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Working Paper #34
October, 2023

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National Center of Competence in Research –
The Migration-Mobility Nexus

nccr-onthemove.ch

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Swiss National Science Foundation

The National Centres of Competence in Research (NCCRs) are a funding scheme of the Swiss National Science Foundation

Abstract

Theoretically, this article proposes that concerns of 'welfare migration' have shaped the EU free movement regime as a system of differential rights. This system was institutionalised in Directive 2004/38 in the context of Eastern Enlargements, and it gives different residence and social rights to EU citizens depending on their socioeconomic status. Whereas workers have unquestioned residence rights and can have access to various contributory and non-contributory social benefits, economically inactive citizens are excluded from welfare benefits and must prove they have sufficient resources to obtain the right to reside.

The article further suggests that these provisions sought to provide member states with tools to control 'unwanted' migration, which in this article refers to the 'poor'. Directive 2004/38 enables member states to use two policies to control intra-EU migration: welfare exclusion and the control of residence rights. Empirically, the article investigates the implementation of these two policies in Germany and the UK. It finds that the implementation of these policies has led to a 'migranticisation' of the EU free movement regime. Whereas workers are seen as *free movers*, economically inactive citizens are seen as *migrants* that need to prove their right to reside. However, the article also finds fundamental differences between the cases. The UK's long tradition of Euroscepticism led to Brexit and to the *de facto* transformation of all EU citizens into migrants. In contrast, countries with a strong European identity and robust social values entrenched in national law, such as Germany, are less likely to experience a radical turn to the 'migranticisation' of EU free movement.

Keywords

European Union, free movement, intra-EU migration, mobility, economically inactive citizens, social benefits

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1 Introduction

The relationship between migration and welfare states, often called the migration-welfare nexus, has been examined extensively in the literature (Bommes and Geddes 2000; Geddes 2003; Mau and Burkhardt 2009). Many studies have focused on analysing how migration impacts national welfare policies. This line of research treats migration as the independent variable with the aim of observing the effect of population flows on welfare states regarding the design of social policies or the resources dedicated to fund welfare services, among others (Burgoon and Roodujin 2021; Avdagic and Savage 2021). Another line of research highlights the effect of discourses and framings on migration on welfare policies. Burgoon and Roodujin, for example, have studied how attitudes towards immigration affect the politics of welfare states (Burgoon and Roodujin 2021, 178). On the other hand, Avdagic and Savage found that negative framings on migration decrease citizens' support for high levels of spending on welfare benefits (Avdagic and Savage 2021, 625).

However, while much is known about the impact of migration (or discourses on migration) on welfare states, the impact of welfare states (and discourses on welfare) on migration is yet to be explored. There is little research on the effect of different notions of welfare and programmes on migration policies such as regulations on the right to entry, residence, or settlement, for example. This shortcoming is puzzling because societal and political preferences on immigration can be influenced by the way societies think about welfare and how it is administered by the state (Geddes 2003, 152). As Geddes argues, it is "more useful to explore the organisational and ideological changes within European welfare states and the effects that these in turn have on understandings of migration" (Geddes 2003, 152). This article aims to contribute to this gap by studying the potential impact of welfare-related arguments on migration regimes and policies.

With this objective, the article analyses how a welfare-related argument, namely claims of 'welfare migration', influences a specific form of migration, more specifically, European Union (EU) free movement, in the context of the 2004 and 2007 Enlargements. This case study can provide us with useful insights about how different ideas about welfare states can transform mobility regimes for various reasons. In the 2004 Enlargement, eight Central and Eastern European Countries (CEECs), the A8[1], which had lower levels of social rights than West European countries, acceded to the EU. This was followed in 2007 by the adhesion of two other Eastern European countries (A2), Bulgaria and Romania. This raised concerns about the possibility of Eastern migrants moving to West European countries to profit from generous social benefits rather than to work, which is commonly known as 'welfare migration', 'benefit tourism' or 'social tourism'[2] (Menghi and Quéré 2016, 9).

