## **The Borders Within: Socio-Economic Rights and Non-discrimination in EU Law**

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## **1. Introduction**

The contributions in this special section engage with socio-economic rights and non-discrimination as sources of welfare for nationals of the Member States, EU citizens on the move and third-country nationals. Under European human rights law, states have considerable discretion when it comes to socio-economic policy-making despite the direct impact of such policies on individuals’ enjoyment of economic and social rights.[[1]](#footnote-2) Moreover, there is room to differentiate between citizens and non-citizens as well as among non-citizens in the distribution of welfare as a matter of state discretion.[[2]](#footnote-3) Under EU law, on the other hand, the boundaries between national socio-economic policies and the enjoyment of socio-economic rights by non-citizens become blurred for a series of reasons.

First, the EU and the Member States have shared competence over social policy under Article 4(2)(b) TEU. The Member States have historically had different national welfare systems based on different valuations of redistributive justice.[[3]](#footnote-4) While there has been reluctance to cede competence to the EU, the EU can undertake action in accordance with Title X TFEU in order to promote specific social policy objectives within the fields mentioned in Article 153 TFEU.[[4]](#footnote-5) Second, the establishment of the EU citizenship and the right to non-discrimination under Article 18 TFEU require EU Member States to extend equal treatment to EU nationals residing within their borders in the enjoyment of socio-economic rights. This has been historically connected to the integrating function of the principle of equal treatment for free movement under EU law.[[5]](#footnote-6) As a result, Member States’ discretion to exclude non-citizens from socio-economic rights has been curtailed, though not erased.[[6]](#footnote-7) Third, social rights are part of the EU Charter of Fundamental Rights and within the field of application of EU law; they also extend to non-EU nationals.[[7]](#footnote-8) This means that next to the national socio-economic policies, the EU engages with questions of social justice between and within the Member States under Articles 2 and 3 TEU.[[8]](#footnote-9)

In order to provide a comprehensive and non-fragmented understanding of socio-economic rights, the right to non-discrimination and their meaning for welfare in EU Member States, one has to necessarily take into account the complicated link between EU and national social policy, as well as the operation of national policies against the background of EU social objectives when examining the attribution and limitations of socio-economic rights to different categories of non-citizens (among which are also EU citizens). This is precisely what this special section does by examining who is included within the welfare structures of Member States and how, and who is not and why. Through a series of contributions, this special section demonstrates the tension between rights that are presumed to carry a cost for public finances, financial solidarity between the Member States and the complicated dynamics of belonging at domestic level dictated by policy choices at a supranational level.[[9]](#footnote-10)

## **2. Borders, Markets, Distinctions and Rights**

The special section starts with an article by Pavlina Hubkova who revisits the traditional understanding of socio-economic rights and their relation to the market under EU law in order to argue that their protection does not necessarily go against the internal market rationale of EU law, neither does it come with extra costs that cannot be carried by the EU economies. By following an analytical rather than a critical approach, Hubkova shows the interconnections between political considerations related to social policy, economic considerations behind socio-economic rights and EU primary and secondary law. To do so, Hubkova provides an overview of the relation of the internal market to fundamental rights in the development of EU law before recounting the complicated history of socio-economic rights in EU law. Hubkova reminds us not only of early contentious attempts to bring the protection of socio-economic rights to EU law but also of the complicated position of various social rights due to the unclear distinction between rights and principles under Article 52(5) of the Charter.[[10]](#footnote-11) Subsequently, she turns to the specific provisions of the Charter and explains how various of these provisions can be revisited in light of an economic perspective. Crucial in her analysis is the distinction between labour rights and the provisions on social security and social assistance.

