Stratified Social Rights Limiting EU Citizenship

Article *in* JCMS Journal of Common Market Studies · May 2017

CITATIONS
0

READ
1

3 authors, including:

Cecilia Bruzelius
University of Oxford
3 PUBLICATIONS **1** CITATION
SEE PROFILE

Martin Seeleib-Kaiser
University of Oxford
75 PUBLICATIONS **746** CITATIONS
SEE PROFILE

Stratified Social Rights Limiting EU Citizenship

Bruzelius, C*, Constantin, R* and Seeleib-Kaiser, M.*

*University of Oxford, Oxford Institute of Social Policy

Forthcoming in Journal of Common Market Studies (accepted January 2017)

Abstract:

Differences in member states' economic development and national social protection systems can translate into significant differences in the substantive social rights of EU migrant citizens. The substantive rights of *economically inactive EU migrant citizens* are dependent on the 'export' of social rights from their country of origin to the member state of destination, in particular during the initial phase of their residence in a new member state as a jobseeker or a pensioner. This paper demonstrates that EU citizens' social rights are substantively stratified, not only by economic status, but also according to the member states of origin and destination. Stratified social rights, it is argued, generate unequal opportunities to free movement and eo ipso challenge the very concept of EU citizenship. The paper concludes with a proposal for a European Minimum Income Scheme to at least partially overcome the shortcomings of existing EU citizenship.

Introduction

The theoretical debate on the social rights of EU migrant citizens'[1] tends to focus on the legally (or formally) defined rights and access to benefits in the member state of *destination.*[2] Accordingly, previous research has highlighted the stratification of EU migrant citizens' formal social rights in the country of destination according to economic activity (e.g. Bruzelius and Seeleib-Kaiser, forthcoming; Joppke, 2010; Maas; 2009; Morris, 2002; Pennings, 2012). However, to fully assess social rights we must analyse also *substantive* social rights (Sainsbury, 2012, p. 4). In this respect, one peculiarity of EU migrant citizens' social rights is the significance of *portable rights*. Especially the substantive rights of *economically inactive EU migrant citizens* is dependent on the 'export' of social rights from their country of origin to the member state of destination, in particular during the initial phase of their residence in a new member state as a jobseeker. As a consequence, economically inactive EU migrant citizens' social rights primarily rest on the *coordination* of social security systems, rather than on some pan-European welfare state, European social rights or the social rights provided in the country of destination. European 'social citizenship' is, as Thomas Faist (2001) put it, an inherently 'nested' construction. The possibility of 'exporting' benefits as a source of migrants' rights has also largely been neglected by research emphasizing the importance of the type of welfare state for migrants' social rights (cf. Römer, 2016; Sainsbury, 2012). The analysis of substantive rights in this paper reveals how the welfare systems of the countries of origin stratify EU migrant citizens' substantive social rights in the

[1] We define EU migrant citizens as EU citizens who are, or intend to become, habitually resident in a member state of which they do not hold nationality.

[2] We use the terms 'member state of destination' and 'member state of origin' to refer first to the country that a EU citizen relocates to, and second to the country of previous residence.

destination member state. This, we contend, has extensive implications for EU citizenship and the notion of poverty migration.

Free movement is core to EU citizens' social rights, 'without the movement of EU citizens, there is nothing actually to trigger EU law rights' (Foster, 2011, p. 350). Furthermore, the right to freedom of movement is held to be constitutive of EU citizenship as such (Joppke, 2010, p. 164; Recchi, 2015). From a libertarian perspective, the absence of border controls and restrictions on settlement suffices for free movement to be actualized. In contrast, from a positive point of view, free movement requires *enabling* conditions[3]. A parallel can here be drawn to Marshall (1950), who argued that full membership in a community required social rights, as these enable citizens, irrespective of class, to enjoy their political and civil rights. Accordingly, we contend that a differentiated *ability* to exercise the freedom of movement by EU citizens from different member states would *eo ipso* challenge the very concept of a single European citizenship. Specifically, we are concerned with EU citizens' ability to *settle* in another member state. That is, freedom of movement can be separated into three distinct parts: the right to exit, entry and settlement (Bauböck, 2011, p. 350). And in line with Kostakopoulou (2014), we hold that 'EU citizenship is not confined to mobility, that is, to border-crossings … the critical ideal that underpins EU citizenship, is the principle of non-discrimination on the grounds of nationality and thus equal treatment with nationals of a certain member state', something which requires settlement. Our analysis of portable social rights shows how the stratification according to member state of origin has significant implications for EU citizens' ability to use their right to free movement, effectively creating a two-tier citizenship.

[3] Compare also with Bauböck's (2013, p. 350) discussion on the difference between 'right' and 'opportunities' for free movement.

The article is structured as follows: We first analyze (stylized) substantive rights of EU citizens relating to unemployment and pension benefits. We have selected these benefit domains, as they are of high relevance to the major groups of economically inactive intra-EU migrants, i.e. jobseekers and pensioners. Subsequently, we empirically show that EU citizenship is highly stratified by the country of origin and destination. In the penultimate section, we propose a European Minimum Income Scheme to at least partially overcome the shortcomings of existing EU citizenship.

EU migrant citizens' substantive social rights

Initially, freedom of movement and associated social rights were largely limited to workers and self-employed persons (Wollenschläger, 2011, pp. 3-4).[4] Some of the privileges previously linked to a person's legal status as a worker or self-employed have over time been extended by the Court of Justice also to economically inactive EU citizens, and were further institutionalized by the subsequent establishment of EU citizenship (Article 20 TFEU, Treaty of Maastricht) (c.f. Pennings, 2015, pp. 163-176).[5] Despite the expansion of freedom of movement and social rights on the basis of EU citizenship, the right to reside and access to social rights in a member state continues to be heavily stratified according to economic status during the first five years of residence. This leads to a stark distinction between EU workers (employed or self-employed) and all other EU citizens.

