



**BEUCITIZEN**  
BARRIERS TOWARDS EU CITIZENSHIP

*Gender and generational dimensions in  
accessing to Social Rights by EU mobile  
citizens*

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## **EXECUTIVE SUMMARY**

This study investigates, from a gender and generational perspective, the actual possibilities and impediments that EU mobile citizens experience in their access to social rights. The report covers a wide spectrum of welfare regimes and migration regimes by including twelve EU and non-EU countries. A review of the gender and intergenerational issues concerning access by EU mobile citizens to social rights is presented by looking at both national and EU laws. Increased intra-EU migration has led to greater interest in EU citizens' entitlements to public benefits. Because many of these entitlements have been maintained under the national jurisdictions, selective criteria as means to prevent welfare tourism have been implemented by many countries. Gender and intergenerational issues are not directly addressed. However, access to these rights mostly depends on meeting requirements or possessing economic resources, which may be indirectly related to gender and generation as long as they are based on the applicants' employment position. Therefore, because in many countries migrant women are employed in disadvantaged labour market positions, they are at greater risk of encountering practical barriers in meeting the requirements for social rights entitlements. Also young EU (mobile) citizens, when they move to other Member States for study purposes, may encounter obstacles in accessing some social rights if they do not fulfil certain requirements.

## 1. INTRODUCTION

This Deliverable offers a gender and generational perspective on aspects of social rights that hinder or facilitate access to them by EU mobile citizens<sup>1</sup> and their impact on national citizens. It also conducts a cross-national examination of actual possibilities and impediments that EU citizens experience in their access to social rights. The analysis is based upon Deliverables 6.1 and 6.2 developed within WP6 and based on national reports (Bruzelius, Chase and Seeleib-Kaiser, 2015; Pennings and Heeger-Hertter, 2016)<sup>2</sup>. These WP6 reports covered eight European countries: **Estonia, Denmark, Germany, the Netherlands, Poland, Spain, Sweden and the UK**. This Deliverable includes analysis of social rights in four additional countries included in WP 9, but not originally involved in WP 6.1 and 6.2: **Croatia, Hungary, Italy and Israel**.<sup>3</sup>

Deliverable 6.1 highlighted that, rather than the degree of generosity of national welfare state, access to social rights largely depends on meeting residency and/or registration requirements and on the propensity of individual Member States to implement rules limiting access of these rights for EU migrant citizens. Deliverable 6.2, which analysed the access to social rights in relation to EU law, focused on the different approach followed by national welfare state toward EU mobile citizens' integration, suggesting that criteria as residency, the conditions on registering and the financing of the systems, are crucial element in differentiating the countries analyzed.

On adding these four additional countries, the entire spectrum of welfare regimes and of migration regimes is represented. Additionally, by including Hungary and Croatia the analysis is enriched by including countries traditionally considered as sending countries. On the other hand, Italy and Israel, together with Spain, allow to investigate three key countries of Mediterranean area (Gal, 2010; Naldini, 2003), which differ not only in terms of welfare state and intra-EU migration features but also in relation to EU membership. The questionnaires used to collect data reflected the original questionnaire created in collaboration between WP 6 and WP9. A team of national experts in each countries analysed provided for the required information and data, consulting national as well as EU law framework regulating social rights analysed<sup>4</sup>. These questionnaires aimed at analysing the degree of accessibility to social rights for EU citizens living and working outside their home country. They did

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<sup>1</sup> We adopt the definition of 'EU mobile citizens' used in the Deliverable 6.1: "EU citizens that have migrated to another EU Member State, thereby excluding tourists, cross-border mobile workers or posted workers within the EU" (p. 5).

<sup>2</sup> Deliverables 6.1 and 6.2 are available at: <http://beucitizen.eu/publications/?so=&wp=17&th=&res=&search=>

<sup>3</sup> Israel is only partially included in the analysis since it is not a EU country. It is included in the analysis related to the access to social rights from a gender and generational perspective, but in this case the reference is not EU migrant social rights but migrant citizens' social rights in general.

<sup>4</sup> Data collection about countries originally involved in WP 6 (Estonia, Denmark, Germany, the Netherlands, Poland, Spain, Sweden and the UK), plus Italy, was carried out between 2014 and 2015. As for the other countries, the questionnaires have been collected during 2016.

so both within the national framework of EU member states and by comparing national law with the EU regulations. In these questionnaires, as well as in this deliverable, the focus is particularly on EU mobile citizens and less on third country nationals (TCNs). The specific aim of this deliverable is to understand the Gender and Generational (G&G) (direct and indirect) barriers that EU mobile citizens can encounter within EU boundaries. The possibility to include Israel among the selected countries enriches the deliverable with a non-EU point of view on foreign citizens' access to social rights. On the other hand, the specific attention paid to EU regulations and EU citizens limits the possibility to consider Israel in the analysis, especially in relation to discrepancies with EU law.

The purpose of the analysis is to understand if gender and generational dimensions play a role in defining or affecting access to social rights by EU mobile citizens.

Gender, age and phase of the family cycle, citizenship and employment position, are aspects of key importance in shaping access by EU mobile citizens to social rights.

In order to analyse the practical (direct and indirect) barriers faced by migrant EU citizens in accessing social rights according to gender and generation issues, two different perspectives have been used to interpret our data: the *intersectional* approach and the *civic stratification* theory.

The notion of *intersectionality* (Crenshaw, 1989; Collins, 1990 Anthias & Yuval-Davis, 1992; Yuval-Davis, 2011) makes it possible to identify discriminations/disadvantages in accessing social rights for specific categories of migrant (EU) citizens: those created by the way in which each disadvantage intersects/crossroads with other categories, such as gender, age, citizenship and social position. In our analysis, the notion of intersection shows how citizenship (and especially residence status), family status, and employment position intersect with each other. Within the intersectional approach, scholars distinguish between 'inter-categorical' and 'intra-categorical' approaches (McCall, 2005). An inter-categorical approach focuses on how the intersection of specific social categories – those mentioned above – influence the access to social rights. The intra-categorical approach, on the other hand, "[is] less occupied with the relationships among various social categories and instead problematizes the meaning and boundaries of the categories themselves" (Yuval-Davis, 2011, p. 6). In order to investigate gender and intergenerational issues, it is useful to combine the intra-categorical approach, so as to grasp some dimensions of the current debate on these categories (national citizenship vs. EU citizenship, "active" vs. "inactive" citizens<sup>5</sup>, etc), with the inter-categorical approach to identify legal and socio-economic barriers against access by EU mobile citizens to social rights, from a gender and generational point of view.

The second framework stems from Lockwood's theory of *civic stratification* (Lockwood, 1996; Morris, 2003; Kofman, 2005). It helps to verify if and how specific categories of migrant EU citizens, according

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<sup>5</sup> In the deliverable the term "active citizens" refers to individuals, that by virtue of their working activity, are registered in the national contributory system by means of paying contributions, whereas this is not the case for inactive citizens.

to gender and generation, encounter legal (and practical) barriers in accessing social rights in the EU because of a specific 'hierarchization of rights'. By 'civic exclusion' is meant legal and/or substantial barriers to citizens' eligibility for rights. According to Lockwood (1996, p. 537), 'civic deficit' is "a situation in which a lack of resources prevents the exercise of rights that are formally enjoyed or one in which the exercise of rights is derogating. It is possible to distinguish three types of civic deficit: *power* deficit, *stigmatized* deficit, and *fiscal* deficit". The third deficit refers to financial resources; the first to the ability to exercise rights; and the second one to the social and moral representations (de)legitimizing the actual take-up of benefits.

Starting from these approaches, the next section (Section 2) provides a meta-analysis of D. 6.1 from a G&G perspective and compares the results with the findings of the social rights analysis of the four additional countries. The third section illustrates the tensions between the national legislation /practice and EU law, paying particular attention to the direct and indirect possible gender and generational implications of accessing social rights. The last section closes the deliverable by highlighting the main findings of this analysis. In general, whilst cross-country differences emerge, the main criteria that regulate/limit the access to social rights are: a) residence/registration, b) employment condition, c) length of stay. An intersection between gender and generation, on the one hand, and position in the labour market on the other, is visible for certain groups of citizens. Young migrant EU citizens, if students and therefore economically non-active, are excluded from some benefits. Women or mothers disadvantaged in the labour market may experience indirect or direct barriers in access to social rights for themselves and for their children.

## **2. ACCESS TO SOCIAL RIGHTS IN DIFFERENT WELFARE REGIMES**

### ***A META ANALYSIS OF SOCIAL RIGHTS IN DELIVERABLE 6.1***

Deliverable 6.1 investigated the extent to which EU mobile citizens have access to social rights two decades after the introduction of *EU Citizenship*. It did so in regard to eight countries selected for their different welfare regimes and experiences of intra-EU mobility: Estonia, Denmark, Germany, the Netherlands, Poland, Spain, Sweden, and the UK.

Before providing EU migration numbers, Deliverable 6.1 set out the **legal context** for social rights of EU mobile citizens.

The Treaty of Rome (1957) defined European integration as a political project with the aim of "an ever-closer union among the peoples of Europe" (p. 6 D. 6.1). The legal framework of European integration included the freedom of movement of workers (and job seekers), as well as their protection from discrimination. The Treaty on European Union, adopted in Maastricht in 1992 (Article 8; Article 20 of



the present Treaty), further strengthened the protection of the rights and interests of the nationals of the Member States through the introduction of the European citizenship. Member states' sovereignty has progressively been limited with respect to discrimination and movement of migrants for work reasons. Nevertheless, European citizens moving for other reasons, for example to study, or for family reasons, were not included in this initial project. This omission in EU regulation was remedied in 2009 by the EU Charter of Fundamental Rights (2009) and the Free Movement Directive (2004/38/EC). Both directives have been crucial for EU legislation in relation to the rights of citizens of the Union to move and reside freely within the territory of the Member States. Indeed, article 34 of the Charter of Fundamental Rights stipulates that not only workers but also "everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices".

These legal arrangements "from the perspective of European integration, EU citizenship and associated social rights can be characterized as great achievements" (p. 7). Nevertheless, some limitations in access to social rights are maintained, in the first five years of residency in the receiving country, for those EU mobile citizens who are not 'economically active', including in this concept only the contribution made by EU mobile citizens to the paid labour market, and excluding, for example, students, inactive family members who are not paid carers, and retired persons. It is crucial to understand the impact of these limitations to recall the main **socio-demographic characteristics** of EU mobile citizens.

