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EU Citizenship: Access to Social Benefits in Other EU Member States

Frans Pennings *

As the result of the case law of the Court of Justice of the European Union on EU citizenship provisions, even citizens who are not economically active have access to social benefits in a country other than that of origin. Is it justified to connect such effects to EU citizenship, even though EU citizenship does not yet have an identity of its own?

In this contribution the case law is analysed and it is argued that because of the objective justification that Member States can still offer for limiting access to their systems, more precisely by the link they may require between the claimant and their community, the case law fits well in the system for achieving the free movement of persons. This 'link approach' is a better explanation for the consistency of the case law than an explanation based on cross-border solidarity or a special identity relating to EU citizenship.

Keywords: *EU citizenship; welfare state; social benefits; discrimination.*

1 INTRODUCTION

Since the adoption of the provisions on EU citizenship in the Treaty of Maastricht, interesting judgments have been handed down by the Court of Justice of the European Union, that allow persons, even if not economically active, to claim welfare benefits such as public assistance or study grants, in a State that refuses to grant such benefits on the basis of domestic law. In some cases the Court has allowed access to benefits for a former student in the State of origin (*D'Hoop*) and in some cases to those of the host State (*Trojani* and *Bidar*).This was rather unexpected, as Shaw wrote in 1998: 'At first blush, in view of the rather fragmentary "social dimension" of the EU, one might be tempted to conclude that the social rights of Union citizens are exceedingly sparse'.[1]

Rulings on EU citizenship granting access to foreign schemes have frequently been said to threaten national welfare systems, in particular the solidarity embodied in these systems, as they infringe the boundaries of these

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1 J. Shaw, *The Interpretation of European Union Citizenship*, 61 The Modern L. Rev. 301 (1998).

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systems. If welfare systems can no longer be restricted to well-defined communities, they become difficult to maintain. In other words, the introduction of social citizenship 'entails important consequences for the balance of European welfare States; indeed, a supranational social citizenship puts a weight on the Member States' welfare systems and calls for enlarged notions of solidarity'.[2]

Some authors have accused the Court of Justice of stretching solidarity among EU citizens too far, 'attempting to create, single-handedly and with little political backing, a transnational welfare space where national citizens would have to assume some responsibility for the fate of their Union citizens'.[3]

Alarming claims have been made about the collapse of welfare States and the activist approach of the Court of Justice that grants EU citizens access to a new European welfare space. Even though EU citizens do not yet have an identity as such, it is important to examine whether these fears are justified. This leads to the following questions: (1) whether a new identity for EU citizens has been created; (2) whether such an identity is necessary to justify access to welfare across borders; and (3) whether social citizenship threatens national welfare systems.

In order to answer these questions, first of all it is necessary to describe the criteria that national systems use in order to define the boundaries of their systems (section 2). Next, the main rules are described for economically active persons that override these criteria, since these criteria continue to exist alongside EU case law (sections 3 and 4). Moreover, they are useful for better understanding this case law. In section 5 the case law on EU citizens is described and analyzed. In section 6 some answers to these questions are put forward.

2 CRITERIA FOR DEFINING MEMBERSHIP OF A SOLIDARITY SYSTEM

Traditionally, in many countries nationality has been the primary condition for defining membership of a solidarity system: in order to be eligible for benefit, the individual has to be a national of the State concerned. Nationality conditions are not merely criteria for defining membership of a particular scheme. As Dougan wrote, the limitation of certain social rights to the nationals and/or residents of a country reflects the close relationship between the welfare State and the nation State, whereby the community of interests derived from shared

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2 F. Strumia, *European Social Citizenship: Solidarity in the Realm of Faltering Identity*, 2 Eur. J. Soc. L. 124 (2011).

3 E. Spaventa, *The Impact of Articles 12, 18, 39 and 43 of the EC Treaty on the Coordination of Social Security Systems'* in Y. Jorens (ed.), *50 years of Social Security Coordination, Past – Present – Future, Report of the conference celebrating the 50th Anniversary of the European Coordination of Social Security*, Luxembourg, 128 (2010).

identity provides much of the moral force required to justify the redistribution of wealth through social security and other welfare benefits.[4] It is exactly this connection between nationality and access to welfare that raises the question as to whether the identity of EU citizens is sufficient to justify their claims to social welfare on the basis of EU law.

In order to regulate access to schemes, criteria are often adopted that complement the nationality condition. In the early decades after the establishment of the first statutory social security schemes (i.e., in the first half of the twentieth century), an additional condition was often employment status, since persons in salaried employment were considered to need protection most. Since the Second World War, however, residence schemes have also been established, extending solidarity to all residents. Residence is thus another criterion by which membership of a system can be defined. The idea is that persons who have lived for a certain period in a country become members of that community and solidarity should be extended to them. For this purpose a minimum period of residence is often required. This condition implies that a person who leaves the community, even if s/he has nationality of that country, is no longer eligible for protection under the solidarity system.

Thus nationality, employment status and residence are the main criteria for defining membership of a system. The problem is, however, that these criteria may hinder the free movement of persons, and for this reason, as we shall see in the following section, EU law has been developed which in some cases overrides these conditions for membership of a solidarity system.

3 COORDINATION RULES AND NATIONALITY AND/OR RESIDENCE CONDITIONS

3.1 Coordination Rules and Nationality Conditions

At the time of establishment of the European Community in 1957, it was deemed essential for achieving the free movement of workers to adopt rules which override, *inter alia*, nationality and residence conditions, including rules on the aggregation of periods spent in other Member States. For this purpose a coordination provision was adopted, Regulation 3, in 1958,[5] which had an

[4] M. Dougan, *Expanding the Frontiers of Union Citizenship by Dismantling the Territorial Boundaries of the National Welfare States?*, in, *The Outer Limits of European Union Law*, 120 (C. Barnard and O. Odudu eds., Hart Publishing 2009). *See* also M. Dougan and E. Spaventa, *Wish you weren't here … New Models of Social Solidarity in the European Union*, in, *Social Welfare and EU Law*, (M. Dougan and E. Spaventa eds., Hart 2005).

[5] OJ 1958/30; Regulation 3 was succeeded by Regulation 1408/71, OJ L 1971/149 (1972); and Regulation 883/2004, OJ L 2004/166 (2010) respectively.

important impact on the outer limits of national social security systems. The rationale behind the coordination rules is that if workers lose their social protection rights when they cross national borders, they will never consider going to another Member State to work.