EU law coordinates, rather than harmonizes social rights across member states. The material scope of EU migrant citizens' social rights is thus regulated by the 'coordination' of social security among member states (Pennings, 2015, p. 6). This also means that, *portability*

[4] Directive 2004/38 regulates freedom of movement. Regulations 1612/68 (now 491/2011) and 1408/71 (now 883/2004) specify the co-ordination of social protection between national welfare systems.

[5] EU citizenship was further embedded in the Lisbon Treaty and the EU Charter of Fundamental Rights in 2009 (Pennings, 2012).

of social rights between member states is an important part of EU citizens' social rights. Although court rulings have gradually extended equal treatment to forms of social support previously reserved to national citizens (Ferrera, 2005, pp. 131-138), European social security coordination does not extend to all social security benefit schemes; most importantly it continues to exclude social assistance. Optimistic interpretations of Regulation (EEC) No 1408/71, the deliberations leading up to the Regulation (EC) No 883/2004 that governs social security coordination, as well as the text of the regulation 883/2004 itself, suggested that economically inactive EU migrant citizens may access minimum subsistence benefits within the framework of social security coordination (cf. Verschueren 2007). However, the recent Brey (C-140/12), Dano (C-333/13) and Alimanovic (C-67/14) cases have made it de facto extremely difficult, if not impossible, for economically inactive (poor) EU migrant citizens to access minimum subsistence benefits during the first five years after relocating to another member state (Verschueren 2016; van der Mei 2015; O'Brien, 2016). They are thus largely dependent on the 'export' of benefits from their country of origin, as is evident in Table 1 that summarizes these formal distinctions in rights according to category.

TABLE 1: EU CITIZENS' SOCIAL RIGHTS BY CATEGORY AND TIME

	3 month or less	**3 - 6 months**	**1 - 5 years**	**+ 5 years**
Worker	- full access	- full access	- full access	- full access
Jobseeker (with no work experience in country of destination)	- export/import of unemployment benefits - family benefits	- family benefits	- family benefits	- full access, *if* legal resident for a minimum of five years
Student	- export/import of sickness insurance - family benefits	- export/import of sickness insurance - family benefits	- export/import of sickness insurance - family benefits	- full access, *if* legal resident for a minimum of five years
Pensioner	- export/import of pension - export/import of sickness insurance	- export/import of pension - export/import of sickness insurance	- export/import of pension - export/import of sickness insurance	- export/import of pension - export/import of sickness insurance

This institutional design can generate significant gaps in the social protection of economically inactive EU migrant citizens during the first five years, and especially the first couple of months, of residence in destination countries. This makes portable social rights highly significant. In the following, we detail the stylized substantive social rights of 'average' jobseekers and pensioners, and demonstrate the stratification of social rights according to member state of origin *and* destination.

Unemployment benefits

Social security coordination allows unemployed EU citizens to 'export' their unemployment benefits from the member state of origin for a minimum period of three months (Article 64 of Regulation 883/2004). Table 2 shows the exportable benefit of a stylized unemployed worker (single with a previous income of 67 per cent of the average national wage).[6] Table 3 in turn shows the absolute difference between the exportable unemployment benefit of the unemployed worker who has moved to another member state and the unemployment benefit for an equivalent unemployed worker in the respective destination country. Evidently, unemployed workers moving to another member state have varied substantive social rights. For example, a jobseeker from Romania moving to Denmark in search for a job would be entitled to a weekly unemployment benefit of only €27, whilst someone who lost his/her job in Denmark would receive a weekly benefit of €367. The exportable weekly unemployment benefit of €27 constitutes the theoretical reservation wage for a jobseeker from Romania without any other resources. As an unemployed person can be excluded from social assistance benefit receipt during the first three months of residence in the destination country (Article

[6] We have chosen a single worker with 67 per cent of average wage, as the majority of intra-EU migrants are young people and therefore unlikely to have a higher wage.

24.2, Directive 2004/38), this low reservation wage forces her to take up any job in order to survive.

TABLE 2: UNEMPLOYMENT BENEFIT, 2014 (single, 67 per cent of AW)

		Net annual earnings (in €)	Replacement rate (in per cent)	Weekly unemployment benefit (in €)
Social-democratic	**Denmark**	22,705	84	367.70
	Sweden	23,490	61	274.99
Conservative	**Netherlands**	24,430	74	347.99
	Belgium	19,957	89	341.59
	Finland	21,895	71	297.65
	France	18,381	69	244.57
	Germany	20,144	59	227.87
	Austria	20,338	55	215.12
Liberal	**Ireland**	19,915	49	185.97
	United Kingdom	23,804	20	90.78
Mediterranean	**Italy**	15,536	73	218.91
	Spain	14,284	78	213.11
	Portugal	9,403	75	135.63
	Malta	11,961	41	93.49
	Greece	10,953	39	81.75
A8	**Slovenia**	8,533	86	140.42
	Czech Republic	6,134	65	76.68
	Latvia	4,696	84	75.99
	Estonia	6,814	55	71.68
	Slovakia	5,583	62	66.69
	Hungary	4,278	67	55.32
	Poland	5,164	45	44.59
	Lithuania	4,353	52	43.44
A2	**Bulgaria**	2,668	77	39.27
	Romania	3,146	45	27.21

Notes: Cyprus and Croatia are excluded, as no data on net annual earnings is available; Luxembourg is excluded, as it is an outlier with a disproportionately large EU migrant citizen population.

Source: Annual net earnings for a single person, 67 per cent of AW from Eurostat (http://ec.europa.eu/eurostat/web/labour-market/earnings/database); replacement rates from OECD for single person without children, 67 per cent of AW, initial phase of unemployment (http://www.oecd.org/els/benefits-and-wages-statistics.htm).

