citizenship, with a greater role for European Union institutions in securing the core human rights of all its citizens.<sup>26</sup> The momentum has now gone, even if the European Union is stepping up its monitoring of the respect for the rule of law in the member states. This move is, however, not directly linked to European Union citizenship.

Even if some civil society organisations favour a more inclusive and comprehensive European Union citizenship regime, and greater European Union involvement in securing respect for human rights, there is, for the time being, little political and judicial appetite for fleshing out the concept of European Union citizenship around fundamental rights.

Mobility is thus likely to remain at the core of the concept and practice of European Union citizenship for some time. However, it is likely that its exercise may be further restricted, because of security concerns and to address the perception of abuses (social tourism). The recent case law of the Court, and the United

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<sup>26</sup> See Kochenov, D. 'A real European citizenship: A new jurisdiction test: A novel chapter in the development of the Union in Europe', *Columbia Journal of European Law*, 18(1), pp. 56-109, 2011.

Kingdom deal, confirm this trend. It would consist in short-term, and largely cosmetic fixes, which would not radically transform the existing regime.

**Amongst the mobility options available, an interesting one, which would have the merit of securing mobility and protecting migrants against social risks, without placing unsustainable costs on both host and home states and avoid resentment from locals, would be to create a European Union level social insurance regime, financed by European Union mobile citizens themselves, through income generated by cross-border movement.**

The practical details of such a scheme require further and detailed elaboration. It would generate greater confidence and loyalty towards the European Union, at least amongst mobile citizens; on the downside, it would further amplify the divide between mobile and sedentary European Union citizens.

## RESEARCH PARAMETERS

### OBJECTIVES OF THE PROJECT

bEUcitizen is an 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
- 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

<b>PROJECT NAME</b>	All Rights Reserved? Barriers towards European CITIZENship (bEUcitizen)
<b>COORDINATOR</b>	Professor Sybe de Vries, Utrecht University, Utrecht, The Netherlands, <a href="mailto:s.a.devries@uu.nl">s.a.devries@uu.nl</a>
<b>CONSORTIUM</b>	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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<b>WEBSITE</b>	<a href="http://beucitizen.eu/">http://beucitizen.eu/</a>
<b>FOR MORE INFORMATION</b>	Author contact: Dr Marie-Pierre Granger, Associate Professor, Central European University, Budapest, Hungary, <a href="mailto:grangerm@ceu.edu">grangerm@ceu.edu</a>

General contact:  
Professor Sybe de Vries, Utrecht University, Utrecht, The Netherlands,  
[s.a.devries@uu.nl](mailto:s.a.devries@uu.nl)

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#### FURTHER READING

bEUCitizen research paper *The legal framework for civil rights protection in national and international context*, D 7.1, by van Eijken, H., and de Vries, S., 2015, <https://doi.org/10.5281/zenodo.16530>.

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>.

bEUCitizen report *Exploring obstacles in exercising core European Union citizenship rights*, D 7.3, by van Eijken, H., and Phoa, P., 2016, <https://doi.org/10.5281/zenodo.61777>.