How did these concerns about 'welfare migration' influence EU free movement? This article suggests that fears of 'welfare migration' in the context of Eastern Enlargements shaped the provisions of European Directive 2004/38, which was created to regulate both the residence rights of EU citizens and member states' obligations to provide social assistance benefits. Inspired by the 'civic stratification' approach (Morris 2003), the article proposes that Directive 2004/38 institutionalised EU free movement as a system of differential rights. Previous studies have already shown that different groups of EU citizens are entitled to different rights in the EU (Ackers and

[1] Czech Republic. Estonia. Hungary. Latvia. Lithuania. Poland. Slovakia. Slovenia.
[2] This article uses the expression of 'welfare migration' because we consider that it is the most accurate way to describe the phenomenon analysed. We believe that other expressions that include the term tourism can be misleading.

Dwyer 2004, 451; Ratzmann 2022). In fact, the EU was conceived as an economic community and, as such, it only facilitated the mobility of citizens *as workers*, and the expansion of rights for other categories of citizens emerged only later in a gradual and hierarchical manner.

This article builds on this field of research to suggest that Directive 2004/38 *systemised* a regime of differential rights. Directive 2005/38 consolidates the different categories of EU citizens depending on their socioeconomic activity: workers, jobseekers, and economically inactive citizens. Workers have unquestioned rights of residence in another member state and can access to contributory and means-tested benefits. On the other hand, jobseekers' right to residence is conditional on the time that they have previously worked in the host country and their active search for a job.

Finally, economically inactive citizens seeking the right of residence are required to provide for themselves, and they can lose residence rights if they become a burden for the welfare states of the host country. This categorisation of EU migrants depending on socioeconomic activity determines the level of "protection, rights and resources" that are available for certain groups (Crawley and Skleparis 2018, 59).

The article further suggests that these legal categorisations were institutionalised to limit the migration of 'unwanted migrants', which in our case refers to economically inactive EU migrants that can fall into a situation of economic vulnerability (Geddes, 2003, 162). However, it is difficult to control 'unwanted' intra-EU migration in a context of free movement. Member states must control intra-EU migration creatively by using other policies such as welfare exclusion and the control of residence rights. On one hand, exclusion from welfare services is used as a tool of migration control (Bommes and Geddes 2000) to encourage poor EU citizens to return to their home countries. On the other, EU migration is controlled by scrutinising EU migrants' residence rights which has become the way to have access to social rights in the EU (Ferrera 2012; Martinsen and Vollard 2014, 685).

The empirical objective of this article is to analyse the implementation of these policies. To this end, the article traces social policy and immigration reforms regarding EU migrants in two countries, Germany and the United Kingdom (UK), from 2004 to 2020. These countries are "most similar" case studies because Eastern migration has had a large impact in the two countries and concerns about welfare migration have been at the forefront of the political agenda in the last years (Luhman 2017; Bruzelius et al. 2015; Fernandes 2016, 8). Our empirical analysis shows that both countries have combined policies of welfare exclusion and the control of residence rights to limit the migration of economically inactive people. Also, we observe that after migration restrictions on Romanians and Bulgarian came to an end in 2013, the two countries opted mostly for measures that tighten up residence rights and increase the state's administrative power to scrutinise the residence rights of EU migrants.

However, the article also highlights important differences in the two countries. The deep questioning of EU free movement *per se* in the UK from 2016 ultimately led to Brexit. In contrast, EU free movement has not been questioned in Germany and certain political and legal actors, such as the Federal Social Court (FSC), still defend the provision of social benefits for inactive EU migrants. This difference might be explained by the deep-rooted presence of Euroscepticism in the

UK that led to its break from with the EU in 2016, which contrasts with the unquestioning support of EU membership by mainstream political parties in Germany.

Finally, our empirical findings have broader theoretical implications for the Migration-Mobility nexus. The article proposes that the stratification of EU citizens leads to a 'migranticisation' of the EU mobility regime that is shaped by the economic activity of people: workers and self-sufficient people are considered *free movers*, whereas economically inactive people are seen as *migrants* that need to prove their right to reside.

The article is organised as follows. The next section explains the emergence of a stratified EU regime and introduces our theoretical expectations. The third section describes the research design and justifies the case selection. The fourth section offers the empirical analysis of social and immigration policies in Germany and the UK. The fifth section evaluates the empirical results from a comparative perspective and the sixth section concludes.