Absolute net difference of weekly unemployment benefits between country of origin and country of destination, 2014

COUNTRY OF DESTINATION		COUNTRY OF ORIGIN																								
			Soc-Dem		Conservative						Liberal		Mediterranean					A8								A2	
			DK	SE	NL	BE	FI	FR	DE	AT	IE	UK	IT	ES	PT	MT	EL	SI	CZ	LV	EE	SK	HU	PL	LT	BG	RO
	SD	DK		-93	-20	-26	-70	-123	-140	-153	-182	-277	-149	-155	-232	-274	-286	-227	-291	-292	-296	-301	-312	-323	-324	-328	-340
		SE	93		73	67	23	-30	-47	-60	-89	-184	-56	-62	-139	-181	-193	-135	-198	-199	-203	-208	-220	-230	-232	-236	-248
	Conservative	NL	20	-73		-6	-50	-103	-120	-133	-162	-257	-129	-135	-212	-254	-266	-208	-271	-272	-276	-281	-293	-303	-305	-309	-321
		BE	26	-67	6		-44	-97	-114	-126	-156	-251	-123	-128	-206	-248	-260	-201	-265	-266	-270	-275	-286	-297	-298	-302	-314
		FI	70	-23	50	44		-53	-70	-83	-112	-207	-79	-85	-162	-204	-216	-157	-221	-222	-226	-231	-242	-253	-254	-258	-270
		FR	123	30	103	97	53		-17	-29	-59	-154	-26	-31	-109	-151	-163	-104	-168	-169	-173	-178	-189	-200	-201	-205	-217
		DE	140	47	120	114	70	17		-13	-42	-137	-9	-15	-92	-134	-146	-87	-151	-152	-156	-161	-173	-183	-184	-189	-201
		AT	153	60	133	126	83	29	13		-29	-124	4	-2	-79	-122	-133	-75	-138	-139	-143	-148	-160	-171	-172	-176	-188
	Lib	IE	182	89	162	156	112	59	42	29		-95	33	27	-50	-92	-104	-46	-109	-110	-114	-119	-131	-141	-143	-147	-159
		UK	277	184	257	251	207	154	137	124	95		128	122	45	3	-9	50	-14	-15	-19	-24	-35	-46	-47	-52	-64
	Mediterr.	IT	149	56	129	123	79	26	9	-4	-33	-128		-6	-83	-125	-137	-78	-142	-143	-147	-152	-164	-174	-175	-180	-192
		ES	155	62	135	128	85	31	15	2	-27	-122	6		-77	-120	-131	-73	-136	-137	-141	-146	-158	-169	-170	-174	-186
		PT	232	139	212	206	162	109	92	79	50	-45	83	77		-42	-54	5	-59	-60	-64	-69	-80	-91	-92	-96	-108
		MT	274	181	254	248	204	151	134	122	92	-3	125	120	42		-12	47	-17	-18	-22	-27	-38	-49	-50	-54	-66
		EL	286	193	266	260	216	163	146	133	104	9	137	131	54	12		59	-5	-6	-10	-15	-26	-37	-38	-42	-55
	A8	SI	227	135	208	201	157	104	87	75	46	-50	78	73	-5	-47	-59		-64	-64	-69	-74	-85	-96	-97	-101	-113
		CZ	291	198	271	265	221	168	151	138	109	14	142	136	59	17	5	64		-1	-5	-10	-21	-32	-33	-37	-49
		LV	292	199	272	266	222	169	152	139	110	15	143	137	60	18	6	64	1		-4	-9	-21	-31	-33	-37	-49
		EE	296	203	276	270	226	173	156	143	114	19	147	141	64	22	10	69	5	4		-5	-16	-27	-28	-32	-44
		SK	301	208	281	275	231	178	161	148	119	24	152	146	69	27	15	74	10	9	5		-11	-22	-23	-27	-39
		HU	312	220	293	286	242	189	173	160	131	35	164	158	80	38	26	85	21	21	16	11		-11	-12	-16	-28
		PL	323	230	303	297	253	200	183	171	141	46	174	169	91	49	37	96	32	31	27	22	11		-1	-5	-17
		LT	324	232	305	298	254	201	184	172	143	47	175	170	92	50	38	97	33	33	28	23	12	1		-4	-16
	A2	BG	328	236	309	302	258	205	189	176	147	52	180	174	96	54	42	101	37	37	32	27	16	5	4		-12
		RO	340	248	321	314	270	217	201	188	159	64	192	186	108	66	55	113	49	49	44	39	28	17	16	12	

higher or up to 25% lower in origin than in destination country

25-50% lower than in the destination country

more than 50% lower than in destination country

Notes: Weekly exportable unemployment benefit calculated for mobile unemployed single EU citizens without children with 67% of AW for the initial period of unemployment; Cyprus and Croatia excluded as data on net annual earnings is unavailable; Luxembourg excluded as outlier with disproportionately large proportion of EU migrant citizens

Source: Eurostat (http://ec.europa.eu/eurostat/web/labour-market/earnings/database), OECD (http://www.oecd.org/els/benefits-and-wages-statistics.htm)

Pensions

Social security coordination for pensions specifies that EU citizens can export their pensions if they choose to retire in a different member state (Article 29 of Regulation 833/2004). Table 4 provides an overview of non means-tested old age pension[7] expenditure per beneficiary across EU member states.[8] Table 5 shows the absolute difference in average pension expenditure per beneficiary between origin and destination countries within the EU. The substantial absolute differences indicate that the ease to retire in another member state on an exported pension varies significantly across countries. For instance, a pensioner from Bulgaria making use of his/her freedom of movement with the aim to settle in Denmark would de facto have no substantive social rights in Denmark, as his/her annual pension would only be approximately €1,500. The pensioner entitled to the 'average' Danish pension would in contrast receive more than €20,000 per annum. Overall, pensioners from CEE countries have significantly lower substantive social rights when retiring in another member state, compared to pensioners from Northwest European member states.