Removal of nationality conditions is the first task of coordination rules. If nationality conditions remain intact, free movement cannot take place across borders. As a result, coordination rules overrule national rules that limit the scope of social security schemes to workers who are nationals of the country concerned.

The personal scope of the coordination Regulations has been amended over time. Initially it was limited to salaried employees, then extended to the self-employed. Although the Court has gradually extended the scope of the coordination Regulation to the extent that the terms 'employed person' and 'self-employed person' were interpreted broadly, it has not itself extended the scope beyond the economically active population. That step was taken by the legislature with the adoption of Regulation 883/2004, which came into force in May 2010. Still, the scope is limited to nationals of EU Member States.

The material scope of the coordination rules is even today restricted to a limited set of statutory social security benefit schemes. Thus under the coordination Regulation, access is not given to all the benefits of a host State. A major example of an excluded social protection scheme is social assistance.

3.2 Coordination Rules and Residence Conditions

Coordination rules which waive territorial conditions are important, since without such rules, foreign workers would be denied, *inter alia*, access to social security in the country where they work(ed) if they move to another country. They would suffer from gaps in their working career and in many cases they could not transfer their benefits to a State other than the one where they acquired the right to these benefits.

The coordination Regulation is based on the country-of-employment principle. This principle implies the equal treatment of workers with those of the State of employment. This is deemed most conducive to free movement, since workers generally move to richer countries. Moreover, this principle does not endanger national systems, that would otherwise be the case if contribution rates were applied which were lower than those in the country of employment.

Residence conditions are removed, *inter alia*, by the rules determining the applicable legislation, by provisions prohibiting indirect discrimination, by provisions requiring assimilation of periods and facts and by transfer provisions. Thus, if, for instance, a person lives in Belgium and works in the Netherlands,

s/he is insured under the Dutch retirement pension scheme, even though this is a residence scheme.

Although coordination on the basis of the country-of-employment principle reflects the characteristics of employment-based schemes, residence schemes also fit well with the Regulation.

3.3 Special Non-contributory Benefits and Coordination Rules

The elimination of the nationality and residence conditions by the coordination rules was not based on arguments of solidarity. Solidarity was not mentioned in the coordination Regulation, nor in the case law of the Court of Justice, as a reason for the interpretation or application of coordination rules. Instead, the coordination rules were based on free movement provisions.

Solidarity does however play a role in that it can restrict the application of free-movement rules. A major example is that of social assistance, that was excluded from the scope of the coordination Regulation from its inception. However, the Court limited the scope of this exception, and the case law led to the identification of a new type of solidarity benefit. An important judgment on this issue was *Frilli*,[6] which concerned the Belgian non-contributory guaranteed income for older persons. The Court argued that such benefits are within the scope of the Regulation, if they are linked with the contingencies that are within its material scope and give an enforceable right to benefit. As a result of *Frilli*, benefits like the one disputed in this case could no longer be restricted to Belgians, and the aggregation rules and transfer rules applicable to retirement benefits could be invoked. As a result, Mrs Frilli could have her retirement benefit transferred when she returned to Italy.

As a result of an amending Regulation, the effects of this case law on the residence criterion of these benefits were modified[7] and a new category of benefits was introduced, that is, special non-contributory benefits. Special non-contributory benefits are those that provide a minimum subsistence income taking account of the economic and social situation in the Member State concerned, or that provide specific protection for people with disabilities.[8] For these benefits, Article 70(4) of Regulation 883/2004 lays down that these benefits shall be provided exclusively in the Member State in which the person concerned resides. This rule means that persons entitled to benefits in a Member State who leave that State are excluded from these benefits. However, persons entering the State become entitled to these benefits, even if the conditions (e.g., disability)

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6 Case 1/72, Frilli, [1972] ECR 457.

7 Regulation 1247/92, OJ L 136 of Apr. 30, 1992.

8 Since this would not really make clear which benefits belong to this type, a further condition is that they are listed in an Annex to the Regulation.

materialized before they entered the country. This effect is (currently) due to Article 5(b) of the Regulation that lays down that where, under the legislation of the Member State, legal effects are attributed to the occurrence of certain conditions, the Member State shall take account of conditions occurring in another Member State as though they had taken place in its own territory.

In several cases the Court has had to decide whether a particular benefit was a special non-contributory benefit or not. Member States wished to classify benefits as such, as this excluded their transfer to other Members States. In *Skalka*,[9] the Court mentioned the solidarity aspect of this type of benefit as decisive. It considered that the benefit concerned ensured the provision of an income supplement to those persons receiving insufficient social security benefit by guaranteeing a minimum means of subsistence to persons whose total income falls below a statutory threshold. Such a benefit is always closely linked to the socio-economic situation of the country concerned and its amount, fixed by law, takes account of the standard of living in that country. Clearly its purpose would be lost if it were to be granted outside the State of residence.[10] As a result these characteristics serve as a criterion for distinguishing these benefits from other ones.

3.4 Residence Conditions, Even if Part of the Regulation, Should not Impede Free Movement

In *Kersbergen-Laps*,[11] the Court ruled that, following the *Skalka* criteria, the Dutch benefit for young disabled people was a special non-contributory benefit, and that therefore the residence condition for this type of benefit was allowed. However, in *Hendrix*,[12] the question was raised as to whether this was also acceptable in the case of a person who, while maintaining paid employment in his or her State of origin, transferred his or her residence to another Member State and then found employment in the State of origin. The Court ruled that Mr Hendrix was a migrant worker and could invoke the provisions relating to freedom of movement of workers. Even though the residence criterion for this type of benefit was in general objectively justified, the Court continued, the provisions of the coordination Regulation have to be interpreted in the light of Article 48 TFEU, whose purpose is to contribute to the establishment of the greatest possible freedom of movement for migrant workers. Consequently, the

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9 Case C-160/02, [2004] ECR I-56.
10 See for a comparable reasoning, *Kersbergen-Lap*, Case C-154/05, [2006] ECR I-6249.
11 Case C-154/05, [2006] ECR I-6249.
12 Case C-287/05, [2007] ECR I-6909.

residence condition can be maintained in a situation such as that of Mr Hendrix only if it is objectively justified and proportionate to the objective pursued.

