Exploring the Links between Residence and Social Rights for Economically Inactive EU Citizens

Sandra Mantu

Centre for Migration Law, Radboud University Nijmegen, The Netherlands
s.mantu@jur.ru.nl

Paul Minderhoud

Centre for Migration Law, Radboud University Nijmegen, The Netherlands
p.minderhoud@jur.ru.nl

Abstract

This article examines the links between residence and social rights in the context of EU citizens' mobility. It builds on national replies to a questionnaire concerning the implementation and application of Directive 2004/38 at the national level. Our focus is on how the EU28 are implementing the provisions on social assistance for economically inactive EU citizens, including five relevant European Court of Justice (ECJ) judgments in this area (*Brey*, *Dano*, *Alimanovic*, *Garcia-Nieto* and *Commission v UK*) and the provisions on permanent residence status. Based on the national replies we argue that asking for social benefits becomes a first step towards being considered by the administration as an unreasonable burden, which leads to the termination of EU residence rights. Our analysis shows that asserting and maintaining residence rights under Articles 7 and 16 of Directive 2004/38 is becoming problematic for certain categories of EU citizens and linked with the more restrictive position taken by some Member States in relation to accessing their national social assistance systems.

Keywords

residence – permanent residence – social assistance – sufficient resources – comprehensive medical insurance – EU28

1 Introduction¹

This article discusses the links between residence and social rights in the context of EU citizens' mobility. It is based on a monitoring effort examining EU28 national practices in relation to the social assistance and permanent residence rights of EU citizens over the time frame 2014–2016.² Moreover, it seeks to identify issues relevant for the effective exercise of EU citizenship rights in these specific areas of law. This monitoring effort was part of the 2015–2018 Jean Monnet Centre of Excellence work programme implemented by the Centre for Migration Law (Radboud University Nijmegen). Information on national practices was obtained through a questionnaire that was sent out to 28 national experts. The questionnaire addressed three main themes: social rights and economically inactive EU citizens, permanent residence and, family reunification for EU citizens. For the purposes of this article, family reunification is not addressed. Our analysis is based on the expert national replies, which are all on file with the authors. In-depth analyses of all three themes can be found here.

The question we seek to answer in this contribution is 'what are the consequences of asking for social benefits on establishing and maintaining a right of residence under Directive 2004/38 for economically inactive EU citizens?'. Based on the analysis of the national replies to our questionnaire, we seek to argue that asking for social benefits becomes a first step towards being considered by the administration as an unreasonable burden, which leads to the termination of EU residence rights and even expulsion. Our analysis shows that asserting and maintaining residence rights under Articles 7 and 16 of Directive 2004/38 is becoming problematic for certain categories of EU citizens and linked with the more restrictive position taken by some Member States in relation to accessing their national social assistance systems.

2 Establishing A Right of Residence

Based on Article 6 Directive 2004/38 EU citizens have the right to enter any EU Member State without any conditions or formalities, other than the requirement to hold a valid identity card or passport, for 3 months. When it comes to residence for longer than 3 months, Article 7(1)(b) Directive 2004/38

1 This article is based on research performed as part of the Centre of Migration Law's Jean Monnet Centre of Excellence work programme 2015–2018 funded by the European Commission under contract number 565027-EPP-1-2015-1-NL-EPPJMO-CoE.

2 National replies to the questionnaire are on file with the authors.

stipulates that economically inactive EU citizens need to show that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of their host state, and that they have comprehensive sickness insurance. A recurring issue in ECJ jurisprudence is whether sufficient resources can be derived from social benefits paid by the host state to an economically inactive citizen. Article 24 Directive 2004/38 entitles EU citizens residing on the basis of the Directive in a host Member State to enjoy equal treatment with nationals of the that state within the scope of the Treaty. Article 24(2) sets out exceptions to the general rule: the host Member State can exclude mobile EU citizens from social assistance for the first three months of their residence; jobseekers can be excluded from social assistance while seeking out work; Member States can limit the grant of maintenance aid for studies including vocational training to EU citizens who have acquired permanent residence and to economically active EU citizens and their family members. Our questionnaire sought to gain info on national practices concerning a) the notion of sufficient resources; b) the impact of ECJ jurisprudence dealing with social benefits claims, and c) the notion of comprehensive sickness insurance.

2.1 *Sufficient Resources*

One of the crucial questions for establishing a right of residence under Article 7 of Directive 2004/38 is when do inactive Union citizens have sufficient resources. According to Commission guidelines published in 2009, the notion of 'sufficient resources' must be interpreted in the light of the objective of the Directive, which is to facilitate free movement, as long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State.³ The first step to assess the existence of sufficient resources should be whether the EU citizen (and family members who derive their right of residence from him or her) would meet the national criteria to be granted the basic social assistance benefit. EU citizens have sufficient resources, according to the Commission's guidelines, where the level of their resources is higher than the threshold under which a minimum subsistence benefit is granted in the host Member State. Where this criterion is not applicable, the minimum social security pension should be considered.

3 COM (2009) 313 final, Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Section 2.3.1. Sufficient resources.

At the same time Article 8(4) of Directive 2004/38, which is the relevant provision in this context, prohibits Member States from laying down a fixed amount to be regarded as 'sufficient resources', either directly or indirectly, below which the right of residence can be automatically refused. The authorities of the Member States must consider the personal situation of the individual concerned. Unfortunately, the text of Article 8(4) has a rather ambivalent character. On the one hand, a fixed amount is prohibited, but on the other hand, a threshold at the level of a social assistance benefit is indicated. During the 2002 and 2003 negotiations on Directive 2004/38, the wording of the provision addressing 'sufficient resources' was highly debated by some Member States and the Commission, which has probably contributed to the text's ambivalence.

In light of this ambiguity, it is important to scrutinize how the notion of 'sufficient resources' is defined in Member State legislation and how it is applied by the administration and reviewed by national courts. The national replies show that while in all Member States the notion of sufficient resources is recognized in national legislation, a concrete definition of the concept is not always present. It is possible to distinguish between:

- Member States with a **clear definition** in their legislation (Belgium, Croatia, France, Italy, Latvia, Malta, Netherlands and Portugal). Usually, the definition is linked with the national level at which a person becomes entitled to social assistance benefits or with the national minimum income level.
- Member States with **no clear definition** in their legislation but where the administration uses a fixed threshold set at the level of the social assistance benefit (Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Ireland, Lithuania, Poland, Romania and Slovenia).
- one Member State (Ireland) with **no definition** and **no fixed threshold**.