[7] Means-tested pensions, while relatively important in some states, are excluded, as EU pensioners can only export non means-tested pension payments.

[8] We chose the total non means-tested old-age pension expenditure per beneficiary as an approximation of average non-means tested pension receipt. We acknowledge the limitations of taking pension expenditure per beneficiary; the data likely overstates the value of average pensions in countries with long minimum contributory periods to qualify for minimum non-means tested pensions and pension benefits might be liable to taxation in some countries. However, in the absence of comparable data on pension benefits across countries, we believe non means-tested pension expenditure is a good proxy measure.

TABLE 4: PENSION EXPENDITURE PER BENEFICIARY, 2012

		Expenditure per beneficiary (in €)
Social-democratic	**Denmark**	20,395
	Sweden	19,926
Conservative	**Austria**	19,237
	Netherlands	18,691
	Belgium	17,554
	Finland	16,338
	France	16,073
	Germany	13,387
Liberal	**Ireland**	19,370
	United Kingdom	15,300
Mediterranean	**Italy**	15,417
	Cyprus	13,891
	Spain	13,382
	Greece	10,825
	Malta	8,855
	Portugal	8,588
A8	**Slovenia**	5,825
	Czech Republic	5,085
	Poland	4,568
	Slovakia	4,244
	Hungary	3,955
	Estonia	3,890
	Latvia	3,216
	Lithuania	2,821
A2	**Romania**	2,347
	Bulgaria	1,527

Notes: Croatia is excluded, as no data on net annual earnings is available; Luxembourg is excluded, as it is an outlier with a disproportionately large EU migrant citizen population.
Source: Eurostat; total expenditure on non means-tested old age pension, pension beneficiaries, non means-tested old age pensions (http://ec.europa.eu/eurostat/web/social-protection/data/database).

Absolute net difference (in €) in non means-tested old age pension expenditure per beneficiary between country of origin and country of destination, 2012