In principle, the residence condition for this type of benefit is objectively justified, because it is closely linked to the socio-economic situation of the Member State concerned, as it is based on the minimum wage and standard of living in the country concerned and it is a special non-contributory benefit for which the coordination Regulation introduced the residence regime. However, the application of the residence condition must not entail an infringement of rights which goes beyond what is required to achieve the legitimate objective pursued by the national legislation. For this purpose the national court must, so far as possible, interpret the national legislation in conformity with Community law, to take account, in particular, of the fact that Mr Hendrix had exercised his right of freedom of movement as a worker and maintained all of his economic and social links to the Member State of origin.[13]

Also in this situation of a migrant worker, the economic and social links are important. Normally the link with a country is assumed if a person works in that country. In this case mentioning additional elements was apparently necessary, because of the special nature of the benefit concerned, and the fact that the Regulation has a special regime for it.

4 REGULATION 492/2011 AND NATIONALITY AND RESIDENCE CONDITIONS

4.1 The Personal Scope of the Regulation

We have seen that the material scope of Regulation 883/2004 is limited. Thus not every welfare benefit is covered by the non-discrimination provision of the coordination Regulation. Public assistance benefits, for instance, are excluded. Therefore, the equal treatment provision of Article 7 of Regulation 492/2011[14] may be useful in supplementing the non-discrimination rule of Regulation 883/2004.

Regulation 492/2011 is relevant to 'workers' only: self-employed workers and non-active persons cannot rely on it. The term 'workers' in the Regulation is restricted to 'workers' in the sense of labour law. The essential feature of an employment relationship is, according to *Levin*,[15] that a person performs work for a certain period of time for and under the direction of another person for

[13] The Court also considered that Article 21 TFEU, which sets out generally the right to free movement of EU citizens finds specific expression in Article 45 TFEU and thus does not need further discussion.

[14] Until mid-2011 this was Regulation 1612/68.

[15] Case 53/81, [1982] ECR 1035.

which s/he receives remuneration. 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'.

The Court does not decide itself whether activities satisfy this criterion or not. An example is *Trojani*.[16] In this case, Mr Trojani performed activities at a Salvation Army hostel in return for board, lodging and some pocket money for about thirty hours a week as part of a personal socio-occupational reintegration programme. He applied for public assistance in Belgium and his claim was rejected on the ground that he did not have Belgian nationality. The Court of Justice left it to the national court to decide whether the services performed by Mr Trojani were capable of being regarded as forming part of the normal labour market.

Also frontier workers can invoke Article 7(2). This does not follow from the text of Article 7, but the Court considered that it follows from the fourth recital of the preamble of Regulation 1612/68 (the predecessor to Regulation 492/2011), that the right of free movement must be enjoyed *inter alia* by seasonal and frontier workers.

Only in exceptional cases can persons who have stopped working invoke Article 7, that is, the situation in which migrant workers are guaranteed certain rights linked to the status of worker even when they are no longer in employment. This is the case if an advantage depends on the prior existence of an employment relationship, and entitlement to the benefit was thus intrinsically linked to the recipients' objective status as workers (*Meints*[17]). In the *Meints case the grant could not be refused on the ground that Mr Meints did not reside in the Netherlands.*

Because of the required link between the benefit and the status as a worker, the applicant in *Esmoris Cerdeiro-Pinedo Amado*[18] could not invoke Article 7 in respect of Dutch study grants for his children living in Spain.

If Article 7(2) of Regulation 1612/68 were to be interpreted literally, it would be applicable solely to workers and not to family members. However, the Court followed a broader interpretation of this provision. In *Cristini*[19] it considered that if a Member State could refuse benefits to family members and/or relatives of the worker on the ground of their nationality, employed persons might leave the Member State in which they had resident status and in which they were employed. This would run counter to the objectives and the spirit of freedom of movement. There is, however, only an obligation to grant a

16 Case 456/02, [2004] ECR I-7573.
17 Case 57/96, [1997] ECR I-6708.
18 Case 33/99, [2001] ECR I-4265.
19 Case 32/75, [1975] ECR 1085.

social benefit to members of the family if this can be regarded as a social benefit *pertaining to the employed person*. In determining this, it is important to ascertain whether the employed person actually supports the family members in question. A family member who is no longer financially dependent on the worker cannot rely on Article 7(2).

4.2 The Material Scope of the Regulation

Article 7(2) has a broad scope. In *Hoeckx*[20] the Court ruled that social benefits are all those which, 'whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community'. Thus not only benefits within the scope of Regulation 883/2004, for example, child-raising allowance, but also reduced railway fares (*Cristini*[21]), public assistance (*Hoeckx*[22]) and study grants (*Meeusen*[23]) fall within the scope of Regulation 492/2011. The only exclusion identified so far is for benefits for victims of war (*Even*[24]). The Court ruled that the essential objective of benefits for victims of war was to give those nationals a benefit by reason of the hardships they suffered in conditions of war. Such a benefit could not be considered as a benefit granted to a worker by reason primarily of his status as a worker or resident in the national territory.

4.3 Nationality and Residence Conditions

Article 7 prohibits unequal treatment, and thus removes nationality conditions. In *Hoeckx*,[25] non-Belgians were required to have been resident in Belgium for at least the five years immediately prior to the claim for the minimum means of subsistence. As a result this residence condition (to be fulfilled prior to the claim) applied to non-Belgians only. The Court decided that it 'therefore constitutes a clear case of discrimination on the basis of nationality of workers'. Since residence was a criterion applied to non-Belgians only, it was a form of direct discrimination.

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20 Case *249/83,* [*1985*] ECR 982.
21 Case 32/75, [1975] ECR1085.
22 Case 248/83, [1985] ECR 982.
23 Case 337/97, *Meeusen*, [1999] ECR I-3289.
24 Case 207/78, [1979] ECR 2019.
25 Case 248/83, [1985] ECR 982.