2 The institutionalisation of a stratified EU mobility regime in the context of the Eastern Enlargements

The relationship between national welfare states and the EU mobility regime has always been tense. This is due on the one hand to the existence of EU free movement and the non-discrimination principle, and on the other to social rights that were the responsibility of member states (Ferrera 2009). Member states agreed to the free movement of people in the Treaty of Maastricht in 1992 but they were more reluctant to provide full citizenship and equal social rights to EU citizens, The absence of EU legislative intervention in social policies was offset by the activist role taken by the European Court of Justice (ECJ), which expanded the social rights of EU migrants in various rulings (e.g., Case C-85/96 Martinez Sala in 1998) (Gago and Maiani, 2021).

Paradoxically, the ECJ's important role was not highly contested by member states despite their reluctance to transfer competences for social rights to the EU level. This lack of contestation can be explained by the fact that EU intra-mobility was not (yet) considered as a threat to member states' financial resources in the 1990s given the relatively low number of EU migrants (King and Pratsinakis 2019, 8).

However, this perception changed in the context of the 2004 and 2007 Eastern and Central European Enlargements (Martinsen 2011, 951). In the run-up to the 2004 Enlargement, West European countries started to be concerned about how Eastern and Central European migration would affect their labour markets and welfare states. This was due to the stark differences between the high labour and social standards of the West compared with those of the CEECs (Sinn 2002, 105; Kvist 2004, 303). In relation to the impact of Enlargement on welfare states, concerns emerged about 'welfare migration' as it was thought that Eastern migrants would move to the West to get generous social benefits rather than to work.

In response to these concerns, the EU decided to regulate the residence and social rights of EU citizens in Directive 2004/38. Article 6 of this Directive states that all EU citizens can move freely and stay in a host country for three months on condition that they have a valid identity card or passport. After three months, Article 7 provides residence rights to EU citizens under certain

conditions, namely if they 1) are a worker or a self-employed person and 2) have sufficient resources and a comprehensive sickness insurance so as not to become a burden for the social assistance system of the host member state. Moreover, Article 24 (2) stipulates that "the host member state shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period".

The regulations of Directive 2004/38 institutionalised different categories of EU citizens with distinct entitlements of residence and social rights. In doing so, it produced a "hierarchical system of rights" like other migration regimes (Crawley and Skleparis 2018, 51; Morris 2003). Workers and self-employed persons are granted the right to reside and settle, which gives them access to contributory and means-tested benefits. The situation of jobseekers is more complex. An EU citizen that is employed for a certain period of time in the host country can retain worker status in the following circumstances: 1) if he/she is unable to work due to illness 2) if he/she loses the job involuntarily after one year 3) if he/she loses the job involuntarily before one year or after a fixed-term contract but is registered in the unemployment office as a jobseeker, in which case the worker status of can be retained for six months 3) if he/she loses the job involuntarily and starts vocational training.

The institutionalisation of these categories (workers, jobseekers, economically inactive people) sheds light on which types of migrants are welcomed by member states (Geddes 2003, 153). People that are active in the labour market are welcome but inactive citizens are seen as a problem unless they can provide for themselves. This has implications for residence rights. The right of residence is not questioned in the case of workers, self-employed persons, and jobseekers. However, there are some limitations in case of the jobseekers,: they can only retain the right of residence after losing worker status if they "can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged". In practice, this means that these categories of citizens cannot be issued with an expulsion measure.

The situation for economically inactive people that enter the host country at their "own risk" is very different (Heindlmaier and Blauberger 2017, 1198). To retain their right of residence, inactive citizens must prove they have sufficient resources. If they cannot cater for themselves and need to resort to social assistance benefits, they can lose their right of residence. Member states cannot *automatically* withhold the right to reside from economically inactive citizens; they need to check on a case-by-case basis whether or not these citizens have become a 'burden' on the welfare system. However, once the host country has evaluated the situation, an expulsion measure can be issued.