			COUNTRY OF ORIGIN																									
			Soc-Dem		Conservative						Liberal		Mediterranean						A8								A2	
			DK	SE	AT	NL	BE	FI	FR	DE	IE	UK	IT	CY	ES	EL	MT	PT	SI	CZ	PL	SK	HU	EE	LV	LT	RO	BG
COUNTRY OF DESTINATION	SD	DK		-469	-1,158	-1,704	-2,841	-4,057	-4,322	-7,008	-1,025	-5,095	-4,978	-6,504	-7,013	-9,570	-11,540	-11,807	-14,570	-15,310	-15,827	-16,151	-16,440	-16,505	-17,179	-17,573	-18,048	-18,868
		SE	469		-689	-1,235	-2,372	-3,587	-3,852	-6,539	-556	-4,626	-4,509	-6,035	-6,544	-9,101	-11,071	-11,338	-14,101	-14,841	-15,358	-15,681	-15,971	-16,036	-16,710	-17,104	-17,579	-18,399
	Conservative	AT	1,158	689		-547	-1,684	-2,899	-3,164	-5,850	133	-3,937	-3,821	-5,347	-5,855	-8,413	-10,383	-10,650	-13,412	-14,153	-14,669	-14,993	-15,283	-15,348	-16,021	-16,416	-16,891	-17,710
		NL	1,704	1,235	547		-1,137	-2,352	-2,617	-5,304	680	-3,390	-3,274	-4,800	-5,309	-7,866	-9,836	-10,103	-12,866	-13,606	-14,122	-14,446	-14,736	-14,801	-15,475	-15,869	-16,344	-17,163
		BE	2,841	2,372	1,684	1,137		-1,215	-1,480	-4,167	1,817	-2,253	-2,137	-3,663	-4,171	-6,729	-8,699	-8,966	-11,729	-12,469	-12,985	-13,309	-13,599	-13,664	-14,338	-14,732	-15,207	-16,026
		FI	4,057	3,587	2,899	2,352	1,215		-265	-2,952	3,032	-1,038	-922	-2,448	-2,956	-5,514	-7,484	-7,751	-10,513	-11,254	-11,770	-12,094	-12,384	-12,449	-13,123	-13,517	-13,992	-14,811
		FR	4,322	3,852	3,164	2,617	1,480	265		-2,687	3,297	-773	-657	-2,183	-2,691	-5,249	-7,219	-7,486	-10,248	-10,989	-11,505	-11,829	-12,119	-12,184	-12,858	-13,252	-13,727	-14,546
		DE	7,008	6,539	5,850	5,304	4,167	2,952	2,687		5,983	1,913	2,030	504	-5	-2,562	-4,532	-4,799	-7,562	-8,302	-8,818	-9,142	-9,432	-9,497	-10,171	-10,565	-11,040	-11,860
	Lib	IE	1,025	556	-133	-680	-1,817	-3,032	-3,297	-5,983		-4,070	-3,954	-5,480	-5,988	-8,546	-10,516	-10,783	-13,545	-14,286	-14,802	-15,126	-15,416	-15,481	-16,154	-16,549	-17,024	-17,843
		UK	5,095	4,626	3,937	3,390	2,253	1,038	773	-1,913	4,070		116	-1,410	-1,918	-4,476	-6,445	-6,713	-9,475	-10,216	-10,732	-11,056	-11,346	-11,411	-12,084	-12,479	-12,954	-13,773
	Mediterranean	IT	4,978	4,509	3,821	3,274	2,137	922	657	-2,030	3,954	-116		-1,526	-2,035	-4,592	-6,562	-6,829	-9,592	-10,332	-10,848	-11,172	-11,462	-11,527	-12,201	-12,595	-13,070	-13,889
		CY	6,504	6,035	5,347	4,800	3,663	2,448	2,183	-504	5,480	1,410	1,526		-509	-3,066	-5,036	-5,303	-8,066	-8,806	-9,322	-9,646	-9,936	-10,001	-10,675	-11,069	-11,544	-12,363
		ES	7,013	6,544	5,855	5,309	4,171	2,956	2,691	5	5,988	1,918	2,035	509		-2,557	-4,527	-4,794	-7,557	-8,298	-8,814	-9,138	-9,428	-9,493	-10,166	-10,561	-11,036	-11,855
		EL	9,570	9,101	8,413	7,866	6,729	5,514	5,249	2,562	8,546	4,476	4,592	3,066	2,557		-1,970	-2,237	-5,000	-5,740	-6,256	-6,580	-6,870	-6,935	-7,609	-8,003	-8,478	-9,297
		MT	11,540	11,071	10,383	9,836	8,699	7,484	7,219	4,532	10,516	6,445	6,562	5,036	4,527	1,970		-267	-3,030	-3,770	-4,286	-4,610	-4,900	-4,965	-5,639	-6,033	-6,508	-7,327
		PT	11,807	11,338	10,650	10,103	8,966	7,751	7,486	4,799	10,783	6,713	6,829	5,303	4,794	2,237	267		-2,763	-3,503	-4,019	-4,343	-4,633	-4,698	-5,372	-5,766	-6,241	-7,060
	A8	SI	14,570	14,101	13,412	12,866	11,729	10,513	10,248	7,562	13,545	9,475	9,592	8,066	7,557	5,000	3,030	2,763		-740	-1,257	-1,580	-1,870	-1,935	-2,609	-3,003	-3,478	-4,298
		CZ	15,310	14,841	14,153	13,606	12,469	11,254	10,989	8,302	14,286	10,216	10,332	8,806	8,298	5,740	3,770	3,503	740		-516	-840	-1,130	-1,195	-1,869	-2,263	-2,738	-3,557
		PL	15,827	15,358	14,669	14,122	12,985	11,770	11,505	8,818	14,802	10,732	10,848	9,322	8,814	6,256	4,286	4,019	1,257	516		-324	-614	-679	-1,352	-1,747	-2,222	-3,041
		SK	16,151	15,681	14,993	14,446	13,309	12,094	11,829	9,142	15,126	11,056	11,172	9,646	9,138	6,580	4,610	4,343	1,580	840	324		-290	-355	-1,029	-1,423	-1,898	-2,717
		HU	16,440	15,971	15,283	14,736	13,599	12,384	12,119	9,432	15,416	11,346	11,462	9,936	9,428	6,870	4,900	4,633	1,870	1,130	614	290		-65	-739	-1,133	-1,608	-2,427
		EE	16,505	16,036	15,348	14,801	13,664	12,449	12,184	9,497	15,481	11,411	11,527	10,001	9,493	6,935	4,965	4,698	1,935	1,195	679	355	65		-674	-1,068	-1,543	-2,362
		LV	17,179	16,710	16,021	15,475	14,338	13,123	12,858	10,171	16,154	12,084	12,201	10,675	10,166	7,609	5,639	5,372	2,609	1,869	1,352	1,029	739	674		-394	-869	-1,689
		LT	17,573	17,104	16,416	15,869	14,732	13,517	13,252	10,565	16,549	12,479	12,595	11,069	10,561	8,003	6,033	5,766	3,003	2,263	1,747	1,423	1,133	1,068	394		-475	-1,294
	A2	RO	18,048	17,579	16,891	16,344	15,207	13,992	13,727	11,040	17,024	12,954	13,070	11,544	11,036	8,478	6,508	6,241	3,478	2,738	2,222	1,898	1,608	1,543	869	475		-819
		BG	18,868	18,399	17,710	17,163	16,026	14,811	14,546	11,860	17,843	13,773	13,889	12,363	11,855	9,297	7,327	7,060	4,298	3,557	3,041	2,717	2,427	2,362	1,689	1,294	819	

higher or up to 25% lower in origin than in destination country | 25-50% lower than in the destination country | more than 50% lower than in destination country

Notes: Total non means-tested old age pension expenditure per beneficiary. Croatia is excluded, as no data on net annual earnings is available; Luxembourg is excluded, as it is an outlier with a disproportionately large EU migrant citizen population.

Source: Eurostat (http://ec.europa.eu/eurostat/web/social-protection/data/database)

Substantive social rights and freedom of movement

The illustrated stark differences in substantive social rights in the domains of unemployment and old age demonstrate that EU citizens' substantive social rights are not only determined by the economic status of EU migrant citizens, but are also a consequence of different levels of economic development and welfare state arrangements across member states. In other words, EU citizens who fall into the same category may have different substantive social rights in the same member state of destination, depending on the country competent for the payment of their benefits (normally the country of previous employment). It is therefore often the member state of origin that shapes the social rights of economically inactive EU citizens. Such differentiated rights clearly impact the ability to settle in another member state, as lack of resources combined with de facto no access to the social assistance system of the destination member state is likely to force EU migrant citizens to return to their country of origin. Hence, EU migrant citizens' limited substantive social rights restrict their ability to use their right to free movement.

In the following analysis, we illustrate how differences in substantive social rights limit the freedom of movement for EU citizens from certain member states. We define the degree of freedom of movement and citizenship to be high if an economically inactive person can move to another member state without being financially significantly worse off, defined as having at least 75 per cent of the benefit of a person with the same socio-demographic characteristic in the country of destination.[9] The degree of freedom of movement is limited, if the exportable benefit is between 50 and 75 per cent of the respective benefit in at least one country of destination; it is characterized as restricted if it is below 50 per cent in any member state. Benefits below 50 per cent of the benefit level in the destination country are very likely

[9] The results do not change significantly if the threshold is adjusted slightly upwards or downwards.

to be below the level of subsistence and condemn the EU migrant citizen to live a life in abject poverty.