As described in D. 6.1, the proportion of EU nationals in the total population grew between 2001 and 2013 in Spain, the UK, Denmark, Estonia, Germany, Estonia, Poland, Sweden and the Netherlands. EU mobile citizens are in general younger than the national populations and mostly of working age, while the percentage and composition of EU mobile citizens vary across Member States. The EU foreign population in Denmark is comparatively young (in the 15-24 age group), while the UK has the largest share of EU mobile citizens of prime working age (24-54). Germany, Sweden and Spain, on the other hand, have comparatively high proportions of older EU mobile citizens.<sup>6</sup> EU mobile children are a minority, with comparatively high percentages in Sweden and the UK. Moreover, not surprisingly, cross-country EU mobile citizens from new Member States are significantly younger than those from older member states. Most of the EU citizens who move to other Member States do so for work reasons. Even if on average they have a high level of education, their employment sectors and skills vary across countries.

The differences in the **public and media discourses** on immigration and associated social rights across countries are not directly shaped by the percentage of the EU mobile citizens among the

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<sup>6</sup> The majority of EU pensioners in Germany are former 'guest workers' from old Member States; in Spain comparatively large numbers of pensioners come from Germany and Britain (Deliverable 6.1, p. 16).

overall resident population. Deliverable 6.1 showed that, among the five north-west European member states, the public discourses were particularly negative in Britain, Denmark and the Netherlands, while in Germany and Sweden the social rights of EU mobile citizens seem to be less contested. Although data on the level of solidarity with EU mobile citizens across Europe are uncertain, partially because they are strongly influenced by the exact wording of the survey questions, they “do seem to indicate that, with the exception of Britain, we might be able to speak of a nascent element of solidarity for EU mobile citizens” (Deliverable 6.1, p. 17). The strongest support for national governments to be able to restrict benefits is found in Britain, followed by Germany, France, and Spain. However, no specific gender and generation issues emerge.

Deliverable 6.1 also discussed the use by EU mobile citizens of social benefits. Data on EU nationals’ access to public benefits are limited and under-examined. Existing sources show that the welfare magnet theory “whereby people migrate into the social security systems of jurisdictions with more generous benefits, cannot be substantiated” (Deliverable 6.1, p. 24; see also Eurofound, 2015).

According to the results presented in Deliverable 6.1, direct barriers due to gender and generation in EU mobile citizens’ access to the four social rights (Health, Social Assistance, Education, Housing) are not an issue in the Member States concerned. In general, the welfare regime of the receiving countries does not seem to play a crucial role in access by EU migrant citizens to social rights. Findings showed that access mainly depends on fulfilling registration (in Denmark and Sweden) or/and residency requirements (in the Netherlands and Germany) and/or a worker status/income (especially in the UK), as well as on the specific propensity of Member States to reinforce restrictive rules on access to social rights by EU mobile citizens. On the other hand, in Estonia, Poland and Spain the social benefits to residents are overall quite limited and therefore of no great practical importance for EU mobile citizens.

These aspects are apparently neutral to the gender and generation of immigrants. Nevertheless, it is possible to identify an indirect relation between EU mobile citizens’ gender and generation, on the one hand, and barriers to access to social rights on the other. Since the residence, or registration, required in many countries to limit access to social rights for EU nationals – within their initial five-year period of arrival – typically depends on the migrants’ employment situation, the most disadvantaged EU mobile citizens in the paid labour market (among whom women and young migrants are on average over-represented) may encounter substantial difficulties in accessing social rights when they move to other Member States.

### **ADDITIONAL COUNTRY ANALYSIS: CROATIA, HUNGARY, ITALY AND ISRAEL**

The number of EU mobile citizens<sup>7</sup> in the total populations of Hungary and Italy grew between 2001 and 2014, as in most other EU countries (see above). Differently, in Croatia, which is still not in the Schengen area, the number of EU nationals started to increase only in 2010, during the negotiations on Croatia's entry into the European Union as 28<sup>th</sup> Member State in 2013.

As a consequence, the amount of intra-EU migration to Croatia is still very small if compared with the other countries covered by this deliverable: the main countries of origin per number of EU citizens in Croatia are Slovenia, Germany and Italy. On the other hand, Hungary is one of the few EU countries in which most of the foreign nationals are EU mobile citizens (3% of the total population in 2014). The majority of them are ethnic Hungarians arriving from neighbouring EU countries like Romania and Slovakia. Romania is the main origin country of EU mobile citizens (as well as of immigrants in general) also in Italy, where it is followed by Poland and Bulgaria. Enlargement has profoundly changed the socio-demographic characteristics of the EU population in Italy. In fact Romanians constitute 73% of EU immigrants in Italy, and the share of EU nationals from the so-called A2 countries (Romania and Bulgaria, which joined the EU in 2007) in the total EU population grew from 30% in 2001 to 77% in 2011. These data are important for a gender and generational analysis because the composition by of EU mobile population age, sex and employment conditions varies across the origin countries.

As in the countries involved in Deliverable 6.1, so in Hungary and Italy most EU mobile citizens are of active age, with the exceptions of the comparatively high rate of Polish and Romanian children in Italy (almost 20% of the EU mobile citizens from these countries) and of elderly Germans in Hungary (more than 14%).

Around 51% of EU citizens in Hungary are women. In Italy the proportion of female migrants from Bulgaria, Poland and Romania – the three main EU origin countries – has always been larger than the proportion of men, and in 2011 it reached respectively 62%, 71% and 55% of all migrants from those countries. This high proportion of migrant women in Italy reflects the strong demand for care work in the Italian 'unsupported familistic' context (Saraceno & Keck, 2010) (see Luppi, Oomkens, Knijn and Weicht, 2015).

The demographic composition of intra-EU mobility inflows affects the terms and conditions under which EU citizens have access to the social rights considered, since EU mobile citizens are on average younger than the native population, and, especially in Italy, there are female-dominated 'migration circuits' (Kofman, 2012).

In Hungary and in Italy, as in the eight countries covered by Deliverable 6.1, EU mobile citizens are over-represented among the higher-educated population. Nevertheless, this does not mean that they

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<sup>7</sup> For Israel see note 1.

automatically obtain skilled jobs in the destination countries, especially in the case of migrant women (see Kofman and Raghuram, 2015). For example, while immigrants from Austria, Slovakia and Croatia in Hungary tend to have higher-qualified jobs, EU citizens from Romania take jobs with low qualification requirements. Moreover, from a gender perspective it is important to note that a large number of unregistered EU citizens, especially women from Romania, work in the informal elderly care and domestic sector, where they are typically employed by middle-class Hungarian families in Budapest. On the other hand, the percentage of EU skilled workers in Italy tends to be comparatively low, and their 'ethnic penalty' (Heath and Cheung, 2007) relatively high. Moreover, in Hungary unemployment rates are higher especially in the case of immigrant women.

To sum up, in contexts – such as Italy and, to some extent, Hungary – where EU mobile women from EU-28 appear comparatively more disadvantaged in the receiving labour market, indirect consequences for access to work-related benefits may arise. Indeed, it has to be considered that a high rate of intra-EU mobility concerns migrants for family reasons, usually women following their employed partners, which can encounter difficulties in entering in the receiving country' labour market. This may put EU mobile citizens – especially if young and (not yet) included in the labour market or women in irregular employment – in a disadvantaged position upon their arrival. Moreover, as shown by the meta-analysis of Deliverable 6.1 on Estonia, Denmark, Germany, the Netherlands, Poland, Spain, Sweden and the UK, the employment status can also indirectly affect access by EU mobile citizens to social rights, in countries and social rights in which additional criteria for entitlement, such as registered residence, are work-related.

### ***PUBLIC OPINION AND DISCOURSE: REINFORCING OR PREVENTING CIVIC DEFICIT?***

The way in which migration and EU mobility issues are framed in the national political context, as well as by public opinion, are elements crucial for understanding also G&G barriers against EU mobile citizens' access to social rights in Europe. In Italy, right-wing parties, and in particular the Northern League (*Lega Nord*) are hostile to (EU) immigration, as well as claiming priority in access to welfare benefits for Italians. They have a significant impact on the public debate on access by foreigners – both EU and non-EU citizens – to social rights. This growing "welfare state chauvinism" (Andersen and Bjørklund, 1990: 212) in Italy is often shared by centre-right parties and tends to prevail in regions and cities where these parties have more votes. In this context, the humanitarian discourse has rarely applied to EU mobile citizens, because they are not among the "weakest" migrants with respect to equal access to social rights. Also in Hungary, although the Human Rights legal framework can be applied in the case of EU mobile citizens, it is not actively employed to prevent discrimination against EU mobile citizens' access to their social rights. The guiding principle of the current Hungarian *Migration Strategy* (2013) is to address migrants through mainstream policies. This principle, in line with those of the EU, results in practice in a lack of attention to the EU mobile population. On the contrary, the Migration Strategy points out that state authorities suspect various forms of misuse of the social support system, and national informants have reported worsening attitudes of the authorities

towards migrants in the past few years: for example, they have reduced the translation of information about welfare benefits into languages other than Hungarian. In Croatia, safeguarding the welfare system from foreigners has been one of the main political issues in the adoption of the EU framework on immigration and asylum. Consequently, the country has tended to adopt minimal requirements set by the EU, and where possible, it has sought to restrict access to these rights by the foreign population. In particular, prior to Croatia's accession to the EU, anti-immigrant sentiments in political discourse and the media targeted particular EU citizens – i.e. the nationals of Romania and Bulgaria. Since these inflows are still limited, in general, the political climate is not averse to any particular groups of EEA citizens, and immigration by EU citizens is not a political issue.

To sum up, it seems that in the public debate of the three countries considered no human rights frames are employed to address issues concerning the diversity of EU mobile citizens' needs and to prevent discrimination in access to social rights. Together with the 'welfare chauvinist' approach and the declared intent to prevent 'abuses' by EU mobile citizens, this feature may reinforce, at national or local levels, the social stigmatization of EU mobile citizens (Lockwood, 1996) especially in countries where the growing number of EU mobile citizens potentially eligible for social benefits seems more politicized (i.e. Italy). The next section investigates the substantial and legal barriers to EU mobile citizens' entitlements in Croatia, Hungary and Italy, and to foreigners in Israel.