We argue here that, as a result of this process, concerns about 'welfare migration' have led to the institutionalisation of a stratified EU mobility regime, as a "system of inequality based on the relationship between different categories of individuals and the state, and the rights thereby granted or denied" (Morris 2003, 79). The objective of this stratification is to legally uphold residence restrictions on "unwanted forms of migration" (Geddes 2003, 162). All nation states share this desire to control the migration of groups of migrants, and a distinction is generally made between the accepted (high skilled workers and the wealthy), the tolerated (skilled or unskilled workers) and the unwanted. The 'unwanted' category usually includes asylum seekers, refugees, undocumented migrants, persons with criminal records and the poor (Klaus and Martynowicz 2021, 5). This article

addresses situations in which undesired migration is measured on the basis of socioeconomic conditions and refers to the "mobility of the poor" (Lafleur and Mescoli 2018, 581).

2.1 Policies to control unwanted intra-EU migration at the national level

How is 'unwanted' intra-EU migration controlled at the national level? In classic migration regimes, states seeking to control unwanted migration can do so through border controls and visa requirements. However, the EU was created as a frontier-free zone, thus inhibiting the member states' ability to control migration at the gate. Open borders represent an administrative challenge for those member states that want to control EU migration (Kramer and Heindlmaier 2021). Hence, we suggest that, in the absence of border controls and visa requirements, two policies can be used to limit the migration of economically inactive citizens: welfare exclusion and the control of residence rights.

First, governments can use Article 24 (2) of Directive 2004/38 to justify restrictive social policy reforms to tighten up access to social benefits for EU migrants. The aim of this policy is to act as a deterrent for EU citizens without sufficient resources to provide for themselves. It seeks to prevent poor EU citizens from moving to the host country or to encourage them to return to their home country voluntarily if they fall into a situation of economic vulnerability (Kraler 2019).

Alternatively, governments can control *residence rights*. Member states can use legal residence as the precondition to entry (Martinsen and Vollard 2014, 685). If inactive citizens without sufficient resources do not leave the country voluntarily, their right to reside in accordance with Directive 2004/38 can be removed. Therefore, legal residence becomes dependent on economic activity (Perna et al., 2019, 10). Contrary to other migration regimes that consider nationality or citizenship as the access point to social rights, the EU mobility regime has adopted a "residence-based" logic (Thym 2015, 34). Again, this does not guarantee the automatic return of EU migrants, who can decide to stay in the host country without legal residence. The result is the creation of "undocumented" EU migrants in a situation of precarity (Lafleur and Mescoli 2018, 485). These policies led to a 'migranticisation' of the EU mobility regime: workers and self-employed people are seen as privileged EU *movers*, but the situation of economically inactive people is the same as that of third-country nationals as they need to prove their right to reside. 'Migranticization' is understood here as "those sets of performative practices that ascribe a migratory status to certain people and bodies" (Dahinden forthcoming). The stratified EU regime places EU *movers* and EU *migrants* in a "distinct hierarchy which goes along with an unequal distribution of societal symbolic and material resources" (Dahinden, forthcoming).

3 Research design and case selection

This article investigates the implementation of policies to control intra EU-migration in two case studies: Germany and the UK. The research is based on a most similar system design, which involves the selection of cases where independent variables are similar but some dissimilar elements help us to explain a different outcome (Steinmez 2021). Our country case studies, Germany and UK, are similar because Eastern migration has had a marked impact in both countries as they are traditional receivers of EU migrants due to low unemployment rates (Brücker et al 2002, 1).

In the UK, half a million Eastern Europeans arrived between 2004 and 2008 (Gilpin et al 2006). In Germany, municipalities reported that the number of Romanians and Bulgarians rose from 30,000 to 70,000 between 2007 and 2012 (Roos 2016). In addition, preliminary research shows that discussions on welfare migration in the two countries increased after the end of transition controls for Bulgarians and Romanians in 2013 (Fernandes 2016). However, there are also dissimilar elements in these cases. Whereas Euroscepticism was well established in several political parties in the UK, including the United Kingdom Independence Party (UKIP) and the Conservative Party (Alexandre-Collier 2015, 5; Ellison 2017, 5-6), EU membership has never been questioned in Germany (Arzheimer 2015, 535).