As regards labour rights, Hubkova suggests that although they are presented as part of ‘social Europe’ in contrast to ‘market Europe’, labour rights are clearly rights of those who are active in the specific labour market. Looking at these rights through an economic lens implies that these rights must be considered as having pro-market aspects rather than mere opportunities to ‘consume’ public budgets. The legal protection of these fundamental rights in EU law inevitably means protection of those who play a weaker role in economic relations but who remain economically active and thus contribute directly to the EU's economic performance and prosperity. Similarly, neither environmental protection, consumer protection nor health care are principles whose observance would necessarily mean only eating from the common cake, since they can be seen as incentives for economic activity, investment or innovation. As regards the ‘genuine solidarity’ provisions of social security and social assistance, such rights are considered ‘costly’ and depend on national budget. Hubkova challenges these understandings, first by suggesting that all rights (also civil and political) are costly as they depend on state action for their protection and enforcement. Most importantly, Hubkova argues that, viewed from a broader economic perspective, such rights should not be seen as a drain on national resources. Although they include the rights of those who are economically inactive or less active, the granting of such entitlements further influences the economic performance of the EU: either they enable people to return to the labour market (e.g. in the case of free childcare) or they enable people to spend money (in the case of cash benefits), which boosts aggregate demand and thus influences both the domestic and the EU economy. Overall, Hubkova’s contribution asserts that both the content of socio-economic rights and their relative power against free market considerations can be supported by economic arguments.

In conclusion, Hubkova suggests that we should reconsider our perception of socio-economic rights and their relation to the internal market: they are not some sort of tolerable brakes or obstacles to the economy, but its full components. While the protection of socio-economic rights may be formally perceived as a corrective to the exercise of economic freedoms and the functioning of the internal market, in practice, these rights involve micro and macro-economic considerations. Hence the ultimate question is not whether we can afford solidarity through legally enforceable socio-economic rights, but rather how to design a legal system that provides such rights with due regard to the double social and economic function they serve.

After Hubkova’s conceptual contribution, Sandra Mantu, Alezini Loxa, and Matteo Manfredi look at the socio-economic rights of specific groups of individuals under EU Law. Sandra Mantu reconsiders the well-established limitations to social rights for EU citizens and examines to what extent human rights law and the protection of human dignity can extend rights to destitute EU citizens. The starting point for her analysis is that EU citizens are a category of migrants who enjoy equal treatment with nationals of the Member State where they reside as a matter of primary and secondary EU law. Indeed, concerning equal treatment, they are much more protected than non-EU migrants who lack such a ‘constitutionalised’ right to equal treatment and who enjoy a weaker position under EU anti-discrimination legislation. Yet, this right to equal treatment for EU citizens is stratified and conditional on the legality of their residence, which requires possession of sufficient resources so as not to become an unreasonable burden on the host state’s welfare system. In the relevant framework, social rights are granted under equal treatment for economically active EU citizens because they operate as part of the completion of the internal market. The attribution of social rights removes obstacles to free movement of workers and citizens. However, when it comes to economically inactive EU citizens, their right to free movement is conditional and it transmutes into a conditional right of equal treatment and limited social rights. It is within this complex legal terrain that human dignity as an EU fundamental right enters the picture as possible justification for social rights for economically inactive EU citizens.

Specifically, in the *C.G*. case, the Court of Justice of the EU (CJEU) relied on the Charter to interpret the claim to social rights made by an EU citizen lacking sufficient resources.[[11]](#footnote-12) In its previous jurisprudence such an EU citizen would have been found to be outside the scope of Directive 2004/38 which regulates the residence and rights of migrant EU citizens, and therefore outside the equal treatment provisions contained in this Directive.[[12]](#footnote-13) As Mantu notes, *C.G.* introduces the possibility to rely on EU fundamental rights - human dignity, the best interest of the child and respect for family life - as justifications for access to social rights for otherwise excluded migrant EU citizens. Furthermore, it establishes positive state obligations towards vulnerable EU citizens since states must ensure they live in dignified conditions, even when they are refused social assistance.

This mention to human dignity is a new addition to the legal toolkit of the CJEU. To get an understanding of what this right means for equal treatment of EU citizens and their claims to social rights, Mantu explores the use of human dignity in the CJEU and European Court of Human Rights (ECtHR) case law. She brings together two different models for migrants’ access to social rights: the EU free movement model and the human rights model which is dependent on human dignity considerations. Understanding *C.G.* as the case that bridges the two models, Mantu investigates how human dignity informs the interpretation of socio-economic rights under human rights law and whether it can function as an alternative or corrective to the conditional nature of equal treatment for migrant EU citizens. After reviewing the relevant frameworks, she demonstrates that the conditions for claiming social rights by destitute EU citizens by invoking human dignity as used in the context of the ECtHR case law are high: they demand state action if the living conditions of the migrant reach a certain level of severity, if states have obligations towards such migrants, and if the migrant can be seen as vulnerable. Finally, drawing on diverse literature, Mantu problematizes the role of human dignity in human rights law and its potential as a justification for social rights for migrants. She shows that there is difficulty in reconciling the absolute nature of human dignity understood as foundational value of human rights with the conditionality and relativity that characterise social rights, even when conceived of as human rights. She concludes that while there is an agreement that human dignity requires a minimum of social rights which establishes positive state obligations, there is no clarity as to what states’ obligations corresponding to this minimum core in respect of a dignified existence are. The fit between human dignity, equality and social rights is imperfect in both EU citizenship and human rights law.