Unemployed EU migrant citizens from four member states, Belgium, Denmark, Finland and the Netherlands, have exportable unemployment benefits enabling them to enjoy a high level of freedom of movement and European citizenship across the EU, as their unemployment benefit does not drop below 75 per cent of the unemployment benefit in any EU destination state. Jobseekers from other western European countries enjoy a limited degree of freedom of movement, as they can relocate to the majority of member states without being relatively much worse off than unemployed nationals of the destination state. However, they will generally be disadvantaged when relocating to Belgium, Denmark, Finland or the Netherlands. Comparatively very low levels of unemployment benefits restrict jobseekers' freedom of movement from CEE countries, Portugal and the United Kingdom; their benefits are often significantly lower than 50 per cent of the unemployment benefit in destination countries.

The effective freedom of movement also varies for pensioners. Using pension expenditure as a proxy, pensioners from Austria, Belgium, Denmark, Finland, France, Ireland, the Netherlands, Sweden and the United Kingdom have a relatively high degree of effective freedom of movement. They can relocate to any member state without being significantly worse off, as the average pension expenditure in the state of origin is 75 per cent or higher than in any other member state. Germans, Spaniards and Greeks have only a limited freedom of movement, as pension expenditure per beneficiary amounts to less than 75 per cent of the respective amount in some destination states. Lastly, pensioners from CEE countries and Portugal are significantly restricted in choosing where to retire as their exportable pensions are frequently below 50 per cent of comparable pensions in destination countries.

Overall, the degree of freedom of movement (and thus European citizenship) is extremely limited for unemployed and senior citizens from CEE countries, as they are faced with low levels of social protection outside their region of origin. Unemployed and senior citizens from Belgium, Denmark, Finland and the Netherlands enjoy a very high degree of freedom of movement and EU citizenship, as their level of benefits is not below 75 per cent of nationals in any other member state, whereas both German pensioners and unemployed enjoy only moderate freedom of movement.

Combining data for jobseekers, pensioners and children[10] (not separately discussed in this article) we can develop a European Index of Free Movement and Social Rights (EIFMSR), which indicates the degree of freedom of movement, based on stylized substantive social rights entitlements. We construct the EIFMSR as follows: first, for each country and entry category, jobseeker, pensioner and child, we calculate the effective freedom of movement, i.e. the number of countries the respective EU citizen can relocate to without being significantly worse off (maximum 25 per cent less) than their counterparts in the country of destination. Second, we add-up effective freedom of movement across entry categories for each country and divide by three to get the average freedom of movement for each country. Third, we divide the data into three parts, ranging from full freedom of movement in Denmark (24 countries across all categories, 100 per cent of destination countries) to practically no freedom of movement in Romania (1.67 countries on average, 7 per cent). The upper section signifies (full) freedom of movement, i.e. nationals can relocate to more than 90 per cent (22 states) of the 24 destination member states in our sample. The middle segment indicates limited freedom of movement; citizens from the countries in this

[10] Family benefits are not exported from the member state of origin but rather paid by the member state of destination; the parent's residence determines the benefit level. This can impact the overall level of social transfers available to a job-seeking EU citizens, but also the benefit available to a child, as children also have the right to free movement, for example to study in a different member state.

group can relocate to a minimum of 50 per cent (12 states) of member states. The lower section, restricted freedom of movement, encompasses countries in which citizens can relocate to less than 50 per cent (12 states) of EU destination member states. Table 6 shows the effective freedom of movement for single jobseekers, pensioners and children.

TABLE 6: EFFECTIVE FREEDOM OF MOVEMENT FOR SINGLE JOBSEEKERS, PENSIONERS AND CHILDREN

	Number of countries possible to relocate to				
	Job-seeker	**Pensioner**	**Child**	**Avg. / category**	
Denmark	24	24	24	24.00	(100%)
Finland	24	24	21	23.00	(96%)
Sweden	23	24	22	23.00	(96%)
Belgium	24	24	20	22.67	(94%)
Netherlands	24	24	18	22.00	(92%)
Austria	20	24	22	22.00	(92%)
Ireland	19	24	22	21.67	(90%)
Germany	21	19	24	21.33	(89%)
United Kingdom	11	24	22	19.00	(79%)
Italy	20	24	12	18.67	(78%)
Spain	20	19	10	16.33	(68%)
Portugal	13	12	23	16.00	(67%)
France	21	24	-	15.00	(63%)
Slovenia	14	9	22	15.00	(63%)
Malta	11	12	20	14.33	(60%)
Greece	11	14	n/a	12.50	(52%)
Czech Republic	11	9	8	9.33	(39%)
Estonia	11	8	9	9.33	(39%)
Slovakia	9	8	10	9.00	(38%)
Hungary	6	8	12	8.67	(36%)
Poland	4	9	8	7.00	(29%)
Latvia	11	6	3	6.67	(28%)
Lithuania	4	3	10	5.67	(24%)
Bulgaria	3	-	8	3.67	(15%)
Romania	-	2	3	1.67	(7%)

Notes: Cyprus and Croatia are excluded, as no data on net annual earnings (jobseekers) is available; Luxembourg is excluded, as it is an outlier with a disproportionately large EU migrant citizen population; no data for child benefits for Greece available, the average for Greece hence only encapsulates jobseekers and pensioners.