Regarding the dependent variable, this article is interested in identifying the policies implemented by the governments to control the migration of economically inactive migrants. We collected data on 12 policy reforms from 2004 to 2020: 7 in the UK and 5 in Germany. We use process tracing methods to reconstruct the political and legal contexts in which these policies were formulated and approved. The empirical analysis starts in 2004 and examines the transposition of Directive 2004/38; this was a crucial moment because it was when EU law was filtered and shaped by domestic politics (Martinsen and Vollard 2014, 677). Moreover, we can observe cross-country variations during the implementation process due to the differences in national governments' preferences regarding intra-EU mobility and their respective welfare traditions (Perna et al. 2019, 20).

4 Empirical analysis

4.1 Germany: a welfare or immigration policy problem?

In 2004, Germany transposed Directive 2004/30 in the *Freedom of Movement Act/EU of 30 July 2004*. This law included the regulations on EU migrants' right of entry and residence. Section 4 of the Law is dedicated to non-economically active migrants and stipulates that they must have sufficient resources and health insurance to stay in the country. In addition, Section 5a explains that competent authorities can require EU citizens to present documents proving these conditions.

Moreover, specific questions regarding social assistance benefits for EU migrants were transposed by amending the Social Code Book II (SCB II) in 2006. There are two types of social benefits in Germany. The first is included in Social Code Book II, which regulates means-tested benefits (minimum subsistence benefits) for people who are able to work (jobseekers). The second is included in Social Code Book XII (SCB XII) and refers to means-tested benefits for people who are not able to work and do not have any other sources of income. These benefits do not depend on labour status but on residence, which is the only precondition to claiming them (Bruzelius 2019, 77).

Prior to the 2004 Enlargement, EU migrants were already excluded from minimum subsistence benefits under Section 23 of Social Book XII but they could apply for the benefits under SCB II. However, the *Social Security Act 2006*, passed by Angela Merkel's first government, a coalition between the Christian Democratic Union (CDU) and the Social Democratic Party (SPD), also excluded EU migrants from SCB II benefits.

Nevertheless, *welfare exclusion* policies came up against an internal obstacle in Germany. On several occasions, the German Federal Social Court (FSC) took decisions counter to the Social Book regulations and used other legal reasonings to grant EU migrants social benefits (Gago and Maiani 2021). In 2010, the FSC decided that the exclusion of EU jobseekers from social benefits was contrary to the European Convention of Social and Medical Assistance (ECSMA), which obliged Germany to provide all migrants with health and social assistance. The government reacted to this decision by adding a reservation to the ECSMA in 2011, which suspended equal treatment with nationals for both types of benefits. Notwithstanding, the FSC continued to oppose welfare exclusion in 2013 and decided to grant social assistance benefits to an economically inactive Bulgarian migrant (Federal Social Court 2013). The FSC ruling was contested by the local authorities responsible for the funding of social assistance benefits (Heindlmaier and Blauberger 2017, 1198).

The debate on EU migrants' access to social benefits intensified from 2013, coinciding with the end of transitional migration controls for Bulgarians and Romanians. The local authorities of various cities (Berlin, Duisburg, Dortmund and Manheim) started a campaign to show that EU migration had become a burden on their financial budgets and to ask the federal government for help (DW 12 October 2013).

The government subsequently decided to increase the transfer from the European Social Fund and the Fund for European Aid to the most deprived to municipalities by 200 million euros (Bruzelius et al. 2015, 412). In addition, the federal government transferred further funds (25 million euros) to municipalities and increased its contribution to the costs for accommodation and heating in line with SCB II. Moreover, the government implemented policies on the *control* of *residence rights* in 2014. The *Freedom of Movement Act / EU* was amended to give EU jobseekers the right to reside for up to six months. The government strategy sought to make "access to residence status more cumbersome" (Roos 2016, 277).

Despite these restrictions, debates on welfare migration became more heated in 2015. Certain political parties used the refugee crisis as a window of opportunity to bring claims of welfare migration to the forefront of the political debate (Stockmeyer et al. 2020). The sister party of the CDU, the Christian Social Union (CSU), considered welfare abuse of EU migrants as a growing policy problem (Briggs 13 March 2015). The anti-immigration discourse was reinforced by the electoral advancement of the right-wing populist party Alternative for Germany (Afd) (Lees 2018). Pressures from the CSU and the entry of AfD in parliament in certain regions pushed the CDU/CSU-SPD coalition into implementing further restrictions in 2016 (Wagstyl 28 April 2016).