The 2015 Irish Regulations do not define a fixed sum of money in relation to the notion of 'sufficient resources'. There is no mention of 'taking into account the personal situation of the person concerned', nor do they state that the amount of sufficient resources shall not be higher than the threshold below which nationals of Ireland become eligible for social assistance, or higher than the minimum social security pension paid by Ireland, as stipulated in the Directive. The lack of any reference to these criteria in the 2015 Regulations could be considered as insufficient transposition of the Directive.

In a few Member States the legislation and administration provide the possibility to have an individual assessment of the possession of sufficient resources (Germany, Denmark, Finland, Spain, Sweden and the UK) sometimes referring explicitly to Article 8(4) of Directive 2004/38. This is an important aspect since in practice the level of social assistance is taken as an indication

of having resources or not. Where individual assessment takes place, the possession of resources below the general threshold will not automatically lead to a conclusion of lack of resources.

In five Member States (Finland, Spain, Germany, the Netherlands and the UK) the issue of sufficient resources has been subject of court cases, mostly dealing with the question whether the resources the EU citizen had could be seen as sufficient in spite of the fact that they were less than the threshold of the social assistance level. In Finland, the Supreme Administrative Court decided on the requirement of sufficient funds as a condition for registering the right of residence of a Dutch national who stated that he had an European Health Insurance Card (EHIC)⁴ and that his partner's family would cover his normal living expenses and his own father would provide him with money for clothes and other expenses. The Court noted that the central criterion for assessing 'sufficient funds' under the Finnish Alien Act is that the applicant does not repeatedly have recourse to subsistence benefits and, thus, does not become an unreasonable burden on the social assistance system. The Court further noted that the Aliens Act does not include specific provisions on the amount and source of 'sufficient funds' or what kind of proof the applicant must present for their existence.⁵ From several Dutch court cases on this issue, it can be concluded that the Dutch immigration authorities apply a fixed amount at the level of a social assistance benefit as a condition of sufficient resources, not taking into account Article 8(4) Directive 2004/38, while the courts do take into account the personal situation of the EU citizen and tend to accept a lower amount of money to fulfill the condition of sufficient resources.⁶ The German jurisprudence on this issue is occasional, and there is no clear pattern discernible. Often references to the sufficient resources' criterion presents itself as an integral part of a broader judicial dispute, which revolves around other issues, i.e. the question of resources alone rarely seems to be controversial in itself, only in combination with other factors. One element should be noted: courts maintain that there is a rebuttable presumption to the benefit of individuals that they have sufficient resources if they do not claim income

4 The European Health Insurance Card (EHIC) can be used to cover any necessary medical treatment due to either an accident or illness during a temporary stay in another EU/EEA Member State. The EHIC entitles the holder to state-provided medical treatment within the country they are visiting and the service provided will be the same as received by a person covered by the country's 'insured' medical scheme.

5 KHO:2015:28.

6 See P. Minderhoud (2016) 'Sufficient resources and residence rights under Directive 2004/38', in: H. Verschueren (ed), *Residence, Employment and Social Rights of Mobile Persons. On How EU Law Defines Where They Belong* (Cambridge, Intersentia), p. 47–73.

support while in Germany, whereas it can be an indication that they do not have sufficient resources if they claim income support.⁷ Again, the final verdict will depend on an individual assessment: in one case, the court ruled that the fact a citizen claims a relative amount of income support, which is lower than the maximum level for two months, cannot be taken in itself as indication that there are not sufficient resources.⁸

A general conclusion could be that the variety of approaches linked to the concept of 'sufficient resources' will undoubtedly give rise to confusion amongst Union citizens exercising their free movement rights.

2.2 *Sufficient Resources and Social Assistance—ECJ Case Law at the National Level*

Once an economically inactive EU citizen makes a request for social assistance from her/his host Member State, some national authorities take the view that the EU citizen in fact does not comply with the requirement of having sufficient resources and her/his rights of residence should be terminated. A more nuanced position would be to argue that an inactive EU citizen applying for a social assistance benefit because s/he lacked sufficient resources, keeps a right of residence under Directive 2004/38 until the moment this right is withdrawn, on the ground that s/he had supposedly become an unreasonable burden to the social assistance system. The ECJ has recognised the right of the host Member State to end the right of residence of the person concerned, but added that this should not be or become 'the automatic consequence of relying on the social assistance system'.⁹ Between 2013 and 2016, five important ECJ judgments have been delivered on this topic (the *Brey*, *Dano*, *Alimanovic*, *Garcia-Nieto* and *Commission v UK* cases). The cases mentioned above deal with the entitlement of EU citizens to social benefits in their host state and explore the limits of social solidarity to which mobile EU citizens are entitled. They have changed the landscape concerning access to social assistance benefits for inactive mobile EU citizens and minimised the principle that there should be a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States resident there. As a result, the more restrictive position mentioned at the beginning of this paragraph has gained ground. In order to understand better the links between residence rights and claiming social

7 See, by way of example, Verwaltungsgerichtshof (Regional Administrative Court) Bayern, decision of 03.02.2015, 19 CS 14.2276, para 6; Oberverwaltungsgericht (Regional Administrative Court) Saarland, decision of 05.10.2016, 2 B 248_16.

8 Verwaltungsgerichtshof Bayern, *ibid.*, para 7.

9 Case C-184/99 *Grzelczyk*, EU:C:2001:458, para 43; Case C-456/02 *Trojani*, EU:C:2004:488, para 3.

rights, we asked national experts to discuss the impact of these cases in their Member State in terms of legislative changes and/or legal and administrative practices.

Regarding the impact of the case-law, a distinction can be made between:

- **Member States where there was no impact** (Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovenia, Slovakia, Spain and Sweden)

We notice that in the majority of Member States, the case law did not have impact. However, the reasons for no impact varied. Some Member States such as Italy and Greece do not have the kind of social (assistance) benefits similar to those at stake in the various ECJ cases. In other countries (Cyprus, France, Lithuania, Slovakia, Slovenia and Spain) the restrictions for accessing social provisions, similar to the ones challenged by the applicants in *Dano*, *Alimanovic* and *Garcia Nieto*, were already in place prior to the ECJ judgments in these cases. In these Member States, national authorities were already applying the more restrictive position that was vindicated by the ECJ.