### ***ACCESS TO SOCIAL RIGHTS IN CROATIA, HUNGARY, ITALY AND ISRAEL***

As in the other EU member states, in Croatia, Hungary and Italy EU citizens' access to social rights has no legal distinctions based on age and gender (with the exception of minors protection). Nevertheless, receiving countries can introduce some requirements to limit the EU mobile citizens' access to rights in practice, which seems to have indirect consequences from a gender and generational perspective.

In Hungary, according to the document *Migration Strategy 2013* legal residence (registration in the case of EU nationals) and an address card<sup>8</sup> are required to apply for different types of social benefits. In Croatia, restrictions have been applied on citizens of some member states, as a reaction to barriers to freedom of movement and work for Croatian citizens in those EU countries<sup>9</sup>. Citizens of these countries need a work registration certificate to work. Restrictions on work thus limit the benefits that are conditional on employment status: for example, subsistence benefits because recipients of income assistance are obliged to work in any job available, including unpaid public works, at the first

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<sup>8</sup> The address card is issued by the national Központi Okmányiroda office and is based on a series of documents, including a lease contract signed by the owner of the rented accommodation and two witnesses, the letter from the Land Property Bureau (Földhivatal) about official ownership of the accommodation, travel documents (passport), residence permit/registration.

<sup>9</sup> Austria, Malta, the Netherlands, Slovenia, and the UK until June 2018.

opportunity. Apart from these restrictions applied to the nationals of the EU countries based on reciprocity, there are no data to argue that target group citizens from other member states face barriers in access to their social rights.

In Italy, the disadvantaged position of immigrants, including EU mobile citizens, in the labour market influences their access not only to the majority of social security measures (i.e. pensions), but also to other social rights. Since income guarantee schemes are scant and strongly polarized, and because the level of employment informality and the frequency of temporary and precarious jobs are high, enforcement of these social rights is difficult to achieve for EU mobile citizens in Italy.

The case of access to social rights in Israel is different not only because Israel is not part of the European Union, but also because the entitlement to social rights is based on a continuum of legal statuses of immigrants according to the *jus sanguinis* principle: citizenship, permanent residency, temporary residency, and various types of visas (i.e. work, tourism, volunteering and clergy). The Law of Return (1950) grants citizenship to Jewish immigrants upon their arrival, without any considerations of economic characteristics, age or skills. Only the holders of a permanent residency<sup>10</sup> enjoy access to almost all social rights granted to citizens. Temporary residents are granted partial access to social assistance programmes (i.e. unemployment insurance, income support, old age benefits and general disability benefits). Visa holders of all types are not granted access to the social welfare system, although labour migrants as well as children of asylum seekers (up to the age of 18) are entitled to some social protection. Moreover, access to social assistance programmes requires fulfilment of other conditions, for example a residency period, which in practice limit immigrants' access to social benefits. No direct gender and generational implications are evident, except the measures for the protection of migrant children.<sup>11</sup>

The emigration traditions of Croatia, Hungary and Italy, and Israel, do not seem to have gender consequences with respect to social rights, whilst generational consequences are apparent. In fact, (EU) migrant citizens who respectively have Hungarian ethnicity, Italian lineage or are ethnic Croatian are facilitated in obtaining citizenship (in Hungary and Italy) or social rights (in Croatia). This feature is the main determinant of the stratification of immigrants' social rights in Israel.

### ***THE RIGHT TO SUBSISTENCE BENEFITS***

As has been shown in Deliverable 6.1, the availability of and access to social assistance benefits or safety-net programmes vary significantly across EU countries, and they are related to the overall institutional welfare state arrangements. The overall level of subsistence benefits granted in Croatia,

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<sup>10</sup> Permanent resident visa are issued or extended at the discretion of the Minister of the Interior.

<sup>11</sup> We cannot extend the argument further, since almost all the other considerations related to EU migrants do not apply in the case of Israel.

Hungary and Italy is comparatively low. Italy, for instance, has never developed a national minimum income protection programme, and social assistance has a marginal role (Ferrera, Matsaganis and Sacchi, 2002).

As Deliverable 6.1 has illustrated for other welfare regimes, also in Croatia, Hungary Italy and Israel a residency period is required for entitlement to most of the subsistence benefits. Since the most important criterion for obtaining permanent residency is length of the stay, gender and generation issues do not seem directly addressed.

Whilst child benefits, as well as other family transfers and services which can influence the intergenerational – gendered – care responsibilities within migrant families, should be available to EU mobile citizens upon their arrival in another Member State, EU Member States have the right to unconditionally deny the social assistance benefits during the first three months after arrival.

In Italy, for instance, in the first three months upon arrival only workers and their family members are entitled to subsistence benefits, in order to discourage welfare tourism by EU citizens. After this initial period, EU citizens can reside legally in Italy only if they have a job or sufficient economic resources to maintain themselves and their family members, are students or family members of a person who meets these requirements. Further restrictions have been introduced as a consequence of recent public spending cuts. For example, since 2009 ten years of continuous residence in Italy are required to apply for a social allowance (*assegno sociale*), and ten years of residence in the country or five years in the same Italian region to apply for social housing. Further residency requirements based on length of stay may be in place and implemented at local level. Only EU citizens with long-term residence enjoy the same rights as nationals<sup>12</sup>.

The requirement for EU citizens to be eligible for family benefits in Hungary is possession of a registration card and an address card. As a general rule, access to different types of social benefits and family allowances is based on a long-term residence permit (registration in the case of EU nationals) and a valid address in Hungary (in the form of a valid address card, which can be required as explained above). If these two conditions are met, the applicant has in principle the same rights and access to social benefits as Hungarian nationals. However, it seems that EU citizens have rarely been granted subsistence benefits in Hungary. The reason for this could be that the income level with which one is eligible is very low – and this is not typical of EU workers in Hungary.

In Croatia, the importance of a residency period and its length vary greatly among the different measures. For example, in the case of the guaranteed minimum income (means-tested), whilst permanent residents are eligible, applicants for temporary residence must prove that they are able to support themselves and their families financially as one of the first criteria for gaining residency. The means-tested child allowance is conditioned by length of permanent residency (at least 3 years).

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<sup>12</sup> While we are writing, a new law on Guaranteed minimum income (means-tested) in Italy have been approved. A residence period is required to be entitled.



Also in the case of Israel, residency is required for entitlement to most of the subsistence benefits.

### ***THE RIGHT TO HEALTH CARE***

We analyze the EU mobile citizens access to health care taking into account the distinction between universal and contributory based health systems. In Croatia, healthcare coverage is mandatory. Anyone with temporary or permanent residence in Croatia is required to participate in the national health care system and receives the same benefits in kind and cash as Croatian citizens. Compulsory health insurance is granted to permanent residents and their family members on a par with citizens. Temporary residents have various temporary bases of insurance. The co-payment for regular doctor visits (1.31 Euros) or hospital stays (13 Euros) are quite affordable by European standards and, therefore, unlikely to create a barrier to service for most EU citizens. Health tourism is one of the secondary health care services that the Croatian government hopes to develop further.

The Hungarian health insurance system is more complex, as it involves two different categories of beneficiaries: the owners of the right (for example regular workers<sup>13</sup>), who are entitled to the overall health insurance benefits (cash benefits, benefits in kind and accident allowances), and the entitled beneficiaries, i.e. students and pensioners<sup>14</sup>, who are entitled only to non-cash health insurance benefits. EU citizens staying for longer than 3 months in Hungary have three different options. Firstly, they can remain enrolled in their home country's state health insurance system, if they bring a valid EHIC to Hungary. In this case, EU nationals are entitled to emergency services and medical interventions which cannot be postponed. Secondly, EU citizens in Hungary may also sign a contract with a Hungarian private insurance company. The services covered by different health insurance companies may vary. As a third option, an EU citizen may enrol<sup>15</sup> in the Hungarian State Health Insurance System (HSHIS) immediately upon arrival after signing a contract with it. Some documents are required to be covered by HSHIS.<sup>16</sup> The HSHIS insurance offers limited services in the first 6 months of membership, and then the same full medical services as for Hungarian nationals. Thus gender or age-based disadvantages in the labour market may have indirect effects on access to the HSHIS, because the enrollment and the services provided are based on the patients' employment situation.

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<sup>13</sup> Including those persons who have a statutory obligation to pay contributions, e.g. employees and civil servants, the self-employed and workers with other legal arrangements, ecclesiastics and members of associations.

<sup>14</sup> For example, minors, students, pensioners, people on low incomes who have reached retirement age, those receiving cash maternity and social protection benefits

<sup>15</sup> Students who have already been residing in Hungary for longer than 1 year must be enrolled with the HSHIS.

<sup>16</sup> Registration card, address card, enrolment certificate for student/ employment contract for those on employment basis, tax card and TAJ card for students, EU ID card or passport.



On the other hand, the Italian National Health System is universal and provides services for Italian citizens as well as emergency services to all regardless of their citizenship or registration with the National Health System. European citizens who stay in Italy for longer than three months are required to have private health insurance or to be enrolled with the National Health Service (NHS). The (EU) foreigners' right to register with the Italian NHS is granted to those who have legal residence and a job, as well as to their family members, and to family members of Italian citizens.<sup>17</sup> However, EU mobile citizens who do not meet the requirements for registration with the NHS, and without private health insurance, nor with EHIC, are entitled to care for the protection of minors' health, maternity, and voluntary interruption of pregnancy, vaccinations, treatment and prophylaxis of infectious diseases. To be entitled to these benefits, the EU citizen must be able to be identified by his/her valid ID. This is because identification of the foreigner enables the Italian State to contact the foreigner's home state to recover the costs necessary for health services furnished.

Other policies are implemented in Israel. Immigrants under the Law of Return are entitled to health care services according to the National Health Insurance Law upon arrival, even if with some limitations<sup>18</sup>. Legal labour migrants have to be insured by their employers according to the law however the National Health Insurance Law does not cover non insured labour migrants, asylum seekers, and other persons who do not have resident status. For the children of asylum seekers (up to the age of 18), welfare services are restricted to life-threatening situations. Only babies are entitled to health services. Additionally, a private yet regulated and subsidized health insurance programme was established for children up to 18 with no residency status, which is equal to that of citizens. Since 2012 women victims of trafficking have been granted access to medical services.