This imperfection is further exacerbated by comparing the limitation to social rights for destitute EU citizens to those of third-country nationals. Alezini Loxa’s contribution continues this thread and maps the accepted limitations to social rights of destitute EU citizens, long-term residents and third-country nationals under EU law. By examining the accepted limitations to social rights as they appear in secondary law and case law for both EU and non-EU migrants, Loxa demonstrates that there are overlaps behind the objectives served by the attribution of such rights, while divergences exist behind the legitimate limitations. But the areas of convergence and divergence are to some extent counterintuitive.

Similarly to Hubkova, Loxa shows that social rights are granted not only due to human rights considerations, but also to ensure a better functioning of the internal market (by avoiding obstacles to free movement for EU citizens and by avoiding labour exploitation and unfair competition as regards third country nationals). When it comes to limitations to social rights, as Mantu’s contribution also shows, the free movement framework has developed with conditionalities in secondary law to minimize the negative impacts of migrant movement on national economies. The limitation of rights is based on the objective of maintaining the financial equilibrium of the Member States and is construed with due regard to financial solidarity between Member States. Both secondary law and case law acknowledge a clear link between the economic contribution of an EU citizen and the more extensive social rights they are entitled not only under Directive 2004/38, but also under the Regulation 492/2011.[[13]](#footnote-14) As regards third country nationals, despite the fragmentation of the relevant framework, the economic function of the migrant is also used as a source of more extensive rights, while limitations are inserted in the relevant secondary law in order to avoid the repercussions of granting rights for public finances.

The counterintuitive differentiation enters the picture in the judicial review of accepted limitations. While both EU citizens and third country nationals are attributed rights in view of their economic function, one would expect that the limitations to EU migrants’ social rights would be reviewed in light of the primary status of EU citizenship for the EU constitutional architecture. In practice, limitations to social rights are reviewed in light of the legitimate objective of protecting public finances with very limited room for protection for destitute EU citizens. In contrast, in the area of migration, and despite the fragmentation that appears in the relevant secondary law which is also emphasised by Manfredi, Loxa suggests that the CJEU has consistently emphasized the protection afforded by the Charter to consolidate the rights of migrants, even those with irregular status.

Loxa suggests that, in the relevant case law, the CJEU puts forward the social objectives served by secondary law (integration of long-term residents and fair treatment for all legally resident migrants) not as a byproduct of the economic contribution of the third country nationals, but rather under a positive vision of social justice in line with the social objectives of primary law. In the case law, the CJEU draws on the attribution of social rights to third country nationals with a view to social cohesion and integration (an integration that is presumably more easily achieved by EU migrants). This means that when limitations to social rights are reviewed, the potential burdens to national welfare systems are weighed against the Charter, thereby ensuring equal access to a minimum set of social rights that can guarantee a dignified life for all those who fall within the scope of EU law. To constructively combine these opposing yet overlapping logics, Loxa argues that there is room for evolution in judicial review by combining elements of the judicial approach for both EU and non-EU migrants in light of the social objectives of the EU under Article 3 TEU and the Charter. Loxa presents the potential of this combination not as a groundbreaking shift in the functional approach followed by EU law to social rights, but rather as a limited change that can bring about more extensive protection of social rights for all migrants, while being acutely aware of the limitations of EU law due to the attribution of rights in the form of equal opportunities and due to financial solidarity as the key justification behind the more extensive attribution of social rights.