- **Member States with indirect impact** (Sweden, Poland and Denmark)

In these Member States there was no direct influence on judicial practices, but the issue was addressed in governmental reports and in legal literature. It generated an increased focus on the issue of granting social benefits to EU citizens and the notion of ‘benefit tourism’. In Sweden, a 2017 Official report of a governmental investigation committee found that the ECJ case law involves a restriction of the free movement of economically inactive EU citizens.¹⁰ Social benefits based on an individual-needs assessment as well as some of the special non-contributory cash benefits and social assistance can be made subject to a requirement of residence. Concerning more traditional social security benefits, the committee suggested certain legal amendments are needed in order to adapt Swedish social security law to internationalisation. The report suggests that a person should have the right to have his claim examined in order to determine if social security law is applicable, considering his personal circumstances, and if the decision is positive, a certificate should be issued giving proof of such a status. The decision could be subject to an appeal before a court. When deciding if a person should be considered having residence in Sweden, all relevant circumstances should be considered. An exception to a positive decision could be based on ‘special circumstances’. The committee recommended to clarify Swedish social security law with a view to ensure that having a right to, for instance, housing allowance and elderly income support, a person must have a residence right in Sweden. It

¹⁰ Official report (SOU) 2017:05, Part II, p. 606.

is the intention that these suggestions become law in 2019 if approved by the parliament.

In Denmark, the granting of social benefits to EU citizens and the notion of 'benefit tourism' have been high on the political agenda of the last few years. The notion of 'unreasonable burden on the host Member State's social system' and the possible loss of residence rights gained prominence in guidelines issued to the administrative authorities as well as in explanatory remarks to the Bill introducing the 'integration benefit'.¹¹ The 2015 *Briefing to the State Administration about the EU Residence Order* addresses the possibility of becoming an unreasonable burden, the loss of residence rights for that reason as well as the requirement on conducting a proportionality test. The Briefing refers to the *Dano* decision and notes that '[i]t follows from recent practice from the ECJ that a Member State may refuse the granting of social benefits to economically inactive Union citizens who exercise their right of free movement solely in order to obtain social assistance in another Member State'.¹² The increased focus is likely to have been caused by the cases of the ECJ, but may also be seen as a result of the tightened control on EU citizens. No information is available on whether this resulted in changes to administrative practices regarding EU citizens. Regarding the *Commission v UK* judgment, the Minister of Employment in response to questions from a Danish MP concerning the possible impact of that case in Denmark concluded that the issue at stake in *Commission v UK* is not relevant as Danish practice already follows the Court's approach.

– **Member States with direct impact** (Germany, Portugal, Ireland, Malta, Netherlands, Finland, Austria, UK)

As three of the ECJ cases concerned the German welfare system, it was expected that this jurisprudence would have direct effects in Germany. In this article, we do not discuss in detail the German situation since it is examined in the article by Stamatia Devetzi in this special issue. Nonetheless, we would like to mention the exceptional situation generated by ECJ jurisprudence. In spite of the ECJ's decision that the German provisions were in line with EU law, the German Federal Social Court decided that in certain circumstances economically inactive EU citizens should be able to access social assistance

11 By Act No. 1000 of 30 August 2015, available at <https://www.retsinformation.dk/Forms/R0710.aspx?id=174123>.

12 The Immigration Service, 'Orientering til Statsforvaltningen om EU-opholdsbekendtgørelsen,' EU Briefing No. 2/15 of 26 November 2015, p. 32, available at [http://www.statsforvaltningen.dk/sfdocs/EU-omr%C3%A5det/Vejledning%20\(prim%C3%A6r%20bev%C3%A6gelse\).pdf](http://www.statsforvaltningen.dk/sfdocs/EU-omr%C3%A5det/Vejledning%20(prim%C3%A6r%20bev%C3%A6gelse).pdf).

based on the provisions of the German Constitution that uphold the right to human dignity. This more nuanced position led to legislative intervention and the adoption of rules stating that inactive EU citizens are not entitled to social assistance benefits for the first five years. These new legal provisions confirmed the more restrictive position of the ECJ. The fact that the compatibility of these rules with the German Constitution remains open for debate, leads us to argue that the German case illustrates the possibility to mobilize national laws to counter a more restrictive position under EU law. For the remaining states where direct effect is present—Portugal, Ireland, Malta, Netherlands, Finland, Austria and the UK—ECJ jurisprudence has had impact mostly at the level of national case law restricting the access of inactive EU citizens to social benefits. ECJ case law is relied upon to justify withholding benefits from mobile EU citizens based on the argument that economically inactive citizens asking for benefits lack(ed) a right to reside to start with.

An interesting development in this regard can be observed in the Netherlands. The Implementation Guidelines of the Dutch Aliens Act (Vc B 10/2.3) provide very detailed information in the form of a sliding scale about when a demand on public funds (consisting of an application for social assistance in accordance with the Participation Act (PW) or for social services in the form of accommodation under the Social Support Act (Wmo)) results in the termination of the EU citizen's lawful residence by the immigration authorities (IND). Each application for social assistance during the first two years of residence is in any case considered unreasonable and will, in principle, result in termination of residence. In this scenario, the IND will assess the appropriateness while considering the following circumstances of each case: the reason for the inability to make a living, its temporary or permanent nature, ties with the country of origin, family situation, medical situation, age, other applications for (social) services, the extent of previously paid social security contributions, the level of integration and the expectation for future social assistance needs. With this sliding scale the IND has implemented the ambiguous nature of Directive 2004/38, balancing between the condition of sufficient resources and the possibility of access to social assistance as long as this does not become an unreasonable burden on the social assistance system of the host Member State.

There is not much case law on this subject in the Netherlands. This might indicate that there are not many inactive EU citizens (staying less than 5 years in the Netherlands), who ask for a social assistance benefit or that the IND does not withdraw often the right of residence of these citizens. In an unpublished court case dating from September 2015, the IND relied on the *Dano* reasoning

in relation to an inactive EU citizen, who had asked for a social assistance benefit but had never searched for work.¹³ According to the IND, it was current policy to consider such an EU citizen immediately as an unreasonable burden to the Dutch public funds, 'even if there was only an appeal of one day'. The *Dano* reasoning was again relied upon by the District Court The Hague in a case concerning a Bulgarian citizen.¹⁴ The Court ruled that there had never been a right of residence based on Article 7(1)(b) Directive 2004/38 and Article 8.12 Aliens Decree, because the EU citizen was unemployable as she did not speak Dutch. However, in a recent decision of the State Council (the highest Dutch court in aliens' affairs) a remarkable shift in reasoning can be observed.¹⁵ In the Dutch system, the lack of a right of residence stemming from Directive 2004/38 is directly linked to the issuing of a removal order against the EU citizen. The State Council has ruled that even where there is no (longer) right of residence based on Directive 2004/38, a balance of interest must be made at all times to determine whether the person concerned does or does not possess lawful residence and whether they can be expelled. While this approach might seem sympathetic, it could easily turn out to be an empty shell. It is not clear in which situation this balance of interest could actually lead to a decision in favour of the EU citizen who does not have sufficient resources. There is no formal basis to provide these EU citizens with a right of residence in Dutch law.