Direct gender and generation barriers to access to health rights for EU mobile citizens do not seem to be an issue in the four countries considered: i.e. Croatia, Hungary, Italy, and Israel.

### ***THE RIGHT TO HOUSING***

As illustrated in Deliverable 6.1, cross-country differences in housing policies are significant in Europe (see Dewilde and De Decker, 2014).

While some EU member states have primarily developed a public/social housing system to provide affordable housing for those in need, other EU countries have mainly implemented housing benefits or have used a combination of the two. In Croatia, Italy and Hungary, social rights to housing are

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<sup>17</sup> There are also other particular situations that determine the right to be enrolled with the National Health Service: for example, employment with an international organization based in Italy.

<sup>18</sup> The health plans have an established quarterly payment ceiling for medical services per family. An immigrant family is entitled to a 50% reduction of this quarterly payment ceiling.

comparatively quite limited. Moreover, restrictions due to a residence period (in Hungary and Italy) or citizenship (in Croatia and Italy) can be introduced by national and local authorities.

Compared to the EU member states, Croatia is among the countries with the most inappropriate housing stock. Croatian laws in general do not differentiate among EU citizens, third country citizens, and refugees. Foreigners (including EU citizens) usually have access to the same rights, provided that they have residence status in Croatia. Residence is usually tied to stable employment. Moreover, some interventions are reserved to citizens of Croatia. For example, access to the state-subsidized housing construction programme<sup>19</sup> is granted to Croatian citizens only. Other programmes (such as housing allowances) are targeted on very disadvantaged households.

In Hungary according to the 1993/ III Law on Social Benefits, housing benefits are provided according to 'social need' (*szociális rászorultság*) by the local governments on the basis of the applicant's registered address. But this programme is not enough to respond to citizens' needs. According to the Habitat for Humanity's *Report on Housing Poverty in Hungary 2014*, around 16 percent of the population continues to live in a state of housing poverty. EU citizens who have legally registered with the Hungarian authorities and who have obtained a valid address card (*lakcímkártya*) are eligible. Despite their eligibility, since EU mobile citizens are under-represented in the low-income, economically disadvantaged social strata, it is not likely that they can benefit from housing policies and subsidies in Hungary. Moreover, most of the local authorities ask for proof of 3-5 years of residency prior to the application for social housing; proof which is difficult to obtain, especially for (EU) migrants. In Italy, since the public supports to housing are decentralized, there is no general rule concerning access by EU mobile citizens to these benefits. In 2012 the National Bureau Against Racial Discrimination<sup>20</sup> adopted a General Recommendation regarding the criteria on access to housing benefits by EU and non-EU citizens. In this recommendation, requirements such as a long residence period (from 36 months to 5 years), or even the Italian citizenship often imposed by local authorities, aggravate the discriminations against foreigners. Hence the recommendation called on all municipalities and local authorities to avoid requirements additional to those required by art. 40, paragraph 6, of the Immigration Law. According to this law, foreign citizens with a long-term residence permit or legally residing in Italy who are registered as unemployed, employees or self-employed are entitled to rights to housing on the same conditions as Italian citizens. Despite the aforementioned Recommendation, however, some local authorities continue to impose restrictive criteria based on Italian citizenship or a long residence period on access to housing benefits.

Limitations on access to housing social rights, however, seem not have direct gender or generational implications *per se*; rather, certain family conditions must be taken into account. In fact, since the rankings for state subsidies to housing in all the countries considered usually depend on income per

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<sup>19</sup> A centralized programme of help for first-time buyers.

<sup>20</sup> Established in 2003 in accordance with EU Directive no. 2000/43 EC.

household member, this implies that households with more members (for example, children) should be prioritized. In Croatia, the family is taken into account in housing policy because the Act on State-Subsidized Housing Construction exempts families with three or more children from paying 15 percent of the real estate value in cash. Because the demand for housing programmes often exceeds the supply, single migrants seem unlikely to obtain housing benefits.

In Israel, too, public housing provisions are very limited. While in the past, governmental mortgages and grants were in place, during the past decade, social and affordable housing policies and programmes have been drastically restricted<sup>21</sup>. Moreover, the amount of mortgages issued by banks has been reduced. As for temporary and emergency housing, public measures towards the homeless are very limited (Gan-Mor and Pribach-Hefetz, 2009). In Israel, social housing is linked to emergency situations only, and it is not easily affordable for newcomers.

### ***THE RIGHT TO EDUCATION***

School education is an obligation, and not only a right, for all legal resident children from a specific age in Italy, Israel, Croatia and Hungary, as in other countries involved in Deliverable 6.1. Hungary has no education policies directly promoting the integration of (EU) foreign pupils, primary and secondary schools in Croatia and Italy are encouraged to provide international educational programmes, and they are obliged to grant special help to pupils that do not have a sufficient knowledge of the receiving country's language.

Moreover, the Croatian *Primary and Secondary School Education Act* allocates funds to 'preparatory' and 'complementary' classes for children who are family members of citizens of EU Member States, and it supports teacher training. In addition, children of EU citizens who are employed or were employed in Croatia have the right to receive public education in their native language and culture. By contrast, Italian public schools do not organize separate classes for foreign children, and the Ministry of Education has promoted an intercultural approach for all in recent decades. However, some local authorities have provided residence as a requirement in creating the waiting list for or limiting access to preschool services.

On the other hand, in Hungary, state schools have no systematic programmes of funding to provide language support for foreign children. The relatively small numbers of migrant children in the Hungarian public education system seems to contribute to marginalizing this issue. Some of the Hungarian civil organizations specialized in immigrant issues help schools in the delivery of Hungarian language and intercultural programmes (typically by using the EU Integration Fund). During the Socialist-Liberal government, the Ministry of Education prepared educational guidelines on

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<sup>21</sup> However, immigrants according to the law of return might be eligible for assistance with their mortgage up to 15 years from their arrival.

intercultural education and state funds for such programmes, but they are no longer in use under the present right-wing government. Moreover, knowledge of the Hungarian language, long-term residence permit/registration (in the case of EU citizens), and a valid address are required for access to secondary education.

Even if the mobility of university students across the European Union has improved in recent decades in application of EU law, the overall student mobility level continues to be relatively low (see Deliverable 6.1). Study grants provided by universities and the state are available only for national citizens in Croatia, whilst in Hungary and Italy this is not the case for most of the provisions.

### **3. GENDER AND GENERATIONAL BARRIERS: DISCREPANCIES BETWEEN EU AND NATIONAL LAW**

This section further analyses the barriers against access to social rights by EU citizens, looking at the four areas of social rights already analysed (subsistence benefits, health care, education, and housing benefits). It focuses on how these barriers relate to the applicable EU law<sup>22</sup>. Instead of comparing countries' welfare state generosity in granting access to social rights, the legislation and practice concerning these rights are confronted with the EU law that can be invoked by EU mobile citizens. The following question is addressed: *under what conditions can a EU citizen be barred from access to social rights in another EU Member State?* After a brief overview of the EU law relevant to access to social rights, the section analyses the gender and generational barriers affecting access by EU mobile citizens to social rights. It does so by drawing on both Deliverable 6.2 and the national reports provided by the countries involved in WP 9.

#### ***EU LAW RELEVANT TO ACCESS TO SOCIAL RIGHTS***

The aim of this section is to provide a brief overview of the legal framework that embraces the EU regulations of social rights for EU mobile citizens. In this regard, the main elements of relevant EU law are: Regulation **883/2004** on the coordination of social security schemes; Regulation **492/2011** on the free movement of workers; Article **18 TFEU** and Article **20 TFEU** on non-discrimination on grounds of nationality and on EU citizenship; and **Directive 38** adopted in 2004 (2004/38). These regulations concern all EU citizens, regardless of their nationality, country of origin, age and gender. Thus, in this

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<sup>22</sup> Due to the specific focus of this section – discrepancies between national and EU laws – we could not include Israel in the analysis.

section the analysis of these legal arrangements focuses on the secondary implications that can pose barriers to EU citizens in relation to the intersection between gender and generational aspects.

Article 48 TFEU, elaborated in regulation 883/2004, provides that the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers. According to Deliverable 6.2, these measures do not – and are not allowed to – fully harmonize social security. Rather, they provide rules that coordinate the aggregation of all periods taken into account under the laws of the several countries for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit; payment of benefits to individuals resident in the territories of member states; and prohibiting discrimination on the ground of nationality. Nevertheless, as said these measures have a coordination purpose, while sovereignty over the social benefits analysed here rests with national regulation. Besides discrimination on the grounds of nationality, from a G&G perspective it is important to note that the regulation limits the possibilities of other forms of discrimination. Indeed, the personal scope of Regulation 883/2004 is not limited to the economically active population. Article 2 states that this Regulation shall apply to nationals of a Member State, stateless persons and refugees, as well as – which is particularly crucial for this analysis – to the members of their families and to their survivors. This article seems to provide for both economically active and non-economically active persons equal treatment as regards the benefits covered by the Regulation. Nevertheless, as already stated, access to social rights is granted as long as the claimants, the EU mobile citizens, do not become a burden on the social assistance system of the host Member State, inasmuch as they have to fulfill the criterion of financial self-sufficiency in order to be recognized as lawfully resident citizens. Member State, indeed, during the first five years of residence of EU mobile citizens, can exclude economically non-active persons from non-contributory benefits if they do not satisfy the financial self-sufficiency condition.

Moreover, not all benefits or advantages are included under Regulation 883/2004. The material scope of that Regulation does not, for instance, include the broad area of social benefits recognized as *public assistance* and study grants, and the latter are mainly targeted on young EU citizens.