A modest proposal for more equal rights to freedom of movement

The above analysis clearly demonstrates the stratification of EU citizenship arising from the large disparities in opportunities to use the right to free movement. Insufficient substantive social rights leave many EU citizens without the means necessary to settle in another member state. The ability to use free movement and settle in any member state is thus stratified according to economic status *and* member state of origin and destination. As such, the analysis has illustrated the limits of social security coordination. The coordination regulations might have been appropriate for a Union of member states with relatively similar levels of economic development and welfare state arrangements, but in the current context they lead to significant differences in substantive social rights. For European citizenship to be realized, citizens from all member states should enjoy equal opportunity to exercise the fundamental right to freedom of movement. As harmonization of social policy is very unlikely based on the different levels of economic development among member states (Scharpf, 2002, p. 650), and any extension of EU citizens' access to social assistance in the destination member state is unlikely given the Court's recent rulings (as discussed earlier), the introduction of a European Minimum Income Scheme (EMIS) for all EU citizens might instead contribute to substantiating EU citizenship.

Currently there seems to be an overall consensus that strengthening Social Europe is a necessity for EU integration from both an economic and a political perspective (European Commission 2016a). Previous suggestions have included proposals for a means-tested Euro-Stipendium (Schmitter and Bauer 2001) or a guaranteed income ('Euro-Dividend') for every EU citizen (van Parijs and Vanderborght 2001; van Parijs 2004). Although a basic guaranteed income for all EU citizens would potentially be able to address the issues raised in our analysis, it would seem politically difficult to achieve in the current climate. The Social Rights Pillar proposed by the EU Commission, which focuses on strengthening the national

minimum subsistence schemes (European Commission 2016b), would meanwhile do little to address the lack of social protection for many free movers, as inactive EU migrant citizens are by and large not able to access minimum subsistence schemes in destination countries.[11]

Thus, we suggest a comparatively modest proposal of an EMIS for mobile job seekers, which may also be extended to pensioners and in the long-run could be developed into a basic income guarantee for all EU citizens. In order not to negatively impact the labor markets in many of the poorer member states, an EMI for jobseekers should not be paid at a uniform rate to all jobseekers throughout Europe, but only to *mobile* jobseekers at a level of 25 per cent of the equivalized net median income (the level of social assistance in a number of EU member states; cf. Peña-Casas et al. 2013) in the *country of destination* for a maximum duration of three months within a 24 months period. Such a program could be administered by the local labor offices, building on the administrative capacities and experiences associated with the export of unemployment benefits within the social security coordination framework. For instance, for Germany the monthly EMI benefit for an unemployed mobile jobseeker would have been €379 in 2014, only slightly lower than the €391 ALG II [HartzIV] benefit paid to the long-term unemployed, but significantly higher than the monthly average exportable benefit of €112 of a young Romanian jobseeker, should she be entitled to an exportable unemployment benefit. Providing such a benefit for mobile jobseekers would significantly increase the decommodification potential or the reservation wage, thereby minimizing the risk of having to accept an exploitative job offer. As such, the benefit would enhance EU citizenship for unemployed workers.

From a financing perspective, such a first step would be rather modest. Assuming that

[11] Equally, the recent proposal by the Commission to extend the time during which unemployed workers can export their unemployment benefits between countries to six months (European Commission, 2016c), would imply no shift from the status quo described in this article.

roughly one million people of working age move within the EU each year and taking 25 percent of the EU median income for purposes to calculate the cost,[12] the maximum price tag for such a proposal for mobile jobseekers would be a little more than 1 billion euro. In the medium term the EMIS could be expanded to include all EU pensioners above a certain age. Starting with an initially rather small program has the potential of making our proposal more feasible, especially as it falls within the competency of the EU, based on the current Treaty for the Functioning of the European Union (TFEU).[13]

Conclusion

Our analysis of the substantive social rights of EU migrant citizens has demonstrated that EU migrant citizens' access to benefits in destination countries is differentiated not only by economic status, but also, and perhaps even more importantly for economically inactive citizens, by the availability and generosity of exportable social benefits in the member state of origin. Consequently, the social policies of the destination country may be less important for inactive EU migrant citizens' access to social rights than the social protection entitlement and generosity of the country of origin. A finding that runs contrary both to emphases on destination countries' welfare arrangements (Ruhs, 2015; Römer, 2016; Sainsbury, 2012) and academic and populist debates on 'benefit tourism' and 'poverty migration' in a number of destination countries (Economist, 2014; Kvist, 2004; Sinn, 2002). In this regard, it is important to emphasize that the current system of social security coordination, combined with highly diverse institutional and socio-economic realities across member states, creates poverty among EU migrant citizens in certain destination countries. Nonetheless, rather than

[12] Eurostat, [ilc_di04]; available at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_di04&lang=en.

[13] Article 153.1 (c) TFEU, referring to the social security and social protection of workers, and Article 153.1 (h) TFEU, referring to the integration of persons excluded from the labour market, provide the EU with the competency to enact directives including minimum requirements for gradual implementation (cf. for a discussion of the various legal dimensions Peña-Casas et al. 2013, p. 47).

highlighting and addressing these systemic problems, it appears that most attention – judging especially from the recent CJEU cases – has been given to the topic of access to social assistance and the concern with protecting member states finances (O'Brien, 2016).

As freedom of movement underpins EU citizenship, and settlement is a core part of free movement (Bauböck, 2011, p. 350), the differentiated ability to settle in another member state should prompt us to ask if the very concept of EU citizenship is not undermined for those citizens whose freedom of movement is severely restricted by a lack of substantive social rights. Our evidence clearly shows that average EU citizens from many CEE and Southern European countries only have access to a second-class EU citizenship. Based on a recognition of the significance of (substantive) social rights for full citizenship (Dahrendorf, 1985, p. 94), our proposal for an EMIS for mobile jobseekers could be a step forward towards a more Social Europe.

Acknowledgements

For valuable comments and feedback on previous drafts, we want to thank the three anonymous reviewers, Guiliano Bonoli and the participants of the panel 'Divergent citizenship? The debates about social rights for migrants and native citizens in EU member states' at the 2016 CES conference in Philadelphia. Research for this paper was funded through the European Union's Seventh Framework Programme for research, technological development and demonstration as part of the project bEUcitizen (grant no 320294). Additionally, Cecilia Bruzelius and Constantin Reinprecht are recipients of ESRC scholarships.