As a result, the government approved the *Act to regulate the claims of foreign persons 2016*, which strengthened welfare exclusion and the control of EU migrants' residence rights of. The Act excludes economically inactive citizens from access to social assistance benefits under the Social Code Books II and XII for five years. In addition, the new law restricts access to social benefits for EU migrants whose right of residence derives from Article 10 Reg. (EU) 492/2011 (Devetzi 2019, 340). In doing so, not only limits the residence rights of economically inactive citizens but also those of former workers whose right to reside derives from the parenthood of a child residing in the host country (Devetzi 2019, 340).

The 2016 reform also introduced changes in the competences of welfare and migration authorities. It requires Job Centres, which are responsible for assessing EU migrants' benefits entitlements, to inform migration authorities about EU migrants claiming social benefits but who do not have residence rights (Kramer and Heindlmaier 2021, 8). This means that welfare authorities can check residence conditions "at the gate" and "become delegated agents of migration authorities" (Kramer and Heindlmaier 2021, 8).

This shows a progressive 'migranticisation'' of EU mobility in Germany. In fact, once all the welfare exclusion policies were exhausted, the government that took office after the 2017 federal elections tightened policies controlling residence rights. In 2019, the government approved the *Law against illegal employment and abuse of benefits*[3] that modified the *Income Tax Act* (TIA)[4]; it states that EU migrants can only claim child benefits if they prove they have the right to reside in Germany as workers. In practice, this means they need to provide relevant authorities with their tax identification numbers.

In 2020, the government wanted to go one step further in the "migranticisation" of the EU mobility regime and attempted to transfer EU mobility issues to immigration authorities. This aimed to give immigration authorities the administrative capacity and competence to check EU migrants' right of residence in accordance with Directive 2004/38. However, the decision was reversed following a hearing of experts of the parliamentary committee, which considered that immigration authorities were not prepared for this task as they are often "too restrictive". (Rath 10 October 2020).

4.2 The UK: the extra right to reside test and Brexit

Before the transposition of Directive 2004/38, the UK government modified the *Social Security regulations 2004* to change EU migrants' access to social benefits. In the debates on the Enlargement's impact of on social benefits, the first response of Tony Blair's Labour government was to shield means-tested benefits to guarantee that EU migrants were excluded from social benefits. The 2004 social security reform amended regulations on income-related benefits, more specifically, income support, jobseeker's allowance, housing benefit, council tax benefit and state pension credit.

The aim of these reforms was to ensure that these income-related social benefits could not be claimed by EU migrants without the right to reside in the UK in accordance with Directive 2004/38. The regulations explained that migrants without the right to reside could not be treated as 'habitual residents' in the UK, which was a precondition for access to these benefits. In practice, the 2004 regulations meant that inactive migrants who could not provide for themselves could not pass the Habitual Resident Test (HRT). They could stay in the UK, this is called 'lawful presence', but could not be considered 'habitual residents', and therefore did not have 'lawful residence' in the host country.

The HRT had been created in the UK as early as 1994 in response to concerns about benefit tourism (O'Neill 2011, 228) after the Treaty of Maastricht, but the *Social Security regulations 2004* added an extra burden of proof for EU migrants. They were not only required to demonstrate that their

[3] Federal Law Gazette, 2019: I 1066

[4] German child benefits are placed within tax legislation

local residence was in the UK but also that their right to reside (right to reside test) was in compliance with Directive 2004/38 (O'Neill 2011, 227).

The government also created the Worker Registration Scheme (WRS) in 2004 (Drinkwater and Robinson 2013, 102)[5]. Concerns about welfare migration were also behind this second strategy of *welfare exclusion.* As Kvist argues, "countries that impose fewer restrictions on labour mobility may perceive a great and earlier need to adjust social policies" (Kvist 2004, 313). In fact, the UK did not implement the transitional migration controls to the A8 countries after Enlargement. This meant that Eastern migrants could work in the UK without a visa from 2004. However, the government required them to be registered in the WRS; in accordance with the Accession Treaty 2003, member states were allowed to regulate access to labour markets for a maximum period of seven years. Until its dismantling in April 2011, the WRS scheme enabled the UK to exclude EU migrants from social benefits unless they had been registered as employees in the country for 12 months.