Therefore, the equal treatment provision of Regulation 492/2011 is useful in supplementing the non-discrimination rule of Regulation 883/2004. Subparagraph 1 of article 7 of Regulation 492/2011 states that a worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his/her nationality in respect of any conditions of employment and work, in particular as regards remuneration and dismissal. This is a crucial element that should ensure equal access to social security benefits to EU mobile workers. Nevertheless, two aspects of Regulation 492/2011 should be considered in the analysis of the gender and generational barriers against access to social rights. This regulation is relevant only to workers; and for this reason, it does not cover persons seeking a job, or better, persons who have not yet worked in the host country, and 'inactive' EU citizens. This specific aspect can identify a sort of barrier for two specific categories of inactive EU mobile citizens: younger people, and family members who are not included in the paid labour market. Although the Court of Justice has ruled that the term

'worker' in Article 45 TFEU and Regulation 492/2011 has a community meaning and must not be interpreted narrowly<sup>23</sup>, the employment status of EU mobile citizens, or better their working condition and working history in the host country, represents a clear-cut divide between *insiders* and *outsiders* in relation to accessing social rights. With regard to Regulation 429/2011, the exclusive consideration of 'workers' can represent an element of discrimination for students, and particularly student-trainees. In relation to EU mobile citizens who are "dependent family members", the risk of not being covered by Regulation 492/2011 is partially limited by the broad interpretation of Article 7(2) by the Court of Justice. The Court has recognized that there is an obligation on member states to grant a social benefit to (dependent) members of the family if this can constitute a social advantage for the worker. As Deliverable 6.2 highlights, in determining this, it is important whether the employed person actually supports the family members in question. If the family member is no longer financially dependent on the worker, s/he cannot rely on Regulation 492/2011. This aspect suggests that families of EU mobile citizens, in which there is at least one person active in the host country's labour market, should not be subjected to discrimination in accessing social rights. On the other hand, this instrument can severely limit the dependent members' autonomy, since outside the family ties, they may not be entitled to social assistance benefits unless they return under the protection of Regulation 492/2011, becoming workers themselves.

Articles 18 TFEU and 20 TFEU provide a further instrument that ensures the non-discrimination of EU citizens on grounds of nationality through establishing European citizenship and the enforcement of the right of free movement. Article 20 TFEU provides that every person holding the nationality of a Member State shall be a citizen of the Union. Article 21 provides that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect. While Article 18 TFEU provides that, within the scope of application of the Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. Thus, barriers related to gender and generational aspects cannot be identified within this paragraph.

Directive 2004/38, and its implementation by the Member States, plays a significant role in determining the conditions for the access of EU mobile citizens to social rights. The aim of this directive was to provide a uniform framework of residence right throughout the Member States. By defining the criteria that ensure the right of residence and the conditions for retaining the status of a worker in the host country, Directive 2004/38 is extremely important in shaping access to social rights by EU mobile citizens. The implementation of Directive 2004/38 by the Member States in relation to the national legal frameworks related to social rights is of utmost importance in our analysis. In

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<sup>23</sup> According to case law, any person who pursues activities which are effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. However, the European Court of Justice (ECJ) has not indicated how to interpret this criterion in practice, leaving room for interpretation to the member states. See also Deliverable 6.1.

particular, as the previous section showed, restrictions on EU mobile citizens' access to social rights based on residence and work status have indirect consequences for G&G civic stratification. Thus, differences among Member States in this regard will be addressed in the following sections, which consider how the national legislation and practice concerning the social rights, confronted with the applicable EU law, can pose (indirect) gender and generational barriers against access to social benefits by EU mobile citizens.

### **THE RIGHT TO SUBSISTANCE BENEFITS**

As regards EU regulation, subsistence benefits<sup>24</sup> provided by Member States should be not subjected to the material scope of Regulation 883/2004, which cannot be applied to public assistance benefits. According to the Court of Justice, a restrictive interpretation of the term 'public assistance' must be adopted. In its interpretation, public assistance concerns those benefits that are not specifically meant to cover one of the risks mentioned in Article 3 of the Regulation; among them, old age and unemployment.<sup>25</sup> Subsistence benefits for these specific risks are considered as *special non-contributory benefits* since they are not excluded from Regulation 883/2004 as social assistance. The inclusion of old age and unemployment among the risks covered by the special non-contributory benefits, and the absence of a specific risk connected to the possible need for income support by younger people, for example students, reflects a lack of coverage of the latter. Indeed, the exclusion of risks connected to young population, as (full-time) students, from coordination regulation results in a more widespread and differentiated coverage at national level.

However, the case law presented in Deliverable 6.2 – the *Dano*, *Brey* and *Alimanovic* judgments – seems to suggest that, despite the granting of special non-contributory benefits is primarily subject to Regulation 883/2004, it also tends to be influenced by Directive 38/2004. In these judgments, the European Court of Justice supported the decision of the member states not to grant benefits to EU mobile claimants. Although the benefits concerned by the judgments were connected to risks included in article 3 of Regulation 883/2004, the Court considered that the access to subsistence benefits is subordinate to the requirements that regulate the right of residence according to Directive 2004/38, particularly the criterion of having resources sufficient to meet one's basic needs and the needs of family members in order not to become a burden on the public finances of the host Member State (in

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<sup>24</sup> The subsistence benefits considered in Deliverable 6.2 are all benefits intended to realize a minimum income level as defined by the country paying them. These benefits may be the only income for the persons concerned, but they may also supplement other income, whether or not from work. Additionally, only means-tested benefits were considered in Deliverable 6.2, excluding other benefits that guarantee a subsistence minimum, in particular flat-rate pensions for pensioners. We also applied this restriction when analyzing the four other countries involved in WP 9.

<sup>25</sup> The full list of benefits comprises: sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivor's benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits



this case, Germany and Austria, but this condition applied in all the countries analysed). Hence, although analysis of the regulations applied to special non-contributory benefits highlighted that active and elderly population are directly subject, and thus covered, by coordination regulation contrary to non-active younger population, the interaction between EU and national law indicates that access to these benefits is subordinate to the EU regulation applied to residence right.

The law cases analysed highlights a further possible issue in relation to gender and generational barriers. In the Dano case, as well as in the *Alimanovic* judgment<sup>26</sup>, the claimants' exclusion from receiving subsistence benefits implied that their dependent family members, in this case their children, received unequal treatment compared to national citizens, who, since they are lawfully resident in the host country, are entitled to those benefits. Additionally, some countries have applied specific measures in relation to public support for EU citizens' children. This is the case of Croatia where the mean-tested child allowance, available to citizens and permanent residents only, is conditional on three years of permanent residency in Croatia prior to application<sup>27</sup> In Hungary, similar barriers concern TCNs. Whereas EU citizens who have completed the registration process and have a valid address are eligible for family benefits, TCNs do not enjoy the same membership in the social security system. This is because they do not obtain the same address card, but only a temporary address registration, which does not entitle them to any social benefits.

The subordination of access to social rights to the criterion of self-sufficiency (i.e. national sovereignty in defining rules in order to prevent EU mobile citizens from becoming a burden on the social system) is a recurring criterion in most EU countries. This is particularly evident in the case of young children, who are non-active family members because of their age, as in the cases presented above. But this also applies to another category of EU mobile citizens: full-time students, whose primary activity is a non-remunerative one. This aspect is particularly evident when comparing the previous cases with the European Court's judgments in relation to subsistence benefits claimed by persons who have worked in the host countries, even if for only a very short period. Persons who have worked fall under Article 7 of Regulation 492/2011. This is the case even if persons have a very minor job or work for a very short time, as was confirmed in the *Vatsouras* and *Koupatantze* judgments. The work activities performed by both claimants was very residual, but, as reported in the 6.2 Deliverable, "*the Court ruled that neither the origin of the funds from which the remuneration is paid nor the limited amount of that remuneration can have any consequence in regard to whether or not the person is a 'worker' for the purposes of Community law*". In these cases, the recognition of the claimants' status as worker by the

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<sup>26</sup> See Deliverable 6.2 for a detailed explanation of these law cases.

<sup>27</sup> With Croatia's accession to the EU, a change was made to eligibility for child allowance while abroad, so that now the residence criterion for citizens, previously defined as three years' continuous residence in Croatia to claim child allowance, has been expanded to include residence in any EU country for the purpose of the three-year test.



Court ensured them entitlement to subsistence benefits, even if for a limited period of time, the six-month period recognized by EU law.

In conclusion, this brief analysis of the EU law framework applied to subsistence benefits and case law seems to suggest that the main cause of EU citizen migrants' exclusion from subsistence benefits is the risk that claimants may become a burden on the national social security system. From a gender and generational perspective, this aspect could limit the right of free movement of younger migrant EU citizens in an early stage of their adult lives, since students who have never worked in the host country are not entitled to this kind of support. Moreover, we have seen that, in decisions on subsistence benefits and special non-contributory benefits, the economic condition of the claimants falls back on their dependent family members. Indeed, the Ms. Dano case shows that, according to the Court's judgment, Ms Dano and her son were not entitled to claim equal treatment with nationals of the host member state once it was established that their right of residence in Germany did not comply with the conditions of Directive 2004/38. This analysis leads to a further consideration. The greater probability of EU mobile women being employed in disadvantaged positions in the receiving country's labour market, compared to men as well as nationals, as we will see in the next section, can represent a further difficulty in accessing social benefits.

From a strictly gender and generation point of view, the analysis of the right to social assistance and the citizenship directive (2004/38), in the countries analysed, has highlighted minor barriers, apart from those already identified in the analysis of the EU law framework. The main difference among the Member States studied are due to two aspects not directly connected to gender and generational intersections: i) (scant) development of state-wide systems of minimum income assistance, as in the cases of Spain Italy, Hungary and Poland; ii) or the specification of the criteria that regulate the entitlement to social assistance, particularly the differentiation between workers and non-economically active citizens, and lawful and non-lawful residence. In relation to the latter, in the UK, as well as in Sweden, access to the vast range of social assistance benefits is mediated by a criterion that narrows the indications of the Citizenship Directive. In both countries, migrant EU citizens are required to be "habitually resident" in the country. This means, in the case of Sweden, that a person moving to Sweden must prove to the local authority not only his or her intention to stay in Sweden for at least one year, but also that s/he will be lawfully residing, during that period, in a specific municipality. Similarly, in Croatia, the minimum income is unavailable until the EU citizens have been granted permanent residency (meaning after five years of continuing residence), fulfilling the criterion of financial capacity to support themselves and their family members. In Italy, as seen in the previous section, the restriction is even stronger, and more important, not in line with Directive 2004/38. Although this country has not yet developed a nationwide minimum income measure, entitlement to the 'social allowance' devoted to the elderly population requires, since 2009, that EU citizens have been continuously resident for at least ten years, twice the period required by Directive 2004/38.