References

Bauböck, R. (2011) Citizenship and free movement. In Rogers, M. S. (ed.) *Citizenship, Borders and Human Needs* (Philadelphia: Pennsylvania University Press), pp. 343-376.

Bruzelius, C. and Seeleib-Kaiser, M. (forthcoming) 'European citizenship and social rights'. In Kennett, P. and Lendvai, N. (eds.) *A handbook of European social policy* (Cheltenham: Edward Elgar).

Dahrendorf, R. (1985) *Law and Order* (Boulder: Westview Press).

Economist (2014) 'EU migration: The gates are open', January 4, *The Economist*.

European Commission (2016a) Communication from the European Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Launching a Consultation on a European Pillar of Social Rights. COM(2016) 127 final. Strasbourg.

European Commission (2016b) Annex: First preliminary outline of a European Pillar of Social Rights, Communication from the European Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Launching a Consultation on a European Pillar of Social Rights. COM(2016) 127 final. Strasbourg.

European Commission (2016c) 'Fairness at the heart of Commission's proposal to update EU rules on social security coordination'. Brussels, 13 December 2016. Available at http://europa.eu/rapid/press-release_IP-16-4301_en.htm. Accessed 24 January 2017.

Faist, T. (2001) 'Social citizenship in the European Union: Nested Membership'. *Journal of Common Market Studies,* Vol 39, No. 1, pp. 37-58.

Ferrera, M. (2005) *The boundaries of welfare: European integration and the new social politics of social protection* (Oxford: OUP).

Foster, N. (2011) *Foster on EU Law* (Oxford and New York: OUP).

Joppke, C. (2010) *Citizenship and Immigration* (Cambridge: Polity Press).

Kostakopoulou, D. (2014) 'European Union Citizenship Rights and Duties: Civil, Political and Social'**.** In Isin, E. and Neyers, P. (eds.) *Global Handbook of Citizenship Studies* (London: Routledge), pp. 427-436.

Kvist, J. (2004) 'Does EU Enlargement Start a Race to the Bottom? Strategic Interaction among EU member states in Social Policy'. *Journal of European Social Policy,* Vol. 14, No. 3, pp. 301-318.

Maas, W. (2009) 'Unrespected, Unequal, Hollow?: Contingent Citizenship and Reversible Rights in the European Union', *Columbia Journal of European Law,* Vol. 15, No. 2, pp. 265-80.

Marshall, T. H. (1950) 'Citizenship and social class'. In Marshall TH (ed) *Citizenship and social class: And other essays.* (London: Pluto), pp. 3-51.

Morris, L. (2002) *Managing Migration: Civic Stratification and Migrants' Rights* (London: Routledge).

O'Brien, C. (2016) 'Civis capitalist sum: class as the new guiding principle of EU free movement', *Common Market Law Review*. Vol. 53, No. 4, pp. 937–978.

Peña-Casas, R. et al. (2013) *Towards a European Minimum Income.* Contribution Workers' Group, European Economic and Social Committee, No. EESC/COMM/03/2013. Brussels.

Pennings, F. (2012) 'EU Citizenship: Access to Social Benefits in Other EU member states'. *The International Journal of Comparative Labour Law and Industrial Relations,* Vol. 28, No. 3, pp. 307–334.

Pennings, F. (2015) *European Social Security Law.* 6th ed. (Cambridge: Intersentia).

Recchi, E. (2015) *Mobile Europe. The Theory and Practice of Free Movement in the EU*.Basingstoke: Palgrave Macmillian.

Ruhs, M. (2015), '*Is unrestricted immigration compatible with inclusive welfare states? The (un)sustainability of EU exceptionalism*', COMPAS Working Paper, Oxford.

Römer, F. (2016) 'Generous to All or "Insiders Only"? Welfare State Generosity and Immigrant Welfare Rights'. *Journal of European Social Policy* (forthcoming).

Sainsbury, D. (2012) *Welfare States and Immigrant Rights. The Politics of Inclusion and Exclusion* (Oxford: OUP).

Scharpf, F. (2002) 'The European Social Model: Coping with the Challenges of Diversity'. *Journal of Common Market Studies,* Vol 40, No. 4, pp. 645–70.

Schmitter, P.C. and Bauer, M. W. (2001) 'A (Modest) Proposal for Expanding Social Citizenship in the European Union'. *Journal of European Social Policy,* Vol 11, No. 1, pp. 55-65.

Sinn, H. (2002) 'EU Enlargement and the Future of the Welfare State'. *Scottish Journal of Political Economy,* Vol. 49, No. 1, pp. 104-115.

Van der Mei, A. P. (2016) 'Overview of Recent Cases before the Court of Justice of the European Union (July-December 2015).' *European Journal of Social Security.* Vol. 18, No. 1, pp. 74-84.

Van Parijs, P. (2004) 'Basic Income: A Simple and Powerful Idea for the Twenty-First Century', *Politics & Society.* Vol. 32, no. 1, pp. 7-39

Van Parijs, P., Vanderborght, Y. (2001) 'From Euro-Stipendium to Euro-Dividend.' *Journal of European Social Policy.* Vol. 11, No. 4, pp. 342-352.

Verschueren, H. (2007) 'European (Internal) Migration Law as an Instrument for Defining the Boundaries of National Solidarity Systems.' *European Journal of Migration and Law.* Vol 9, pp. 307-346.

Verschueren, H. (2016) 'European Citizenship: not for the poor.' Paper presented at the International Conference of Europeanists, Philadelphia, April 14-16, 2016.

Wollenschläger, F. (2011) ‘A new fundamental freedom beyond market integration: Union citizenship and its dynamics for shifting the economic paradigm of European integration’. *European Law Journal,* Vol. 17, No. 1, pp 1–34.