2.3 *Comprehensive Medical Insurance*

Article 7(1)(b) of Directive 2004/38 imposes not only a requirement that economically inactive EU migrants have sufficient resources, but also that they have a comprehensive sickness insurance. So far, it seems that not too much attention is paid to this condition, neither at Member State nor EU levels. The first 1979 proposal of what later became Directive 2004/38 did not even require economically non-active EU citizens to have any sort of sickness insurance cover.¹⁶ The only important information in the case law of the ECJ on this issue is provided in the *Baumbast* case.¹⁷ The Court stated that under the circumstances of that case the refusal to allow Mr Baumbast to exercise the right of residence which was conferred on him by Article 18(1) EC (now Article 21(1) TFEU) by virtue of the application of the provisions of Directive 90/364 (one of the predecessors of Directive 2004/38) on the ground that his sickness

13 District Court The Hague 1 September 2015, case number AWB 15/4877.

14 District Court The Hague 18 January 2016, NL:RBDHA:2016:3075.

15 ABRvS 7 November 2018, NL:RVS:2018:3584 and 3585.

16 Proposal for a Council Directive on a Right of Residence for Nationals of Member States in the Territory of another Member State, COM(1979)215 final of 26 July 1979.

17 Case C-413/99, *Baumbast*, EU:C:2002:493.

insurance did not cover the emergency treatment given in the host Member State would amount to a disproportionate interference with the exercise of that right.¹⁸

In its 2009 guidelines, the Commission¹⁹ defined a sickness insurance as any insurance cover, private or public, contracted in the host Member State or elsewhere, which would be acceptable in principle, as long as it provides comprehensive coverage and does not create a burden on the public finances of the host Member State. In protecting their public finances while assessing the comprehensiveness of sickness insurance cover, Member States must act in compliance with the limits imposed by Community law and in accordance with the principle of proportionality. Pensioners fulfill the condition of comprehensive sickness insurance cover if they are entitled to health treatment on behalf of the Member State which pays their pension. The European Health Insurance Card offers such comprehensive cover when the EU citizen concerned does not move the residence in the sense of Regulation (EEC) No 1408/71 (now Regulation 883/2004) to the host Member State and has the intention to return, e.g. in case of studies or posting to another Member State.

Based on the replies of the national experts, it appears that in most countries there is **no explicit definition** of the term comprehensive medical insurance. Irrespective of the lack of a definition, EU citizens are nevertheless supposed to have a medical insurance. Differences between Member States arise from the fact that whilst some Member States have a national health service (e.g. Denmark, Finland, Ireland, Italy, Latvia, Malta, Portugal, Spain and the UK), others have a mandatory health insurance scheme (e.g. Belgium, Croatia, Estonia, France, Germany, Hungary, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovenia).

Based on the national replies, we can speak of an **explicit definition** of comprehensive medical insurance contained in the law in Hungary, France, Germany and Slovenia. For the rest of the Member States we can speak of **implicit definitions**. In countries with a national health system the coverage equals the level of health insurance provided by the system. In Austria, this amounts to 'at least those risks need to be covered which are covered by the public health insurance'; in Cyprus to 'insurance coverage of the normal in-patient and outpatient medical expenses as well as the confinement benefits

18 Case C-413/99, *Baumbast*, para 93.

19 COM(2009) 313 final, Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Section 2.3.2.

and repatriation of the mortal remains'. Some countries lay down a minimum amount of money that has to be insured (€ 30.678 in Bulgaria and € 30.000 in Belgium and Hungary).²⁰ The Czech Republic accepts a wide range of documents as documents confirming the possession of health insurance. They include an EHIC, a certificate temporarily replacing the EHIC, a registration certificate, a card of an EU policy holder residing in the Czech Republic, a card of a policy holder living in the Czech Republic or one of the forms E 106, E 109, E 112, E 120, E 121, or a document that in its extent corresponds to a travel health insurance.²¹

For EU citizens who stay for a temporary period of 90 days or who are insured under Regulation 883/2004 the possession of a European Health Insurance Card is seen as proof of a valid health insurance. In general inactive EU citizens (not being students or pensioners) are considered to arrange a health insurance which is equivalent to the health assistance provided by the schemes of the host Member State. However, there is very little information available on the issue of the requirement of a comprehensive medical insurance for inactive EU citizens (not being students or pensioners).

In some Member States, the fulfilment of the comprehensive sickness insurance cover is not verified at all (Estonia, Greece, Lithuania). Dutch authorities do not verify *ex ante* whether the requirement of health insurance is met but verification is possible at a later stage during the period of residence on the territory. In Denmark the requirement of a comprehensive health insurance is not imposed in practice. EU/EEA citizens not having residence in Denmark are as a predominant rule eligible for those primary health care services—for payment—that are available to persons having residence in Denmark under the *Health Act*.

Only in a few countries (Sweden, Italy, France, Spain, UK) problems are reported as EU citizens face obstacles when attempting to get insured. Sweden has a residence based health care system, which means that to have a right to health care in Sweden, an economically inactive EU citizen needs to have his or her national registration address in Sweden. In principle, the Swedish Tax authority should not register a EU citizen on an address in Sweden, if that person is judged not to have a comprehensive health insurance. The requirement for comprehensive health insurance should be read as a right to health care.²² The health insurance shall ensure that a person does not become a

20 Data valid in 2017.

21 The term travel health insurance is defined in the Czech Republics' Foreigners Residence Act (Sec. 180i and 180j).

22 MIG 2012:15.

financial burden to the Swedish health care system. EU citizens who do not have access to a publicly funded health-insurance may alternatively prove that they have access to a private comprehensive health insurance. But the Swedish National Trade Board reports that none of the Swedish private health-care insurance providers are able to provide policies that meet the conditions imposed by the Swedish Tax authority (*Skatteverket*) and also required by the Swedish Migration authority (*Migrationsverket*).²³ Research undertaken by ECAS²⁴ based on enquiries submitted by EU citizens to Your Europe Advice service highlights that EU citizens who cannot show entitlement to health care in Sweden are denied registration in the Swedish population register (the failure to obtain a 'personnummer'), which is a precondition for accessing all sorts of public and private services. Most affected are EU citizens who intent to reside for less than 1 year, jobseekers, students or economically inactive. EHIC is not accepted as comprehensive sickness insurance, rather an S1 form from the state of nationality is requested.