In addition, Article 7 prohibits indirect discrimination. This affects residence conditions, since national workers can more easily satisfy these conditions than frontier workers. If there is no objective justification for such a condition, the benefit can be transferred across national borders.[26]

In *Geven*,[27] however, an objective justification for a residence condition was upheld. The case concerned a Dutch frontier worker (living in the Netherlands and working in Germany) who was in part-time employment (the number of hours per week varied between three and fourteen hours, with weekly earnings of between EUR 20 and EUR 85). She applied for child-raising allowance, but the German Act granted this benefit only to persons permanently or ordinarily resident in Germany and frontier workers, on condition that they worked for more than fifteen hours a week with a monthly remuneration exceeding about EUR 300 a month.

The German Government argued that the German child-raising allowance constitutes an instrument of national family policy intended to encourage the birth rate in that country. The primary purpose of the allowance is to allow parents to care for their children themselves by giving up or reducing their employment in order to concentrate on bringing up their children in the early years of their life. The child-raising allowance is thus granted in order to benefit persons who, by their choice of residence, have established a real link with German society. Frontier workers who carry on an occupation in Germany but reside in another Member State can claim German child-raising allowance if they are employed for a significant number of hours. Consequently, the Court argued, it is apparent that, under the German legislation in force at the time, residence was not regarded as the only significant link with the Member State concerned. A substantial contribution to the national labour market also constituted a valid factor of integration into the society of that Member State. Hence there was a legitimate justification for the refusal to grant child-raising benefit.

As a result, residence conditions are not completely eliminated by Article 7, but are sometimes allowed in view of the type of benefit, but only if it can be maintained that for these benefits the requirement of a real link with society is acceptable, and that this is a legitimate justification in the case of indirect discrimination.

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[26] Case 337/97, [1999] ECR I-3289. Case 35/97; *Commission v. France*, [1998] ECR I-5325.
[27] Case C-213/05, [2007] ECR I-6347.

5 EUROPEAN CITIZENSHIP: ARTICLE 18 TFEU AND NATIONALITY AND RESIDENCE CONDITIONS

5.1 Introduction

According to Article 20 TFEU, every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship. Article 20(2) further provides that citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have the right to move and reside freely within the territory of the Member States. In addition, Article 18 TFEU provides that within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

As argued above, the coordination Regulation has a rather limited material scope and, until May 2010, was restricted to employed and self-employed persons. Regulation 492/2011 has a much broader material scope than the coordination Regulation, but its personal scope is limited to workers. Therefore when the Court of Justice linked Article 20 to the non-discrimination rule of (what is now) Article 18 TFEU, this meant an enormous extension of the applicability of the non-discrimination rule. This connection was made *Martínez Sala*.[28] Mrs Martínez Sala was a Spanish national, living in Germany, who had been unemployed for four years at the time of the claim. When she applied for child-raising allowance, this was refused, because she did not have German nationality. The Court considered that Article 20 TFEU attaches to the status of citizen of the Union the rights and duties laid down by the Treaty, including the right, laid down in Article 18 TFEU, not to suffer discrimination on grounds of nationality within the material scope of the Treaty. Since the child-raising allowance falls within the scope of the coordination Regulation, it indisputably falls within the material scope of Community law. As a national of a Member State lawfully residing in the territory of another Member State, she came within the personal scope of the provisions of the Treaty on European citizenship. Therefore Ms Martínez Sala could successfully invoke Article 18 TFEU in order to challenge the refusal of the benefit.

Before continuing the discussion of European citizenship, it is important to mention that if Article 45 TFEU is applicable, this article has to be applied.[29] In other words, Article 45 has priority over Article 18.

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[28] Case 85/96, [1998] ECR I-2691.
[29] Case C-287/05, *Hendrix* [2007] ECR I-6909.

5.2 Nationality and Residence Conditions

In another case, Mr Grzelczyk was able, by invoking Article 18 TFEU in conjunction with the citizenship provision, to remove the nationality condition for public assistance.[30] The Court considered that a student of Belgian nationality, who found himself in exactly the same circumstances as Mr Grzelczyk, would satisfy the conditions for obtaining public assistance. Thus the fact that Mr Grzelczyk was not of Belgian nationality was the only bar to him receiving such assistance. Within the sphere of application of the Treaty, such discrimination is, in principle, prohibited by Article 18, the Court continued.[31]

A second major type of welfare that was accessed with the help of Articles 18 and 20 is that of study grants. Since study grants do not fall within the scope of Regulation 883/2004, and students who are not workers can rely on Regulation 492/2011 only as family members (which means that they only have access to these grants if a parent works in the State where they study), the applicability of Article 18 TFEU to this type of benefit was a significant extension of the possibilities to remove nationality conditions.

An interesting judgment is *De Cuyper*,[32] in which the Court accepted the residence conditions in the case of unemployment benefits. Since the justification is of a different nature (i.e., related to the characteristics of this type of benefit), it will not be discussed here.

5.3 Objective Justifications are Possible for Restricting Access

In *Martínez Sala*, *Trojani*, and *Grzelczyk*, the nationality condition of the host State was not accepted. In *Bidar*,[33] however, it appeared that objective justifications are possible for applying conditions for access to welfare for foreign nationals, although the ones offered were not accepted. The UK Government had argued that it is legitimate for a Member State, in the case of study grants claimed by an international student, to ensure that the contribution made by parents or students through taxation is or will be sufficient to justify the provision of student grants and to require a genuine link between the student claiming assistance to cover his or her maintenance costs and the labour market of the host Member State.

The Court acknowledged that, although Member States must, in the organization and application of their welfare systems, show a certain degree of

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30 Case 184/99, *Grzelczyk*, [2001] ECR I-6193.
31 For a comparable decision on public assistance, see *Trojani*, Case 456/02, [2004] ECR I-7573.
32 Case C-406/04, [2006] ECR I-6947.
33 Case C-209/03 [2005] ECR I-2119.

financial solidarity with nationals of other Member States, it is permissible for a Member State to ensure that the grant to cover the maintenance costs of students from other Member States does not become an unreasonable burden that could have consequences for the overall level of assistance that may be granted by that State. In the case of assistance covering the maintenance costs of students, it is thus legitimate for a Member State to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that State. However, such a link must not require students to establish a link with the employment market of the State or to have paid contributions as in the British system. Such rules make it impossible for a national of another State, whatever the actual degree of integration into the society of the host Member State, to satisfy that condition. Such treatment cannot be regarded as justified by the legitimate objective which those rules seek to secure.