Finally, Manfredi turns to secondary law and explores the regulation of access to social rights for third country nationals under EU law. This exploration has three aspects. The first one examines whether and how third-country nationals, who have a legal status under EU secondary law, receive equal treatment compared to nationals of the host Member States regarding social benefits. The second aspect relates to the conditions under which it is justifiable to require third-country nationals to integrate into the host country before granting equal treatment and how such conditions can be proportionately implemented. The third aspect relates to the impact of the Charter on third-country nationals’ access to social benefits in the EU.

As Loxa also discusses, third-country nationals’ access to social rights on equal terms to nationals of the host state is regulated by a set of Directives and is differentiated depending on the category of third-country nationals involved. Unlike in the case of EU citizens, EU primary norms do not contain a non-discrimination clause that applies to third-country nationals. The CJEU has held that Article 18 TFEU and, relatedly, Article 21 of the Charter can only cover situations of discrimination on the basis of EU nationality, thereby excluding third-country nationals from the scope of the relevant provisions.[[14]](#footnote-15) While the relevant secondary law partially compensates for the lack of a general principle of non-discrimination for third country nationals, according to Manfredi, it further entrenches disparities, highlighting the need for a more coherent and harmonized approach to equal treatment under EU law. The study reviews, in particular, secondary law and case law on equal treatment provisions in three directives: Directive 2003/109 on long-term residents, Directive 2011/95 on beneficiaries of international protection, and Directive 2024/1233 on single permit holders.[[15]](#footnote-16)

Similarly to the personal scope of these directives which varies and does not cover all third-country nationals legally residing or working in a Member State, the extent of the right to equal treatment is also varied in the various instruments. Directive 2003/109 and Directive 2011/95 refer to the Member States’ national law to determine what falls under social benefits. In contrast, Directive 2024/1233 refers to the social security benefits within the scope of the European social security coordination provisions in Regulation 883/2004.[[16]](#footnote-17) As far as access to social assistance is concerned, equal treatment is generally excluded in respect of third-country nationals, except in case of long-term residents falling under the scope of Directive 2003/109. In fact, the requirement of having sufficient resources ‘without having recourse to the social assistance system of that Member State’ is often laid out as a condition for the grant of a right of residence to third-country nationals. One of the main justifications for introducing such conditions is the argument that Members States should only grant access to social benefits that reflect national solidarity, if the beneficiaries have proven to be sufficiently integrated in the host society, *inter alia* by having contributed for a certain period of time to the financing of these benefits or by having proof of a sufficient level of integration. Also, the exceptions to the right to equal treatment are worded differently. These differences are related to the nature of the third-country national’s stay in the EU (temporary or long-term) and the economically driven approach of the Member States. This fragmented approach is further exacerbated by the significant barriers Member States impose to restrict access to various social benefits due to the limitations of national solidarity.

However, this fragmented approach risks coming into conflict with the equal treatment provisions laid down in EU primary and secondary law. Manfredi reminds us that the principle of equal treatment plays a significant role in the development of the common immigration policy within the European Union. To examine ways to limit the use of exceptions to the principle of equal treatment by Member States and to address the fragmented protection of third-country nationals’ access to social benefits under EU secondary law, Manfredi explores the potentials of particularly Article 20 and Article 34 of the Charter. In relation to Article 20 of the Charter which provides for equality before the law, the CJEU has held that it also applies to third-country nationals in situations falling within the scope of Union law. This means that comparable situations should be treated equally, and different situations should not be treated similarly unless justified and with respect to the principle of proportionality. It can be derived that third-country nationals who acquire a certain status through EU directives are in comparable situations to nationals of the host Member State regarding equal treatment for social benefits. In this regard, Manfredi suggests that this Article could ensure proportionality and fairness in evaluating discriminatory practices or exclusions.

As regards Article 34 of the Charter on social security and social assistance, the Court has highlighted its importance in defining core benefits of which third country national cannot be deprived. In the relevant case law, the purpose of the benefit becomes a central factor for the assessment: if it is essential for a dignified existence, it must be granted to all third country nationals under equal treatment conditions. In contrast, for non-core benefits, Member States can exclude migrants if they explicitly derogate from equal treatment when transposing the relevant Directives. Moreover, this Article explicitly links social assistance to ensuring a dignified existence for all those who lack sufficient resources. Manfredi links Article 34(3)’s mention of ‘a decent existence for all those who lack sufficient resources’ to the right to human dignity enshrined in Article 1 of the Charter and suggests that Article 34 provides a strong legal foundation for extending protections based on the fundamental principle of human dignity.