In Italy, since 2012 an EU citizen who is entitled to reside because of sufficient economic resources, can satisfy the requirement concerning the sickness insurance by voluntary registering with the Italian National Health Service, an opportunity which was not available to EU nationals till then. But Italy does not allow inactive EU citizens (other than students) from affiliating with the National Health Service. Paradoxically, this possibility is offered to non-EU citizens who are required to pay the same annual contribution that Italians pay under Article 36 of Legislative Decree 286/98.²⁵ In France the existence of discriminatory exclusion of inactive EU citizens from the national health service has been the subject of a number of complaints to the European Commission, as reported by the Petitions Committee of the European Parliament.²⁶ In Spain similar problems are reported concerning the refusal of healthcare

23 National Trade Board (2014) *Moving to Sweden—Obstacles to the Free Movement of EU Citizens* (Stockholm, National Trade Board), p. 8: 'In evaluating private insurance policies, the Tax Agency requires that several conditions be met. The policy must be personal, and must not have a monetary ceiling for necessary health care. Private insurance policies may contain no disclaimers that deny coverage for certain complaints, and they must cover health care for injuries resulting from sports, risky activities and so on. The National Board of Trade contacted about twenty insurance companies to learn whether they sell insurance policies that comply with these criteria. None of them do.'

24 A. Nicolaou (2018) *Freedom of Movement in the EU: A look behind the Curtain. The Main Findings* (Brussels, ECAS), p. 8.

25 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero Dlgs 286/98.

26 http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/cm/929/g29916/g29916en.pdf.

coverage to EU citizens who do not work. Moreover, such citizens are not given the possibility to affiliate to the Spanish healthcare system by making monthly contributions.

In the UK, EEA citizens and their family members are allowed to use the National Health Service (NHS) in the UK, but according to the Home Office,²⁷ the NHS does not count as comprehensive sickness insurance. In the one case that has been decided in the higher courts on this point, the Home Office won their argument.²⁸ For an EEA citizen or family member who needs comprehensive medical insurance, therefore, they need to show something more than merely that they can use the NHS if or when they need it. MEPs and the European Commission are looking into this question and even launching an inquiry into the treatment of EU nationals in the UK. The Commission had started infringement proceedings against the UK back in 2012 but nothing further has been heard about the case. The Commission confirmed in November 2016 that the case is ongoing, although would not say much about what, if anything, was going to happen.

Similar problems are reported in Ireland. In order to comply with the 'comprehensive sickness insurance' requirement a letter from a private medical insurance provider is necessary. In addition to this, the right of an economically inactive non-EEA family member of an EU citizen to acquire permanent residence in the state in the event of the death of the citizen, or his/her departure from the Member State is conditional on the acquisition of comprehensive sickness insurance.²⁹ The inactive non-EEA family member must also show comprehensive sickness insurance in the case of a divorce, annulment or termination of a registered partnership.³⁰

3 Retaining Residence and Establishing Permanent Residence

Directive 2004/38 introduces the status of permanent residence that is acquired by EU citizens (and their family members) who have resided for a continuous period of 5 years in a Member State on the basis of the Directive (Article 16 Directive 2004/38). Article 17 of Directive 2004/38 sets out a series of cases in which EU citizens who have been employed in the host state and their

27 Under s. 1(3) of the National Health Service Act 2006, treatment on the NHS is free for all residents of the UK.

28 *Ahmad v. Secretary of State for the Home Department*, [2014] EWCA Civ 988 (16 July 2014).

29 Directive 2004/38/EC, Article 12(2).

30 Directive 2004/38/EC, Article 13(2)(d).

family members acquire permanent residence earlier than the general 5 years rule. The Court has clarified that residence on the basis of the Directive means residence that fulfils the conditions of Article 7³¹—for economically inactive EU citizens this means sufficient resources and comprehensive sickness insurance for 5 continuous years. Once the status of permanent residence is acquired, EU citizens no longer need to comply with the conditions of Article 7. Even if they have recourse to social assistance, this is no longer a ground to end their residence and view them as posing an (unreasonable) burden on the host state's welfare system. Moreover, in line with the provisions of Article 24 Directive 2004/38, EU citizens and their family members who have acquired permanent residence are entitled to equal treatment with nationals of the host state within the scope of application of the Treaty. Thus, in light of the issues discussed in the previous section of this contribution, asking for social benefits may pose problems in terms of maintaining a right of residence for a continuous period of 5 years. To explore the links between permanent residence and the question of social benefits, the questionnaire asked national experts to give an overview of requirements present in their national legislation concerning EU citizens who wish to establish that they have acquired a right of permanent residence under Directive 2004/38. Our intention was to determine if the Member States require EU citizens to present any specific documents when trying to establish permanent residence rights. Finally, the national experts were asked to give information on relevant national case law and administrative practices linked with the right to permanent residence.

3.1 *Lodging an Application and Issues of Evidence*

Our intention was to understand if and how the arrangements that exist at the national level concerning the application process and evidentiary rules pose problems for those EU citizens who wish to certify their right of permanent residence. A combined reading of Articles 16 and 25 of Directive 2004/38 shows that the Directive makes a distinction between the acquisition of the right to permanent residence and the document certifying that the person in question (EU citizen and/or his/her family member) holds the right. Once the conditions of Article 16 or 17 (depending on the situation) are met, the EU citizen has permanent residence. Article 25 clarifies that residence documents cannot be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof. Thus, while acquiring the right is not dependent upon an application,

31 Case C-325/09 *Secretary of State for Work and Pensions v. Maria Dias*, EU:C:2011:498, para 55.

EU citizens can apply to have their right certified. EU citizens who would like to certify their right to permanent residence need to lodge an application to this effect in line with the provisions of Article 19 of Directive 2004/38. This seems to be the rule in most states. TCN family members will need to lodge an application in line with Article 20 of Directive 2004/38 and in their case failure to comply with the requirement to apply for a permanent residence card prior to the expiry of their residence card may render the person liable to proportionate and non-discriminatory sanctions in line with Article 20(2) of Directive 2004/38. The Directive contains a number of provisions regulating administrative formalities linked to the right of permanent residence (Articles 19–25). More specifically, Article 21 clarifies that continuity of residence can be attested by any means of proof in use if the host state, whereas Article 25 states that [...] ‘entitlement to rights may be attested by any other means of proof’ besides a residence certificate as referred in Article 8, a document certifying permanent residence, a certificate attesting submission of an application for a family member residence card, a residence card or a permanent residence card.