In relation to the aim of this deliverable, the element worth mentioning relates to the income threshold requirement for access to social assistance. In the Netherlands and the UK, access to subsistence for workers – who, as we have seen, except for persons who reside for at least five years in the host State, constitute the only category of EU citizens fully entitled to receive subsistence benefit – is regulated through income thresholds. According to Deliverable 6.2, in the Netherlands, EU citizens are regarded as workers or self-employed by the IND (the immigration authorities) if they perform genuine and effective work, i.e. if they earn more than 50 percent of the applicable public assistance rate (i.e. 1524 euros a month for a couple, or 1060 euros for a single person in 2016), or if they work at least 16 hours per week. Similarly, in the UK, the Minimum Earnings Threshold requires an average weekly income at, or above, the prevailing primary earnings threshold (the point at which a person becomes liable to pay national insurance in the UK) over the previous three months of £155 per week (2015/16 tax year), which equals 24 hours a week at minimum wage level. These measures, that are not in line with directive 2004/38, introduced to protect the national social assistance system from welfare tourism, may hinder access to subsistence benefits by those categories of workers that have the greatest need of income support due to their low level of pay or limited hours of work. As reported by Deliverable 6.2, in the UK, the weekly earning threshold has a substantial impact on the part-time workers employed in low-pay sectors, that are usually migrant- and female-dominated, like domestic work and care.

In regard to the practice followed by EU citizens in applying for subsistence benefit, the analysis of the deliverable allowed identification of two interesting aspects related to (financially dependent) family members' entitlement. As we have seen, the EU regulations provide that, when EU citizens are recognized as workers, they and their (dependent) family members are entitled to subsistence benefit. In Denmark, the national regulation states that citizens are eligible for social assistance when they cannot provide for their own needs and have no spouse/partner who can do so; that is, if they have no capital. This criterion gives rise to a possible paradox: if both partners have no capital, then they may be recognized as non-worker citizens, and thus barred from access to the benefit inasmuch as they are not active citizens. The regulation applied to the resident permit in Italy clearly exemplifies this paradox. In order for EU citizens (and TCNs) to be entitled to a resident permit, they must demonstrate that they have an income above a set threshold, which is usually the amount provided by the social security cheque: in other words, the amount which defines if a person is entitled to income support measures. As in Denmark, EU mobile citizens who are dependent family members of a regularly employed person are granted social support, while if they, or their family members, are not able to provide for themselves financially, not only are they not entitled to social support, but also their stay in the countries is at risk.<sup>28</sup> Other elements suggest that this category of EU citizens – non-

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<sup>28</sup> However, recent national law cases suggest that this paradox could be overcome. In 2009 a regional court (Genoa) ruled that foreign citizens are basically excluded from income support measures because they do not meet the self-sufficiency requirements to be recognized as fully resident citizens and are therefore *de facto* excluded also from the benefit.

economically active citizens, and in some countries also jobseekers – can experience difficulties in accessing subsistence benefits. The regulations governing eligibility for the recently introduced *universal credit* benefit in the UK – which has replaced a broad set of income and family support benefits<sup>29</sup> – provides that, apart from the exclusion from social benefits of jobseekers that stay in the country for less than 3 months, also jobseekers who have already worked and lived in the country for years may be barred from accessing the universal credit benefit in the case of unemployment. Although this strict regulation may have negative consequences for several categories of EU citizens, one possible interesting consequence regards single mothers. In this case, unemployment can affect the quality of life of the mother and her children and may hinder their permanency in the country.<sup>30</sup> A Dutch case analysed in Deliverable 6.2 leads to similar considerations. This case<sup>31</sup> concerned a Bulgarian woman and single mother resident in the Netherlands for more than 3 months but less than 5 years, who applied for a social security payment. The woman supported her application by indicating that after her divorce she had been self-employed, and therefore economically active. The national court considered her work activities marginal and ancillary and rejected her claim. In response, the claimant required special attention for the vulnerable position of herself and her daughter, but the national court concluded that she had no lawful residence in the Netherlands in the disputed period and therefore did not belong to the category of beneficiaries under the WWB (Dutch social assistance act). As in the *Dano* and *Alimanovic* judgments, this case suggests the existence of practical barriers against access to subsistence benefits which have both gender and generational elements. Although there is no direct gender discrimination in the legal frameworks analysed, it is important to note that all three law cases concerned women that claimed income support benefit for themselves and for their children. In other words, it can be argued that being a mother (but not a father) makes it more difficult in practice to claim income support. According to available quantitative data (EU Commission, 2014), EU-citizen migrant women are over-represented among the intra-EU mobile population and find it more difficult to enter the receiving labour market compared to nationals, which can result in precarious working conditions. Moreover, in the case of family breakdown, the children's care and responsibility very often falls on women. The conjunction of these two elements suggests that the 'economically active' principle that governs access to subsistence benefits could discriminate EU citizens in a particular time of need during their life-courses, also conditioning the lives of their children and of younger generations.

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<sup>29</sup> In 2015 the universal credit was introduced. This is a new single benefit payment that will replace the existing benefits in the UK : the income-based jobseeker's allowance, income-related employment and support allowance, income support, child tax credit, working tax credit, and housing benefit.

<sup>30</sup> To be noted is that Deliverable 6.2 highlights that in the UK the local authorities must provide basic support (including food and housing) for parents or carers of children under the age of 18 who are not eligible for publicly funded benefits in relation to migration matters, and if withholding or withdrawing support would breach the child's (and family's) human rights.

<sup>31</sup> NL:RBAMS:2013:BZ5689.

## **THE RIGHT TO HEALTH CARE**

Health policy in the European Union has a fundamental contradiction at its core. As noted by Mossialos (*et al.* 2010, 5), on the one hand, the EC Treaty states explicitly that health care is the responsibility of the Member States. On the other hand, because member-state health systems involve persons, goods and services, all of which are granted freedom of movement across borders by the same Treaty, many national health activities are in fact subject to EU law and policy. This suggests that in the analysis of the Gender and Generational barriers to health services for EU mobile citizens, in line with what we have seen in relation to subsistence benefits, the freedom of movement of citizens and Directive 2004/38, namely the requirements of residence right, are key aspects.

As regards the right of EU citizens to be entitled to health services, the analysis of the selected countries yields limited observations in relation to gender and generational barriers. Access to healthcare services seems to be more straightforward than what we saw for subsistence benefits, although this does not result in the absence of access barriers for EU mobile citizens. The main and common criterion that regulates access to the national healthcare system in the countries analysed concerns lawful residence by EU citizens in Member States, and thus involves Directive 2004/38.

A further level of divergence among countries on access to services mainly arises in relation to organization of the national healthcare system. As emerges from Deliverable 6.2, an important element of differentiation among countries, which impacts on EU citizens' access to healthcare services, is the national orientation towards universal or contributory systems. Denmark, Sweden Italy, and the UK have (basically) a universal system of health care. In these systems citizens must satisfy a period of residence or conditions for registering (for which strict conditions apply) in order to be eligible for care. In Sweden, although all citizens are entitled to receive free health services, EU mobile citizens must fulfill the 'habitually resident' criterion in order to be recognized as residents. This means that EU nationals without work (e.g. jobseekers and unemployed workers) – because they do not meet the one year requirement and because they do not have a right of residence for a full year ahead – are hindered in their access to healthcare services. Similarly, in the UK, where the National Health Service (NHS) is a residence scheme, i.e. free of charge and with entitlement to free NHS treatment of anyone lawfully resident in the country and who ordinarily lives there, for nationals from EEA/EU and Switzerland<sup>32</sup> the main barriers are related to the two criteria applied to residence right – length of stay and economic self-sufficiency. In Denmark, access to the healthcare system is mediated through the Yellow Health Card or CPR number, which, as in the other countries, is issued to citizens lawfully

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<sup>32</sup> For non-EEA citizens a further barrier has been imposed. After introduction of the Immigration Health Surcharge in 2015, in order to receive the visa non-national citizens must pay a fee intended to support the National Health System services provision. The fee is proportional to their length of stay, their prospective occupation (student or worker) and the number of dependent family members. And this is applied also in case of family reunion (<https://www.gov.uk>).

resident in the country. In Italy, EU citizens residing for more than three months and not insured through private companies, must be enrolled with National Health Systems. In principle, EU citizens who are (self-) employed are enrolled with the system and granted the same rights as nationals, and this also applies to their family members. Hence, despite the universalist nature of the Italian national health system, in this country the EU citizen's employment status is crucial in defining the right to access health care, as showed in section 2. It has to be considered that in all the Member States analysed, for EU citizens not entitled to health care services, the national systems provide for care and treatment in emergencies. Apart from emergency care, in these systems, barriers to healthcare services seem to be mainly related to residence rights. The intersection between the gender and generational dimensions has limited explanatory power in this case. Considerations similar to those concerning subsistence benefits apply also to health care (migrant women tend to have more precarious and disadvantaged positions in the receiving country's labour market, so that it may be more difficult for them to obtain the residence rights, which are requested for access to social rights).

Non-universal healthcare systems require fulfilment of a further criterion to be entitled for services. In Poland, the Netherlands, Germany, Spain, Estonia and Hungary, the systems require that claimants have paid contributions in order to be eligible for health care. The obligation then rests on the employee or resident – depending on the nature of the system – to pay contributions. In Hungary, the national health insurance system gives access to the public healthcare sector to any EU national residing in Hungary and registered with the Hungarian authorities. Any EU national who stays in Hungary for more than a year must be insured by either paying for private insurance or contributing to the national health insurance fund. In the latter case, lawfully resident EU citizens must sign a contract with the Hungarian State Health Insurance System (HSHIS), and pay a monthly contribution fee of 31,500 HUF (as of January, 2015), which in the case of full-time students is set at 6,930 HUF. In both cases, those insured through the HSHIS enjoy the same set of services as received by any Hungarian citizen with valid state insurance. Similarly, in Croatia, EU citizens with permanent or temporary residence are required to participate in the national healthcare system, meaning that they pay the same healthcare contributions as a Croatian citizen (which correspond to 20% of the actual cost of the treatment) and register with the Croatian Health Insurance Fund. In Germany, a person residing in the country is, since 1 January 2009, obliged to acquire or maintain private health insurance if s/he is not already otherwise insured under the statutory health insurance plan or by another insurance plan. Lawfully resident employees or self-employed persons, regardless of their nationality, are compulsorily enrolled with the public insurance plan, and thus fully entitled to benefit from healthcare services if their gross regular wages exceed 450 euros per month, and are not above the so-called 'annual wage ceiling'. In the case of minimum income jobs, with a gross regular wage below 400 euros – as for mini-job contracts – workers are not exempted from health insurance. While it is up to employers pay social security contributions, the workers must subscribe to a private health insurance plan. As in the case of subsistence benefits, this aspect can represent a barrier to healthcare services for EU mobile citizens, who are over-represented among low-income and mini-job workers, like women employed in the low-skill sector.

