

EU migrant citizens' social rights in comparative perspectiveⁱ

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Access to social rights by EU migrant citizens is dependent upon their economic status. EU workers (employed or self-employed) have the same rights as nationals from the first day of their employment in another Member State, based on the principle of non-discrimination. By contrast, Member States have the right to withhold social assistance payments from economically non-active EU migrant citizens during the first three months of their residence. Economically inactive EU migrant citizens should have sufficient means to support themselves and their family members so as not to become an unreasonable burden on the social assistance system of the host Member State, and should also have comprehensive health insurance cover. After five years of habitual residence in another Member State, EU migrant citizens have the same rights as nationals. Different arrangements apply to pensioners and students from other EU Member States.

KEY FINDINGS

- A country's specific type of welfare system does not appear to directly affect EU migrant citizens' *de facto* access to social rights.
- In practice, access largely depends on meeting residency and/or registration requirements and on the propensity of individual Member States to implement rules that limit or expand EU migrant citizens' access to these rights.
- There is considerable variation in the entitlements and eligibility to social rights for EU migrant citizens living and working in another Member State.

It is important to note that there are no *European* social rights per se. Instead, eligible EU migrant citizens can access social rights according to the rules of the Member State they settle in and, in accordance with EU law; they can do so under the same conditions as national citizens. EU migrant citizens' rights therefore differ significantly across Member States. Below, four types of social rights are considered: social assistance; housing, healthcare and education.

The right to social protection

Arguments suggesting that EU migrant citizens might have easier access to social rights in non-contributory welfare states than in contributory ones (as the latter rely more heavily on contributions) neglect the fact that these countries may also provide tax-financed benefits, such as in-work benefits, housing benefits and family benefits in addition to social assistance programmes that provide support solely based on need.

Availability and access to social assistance (see box on page 2) or minimum income protection programmes vary across the EU as a

consequence of overall institutional welfare state arrangements, eligibility criteria, benefit levels and coverage rates.

During the first three months after arrival, EU Member States have the right to categorically withhold all social assistance benefits. Until the rules were changed in 2014, the UK provided social assistance to EU job seekers from the day of their arrival in the country, whereas other countries, such as the Netherlands, have always had a system of restricted access whereby within the first three months EU migrant citizens are not eligible for any social assistance at all, and then incrementally 'earn' their rights over a period of 5

years. EU workers habitually resident in a Member State, however, are entitled to social assistance and in-work benefits from the beginning of their employment.

Social Assistance or Social Security?

Most welfare benefits can be divided into one of two categories: **social assistance** or **social security**. The difference between these is clarified in the judgement of Case C-1/72 Frilli [1972] ECR – 00457¹:

- **Assistance** 'seeks to relieve a state of need or poverty; it is the need which causes and justifies the right to assistance'.

- **Social security** 'does not seek to relieve poverty, but to indemnify the victim of certain social risks by providing him with a supplementary or substitute income; the intention is not to provide a particular income, but an equivalent or substitute'.

▶▶ **Social assistance benefits in the UK** are funded through general taxes, and their allocation is often means-tested. That includes benefits such as housing benefit and income support.

▶▶ **Social security benefits in the UK**, such as pensions, maternity benefit, contributions-based Jobseekers Allowance and statutory sick pay, are funded through National Insurance contributions and are issued when the criteria are met, regardless of other level of income.

Under EU law, EU migrant citizens can be excluded from social assistance payments for the first three months of residence in another member state.^v

By contrast, family benefits (including child benefit, as well as other family transfers and services, which count as social security benefits) are available to EU migrant citizens with children - irrespective of worker status - once they can demonstrate that they are

habitually resident and have a lawful right to reside in the Member State. According to the current legal framework, child benefits can also be received for children living in another Member State. However, the percentage of those parents whose children live in another Member State is very small (in Germany the second largest group of those 'exporting' their child benefits have German nationality).

The right to housing

Housing policies differ substantially across Member States. Historically, some countries have primarily relied on public/social housing to provide affordable housing for those in need, whilst others have used housing benefits or a combination of the two.

Direct social housing provision is limited in most countries and often associated with relatively long waiting times, making it a largely unviable option for newcomers. Hence, EU migrant citizens tend to primarily rely on the private rental market when they arrive in another EU Member State. The quality of the housing they can access, therefore, partially depends on the regulatory framework governing the private rental market within the host country.

In the UK, housing benefit has recently been linked to 'worker status', without which an EU migrant citizen will not have access to housing benefit or even shelter accommodation should they become homeless.

Several countries operate housing benefit systems which are operationalised differently. In Germany, for example, the duration of residency of an EU migrant citizen is not relevant for the receipt of housing allowance once they have been in the country for three months. In the Netherlands, on the other hand, an EU migrant citizen must have legal residence before being eligible to housing benefit, meaning that within the first five years of residence they must fulfil the requirements of being a worker or self-sufficient person.

The right to healthcare

Access to the NHS in the UK is comparatively easy, since a utility bill, for example, is usually sufficient to demonstrate residence in a local area at the time of registration with the GP. EU migrant citizens who are ordinarily resident in the UK are entitled to free healthcare treatment. Other EU citizens (e.g. visitors, students and posted workers), are *not* automatically entitled to ‘free’ medical care; for these groups, treatment can be charged to the competent authorities in their country of origin. However, NHS healthcare managers and professionals widely lack knowledge regarding the entitlement of different types of EU citizen. Consequently, the UK government is not making full use of the possibilities provided by EU regulation to recoup the costs of treating unentitled EU citizens. This has significant fiscal implications, as considerable amounts of money are not being claimed back from other EU Member States, as should be the case.

Similar to the UK, Denmark, Spain and Sweden are examples of Member States with national health services. While access to healthcare in the UK and Spain appears to be straightforward, it is more complicated in Denmark and Sweden, where EU migrant citizens need to be registered as residents and where the countries’ registration systems are particularly strict.

In Germany, all employees (and their dependents) have access to statutory health insurance coverage paid through contributions to sickness insurance funds. Health insurance coverage can present difficulties for self-

employed EU migrant citizens who normally need to seek private health insurance, should they not have been insured through a statutory health insurance scheme or similar in their country of origin. As insurance premiums are costly (about €300 per month) it is likely that a significant number of self-employed EU migrant citizens lack sufficient health insurance cover. Health insurance for EU migrant citizens in Germany with access to jobseekers assistance is, however, funded directly through local social services departments. The Netherlands, which also operates an insurance-based system for health care, stands out in that it offers people without a residence permit a right to essential medical care, including examination, treatment and routine care which are deemed necessary on medical grounds.

The right to education

Overall, student mobility within the EU has been low, with the exception of movement to England, despite high tuition fees and comparatively limited access to student grants and loans.

Most other European countries do not charge tuition fees and generally do not differentiate between nationals, EU migrant citizens or third country nationals regarding educational access. However, countries differ significantly with regard to financial support available for students attending university. Denmark and Sweden appear to have the most generous student support systems, where working EU migrant citizens under specific conditions can access these grants.

ⁱ The findings reported in this brief are compiled from the research project bEUcitizen (www.beucitizen.eu), which is funded by the European Commission. Eight countries (Denmark, Estonia, Germany, Netherlands, Poland, Spain, Sweden and the UK) were compared to better understand the processes through which EU migrant citizens can access social rights when living and working in another Member State.

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