In closing, Manfredi suggests that determining which benefits can be considered core benefits within the framework of EU law could provide a basis for ensuring a minimum level of uniform protection of fundamental social rights and would limit the discretion of national authorities, particularly in areas pertinent to essential needs like food, housing, and healthcare. By identifying core benefits, the national authorities could reasonably ensure that individuals, including third-country nationals, have access to necessities for a dignified existence, regardless of their nationality or immigration status while, at the same time, the uncertainty associated with case-by-case assessments by national courts would be limited. However, such a definition would require political agreement which can be a complex and challenging task given the different perspectives and interests involved.

## **3. Conclusion**

The contributions in this special section engage with non-discrimination between nationals of a Member State and EU citizens resident in that Member State, nationals of a Member State and third-country nationals, as well as EU citizens resident in a host Member State and third-country nationals resident in that Member State. The changing comparisons and the different limitations accepted as legitimate shape a complicated picture of the borders between insiders and outsiders in EU law as regards accessing socio-economic rights.

All the articles develop against the background of a multilevel tension between the universal aspiration of equal treatment, the limitations imposed by concerns over migration as well as the demands imposed by financial solidarity within and between the Member States, and social justice aspirations at the collective EU level. The respective analyses suggest that these tensions have been dealt with by the creation of a continuum of rights rather than a clear-cut differentiation between insiders and outsiders in EU law. While EU citizenship and its primary status under EU law and the early case law of the CJEU created spaces for imaginaries of post-national citizenship, this status is no longer enough to overcome the concerns of Member States on the limits of their national welfare systems.[[17]](#footnote-18) These concerns have been considered as legitimate, driven the conditionality of social rights under Directive 2004/38, and been confirmed in case law with little regard to fundamental rights considerations.[[18]](#footnote-19) At the same time, the fair treatment demanded by Article 79(1) TFEU has been translated into equal treatment for certain third-country nationals and has overcome national limitations with strong basis on the Charter.[[19]](#footnote-20) In practice, EU law creates a system of variable degrees of social rights that should be delivered at the domestic level for economically active or self-sufficient EU citizens, economically active third country nationals, and destitute EU citizens finding themselves in extreme vulnerability.[[20]](#footnote-21) The relevant framework establishes stratified hierarchies of rights among non-citizens which are then implemented in domestic law.[[21]](#footnote-22) This finding also fits well with literature outside the field of law which investigates the evolution of social policy and welfare states away from universality and based on differentiation of social rights depending on the individual’s deservingness.[[22]](#footnote-23)

In parallel, all the contributions reveal a tension between the economic rationale of the EU, past and present, and the cosmopolitan aspiration of social rights and inclusion.[[23]](#footnote-24) The historical tension has been well discussed in scholarship and is currently expressed in the demand of Article 3 TEU for a highly competitive social market economy which shall also combat social exclusion and discrimination.[[24]](#footnote-25) While Mantu and Manfredi take this differentiation between economic and social objectives as the background against which the limitations of social rights for EU citizens and third country nationals respectively are demanded, Hubkova and Loxa challenge the clear cut differentiation between economic costs and the social imperatives served by social rights.

Another thread that connects the contributions, and which has also been explored in EU law scholarship, is the role of the CJEU in the construction of equal treatment, social rights and the delineation of the scope and extent of social solidarity.[[25]](#footnote-26) While Hubkova’s contribution reminds us of the effects of CJEU decisions for the position of labour rights under EU law and their relation to internal market provisions, Mantu’s article points to the limits of judicial decision making. Mantu criticises the CJEU for the indeterminacy of its use of human dignity, while at the same time she is acutely aware of how a determinate intervention to social policy could lead to overcoming democratic decision making.[[26]](#footnote-27) Loxa and Manfredi on the other hand point to the incoherences in CJEU case law, the variable emphasis on primary law for different categories of migrants as well as the use of the Charter as an attempt to restore coherence into a fragmented legal order.