The national replies support the view that to have his/her right of permanent residence certified, the EU citizen will need to lodge an application that should be accompanied at the very least by a copy of an ID/passport and a passport photo as well as documents showing that s/he has resided legally for 5 consecutive and uninterrupted years in the host state. Where fees are asked, proof of payment of the fee needs to be provided. Where permanent residence is acquired under Article 17 of Directive 2004/38, documents must be provided to show that the conditions of Article 17 are met.³²

The type and number of documents that need to be presented to show the legality and continuity of residence vary between the EU28. In some Member States no specific documents are indicated under the principle of free consideration of evidence and linked with Article 21 of the Directive. For example, in Austria, the authorities may ask for any evidence, which is useful to check if the conditions of the acquisition of the right of permanent residence are met. Denmark operates a similar rule whereby any suitable means of proof is accepted but the website of the state administration provides examples of documents that may be relevant for assessing the basis of residence. France, Croatia and Romania allow any means of proof/evidence. The Hungarian legislation states that the right of residence may be proved in any other authentic way where the specific documents asked for are not available. The Irish

32 Article 17 provides the conditions under which former workers, self-employed persons and their family members can acquire a permanent right of residence before five years.

administrative guidelines states that 'such documentary evidence as may be necessary to support the application' should accompany the application for issuing a certificate of permanent residence. In Germany, the administrative guidelines do not specify the sort of documentation required but this is generally understood to mean that the authorities may ask the same documents that they would require from a EU citizen residing on the basis of Article 7 of Directive 2004/38 and in respect of whose residence there are doubts. The documentation that should be submitted as proof will vary depending upon the category under which the EU citizen is exercising free movement rights: for workers, a confirmation from their employer; for self-employed, a confirmation of their activity, for economically inactive proof of sufficient resources and health insurance. Luxembourg stands out since the continuity of residence can be proven by all means, but the EU citizen is not asked to prove sufficient resources and comprehensive medical insurance.

It is important to stress that due to the declaratory nature of a certificate attesting residence longer than 3 months,³³ the value of such a certificate for documenting the acquisition of a right of permanent residence varies between the Member States. As such, in some Member States it could be argued that presenting a certificate attesting residence under Article 7 of Directive 2004/38 is the starting point of analysing whether the conditions are met and to a certain extent providing such a certificate institutes a presumption that the condition of uninterrupted residence for 5 years is met (see Bulgaria, Greece, Hungary). For example, Bulgarian authorities ask for the valid long-term residence permit or previous permanent residence permit (in case of re-application) and in cases where the EU citizen is entitled to acquire permanent residence based on Article 17 of Directive 2004/38, evidence that those circumstances are present. In Greece the length of residence is checked based on the registration certificate that the EU citizen must present to the authorities. Romanian legislation requires the presentation of the registration certificate or residence card for TCN family members as well as documents certifying the continuous legal residence in Romania; no details are given as to the actual documents.

In other Member States, the declaratory nature of such a certificate is understood as not instituting a presumption of meeting the conditions of permanent residence and the EU citizen may be asked to provide additional documentation to show that he indeed meets the requirements of the right to permanent residence (Austria, France, Finland, Denmark, UK). In France, authorities can require a certificate showing registration of the EU citizen upon

33 C-127/08 *Metock and Others*, EU:C:2008:449, para 52; C-325/09 *Dias*, EU:C:2011:498, para 54; C-246/17 *Diallo*, EU:C:2018:499, paras 48&49.

arrival in France. This requirement needs to be seen within the larger context where there is no requirement for EU citizens to register with the national authorities, although a document can be issued if the EU citizen applies for one. ECAS reports problems as some French prefectures refuse to issue residence documents to EU nationals, even to those who apply for permanent residence status.³⁴ Accessing benefits and other social or private services is nonetheless dependent upon showing a residence document. For the purposes of obtaining a document showing permanent residence other examples of documents that can be used to attest the right of permanent residence include employment contracts, fiscal certificates, lease contracts, rental agreements, current bills etc. The EU citizen is asked to provide documentation for each semester that he has resided in France. Germany no longer requires EU citizens to obtain certificates of residence attesting residence under Article 7 of the Directive with the consequence that a EU citizen asking for his permanent residence status to be confirmed will need to show at that moment in time that he has met the conditions of Article 7 for a continuous period of 5 years or the shorter period mentioned in Article 17 if applicable.

3.2 *Refusal to Issue the Document Attesting the Right of Permanent Residence*

A combined reading of Articles 16 and 21 of Directive 2004/38 suggests that national authorities may refuse to issue the document certifying permanent residence where the EU citizen fails to meet the general conditions listed in Article 16—reside legally for a continuous period of five years and where the residence has not been continuous. Continuity of residence is dealt with in Article 16(3) that lists situations in which continuity of residence is not affected by temporary absences. Temporary absences not affecting the acquisition of the right to permanent residence include absences not exceeding a total of six months per year; absences of a longer duration for compulsory military service; and one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training or a posting in another Member State or a third country. Furthermore, Article 21 states that continuity of residence is broken down by any expulsion decision duly enforced against the person concerned. Where EU citizens acquire the right of permanent residence based on Article 17 of Directive 2004/38, failure to meet the conditions listed there constitute grounds for the authorities to refuse to issue the document. Once acquired, the right of permanent residence shall be lost only through absence from the host

34 Nicolaou (2018), p. 9.

Member State for a period exceeding two consecutive years (Article 16(4)). Such an absence constitutes another ground for refusal to issue the document certifying the right of permanent residence.

The national replies contain relatively scarce information concerning this aspect. Where information exists, it mainly concerns the continuity of residence. The Hungarian report mentions that it is difficult to check whether any of the circumstances that interrupt the continuity of the 5-year condition are present. This issue seems reflected in the low number of refused applications according to the data offered by the Hungarian Office for Immigration and Nationality Affairs (OIN). In 2014–27 refusals; 2015–44 refusals and 2016–48 refusals. For applications concerning TCN family members of EU citizens, the refusal rate was equally small: 2014–5 cases, 2015–7 cases, and 2016–10 cases. It is interesting to note that TCN family members of Hungarian nationals have a higher refusal rate: 2014–63 cases, 2015–89 cases and 2016–197 cases. The marginal rate of refusals for EU citizens and their family members could be an explanation for the lack of judicial review of such decisions. In Belgium, failure to meet the condition of 5 years uninterrupted residence in accordance with the EU instruments constitutes a ground for refusal. Residence is deemed interrupted when: the right of residence has been withdrawn, refused on first admission or the person has been held in prison following a final criminal conviction. In Romania the execution of a custodial sentence of longer than 6 months would interrupt the continuity of residence.³⁵ The execution of a decision asking the EU citizen to leave France is considered to interrupt the continuity of residence leading to the acquisition of a right of permanent residence. This could include cases where the residence is no longer legal.