Thus if the justification is not appropriate to achieve the objective of the measure, or if it absolutely excludes foreign nationals, it is not acceptable, and then the exclusion on grounds of nationality is not permitted. The fact that there is no direct relation between the requirement to pay tax and the link with the employment market, and the fact that students could not establish such a link, made the *Bidar* requirement unacceptable.

In *D'Hoop*[34] the justification offered was not accepted by the Court of Justice. The case concerned Belgian legislation on unemployment benefits, known as tide-over allowances for young people who have just completed their studies and are seeking their first employment. Ms D'Hoop was Belgian, but she studied in France, and was now living in Belgium. Her application for the allowance was rejected. The question was whether EU law precludes a Member State from refusing to grant the tide-over allowance to one of its nationals, on the sole ground that that student completed her secondary education in another Member State.

By linking the grant of tide-over allowances to the condition of having obtained the required diploma in Belgium, the Court argued, the national legislation places at a disadvantage certain of its nationals simply because they have exercised their freedom to move in order to pursue education in another Member State. The condition at issue could be justified only if it were based on objective considerations that are proportionate to the legitimate aim of the national provisions. The tide-over allowance aims to facilitate the transition of young people from education to the employment market. In such a context it is legitimate for the national legislature to aim to ensure that there is a real link between the applicant for that allowance and the geographic employment market

[34] Case C-224/98, [2002] ECR I-6191.

concerned. However, a single condition concerning the place where the diploma of completion of secondary education was obtained is too general and exclusive in nature. It unduly favours an element that is not necessarily representative of the real and effective degree of connection between the applicant for the tide-over allowance and the geographic employment market, to the exclusion of all other representative elements. The Court concluded that the condition therefore goes beyond what is necessary to attain the objective pursued.

From these cases it is evident that a Member State may restrict access to its benefits, but that such a restriction has to be objectively justified. The justification must be related to the type of benefit and must be appropriate and proportionate to achieve the objective. In *Bidar,* the required link with the geographical labour market was not accepted, since a course of study does not in general link a student to a particular geographical labour market. On the contrary, in *D'Hoop*, a link with a particular labour market could be required, since in that case unemployment benefits and participation in a work integration programme were at stake. However, in this case a diploma obtained in Belgium was required, and this was not appropriate. In other words, the national Governments used exactly the wrong arguments.

We can also conclude from the judgments that a certain degree of integration into the society of the host Member State can be required. This is confirmed in *Förster.*[35] In this case the Dutch policy rules on study grants were disputed, laying down that a student who is a national of an EU Member State may be eligible for study grants if, prior to the application, s/he has been lawfully resident in the Netherlands for an uninterrupted period of at least five years.

Was this resident requirement for non-Dutch nationals allowed? The Court answered this question in the affirmative. The requirement was justified by the Netherlands in view of its policy of ensuring that students who are nationals of other Member States are to a certain extent integrated into society. The Court decided that this condition is appropriate for this purpose.

However, the requirement also has to be proportionate to the legitimate objective pursued by the national law. The Court decided that in this case the condition could not be deemed excessive. For this purpose it is relevant that Article 16(1) of Directive 2004/38 – discussed below in Section 5.3 – provides that EU citizens have a right to permanent residence in the territory of a host Member State where they have resided legally for a continuous period of five years. Moreover, the residence requirement for study grants was applied on the basis of clear criteria known in advance. Therefore the residence requirement did

[35] Case C-158/07, [2008] ECR I-8507.

not go beyond what is necessary to attain the objective of ensuring that students from other Member States are to a certain extent integrated into the society of the host Member State.[36]

Table 1 Summary of case law

	Regulation 883/2004	*Regulation 492/2011*	*Article 18 TFEU*
Access for:	EU nationals, on condition that they are or have been covered by a national social security system.	EU nationals.	EU citizens.
On condition that	The facts are not limited to one Member State. The social security system is applicable.	The facts are not limited to one Member State. They are workers.	The facts are not limited to one Member State. The benefit is within the material scope of secondary EU legislation.
Relevance of periods completed earlier	Aggregation of periods, relevant to entitlement and calculation of benefit.	No relevance, but national and foreign workers have to be treated in the same way, and as a result no such conditions may be applied that lead to a difference if there no justification	No.

[36] *See*, for the interpretation technique in the *Förster* judgment see also E. Spaventa, *The Constitutional Impact of Union Citizenship*, in, *The Role of Courts in Developing a European Social Model,* 158 (U. Neergaard et al. eds., Djøf Publishing 2010).

	Regulation 883/2004	*Regulation 492/2011*	*Article 18 TFEU*
Residence conditions as eligibility conditions	Residence condition is overruled for access to the system. Exceptions: in the case of special non-contributory benefits.	Residence conditions are removed for frontier workers on the basis of prohibition of indirect discrimination (*Meeusen*). Former workers can invoke the regulation in respect to a benefit related to their previous status as worker (*Meints*). In *Geven* the residence condition was considered justified for child-raising benefits in the case of a worker in part-time employment.	Residence conditions may be required for some type of benefit if objectively justified, e.g., to establish a link with the society.
Possibility of transfer of benefits across borders	Yes, apart from exceptions (SNCB) and restrictions.	Yes, e.g., *Meints.*	Probably not.
Cover after stopping working	Transfer of long-term benefit is ensured. In the case of specific short-term benefits, the State of employment remains applicable. Otherwise the system of the State of residence is applicable.	Former workers, if the benefit concerned relates to the status of worker.	Work is not a relevant factor.

5.4 The Consequences of Claiming Welfare Rights for Residence Rights

Can an individual lose the right to reside in a State when claiming benefit? Under the residence directives,[37] applicable at the time of *Grzelczyk* and *Trojani*, Member States had to grant the right of residence to nationals of Member

[37] Directive 90/364; Directive 93/96.

States, provided that these nationals and the members of their families were covered by sickness insurance and had sufficient resources to avoid becoming a burden on the social security system of the host Member State during their period of residence. Thus, when Mr Grzelczyk applied for social security, the question arose whether the host State could have him removed from its territory. The Court considered that there were no provisions in the directive that precluded those to whom it applied from receiving social security benefits. That interpretation did not, however, prevent a Member State from taking the view that a student who claimed social security no longer fulfilled the conditions of his right of residence, nor did it prevent the Member State from taking measures either to withdraw his residence permit or to refuse to renew it. However, in no case may such measures become the automatic consequence of a student who is a national of another Member State having recourse to the host Member State's social security system.