In the end, what all authors suggest is that social rights and the extent to which they can protect or exclude people is very much dependent on political choices, as, after all, the distribution of collective common goods in any society is dependent on political struggles for equality.[[27]](#footnote-28) Despite the more nuanced understanding of the relationship between social rights and public finances, the contributions do point to the limitations of social rights to ensure welfare for all those within the jurisdiction of Member States. At the same time, human dignity appears to be a key consideration having the potential of creating a minimum level of protection for both destitute EU citizens and third-country nationals.

1. See for example, Lieneke Slingenberg, ‘Social Security in the Case Law of the European Court of Human Rights’ in Frans Pennings and Gijsbert Vonk (eds), *Research Handbook on European Social Security Law* (Edward Elgar Publishing 2015). [↑](#footnote-ref-2)
2. *Ponomaryovi v. Bulgari*a, Application no. 5335/05. [↑](#footnote-ref-3)
3. Sonja Blum, Johanna Kuhlmann and Klaus Schubert (eds), *Routledge Handbook of European Welfare Systems* (Second edition, Routledge 2021). [↑](#footnote-ref-4)
4. For the most recent reaction to ceding competence see the action for annulment introduced by Denmark and Sweden against the Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, COM(2020) 682 final. See Opinion of Advocate General Emiliou delivered on 14 January 2025 in Case C‑19/23, *Kingdom of Denmark v European Parliament and Council of the European Union*, ECLI:EU:C:2025:11. [↑](#footnote-ref-5)
5. See Elise Muir, *EU Equality Law: The First Fundamental Rights Policy of the EU* (First edition, Oxford University Press 2018). [↑](#footnote-ref-6)
6. Dimitry Kochenov, Nathan Cambien and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill Nijhoff 2020); Stamatia Devetzi, ‘EU Citizens, Residence Rights and Solidarity in the Post-Dano/Alimanovic Era in Germany’ (2019) 21 European Journal of Migration and Law 338; Julio Baquero Cruz, ‘Partial Eclipse of Union Citizenship: From Grzelczyk to Dano’, *What’s Left of the Law of Integration?* (Oxford University Press 2018); Elspeth Guild, ‘Does European Citizenship Blur the Borders of Solidarity?’ in Elspeth Guild, Cristina Gortázar Rotaeche and Dora Kostakopoulou (eds), *The Reconceptualization of European Union Citizenship* (Brill Nijhoff 2014). [↑](#footnote-ref-7)
7. Charter of Fundamental Rights of the European Union [2016] OJ C 202/389; See Sara Iglesias Sánchez, ‘The Constitutional Status of Foreigners and European Union Citizens: Loopholes and Interactions in the Scope of Application of Fundamental Rights’ in Daniel Thym (ed), *Questioning EU citizenship : judges and the limits of free movement and solidarity in the EU* (Hart Publishing 2017). [↑](#footnote-ref-8)
8. See Dimitry Kochenov, Grainne De Burca and Andrew Williams (eds), *Europe’s Justice Deficit?* (Hart Publishing 2015). [↑](#footnote-ref-9)
9. Cf Gary P Freeman, ‘Migration and the Political Economy of the Welfare State’ (1986) 485 The Annals of the American Academy of Political and Social Science 51; Steven LB Jensen and Charles Walton (eds), *Social Rights and the Politics of Obligation in History* (1st edn, Cambridge University Press 2022) particularly part III. [↑](#footnote-ref-10)
10. On earlier attempts to protect social rights see the non-binding Community Charter of Fundamental Social Rights of Workers adopted at the European Council in Strasbourg meeting on 8, 9 December 1989.; On the complicated relation of rights and principles in the solidarity chapter of the Charter see Opinion of Advocate General Cruz Villalón delivered on 18 July 2013 in *AMS*, C-176/12, ECLI:EU:C:2013:491 para. 55; Judgement of the 26 June 2001, *BECTU*, C-173/99, ECLI:EU:C:2001:356, para. 43; Dóra Guðmundsdóttir, ‘A Renewed Emphasis on the Charters Distinction between Rights and Principles: Is a Doctrine of Judicial Restraint More Appropriate?’ (2015) 52 Common Market Law Review 685. [↑](#footnote-ref-11)