Information about refusals on grounds that residence did not meet the requirements of Article 7 is scarce. The Dutch report explains that in the Netherlands until April 2015, when the law was changed, the immigration authorities did not assess whether the applicant (EU citizen or family member) had sufficient resources during the previous five years. In a court case, the judge decided that the IND couldn't invoke this test retrospectively as it would breach the principle of legal certainty under EU law. Given Article 37 of Directive 2004/38, there is no compulsory obligation to check the lawfulness of residence. This practice has changed in 2017.³⁶

A number of national reports highlight the fact that there are differences between the official rules and guidelines applicable in their national jurisdiction

35 EOG no 102 of 14 July 2005.

36 See the decision of the Dutch Highest Administrative Court, ABRvS 15 November 2017, ECLI:NL:RVS:2017:3170.

and the actual manner in which they are applied by national authorities. This suggests that administrative practices may diverge from the letter of the law, an issue that impacts the effective exercise of EU citizenship rights. In Italy, the legislative decree transposing Directive 2004/38 into national law is supplemented by a circular letter issued by the Ministry of Interior detailing the administrative steps that EU citizens must take.³⁷ Despite the existence of such a circular, the instructions given to the authorities in charge of ascertaining whether EU citizens have acquired the right to permanent residence is rather incomplete. Since the competent authorities are part of the municipal administration, they possibly find additional instructions to guide them in the municipal regulations. Local practices have reportedly been developed, not always in line with EU law, but at the same time difficult to detect when not reported by the concerned person. The most difficult cases concern EU citizens who have worked under different short-term contracts or when the economic resources do not come from a regular source (e.g., pensions) or the applicant does not possess a sizeable bank account.

The Irish and UK reports also mention divergence between the official forms and the guidance notes that national authorities rely upon when implementing the official rules. The latter impose more onerous obligations concerning the type and amount of documents authorities may deem necessary for attesting the acquisition of a right to permanent residence. Additionally, the UK report details two further instances of divergent administrative practices concerning permanent residence. Firstly, the UK Home Office seeks to argue that a 2-year period of economic inactivity after acquiring permanent residence is akin to a physical absence of the same period, and means permanent residence status can be lost. This has yet to be tested in the UK Courts. Secondly, the Home Office argues that an EHIC issued by another Member State cannot be used in respect of a permanent residence application, as the holder of the EHIC is required, when claiming an initial right of residence in the UK to make a declaration to the effect that their residence is temporary. Students have been able to rely on the EHIC—the argument would be that at the time they were students they were temporary. The fact that they stayed for example as a worker after their studies does not invalidate their comprehensive sickness insurance at the time they were students. EU Regulation 883/2004 does not contain the requirement to make a declaration and the UK policy is arguably unlawful and challengeable in the UK courts.

37 Circular letter issued by the Ministry of Interior 2007 no. 19.

The Greek report mentions that some authorities only ask for the registration certificate; whereas others check the continuity of residence by asking the EU citizen to provide tax reports, lease contracts or proof of insurance.

3.3 *Problematization of Permanent Residence at the National Level*

Recital 17 of Directive 2004/38 states that 'Enjoyment of permanent residence by Union citizens who have chosen to settle long term in the host Member State would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union.' In light of the role ascribed to permanent residence as a force for social cohesion, it is important to note that during the monitoring period (2014–2016) in some states, permanent residence became a problematic aspect of free movement and EU citizenship due to the fact that once acquired this legal status entitles the EU citizen to social assistance or health care without any restrictions. Austrian courts have decided that since residence certificates have only declaratory force, the authorities responsible for granting social assistance may check independently if the prerequisites for the right of permanent residence are met.³⁸ In Belgium, the increase in the number of applications for certifying permanent residence is linked with the fact that permanent residence facilitates access to social assistance. There is an increase in applications from Eastern European citizens, especially self-employed once working in the building sector. However, there is also an increase in refusals of permanent residence on grounds that the files are not complete coupled with orders to leave the territory. Similar concerns are present in Germany where permanent residence is starting to become an issue due to its implications for accessing income support (social assistance). Economically inactive EU citizens who have not yet acquired permanent residence are excluded from receiving income support, thus authorities will critically examine if the conditions for having acquired a right of permanent residence are met with a view to police the correct application of the provisions of income support. The Italian report mentions that permanent residence has not been a very important topic since Italy did not limit the rights EU citizens can enjoy before the acquisition of the right of permanent residence. When it comes to the requirements to be satisfied in order to apply for benefits, EU nationals and Italian nationals are treated in the same way and a certain duration of residence is the rule for both categories. The main advantage linked to permanent residence is the right to be enrolled into the National Health Service without meeting any time limit.

38 LVwG Wien:1.12.2016, VGW-141/V/023/13444/2016.

In the UK, in the run up to Brexit, permanent residence is an issue as the number of EU citizens applying for the recognition of their right to permanent residence in the UK is growing. Moreover, changes introduced in 2015 to the provisions of the British Nationality Act concerning acquisition of British citizenship have had an impact on permanent residence, too. Since 12 November 2015, a person with at least 12 months of permanent residence who wishes to apply for British citizenship has to apply first for a permanent residence certificate or card.³⁹ Applications for naturalization, made without a permanent residence document where one is required, are now being refused. The practical significance of the amendment is considerable, as it obliges persons who are long-term residents under EU law, and who wish to take out British citizenship, to first obtain a residence document. That requires completion of the EEA (PR) form, submission of a range of supporting documents as above, payment of £65 per person, and temporarily giving up a passport or identity card.

4 Conclusions

This article has examined the consequences of relying on social benefits from the host state on establishing and maintaining a right of residence under Directive 2004/38 in the case of economically inactive EU citizens. Under Directive 2004/38, mobile EU citizens who seek to remain in a host EU state for longer than 3 months must either be economically active or possess sufficient resources and comprehensive sickness insurance so as not to become burdens on the social assistance system of the host state. As a result of several ECJ judgements, economically inactive mobile citizens who ask for social benefits in the host state risk being seen by the authorities as not complying with the requirement of having sufficient resources with the consequence that they are denied benefits and have their right to reside terminated. If this happens while the EU citizen is in the process of acquiring rights in the host state with a view to acquire permanent residence status, then asking for social benefits will also have negative consequences for the possibility to acquire permanent residence.