The Court added that the sixth recital in the preamble of the Directive envisages that beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State. The Directives thus accept a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States, particularly if the difficulties encountered by a beneficiary of the right of residence are temporary.

In Directive 2004/38/EC,[38] the current Residence Directive, the case law established in *Grzelczyk* was consolidated. An expulsion measure should not be the automatic consequence of recourse to the social security system, but it should be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation, and links with the country of origin.

The Directive includes an equal treatment provision (Article 24): in accordance with the prohibition of discrimination on grounds of nationality, all EU citizens and their family members residing in a Member State on the basis of this Directive should enjoy, in that Member State, equal treatment with nationals in areas covered by the Treaty, subject to such specific provisions as are expressly provided for in the Treaty and secondary law. However, it should be left to the host Member State to decide whether it will grant to these persons social assistance during the first three months of residence, or maintenance assistance for studies prior to acquisition of the right of permanent residence. An interesting point is that Article 24 still draws a distinction between economically

[38] OJ L 158/77.

active citizens and others. Note also that the welfare provisions for which exceptions apply are study grants and public assistance only.

5.5 Is Requiring a Link in Terms of Residence also Allowed for Market Citizens?

We saw that a link may be required to remove nationality/residence conditions for study grants and therefore the question arises whether this also affects market citizens, that is, economically active persons. A recent judgment of the Court of Justice concerns this question. The case arose from an infringement procedure of the European Commission against the Netherlands concerning Dutch study grants. Under the rules, Dutch nationals and persons treated as such are entitled to study grants. Those treated as Dutch nationals include EU citizens who are economically active on study grants in the Netherlands and their family members. They need not have resided in the Netherlands to qualify for this type of funding. The third category includes EU citizens who are not economically active in the Netherlands. They qualify for funding after five years of lawful residence in the Netherlands: this is the *Förster* category.

A special rule was introduced for funding for higher education pursued outside the Netherlands. For this purpose students must additionally have resided lawfully in the Netherlands for at least three-out-of-six years preceding enrolment at an educational establishment abroad. This requirement applies irrespective of students' nationality.

The European Commission initiated the infringement procedure since this rule also affected children of frontier workers, and thus could be seen a form of indirect discrimination hindering free movement.

In its judgment of 14 June 2012,[39] the Court ruled that the 'three-out-of-six' rule is indeed inconsistent with Article 45 TFEU and Article 7(2) of Regulation 492/2011. In line with its previous case law (see section 4.1) the Court held that student grants paid by a Member State to the children of workers constitutes, for the migrant worker, a benefit for the purposes of Article 7(2) of Regulation 1612/68 (492/2011). A residence requirement for a specific period primarily operates to the detriment of migrant workers and frontier workers who are nationals of other Member States and is therefore indirectly discriminatory.

In the case under discussion, the Netherlands invoked two reasons to justify the contested residence requirement. First, it claimed that the requirement is necessary in order to avoid an unreasonable financial burden. Second, given that

[39] Case C-542/09, not yet published.

the national legislation at issue is intended to promote higher education outside the Netherlands, the requirement ensures that the portable funding is available solely to those students who, without it, would pursue their education in the Netherlands.

The Court considered that as regards the justification based on the additional financial burden, budgetary considerations cannot justify discrimination against migrant workers. The Netherlands had contended that, in *Bidar*, the Court accepted the legitimacy of the objective of introducing a limit, by means of a residence requirement, to ensure that the grant of that benefit did not become an unreasonable burden for the host Member State. The Court replied that *Bidar* and *Förster* concerned students from other Member States who were not migrant workers or members of their families. The existence of a residence requirement to prove the required degree of integration is, in principle, inappropriate when the persons concerned are migrant or frontier workers.

The Court justified the difference between migrant workers and others by considering that with regard to migrant workers and frontier workers, the fact that they have participated in the labour market of a Member State establishes, in principle, a sufficient link of integration with the society of that Member State, allowing them to benefit from the principle of equal treatment, as compared with national workers, in relation to social benefits.

The objective of avoiding an unreasonable financial burden can therefore not be regarded as an overriding reason relating to the public interest, capable of justifying the unequal treatment of workers from other Member States as compared with Netherlands workers.

A second reason is that the residence requirement may be rendered legitimate by the purpose of increasing student mobility and encouraging students to pursue their studies outside the Netherlands. The Court accepted that the objective of encouraging student mobility is in the public interest and this constitutes an overriding reason justifying a restriction on the principle of non-discrimination on grounds of nationality. However, the condition has to be appropriate for securing the attainment of the legitimate objective pursued and must not go beyond what is necessary to attain it.

The Netherlands contended that the purpose of the portable funding scheme is that it goes only to the students whose mobility must be encouraged. The Court then discussed the question as to whether the requirement does not go beyond what is necessary in order to attain that objective. It is up to the Netherlands to show that the measure is appropriate for securing the attainment of the objective relied upon and does not go beyond what is necessary to attain it.

The Netherlands had contended that a requirement to the effect that the student must know the national language or have a diploma from a Netherlands school would not be an effective means of promoting the objective pursued by the national legislation in question. According to the Netherlands, such requirements would give rise to discrimination on grounds of nationality.

The Court replied that it is not sufficient for a Member State simply to refer to two alternative measures which, in its opinion, are even more discriminatory than the requirement laid down in its Act. The Netherlands must therefore at least show why it opted for the three-out-of-six years rule, to the exclusion of all other representative elements.

The Court did not further explain which arguments would have been sufficient. Since it closely followed the Conclusion of the AG, this can shed some light on this. The AG suggested (point 158) that the Netherlands needs at least to show why it favours residence of three-out-of-six years to the exclusion of all other representative elements, such as residence of a shorter duration, or why the target group cannot be identified through other (possibly less restrictive) measures, such as a rule prescribing that the grant for studying outside the Netherlands cannot be used to study in the place of residence.

6 ANALYSIS AND CONCLUSIONS

6.1 The Questions to be Addressed

In the introductory section, the questions to be addressed in this article were stated: (1) whether a new identity for EU citizens has been created; (2) whether such an identity is necessary to justify access to welfare across borders; and (3) whether social citizenship threatens national welfare systems.

