

The Social Impact of Migration and the Notion of Citizenship for the EU Ensuing challenges and opportunities for the Union

Elspeth Guild

13 March 2014

The European Union is currently suffering a minor identity crisis. Let us hope that this episode will pass rapidly, but for the moment it is causing headaches for civil servants in the EU institutions and the member states as well as uncertainty and a little anxiety among EU citizens and third-country nationals in long-term residence in the EU. The problem is that some member states are no longer sure that all EU citizens should be treated equally – the fundamental claim of citizenship dating from the 1789 French revolution – while others are outraged that their citizens might be treated as less equal EU citizens than others.

Let us look at what has happened in as dispassionate a framework as possible. According to EUROSTAT, the number of EU citizens using their right to free movement to improve their lives and/or try life in another country has increased over the past ten years from about 1.8% of the total EU population to around 3%. In an EU of 506 million people, this means that there are about 17.2 million people living in an EU member state other than that of their nationality. This figure is surprisingly low given the volume of noise in the media on the subject, but it does represent an increase. Moreover, some member states are more affected by the departure of their citizens (e.g. Lithuania and Romania) than others, and some countries are more affected by the arrival of other citizens, such as Luxembourg and Cyprus. Ireland meanwhile has people both coming and going. The last 10 years have witnessed the three enlargements towards the East and the South of Europe – thus incorporating many people as EU citizens who are curious to see their EU world.

Why is this a problem? Actually, it is not a problem at least as far as EU law is concerned. The EU institutions revised the Directive on movement of EU citizens and the Regulation on coordination of social security in 2004, precisely with enlargement in mind. In fact, both the directive and regulation were adopted the day before enlargement, which meant that the then new member states could not vote on either of them. Both measures were adopted unanimously (as they predated the Lisbon amendments). The rules are clear – all EU citizens have the right to move and reside, acquiring rights the longer they stay in a host member state.

Elspeth Guild is Jean Monnet Professor *ad personam*, Radboud University and Queen Mary London, and Associate Senior Research Fellow, CEPS.

CEPS Commentaries offer concise, policy-oriented insights into topical issues in European affairs. The views expressed are attributable only to the author in a personal capacity and not to any institution with which she is associated.

Available for free downloading from the CEPS website (www.ceps.eu) • © CEPS 2014

For the first three months, there are no conditions on EU citizens' entry and residence. This sounds fine, but for those member states that are concerned about who is residing on their territory, there is an anxiety here – what about those people who reside for just under three months, go to another member state and then come back? Are they still beyond the administrative reach of the member states' authorities as regards conditions of residence?

After three months, EU citizens have to exercise an economic activity or be self-sufficient to enjoy a continuing right to reside. While the anxious member states (four in particular – Austria, Germany, the Netherlands and the UK – that wrote to the Presidency expressing their concerns in April 2013) have couched their reservations in terms of the economically inactive, it is in fact those exercising minor economic activities that are the real source of their worries. The reason for this is that once an EU citizen is a worker (as defined generously by the Court of Justice of the European Union back in the 1980s), he or she is entitled to equal access to all social benefits available to nationals of the state who are also in minor employment. So, little part-time jobs count for all EU citizens to be entitled to 'top up' benefits in their host member state.

Then the third step in the acquisition of rights comes at the five-year stage. After living and working or being economically active or self-sufficient (including students), EU citizens automatically acquire permanent residence status and accompanying entitlements, with no further questions, to all social benefits, whether they are working or not. Many of the 17.2 million EU citizens living in a member state other than that of their nationality have now acquired this permanent residence right, but because its acquisition is automatic, the host member state authorities are often not aware of their entitlement until they need social benefits of some kind.

The coordination of social security systems, which was also revamped in 2004, was also made more generous for those moving around the EU. The rules on non-discrimination were tightened up, the entitlement to aggregate contributions made in different member states to calculate entitlements was strengthened and the right to export benefits to one's country of residence was clarified. Since then, some member states have questioned why they have to export 'their' benefits to EU citizens who have acquired rights in their state. Officials tend to forget very quickly that social benefits do not belong to them, but rather to those who are entitled to them.

All this legislative activity, approved by the member states in 2004, strengthened the position of all EU citizens. But now some EU member states are having doubts, notably the four mentioned above. This has sparked a strong riposte from the four Visegrad states (Czech Republic, Hungary, Poland and Slovakia), which in December 2013 wrote to the Presidency insisting on the equality of all EU citizens and their rights of free movement and residence.

Why have EU citizens' free movement rights become so contentious now? Much was made of the final deadline for lifting the transitional restrictions on free movement of workers who are nationals of Bulgaria and Romania on 1 January 2014 – although the majority of member states either had never applied the restrictions or had lifted them well before the final deadline. From EUROSTAT's information, it seems that most nationals of these two member states moved to host member states well before 1 January 2014, if that was what they wanted to do (moving primarily to Italy and Spain over the ten-year period).

What seems to have triggered a reaction now is what one might call the 'shock of poverty'. Yes, there are people who are miserably poor in a number of the 2004 and 2007 member states. From the work of the Fundamental Rights Agency, it seems that the poorest of the poor also tended to be lumped together under the ethnic banner 'Roma'. For these EU citizens, too, the reality of free movement of citizens is a promise of escaping deep poverty

and cumulative discrimination. But when they arrive in a host member state, the officials, often at the local level, are shocked at the depth of poverty in which these people have been living and to which they are accustomed. Sadly, instead of a generous reaction – that these people are entitled to the same poverty-reduction measures that states apply to their own nationals (particularly when these EU citizens are working, even if at odd jobs, or are self-employed, as most of them are) including access to housing on a non-discriminatory basis, social benefits, health coverage, etc. – these officials seek to find arguments to justify expelling them. What they are doing is clearly contrary to EU law, but the objections that these officials raise about abuse and fraud are expressed at a very high pitch precisely calibrated to silence those quieter and more juridical voices insisting on the correct application of the Directive and Regulation.

When member states' officials behave badly towards EU citizens from other member states and deny them EU rights, they shatter the principle of equality of citizens and seek to disaggregate Europe into nationals of the member states who can be treated differently depending on where they come from. This hurts all of us who live in the EU and benefit from the internal market.