The UK transposed Directive 2004/38 in the *Immigration Regulations 2006.* These regulations concerned EU nationals' rights of movement and residence and incorporated several measures to further control their residence rights. For periods of residence longer than three months, Directive 2004/38 allowed member states to require EU migrants to be registered with the relevant authorities; workers were required to have a valid ID and an employment certificate while inactive citizens needed to have proof of comprehensive sickness insurance cover and a declaration of sufficient resources. This allowed the UK government to strengthen the *control of residence rights.*

Euroscepticism and the debate on EU migrants' social benefits intensified in the UK after 2006 when David Cameron was elected leader of the Conservative party (Ellison 2017, 5-6); the new leader of the UKIP, Neil Farage, was also ramping up the anti- immigrant discourse (D'Angelo and Kofman 2018, 335) . Pressured by opposition parties, the Labour government added a new 'extra right to reside test' in the *Social Security Regulations* 2006, which modified "the right to reside requirement in the habitual residence test to take account of Article 24(2) of the Directive". The regulations stated that a person who was not habitually resident in the UK (had not passed the HRT) was considered to be a person from a foreign country and they could be treated as a habitual resident if they did not have the right to reside in accordance with Directive 2004/38.

The restrictions implemented from 2004 to 2006 triggered a conflict between the UK and the EU. The European Commission (EC) sent various letters to the UK government from 2008 questioning the compatibility with EU law of the right to reside test as a strategy for the control of *residence rights* (European Commission 2008). After finding the answers of the UK government unsatisfactory, the EC decided to open an infringement procedure against the UK in 2011[6]. The EC considered that the extra right to reside test discriminated against EU migrants given that they were required to provide more evidence than UK nationals (European Commission 2011). A referral was finally sent to the ECJ in 2011 as the EC considered the UK response justifying this strategy to be insufficient.

[5] Accession (Immigration and Worker Registration) Regulations 2004
[6] Infringement procedure NIF/2011/2054

Pending the ECJ ruling, the debates on EU migrants' access to welfare benefits became more heated. In 2010, the Conservatives won the elections and David Cameron became prime minister. The Eurozone and refugee crisis also led to increased anti-immigration views and Euroscepticism, and Brexit was placed at the forefront of the political debate (Alexandre-Collier 2015). The Conservative government used this context as a window of opportunity to implement further policy changes to limit EU migrants' residence rights (Luhman 2015, 30).

The aim of the new changes implemented in 2013 was to cover some legal loopholes regarding the situation of jobseekers left open by previous regulations. The *Jobseeker's allowance regulation*s 2013[7] stated that EU jobseekers did not have the right to reside in the UK unless they had sufficient resources. Directive 2004/38 distinguishes two types of situations. First, workers who had been employed for a minimum of 12 months and became involuntarily unemployed could retain the right to reside for six months (during which they were entitled to social benefits); thereafter, they would be considered an inactive citizen and needed to have sufficient resources. Second, a person coming to the UK to look for a job was also considered an economically inactive citizen.

The aim of the *Jobseeker's allowance regulations 2013* was to clarify that EU migrants did not qualify as 'habitual residents' in these two cases. Jobseekers were considered persons from a foreign country and therefore could not claim the Jobseeker's Allowance. In addition, a new minimum earnings threshold was used to determine whether an EU migrant could be considered a worker or a self-employed person. In addition, the government implemented further *welfare exclusion* measures in the *Housing Benefit Regulations 2014.* They stated that EU migrants who did not pass the HRT were considered persons from a foreign country and were therefore not entitled to housing benefits. This was extended to child benefits and the Tax Child Credit.

The UK government also amended the transposition of Directive 2004/38 in the *Immigration Regulations 2013*. The new regulations limited the time a person who is involuntarily unemployed could retain their status as a worker. If the person had worked for 12 months, the worker status could be retained for up to six months, but could only be retained longer if the person could provide evidence that he or she was actively looking for a job. Regarding jobseekers, the 2013 regulations state that jobseekers had the right to reside in the UK for six months. All in all, these regulations created a "complex system" of overlapping rules, and widespread confusion in the relevant administrative authorities (Dwyer et al. 2019, 145).