Concerning the residence rights of economically inactive mobile EU citizens, the overall trend is towards restrictiveness in both legal and administrative practices with national authorities checking more thoroughly the fulfilment of requirements for obtaining the right to reside for longer than

39 British Nationality (General) (Amendment No. 3) Regulations 2015 (SI 2015/1806).

3 months or permanent residence. This is particularly so when it comes to showing that the EU citizen possesses sufficient resources. Our analysis shows that the Member States use different approaches to the definition of sufficient resources and its application in practice, which may very well result in confusion for mobile EU citizens trying to assert residence rights. We can make a distinction between Member States with a clear definition in their legislation, Member States with no clear definition but a fixed threshold and one Member State (Ireland) with no definition and no fixed threshold. In a few Member States the legislation and administration provide the possibility to have an individual assessment (Germany, Denmark, Spain, Finland, Sweden and the UK) of the presence of sufficient resources. In five Member States (Finland, Spain, Germany, the Netherlands and the UK) the issue of sufficient resources has been subject of court cases, mostly dealing with the question whether the resources the EU citizen had could be seen as sufficient in spite of the fact that they were less than the threshold of the social assistance level.

Comprehensive medical insurance is the other requirement that economically inactive EU citizens have to meet based on Article 7(1)(b) in order to reside longer than 3 months in a host EU state. Based on our research, we can label comprehensive medical insurance a 'black box'. There is little information on national practices and not much attention seems to be paid to this topic at either national or EU levels. Only in a few countries (Sweden, Italy, France, Spain, UK) problems are reported as EU citizens face obstacles when attempting to get insured. It is unclear if in most Member States inactive EU citizens manage to arrange a sickness insurance or whether the lack of information is linked with the fact that the national authorities do not pay a lot of attention to this issue. The type of health system in place in a host state (mandatory insurance-based scheme or national healthcare system) and the openness of the system towards migrants influences the possibility to comply with the requirement to have a comprehensive medical insurance.

Concerning the impact of ECJ case law, we discovered that in 10 Member States the case law had no impact, either because the national welfare state did not include the type of benefits at stake in the *Brey*, *Dano*, *Alimanovic*, *Garcia-Nieto* and *Commission v. UK* cases (Italy and Greece) or because national practices were already aligned to the more restrictive position taken by the ECJ in those cases (Cyprus, France, Lithuania, Slovakia, Slovenia and Spain). In Portugal, Ireland, Malta, Netherlands, Finland, Austria and the UK, the ECJ cases have had impact mostly in the national case law restricting the access of inactive EU citizens. We conclude that the more restrictive interpretation favoured by the ECJ gains ground in most EU28 Member States leading to economically inactive EU citizens having limited or no access to the welfare state

of the host state. We remind that the Directive does not prohibit the Member States from applying more favourable rules than those listed in the Directive. For example, Member States can decide to treat economically inactive mobile EU citizens in the same way as national citizens prior to the acquisition of the right to permanent residence (Article 24 Directive 2004/38).

The issues discussed above are relevant for both asserting a right to reside and for maintaining that right for 5 years in order to acquire permanent residence. The national replies to the questionnaire have shown a great deal of variety in terms of the documentary evidence that EU citizens must produce in order to certify the legality and continuity of their residence as conditions that must be met to acquire the right of permanent residence. This situation affects the effectiveness of rights enjoyed by EU citizens; the ease and speed with which the right to permanent residence can be proven and certified depends upon the Member State in which one applies. While it is true that the Directive gives Member States leeway in certain cases (how long should it take to issue the certificate or card etc.) a more uniform practical experience of the exercise of EU citizenship rights would be beneficial in light of the role ascribed to permanent residence as a force of social cohesion. Moreover, the move to simplify the administrative formalities linked with the exercise of free movement rights has led to some Member States no longer requiring EU citizens to register their presence. In turn, this has negative implications for being able to prove the acquisition of the right to permanent residence. The national replies have also picked up on the fact that permanent residence is becoming problematized due to the fact that once acquired it entitles economically inactive EU citizens to equal treatment in relation to social rights (Germany) or health care (Italy). Member States have become more circumspect when it comes to certifying acquisition of this right (Netherlands, Belgium, UK) that may result in more cumbersome procedures for EU citizens and higher rates of refusals.

Our overall conclusion is that during the timeframe 2014–2016, we see a convergence at the national level towards more restrictive interpretation and application of the residence and social rights of economically inactive EU citizens. While our conclusion is in line with other research that looks at the influence of the economic crisis on the welfare state and on ECJ jurisprudence,⁴⁰ more

40 M. Blauberger, A. Heindlmaier, D. Kramer, D. Sindbjerg Martinsen, J. Sampson Thierry, A. Schenk & B. Werner (2018) 'ECJ Judges read the morning papers. Explaining the turn-around of European citizenship jurisprudence', *Journal of European Public Policy* 25(10), p. 1422–1441; S.K. Schmidt, M. Blauberger & D. Sindbjerg Martinsen (2018) 'Free movement and equal treatment in an unequal Union', *Journal of European Public Policy* 25(10), p. 1391–1402; C. O'Brien (2016) 'Civis capitalist sum: class as the new guiding principle of free movement rights', *Common Market Law Review* 53(4), p. 937–977; N. Nic Shuibhne

generally, it contradicts Guild's analysis of family reunion rights in this special issue. In that field there seems to be convergence towards the more liberal EU stance on family rights. Two possible explanations seem plausible: firstly, our monitoring exercise coincided with the height of the economic crisis and in this sense, it captures national resistance to a more liberal EU stance on access to the welfare state. Secondly, the temporal aspects of the Europeanization process play a role in explaining national convergence towards the stance put forward by the ECJ in relation to the family reunion rights of EU citizens. We can generalize that there is less resistance towards the Europeanization of family life than towards the Europeanization of the welfare state.

(2019) 'The social market economy and restriction of free movement rights: Plus c'est la même chose?', *Journal of Common Market Studies* 57, p. 111–126; N. Nic Shuibhne (2015) 'Limits rising, duties ascending: The changing legal shape of Union citizenship', *Common Market Law Review* 52, p. 889–937.