6.2 Has a New Identity for EU Citizens been Created by the Case Law of the Court of Justice?

6.2[a] *General*

From the analysis of the case law, it is clear that no new identity or concept of EU citizen has been created. Instead, restrictions on access to welfare in a State other than that of origin or the State of residence have consistently been examined taking account of whether discriminatory conditions could be objectively justified.

More precisely, the objective justification of the cases discussed concerned in particular conditions aimed at establishing that the person concerned is a

member of the community concerned, in other words that the person has a *link* with the community. It must be borne in mind, however, that the link is required as part of the objective justification for the condition concerned, and this test is relevant to answering the question as to whether a link can be required and what the conditions for the link can be. The link has to be closely connected to the particular type of benefit and the status of the person concerned (employed person, non-economically active person and so on). The various aspects of the link approach will be dealt with in the following.

6.2[b] *The Link of Market Citizens to a Foreign Welfare System*

6.2[b][i] The Relevance of an Economic Contribution

Initially membership of a community as a condition for benefit eligibility was, as described in section 2, defined in terms of nationality, employment status and residency. These elements constituted the link between citizens and the State in cases in which a claim for benefits was made, even though it was not worded in these terms at the time. The justification for sharing welfare was often found in more absolute terms, as can be seen in the quote from Dougan (section 3 *supra*): nationality shows a shared identity and this is the moral basis for redistribution of welfare rights. Also residence in the same community can constitute such a moral basis.

However, in view of the free movement objectives of the European Union, the residence and nationality conditions were replaced by the criterion that persons made an economic contribution to a particular country. In fact, in the judgments of the Court on the coordination Regulation and Regulation 492/2011 this economic criterion is hardly ever mentioned – the exceptions are outlined below – since it cast the issue in terms of upholding free movement. The free movement rules were, however, restricted to workers, so the economic contribution was in fact the admission ticket to a national community.

This link between market citizens and access to the social security system of the State of employment was laid down in EU law, that is, in the coordination Regulation and Regulation 492/2011. It is clear that this link is of a different nature from that founded on a nationality or residence condition. Whereas nationality suggests a common identity, making an economic contribution is much less convincing in terms of establishing such an identity.[40] Instead, the objective of realizing free movement is the basis for access across borders.

[40] Still, for residence rights the duration of the economic contribution is indeed relevant, see Directive 2004/38.

The economic link is sufficient to gain access to the social security system assigned by the rules of the coordination Regulation. Thus no extra conditions on the duration of work or residence are required: aggregation rules help to satisfy the conditions of benefit schemes. This is basically also true for persons pursuant to Regulation 492/2011.

At times politicians argue that a waiting period should apply before foreign workers are entitled to benefit, but such conditions are inconsistent with the promotion of free movement. As a result, it is expected that the *Förster* criteria for establishing a link will not permeate the rules applicable for economically active migrants. In other words, it can be expected that the criteria for the objective justification of restricting access to welfare benefits are linked to the type of person and the type of benefit concerned. This is also the approach followed by the Advocate-General in case 542/09, discussed in section 5.4.

6.2[b][ii] For Some Benefits a State Can Require an Additional Criterion in the Case of a Weak Economic Link

In general, there are no requirements on the contents of the economic link. In the case law on the coordination Regulation, no requirements were laid down, since the Court decided in *Kits van Heijningen*[41] that part-time workers also fall within the scope of the coordination Regulation. Furthermore, a decisive factor for falling within the personal scope of the coordination Regulation was whether a country covered persons in its social security system. Indirectly in this way States could exclude persons making a minor economic contribution.

Also for Regulation 492/2011 there is no strict requirement on the level of economic contribution. The only persons excluded are those who work in purely marginal and ancillary roles. This condition seems to refer to the type of work (such as activities forming part of a traineeship) rather than acting as a way to exclude part-timers.

However, in respect of particular benefits, a weak economic link is insufficient to remove residence conditions, as we saw in *Geven*. This was (a) in cases of indirect discrimination of (b) persons in minor employment for (c) benefits that have, in view of their nature, particular solidarity objectives, such as the child-raising allowance.

If (a), (b) and (c) are satisfied, a residence condition may be adopted. Note that the requirement for a link in the form of residence was part of the test of the objective justification for indirect discrimination constituted by this residence condition.

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[41] Case 2/89, [1990] ECR 1755.

This case law is restricted to the situation in which elements (a), (b) and (c) are satisfied. In cases of direct discrimination and in cases where residence conditions are explicitly not allowed (Article 7 Regulation 883/2004, for instance), an economic link, even if it is a weak one, is sufficient. It has to be borne in mind also that the *Geverl* case law is applicable only in respect of benefits that have a particular objective which requires a link with the community concerned. The stronger the link between the benefit and the solidarity system, the more room there is to require a link between the person and the community, although this link does not necessarily need to take the form of residence requirements.

6.2[b][iii] Solidarity Benefits under the Coordination Regulation

For special non-contributory benefits, the coordination Regulation has a special regime, meaning that given the solidarity character of these benefits, the residence condition applies. In *Skalka*,[42] the Court considered that such a benefit is always closely linked to the socio-economic situation of the country concerned and its amount, fixed by law, takes account of the standard of living in that country. As a result, its purpose would be lost if it were to be granted outside the State of residence. This means that a link with the State in which one resides is required.

The special character of these benefits is the more convincing now that assimilation rules apply and pro-rata rules do not apply, which means that persons are fully covered once they are resident in a particular country.

In this context, it is consistent that if there is also another link, that is, the economic link with the country of work, or more generally if there is a free movement dimension, access is still possible to such benefits if one resides elsewhere. However, the Court took a cautious approach, and did not declare the provisions on the special non-contributory benefit inconsistent with the Treaty. Instead, the Court required national legislation to be interpreted in line with Article 45 TFEU, and for this purpose it was relevant that Mr Hendrix (in *Hendrix*, see section 3.4) still had economic and social links with the State where he resided earlier. As a result we see that the link approach permeates also into this area, but the differences with the EU citizens' case law also have to be borne in mind.

Thus in market Regulations in the case of solidarity benefits, the link between the type of benefit and the community may be of such a nature that it requires a particular link with the claimant and Community before the claimant is entitled

[42] Case C-160/02, [2004] ECR I-56.

to it. This link may be with the host State (*Geven*) and in some cases with the State of origin (as in *Hendrix*).