There is another interesting aspect concerning contributory healthcare systems. While such organizations entail direct and easier access to healthcare services by workers – thanks to their rights as tax-payers or insured persons – compared to universal systems, non-active citizens may encounter barriers in accessing healthcare services. In Spain and Poland, the national health systems provide coverage also for EU/EEA citizens who are not able to pay contributions, while in Croatia the "Act on Mandatory Health Insurance and Health Care for Foreigners in the Republic of Croatia" ensures health services to specific groups of not legally residing individuals (e.g. refugees), among them family members of uninsured persons. By contrast, in Hungary, uninsured EU citizens are entitled only to emergency services during the first six months of their stay. In the Netherlands, all citizens, irrespective of their nationality, staying legally or working in the country are obliged to buy health insurance. It is therefore their responsibility to maintain their health insurance even in periods of unemployment.

Possible and further gender and generational barriers may arise in relation to the coverage of dependent family members. Basically, the position of family members living with the insured person in the host country is regulated by Regulation 883/2004. This means that a family member of a person subject to the legislation of a State who is not insured directly by the legislation of the host country (e.g. as resident or employee) is still subject to that system. It seems from Deliverable 6.2, however, that this is not always the case. In Denmark, the Netherlands and Sweden, dependent family members of insured EU citizens are not *de facto* insured. The Dutch health insurance plans, for instance, require that the family members must take out insurance of their own; but citizens aged under 18, whether nationals or foreign, are exempted from liability to pay contributions. By contrast, the Hungarian national report indicates that everyone must be covered on an individual basis by a private insurance company or through the national health insurance system. Thus, in the case of dependent family members, like children, a voluntary contract must be signed on behalf of the child by the parent or by an authorized person, and the relative costs must be paid. Similarly in Italy. However, the family members' coverage represents a minor barrier, since in the countries analysed the legal residence status and the economic situation, especially in the case of minors, derive from the insured family member. The problem arises when there is an uninsured person within the family. All the countries analysed, in fact, provide very little information about this situation, and apart from the treatment guaranteed in the case of emergency care, the absence of an insured person in contributory systems, or a lawfully resident person in universal ones, can exclude the family members from healthcare services. This could be of particular importance for the categories of EU mobile citizens already exposed to other barriers in accessing social rights, like non-active single mothers. Or better, this situation potentially concerns all EU mobile citizens, but it is more serious for those exposed to structural disadvantages in the labour markets of the receiving Member States.

In general, Deliverable 6.2 and national reports suggest that the close connection between being a resident in a Member State and having access to health care is further reinforced by the difficulties of national health systems in calculating, and receiving, payments for care provided to EU citizens. This complexity gives rise to barriers for non-resident citizens, who face strict criteria imposed by national



regulations. From a strictly Gender and Generational point of view, as the title of this Section suggests, health is a basic right and, with the exception of the barriers related to residence and employment condition which emerged also to subsistence benefits, minor limitations can be identified.

### **THE RIGHT TO EDUCATION: STUDY GRANTS**

In this section we focus on the right to study grants for higher education. As stated in the Deliverable 6.2, the study grants are very relevant to EU mobile young citizens. Moreover, the right to study grants is particularly well suited to our analysis because of the specific category of EU citizens that can benefit from them, namely students. This category makes it possible to understand how the access to social rights, and broadly speaking the right of free movement, is conditioned by the purpose of migration by EU citizens. Indeed, is within this category of EU citizens that, according to the EU legal framework, lies the first element of differentiation in access to study grants. This differentiation reflects the recurrent feature already found by our analysis: the employment status and/or work history of EU mobile claimants. The first element of interest in analysis of study grants from a gender and generation perspective is the difference between students who also work and full-time students. In the former case, Article 45 TFEU and Regulation 492/2011, presented in the first section, provide that those who fall within the personal scope of these provisions cannot be discriminated against on grounds of nationality. On the other hand, students who do not satisfy the criteria for qualifying as workers have to rely on Article 21 TFEU if they are not granted study grants on the grounds that they do not satisfy a condition based directly or indirectly (e.g. residence requirement) on nationality.

As in the case of subsistence benefits, the interpretation of the term 'worker' is of especial importance, since those claiming for study grants under Article 7 of Regulation 492/2011 are students who work, so that they work part-time by definition. Considering that if work is only ancillary to study, it does not qualify a person as a worker, as the case of the student-trainee Brown showed<sup>33</sup>, the possibility for students, how is residing in the host Member State for less than five years, to benefit from study grants is strictly connected to their condition as workers. This barrier is further emphasized by the exclusion from entitlement to study grants of job-seekers and former workers (Esmoris Cerdeiro-Pinedo Amado judgment<sup>34</sup>).

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<sup>33</sup> Case C-197/85, [1988] ECR 3205. Brown case concerns a French student who applied for maintenance grant for his engineering study at Cambridge University who could not invoke Article 7(2) of Regulation 1612/68 (the predecessor of Regulation 492/2011) since his training (during which he performed work) was regarded as an obligatory part of his technical studies and thus ancillary to his status as a student.

<sup>34</sup> Case C-33/99, [2001] ECR I-4265.

In the case of EU mobile full-time students, the barriers against access to study grants are even higher. The impossibility of invoking Regulation 492/2011 entails that the main criterion that regulates access to study grants is the claimant's integration in the host Member State. As we have seen, integration is 'measured', among other things, by the claimant's length of stay in the host Member State. Directive 2004/38 allows Member State to exclude persons from study grants for the first five years of residence. According to law cases analyses, a student can claim a study grant after a period of three (Bidar judgment<sup>35</sup>) or, in line with Directive 2004/38 five years (Förster judgment<sup>36</sup>) in the receiving country. This criterion excludes students that move to another Member State with the specific purpose of obtaining a university degree, since, usually, their length of stay does not meet the one required for study grants.

In regard to the countries analysed, the first difference lies in the availability of benefits targeted on students in order to support their careers. Nordic countries, the Netherlands, Estonia, and the UK are the most generous countries in relation to study grants. In Spain, the recent economic crisis, with its impact on the public budget, has narrowed the criteria that regulate the access to study grants, for both national and foreign citizens, and only 25 per cent of students (nationals and foreign) benefit from a grant, and of these the majority only receive exemption from tuition fees. In Poland and Croatia, foreign students are excluded from the possibility to receive benefits in support of their careers. By contrast, In Italy, nationals, EU citizens and TCNs, if legally resident, can compete on equal ground in accessing (limited) scholarships, tax reductions, and public accommodation, which are granted to students according to their household's financial condition (means-tested). However, financial support for higher education in Italy is granted to only a limited number of students, and it usually concerns tax deduction rather than income support. In Hungary, access to study grants is an interesting case in regard to the difference between full-time and part-time students. As in Italy, these benefits are granted through means-tested mechanisms usually on parent financial availability, and restrictions on study grants include full-time enrolment and specific conditions related to the type of assistance (merit or social status). This case indicates that, contrary to what was stated above, part-time students are *de facto* excluded from study grants regardless of the type of activities that they perform. In the Nordic countries, as well as in the Netherlands and the UK, access by EU citizens to study grants is difficult. In the case of full-time students, the Netherlands and Denmark require that students must have been resident in the country for a continuous period of five years or more, or hold a permanent right of residence. In Sweden, two years of residence are required in order to be eligible for study grants, but differently from the other countries, this threshold is applied also in the case of workers. In the Netherlands, working students are eligible for study grants only if they work more than 56 hours a month, i.e. 40 per cent of the average number of working hours per month. Similar conditions are applied also in the UK, while in Denmark, but only since recently (2013), working students from other

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<sup>35</sup> Case C-209/03 [2005] ECR I-2119.

<sup>36</sup> Case C-158/07, [2008] ECR I-8507.



Member States are allowed to claim study grants provided that their work is not ancillary to their status as students.

These findings suggest that a generational barrier can be identified in relation to the right to study grants, especially if the condition of EU citizens who decide to move to another Member State with the purpose of studying is compared with that of those who move with employment purposes. UE migrant full-time students can access study grants on the same conditions as nationals only after having completed their university studies, since, except for a few cases (Sweden, Italy and Hungary), the countries analysed require between three and five years of residence in order to be eligible for study grants. On the other hand, EU mobile workers how also study can access study grants on the same conditions as nationals.. Additionally, the analysis suggests another interesting aspect. For EU mobile students, the differences among countries in access to study grants are in part mitigated by the availability of these benefits. In countries where study grants are more widespread, EU students are almost barred from these benefits mainly through residence requirements. Apart from cases where non-national students cannot benefit from study grants, in the remaining countries the absence of barriers to EU mobile students is coupled with the very scant availability of these benefits.

The export of study grants can in part mitigate the barriers highlighted above. Students, in some countries, can study in other Member States and receive study grants more or less on the same conditions as their peers. Indeed, in countries with a generous study grants scheme, students are allowed to export study grants under certain conditions. In Denmark, Danish nationals and EU citizens considered to be workers or self-employed pursuant to EU law and their family members can export study grants for study in other Member States after a period of two years of residence. In Sweden, citizens who study abroad and have to maintain their residence in the country of origin, if they fulfill the two-year residence criterion, are allowed to export study grants. Similar conditions are applied in Germany, while in Estonia no restriction on the export of study grants has been identified. In the UK and the Netherlands some restrictions are imposed. In the former country, UK citizens are eligible for financial support/study grants lower than those that they would receive if they remained in the UK, and they are not entitled to maintenance grants, contrary to citizens who study in the UK. In the Netherlands, the Ministry of Education determines an annual ceiling (in euros) for study loans to be exported that concerns applications from both nationals and foreign students (that fulfill the residence criterion). In the other countries analysed (Spain, Italy, Croatia and Poland) there are no such measures. In these countries, students who decide to attend university abroad must rely on their own financial resources, except for the Erasmus exchange programme.