As a result, the government intervened again and amended the transposition of Directive 2004/38 in 2014. The *Immigration Regulations 2014* explained that jobseekers entering the country for the first time to look for a job had a right to reside in the UK for a total of six months, the first three months regulated by Directive 2004/38 plus 91 days. After this period, EU migrants needed to provide "compelling evidence that he/she is continuing to seek employment and has a genuine chance of being engaged". The implementation of these regulations meant the imposition of a "stronger, more robust" right to reside test for EU migrants, who were required to respond to more "individually-tailored questions, provide more detailed answers and submit more evidence before they will be allowed to make a claim" (Department of Workers and Pension 2013).

[7] The Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013.

The implementation of these policies to limit unwanted EU migration did not stop negative attitudes towards free movement. In 2013, David Cameron said in an opinion article published in the Financial Times that it was necessary to limit EU free movement (Cameron 2013). In the run up to the Brexit referendum, the UK negotiated a New Settlement with the EU that included several measures to restrict the residence rights of economically inactive migrants. Most of the measures were merely a repetition of the provisions of Directive 2004/38 but the UK also asked the European Commission to adopt new changes in secondary legislation.

One of the proposals was the suspension of non-contributory in-work contributory benefits for workers for seven years upon authorisation of the European Council. These measures would have meant that both inactive citizens and workers were excluded from welfare benefits. In addition, the European Commission agreed to change Regulation (EC) 883/2004 to index child benefits to the conditions of the country where the child resides. Finally, the ECJ ruled on the infringement procedure opened by the EC and decided to support the UK on the right to reside test. Nevertheless, these events were not enough to stop UK citizens voting in favour of leaving the EU in the referendum on 23 June 2016.

5 Comparative discussion

Our empirical analysis shows that both the UK and Germany combined policies of welfare exclusion and the control of residence rights to limit the undesired migration of EU inactive migrants from 2004. We identified four social policy reforms in the UK that excluded inactive migrants from social benefits and three immigration reforms restricting residence rights. In Germany, we observed two social policy reforms and three immigration reforms. Both countries witnessed a progressive 'migranticization' of EU mobility from 2013 in the context of the austerity due to the Eurozone crisis and coinciding with the end of migration controls for Bulgarians and Romanians. This was characterised by the tightening of policies aimed at scrutinising EU citizens' residence rights and by an administrative transfer of EU mobility issues from welfare to immigration authorities.

However, there are also some important differences between Germany and the UK. From 2016, Euroscepticism led to a deep questioning of EU free movement in the UK that ultimately led to its exit from the EU. In Germany, political, legal, and societal actors had divergent preferences on the management of welfare migration concerns. Although some political parties such as the CSU and AfD exerted pressure on the government to take more restrictive measures, EU free movement was not generally opposed. In fact, some legal actors such as the FSC maintained a generous position towards EU migrants' social rights and the push for the administrative 'migranticisation' of EU mobility was criticised by NGOs and experts.

6 Conclusion

These cross-country differences have broader implications for our understanding of the EU mobility regime. EU regulations have institutionalised a stratified EU mobility regime, but countries implement this stratification differently depending on national welfare traditions and the relationship between member states with the European integration project. The preferences of

domestic political and societal actors regarding EU migrants' social and residence rights play a fundamental role in how the stratified EU mobility regime is interpreted and implemented at the national level. Countries with a strong European identity and robust social values entrenched in national law such as Germany are less likely to experience a radical turn to the 'migranticisation' of EU mobility. However, the UK is an exceptional case characterised by strong Euroscepticism that is hardly seen in other European countries. For this reason, future research should investigate our theoretical suggestions in other countries.

Finally, this article brings new theoretical knowledge on the Migration-Mobility nexus at the EU. The stratification of the EU mobility regime produces a shift from a dual migration-mobility regime based on the distinction between third-country nationals and EU citizens to a more complex system shaped by the economic activity of people: whereas EU workers and self-sufficient people are considered *free movers,* economically inactive people are seen as *unwanted migrants* that need to prove their right to reside.

Declaration of interests

- Availability of data and material: There are no datasets related to this article
- Competing interests: there are no financial and non-financial interests related to this article
- Funding: This work was supported by the Swiss National Science Foundation (SNSF) [51NF40-182897].

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