6.2[c] *Social EU Citizenship*

For social EU citizenship – that is, a legal status that is not connected with economic activities – discriminatory conditions which limit access to a particular system can be assessed by the Court against Articles 20 and 18 TFEU. If no justification is mentioned (*Trojani* and *Martínez Sala*) or if it does not correspond with the aim of the measure (*Bidar* and *D'Hoop*), the requirement is not justified.

The condition for benefit eligibility thus needs to have a legitimate aim: it must be appropriate to reach the aim and it must be proportionate. For study grants, students may be required, in order to protect the system against overburdening, to demonstrate a certain degree of integration into the society of that State, which may take the form of a minimum period of residence in the host Member State.

6.3 Is a Separate Identity for EU Citizens Necessary for Justifying Access to Welfare across Borders?

In her article,[43] Strumia concluded that an authentic European social citizenship needs to rest on a notion of solidarity beyond the borders of the nation State. Can solidarity be stretched in the EU, she wonders, without the contextual emergence of some form of European identity? She then considers whether such an identity exists and comes to the conclusion, if I understand her well, that there is as yet no such identity, and it will be difficult to develop such an identity. However, she continues, the foundations of solidarity at supranational level do not consist of belonging to the same community, but of belonging to communities that share common core values. The circle of solidarity which runs through these communities and stretches across their boundaries rests on an idea of mutual recognition, whereby all the European national communities open up to some extent and at the same time grant access to their social spaces to citizens of other Member States.[44]

Although she thus nuances somewhat the requirement of a new overall identity, she still construes identity out of the different systems.

However, the link approach developed above seems much more useful to explain and regulate when Member States have to open their systems to persons

[43] Strumia (note 2), at 127.
[44] Strumia, previous note, at 140.

coming from or going abroad. The case law is not so much based on mutual recognition, since there are still important differences between the systems. If Belgium had had a scheme for young people with disabilities, the *Hendrix* problem would not have arisen. Nor can it be said that States open up their systems of their own free will, but they are obliged to do so.

The EU citizen case law looks similar to the coordination approach developed for market citizens. Under the coordination rules, no harmonization of systems was required, but rules were laid down, *inter alia*, on non-discrimination, aggregation and the cross-border transfer of benefits in order to achieve free movement.

Therefore, also for social EU citizens, no new common identity as such is necessary, but the free movement objective suffices, and a coordination rule is applied, that is, a non-discrimination rule. This non-discrimination rule is forceful, since it requires Member States to explain why a particular condition is legitimate, appropriate and proportionate. In this explanation the requirement of a link with the community may be acceptable and, if well-founded, it may control access.

This link approach also explains why the State of origin has to provide welfare support in respect of its own nationals making use of the right to free movement as long as there is a link with that State (*Hendrix*, a coordination case). When the link with the host State is strong enough, that State has to take over the responsibility (*Förster*).[45] This link may include the condition of a minimum period of residence in the territory of the State.

Solidarity was not the reason why social benefits were made accessible to non-nationals; rather, solidarity is referred to in the case law when a particular national scheme is allowed to be defended *against* foreign nationals, as in the case of special non-contributory benefits, where the Court upheld a residence condition as objectively justified, while referring to the relation between these benefits and the solidarity of the country concerned (as in *Skalka*).[46]

6.4 Is there a Threat for Welfare States?

The third question is whether the development of EU citizenship entails important consequences for the balance of European welfare States and whether there is now a transnational welfare space for EU citizens.

To some extent, the extension arising from EU citizenship is not so dramatic, since it was already in the air: also Regulation 883/2004, adopted some

[45] See also Dougan (2009:134), mentioned in note 4.
[46] Case C-160/02, [2004] ECR I-5613.

five years later, covers all EU nationals. Under Regulation 883/2004, Ms Martínez Sala could have overturned the discriminatory refusal to grant child-raising benefit. However, the scope of the coordination Regulation is limited, that is, to specific statutory benefits. Since the material scope of Article 18 TFEU corresponds to that of Article 7 of Regulation 492/2011, all social welfare rights may now be accessed. In this respect a broad area has indeed been made accessible.

The elimination of nationality and residence conditions can lead to 'social tourism'. In view of the benefits covered by the coordination Regulation, there are now only a few limits, in any case for residence-based schemes, restricting access by new entrants. However, the application of the pro-rata rules of the Regulation for long-term benefits reduces the risk for the welfare system in question and leads to a justified outcome, since protection is given, and the proportional (year wise) accrual of benefit rights will not in itself constitute a reason to move to that country.

This is different for special non-contributory benefits, where a full benefit is payable as soon as a person legally resides in a country. Whether a country might, in the case of a large influx of foreign nationals entering the country for the purpose of claiming these benefits, take measures, such as the removal of these persons, is still an open question.

Regulation 492/2011 still has a limited personal scope, so it is not a threat for foreign schemes.

Articles 18 and 21 TFEU may have a far-reaching impact, but they leave the Member States the possibility to restrict access, provided they have a legitimate reason, and that the measure is appropriate and proportionate. This means that they have to define the conditions for each benefit scheme and these conditions can be tested by the Court. Although this leads to a degree of legal uncertainty as the arguments may vary per scheme, if the reasons are thought through carefully by the State, there is no threat to the existence of the welfare state. Nor can it be said that a new supranational social space has been created.

7 CONCLUSION

It is interesting to see that at several stages of the development of EU law, alarming statements have been made about the threat to welfare States and the failure to respect the values of national systems.

In fact, the approach of the Court of Justice has been consistent in letting the national systems of Member States remain intact by 'merely' interpreting the provisions in view of the promotion of free movement rules. Initially, these were the rules on the free movement of workers, while currently they are the rules on

the free movement of persons. This free movement requires coordination rules: in the case of non-economically active persons, this is the non-discrimination rule. The judicial test of the Court requires an objective justification in case of discrimination, and this judicial test scrutinizes the arguments presented by the national governments. This means on the one hand that States have to put forward arguments for all their schemes and this may give rise to legal uncertainty. On the other hand, it is exactly this method which leaves the power to Member States to regulate access to their schemes, provided the arguments are well-founded. If more progress and less piecemeal measures are wanted, it is for the legislature to intervene.

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