The analysis on the export of study grants highlights the double penalization of students from countries with less generous social systems, such as Poland, Spain, Italy, Hungary and Croatia. They are hindered in access to study grants in the receiving Member States by national and EU law, and they cannot export study grants since such measures do not exist in their countries of residence. Therefore, in terms of access to and export of study grants, the findings suggest that EU (full-time) students from these countries are exposed to an important generational barrier.

As suggested by Deliverable 6.2, *'[s]tudy grants are in several respects a category different from subsistence benefits, since the recipients of study grants are persons whose free movement is basically encouraged [, and they] have had an important meaning for the development of the concept of EU citizenship.* Nevertheless, close analysis of the rights to study grants from a gender and generational perspective suggests that EU students, as non-economically active persons, are exposed to significant barriers in their access to study grants. Compared to health care and subsistence benefits, the analysis shows that Member States have more discretion in regulating access to study grants, as the differences among countries highlight. The export of study grants in part compensates for the barriers that EU citizens face in relation to access to these benefits, but only for citizens coming from countries with generous schemes. This consequently results in a worsening of inequality of social support among young EU citizens within EU countries. Similarly, Yerkes and Knijn (2018), in their study on the EU's young adults' mobility policy, suggest that there is little recognition of the social and civil rights of young adults. The results of the analysis of study grants go in the same direction. They indicate that, although students are seen as the main beneficiaries of the EU free mobility, this mobility is hampered by their difficulty in accessing social rights. And the main element which explains this difficulty is the classification of students as not economically active citizens.

### **THE RIGHT TO HOUSING**

Among the four areas of social rights analysed in Deliverable 6.2, housing benefits are those least encompassed by EU legislation, reflecting the greater specificity of this right compared to the others analysed.

Citizens who have their main residence in Denmark are entitled to housing benefits provided that they fulfill the residence requirements. Generally, subsidies are only given in respect of rented housing, with the exception of retired people, who may be entitled to the subsidy even if they own their home. Persons with a retirement pension from other Member States are put on an equal footing where the pension is covered by Regulation 883/2004. Similarly, in the Netherlands there is formally no distinction between Dutch and European citizens in relation to housing benefits. The only requirement is that claimants must be legally resident in the country: hence EU citizens can apply for housing benefits after 5 years of residence. In the UK the Allocation of Housing and Homelessness regulations<sup>2</sup> can be applied to persons habitually resident in the UK. This means, as we have seen before, that only EU citizens lawfully resident in the country, e.g. those who stayed more than 5 years in the country or (self)employed persons after the initial 3 months' period, are entitled to claim this social support. Since introduction of the Immigration Act in 2014, jobseekers have been excluded from the possibility to claim housing benefits. In addition, this benefit is one of the income-related benefits potentially affected by the minimum earnings threshold test described above, so that EU citizens in a disadvantaged position in the labour market may be excluded from housing benefits.

In Sweden, the right to accommodation is not an individual and enforceable right, and housing benefits are reserved for vulnerable categories of citizens, such as low-income earners (usually students), families and persons with impaired health, and seniors. To be eligible for housing benefit an individual must be considered 'habitually resident'. As seen above, this requires not only that the person has the intention of staying in Sweden for a year but also that s/he can prove that s/he has the right to legally reside in Sweden during that period of time. Usually, a common 'integration link' is an economic activity that lasts more than one year. In Spain, the right to housing is not considered a strong right, so that neither Spanish nationals nor nationals from other EU Member States have a real right to decent and adequate housing. In Poland and Estonia, there is no housing policy and there are no subsidies for accommodation.

The first consideration on the right to housing concerns the disparity between countries in which that right is recognized, and countries in which there is no individual and enforceable right in relation to (decent) accommodation. In general, housing benefits are attached to a right less strong than in the other areas of social support investigated, so that the barriers imposed on EU mobile citizens are less identifiable. Moreover, considering that these benefits are provided to categories of financially vulnerable groups, the residence requirements can represent a significant barrier against access to these benefits by EU mobile citizens. In relation to the gender and generational perspective, in the countries where these benefits are provided, residence requirements – which are related to the length of stay and the employment status of EU mobile citizens – can hinder access to housing benefits by non-economically active persons, such as students, or, in the UK, disadvantaged workers who cannot fulfill the minimum income threshold.

## CONCLUSIONS

This deliverable has focused on gender and generational aspects concerning access to social rights by non-national citizens, particularly EU mobile citizens, in twelve countries (Estonia, Denmark, Germany, the Netherlands, Poland, Spain, Sweden, the UK, Italy, Hungary, Croatia and Israel). The aim of this report has been twofold. The first purpose has been to understand whether the gender and generational dimensions play a role in defining or affecting access to social rights by EU mobile citizens. The second goal has been to understand whether the gender and generational analysis highlights specific categories of EU mobile citizens in relation to access to social rights.

This work has explored how welfare generosity and national and EU law relevant to social rights shape the barriers encountered by EU mobile citizens and their family members in accessing social rights when they move to other European countries. For this reason, G&G implications in regard to social rights access have been addressed by looking at both national law and EU regulations, and how these intersect with EU mobile citizens' socio-demographic characteristics and welfare generosity. Although the focus on specific areas of social rights prevents generalization of the results, some recurrent themes, or indirect barriers from a gender and intergenerational perspective, have been found.

The first consideration is that, in relation to the level of social protection granted to migrant EU citizens, the national welfare regime's characteristics matter only once the migrant is entitled to claim benefits. In this regard, with the additional analysis of four countries provided in this report it is possible to confirm (see Deliverable 6.1<sup>37</sup>) an inverse relation between the strictness of access requirements and welfare generosity. The eligibility criteria tend to be stricter in countries with more generous welfare states, whereas fewer barriers to access are identifiable in countries characterized by a low level of social support.

The receiving welfare systems do not seem to be crucial in shaping G&G barriers affecting UE migrant citizens' access to social rights. According to the meta-analysis presented in this deliverable, access mainly depends on meeting residency (in the Netherlands, Italy and Germany) and/or registration requirements (in Denmark and Sweden) and/or a worker status/income (especially in the UK, and to some extent in Italy), as well as on the propensity of Member States to implement, at the national or local level, further selective criteria on the EU citizens' entitlements. At the same time, in Estonia,

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<sup>37</sup> Available at: [http://beucitizen.eu/wp-content/uploads/Deliverable-6.1\\_final1.pdf](http://beucitizen.eu/wp-content/uploads/Deliverable-6.1_final1.pdf)

Poland, Croatia, Hungary and Spain, the social rights of residents are in general comparatively limited, and therefore of no great importance for EU mobile citizens.

On a legal basis, the analysis has suggested the absence of gender and generational discriminations.

However, the analysis suggests that there are barriers, and more specifically family issues, that affect the level of social protection bestowed on (specific categories of) EU mobile citizens.

Indeed, indirect G&G issues may emerge. As long as the residence or registration depends on the EU national's employment position, the most disadvantaged EU mobile citizens in the paid labour market, among whom women (mothers) and young people are over-represented, may encounter practical barriers in accessing social rights.

On adopting an intersectional perspective and intersecting categories such as gender, age, employment status, family structure and citizenship, issues related to gender and generational aspects emerge, indicating also the existence of a civic stratification faced by EU mobile citizens in their concrete access to social benefits. Among the areas considered, subsistence benefits and study grants are those most covered by case law of the Court of Justice on social rights and European citizenship. This stems from the specific characteristics of the beneficiary population of these benefits, usually students, jobseekers, and unemployed workers, hence non-economically active persons. Health care and housing benefits provide for limited observations in relation to gender and generational barriers. Although differences between contributory and universal systems are identifiable, the access to health care rights may be hindered for non-lawfully resident citizens, and their family members, but it is difficult to disentangle this category further. The analysis of housing benefits has suggested that, in those countries where such benefits are recognized, nationality plays a secondary role, since this right is targeted on vulnerable categories of citizens.

The self-protection of Member States against 'welfare tourism'<sup>38</sup>, which in relation to EU law is enshrined in the requirement that EU citizens must "not become an unreasonable burden for the national social system", is the core element that explains the gender and generational barriers to social rights. As we have seen, the economic condition of EU citizens (active or non-active) is the main discriminant between *outsiders* and *insiders* in relation to access to social rights. Moreover, this principle influences also the requirements applied to residence rights because it constitutes an element of the 'link approach' used to evaluate the right of residence. The gender and generation perspective suggests that the interaction between national criteria, defined in accordance with the EU framework, and demographic and socio-economic characteristics of EU citizens reveals that specific categories of citizens may be hindered in their access to social rights. Whilst the EU Charter of Fundamental Rights (2009) and the Free Movement Directive (2004/38/EC) have clearly expanded access by EU citizens to social rights when they move to or reside in other Member States, some

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<sup>38</sup> Work package 7 of Beucitizen project has focused on other forms of 'tourism', as reproductive tourism, matrimonial tourism ( <http://beucitizen.eu/publications/?so=&wp=18&th=&res=&search=> ).

barriers persist, in the first five years of residency in the receiving country, for those EU mobile citizens who are not “economically active”, including in this concept only the paid labour market, and excluding, as we have seen, for example students, inactive family members who are not paid carers, and retired persons.

This analysis does not have direct G&G implications. However, indirect gender implications emerge if we consider the high female rate of migrants for family reasons – women following their employed partners. In this regard, it is important to note the highly gendered transnational intergenerational care obligations for female members within (EU) migrant families, both migrant and left behind (see Baldassar, Baldock and Wilding 2007; Kofman and Raghuram, 2015). In fact, these family members support the mobility projects of the others (especially men) by enabling their occupational participation in the destination country. Family members excluded from the labour market of the receiving country have neither the direct benefits provided by paid work nor some of the (directly or indirectly) work-related social rights enjoyed by workers.

The categories most exposed to civic stratification seem to be ‘non-economically active’ persons, students, and dependent family members; while, in relation to economically active persons, the analysis suggested that workers employed in low-income and usually female-dominated sectors may be hampered in their access to social rights.

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