11. Judgment of 15 July 2021, *C.G. v The Department for Communities in Northern Ireland,* C-709/20, ECLI:EU:C:2021:602. [↑](#footnote-ref-12)
12. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158/77. [↑](#footnote-ref-13)
13. Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] OJ L 141/1. [↑](#footnote-ref-14)
14. See Judgment of 4 June 2009, *Vatsouras and Koupatantze,* C-22/08 and C-23/08, ECLI:EU:C:2009:344, para 52. [↑](#footnote-ref-15)
15. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents [2003] OJ L 16/ 44; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9; Directive (EU) 2024/1233 of the European Parliament and of the Council of 24 April 2024 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast) [2024] OJ L, 2024/1233. In the case of the Single Permit Directive the case law analysed interprets provisions of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State [2011] OJ L 343/1. [↑](#footnote-ref-16)
16. Regulation (EC) No 883/2004 on the coordination of social security systems in the EU [2004] OJ L 166/1. [↑](#footnote-ref-17)
17. Baquero Cruz (n 6); Dora Kostakopoulou, ‘The Evolution of European Union Citizenship’ (2008) 7 European Political Science 285; Cf Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (University of Chicago 1994). [↑](#footnote-ref-18)
18. Niamh Nic Shuibhne, ‘What I Tell You Three Times Is True: Lawful Residence and Equal Treatment after Dano’ (2016) 23 Maastricht Journal of European and Comparative Law 908; Daniel Thym, ‘When Union Citizens Turn into Illegal Migrants: The Dano Case’ (2015) 40 European Law Review 249; Catherine Barnard, ‘The Day the Clock Stopped: EU Citizenship and the Single Market’ in Panos Koutrakos and Jukka Snell (eds), *Research Handbook on the Law of the EU’s Internal Market* (Edward Elgar Publishing 2017). [↑](#footnote-ref-19)
19. Iglesias Sánchez (n 7); Sara Iglesias Sánchez, ‘Nationality: The Missing Link between Citizenship of the European Union and European Migration Policy’ in Elspeth Guild, Cristina Gortázar Rotaeche and Dora Kostakopoulou (eds), *The Reconceptualization of European Union Citizenship* (Brill Nijhoff 2014). [↑](#footnote-ref-20)
20. Alezini Loxa, ‘EU Law, Migration and Racial Capitalism Encounters at the Neoliberal EU (b)order’ (2024) 4 Retfærd. Nordisk Juridisk Tidsskrift 11, 23. [↑](#footnote-ref-21)
21. Lydia Morris, *Managing Migration: Civic Stratification and Migrants’ Rights* (1. publ, Routledge 2002); Cf Erin Aeran Chung, ‘Creating Hierarchies of Noncitizens: Race, Gender, and Visa Categories in South Korea’ (2020) 46 Journal of Ethnic and Migration Studies 2497. [↑](#footnote-ref-22)
22. See for example Synnøve Bendixsen and Lena Näre, ‘Welfare State Bordering as a Form of Mobility and Migration Control’ (2024) 50 Journal of Ethnic and Migration Studies 2689; Christian Joppke, ‘Neoliberal Nationalism and Immigration Policy’ (2024) 50 Journal of Ethnic and Migration Studies 1657; Yascha Mounk, *The Age of Responsibility: Luck, Choice, and the Welfare State* (Harvard University Press 2017). [↑](#footnote-ref-23)
23. Cf Siba Harb and Pierre-Étienne Vandamme, ‘An Egalitarian Fortress? Global Distributive Justice and the EU’ (2023) 45 Journal of European Integration 577; Turkuler Isiksel, *Europe’s Functional Constitution: A Theory of Constitutionalism Beyond the State* (Oxford University Press 2016) 95–124. [↑](#footnote-ref-24)
24. Fritz W Scharpf, ‘The Asymmetry of European Integration, or Why the EU Cannot Be a “Social Market Economy”’ (2010) 8 Socio-Economic Review 211; Tamara Hervey and Jeff Kenner (eds), ‘Economic and Social Rights in the EU Legal Order: The Mirage of Indivisibility’, *Economic and Social Rights under the EU Charter of Fundamental Rights—A Legal Perspective* (Hart Publishing 2003); Diamond Ashiagbor, ‘On the “Slow Constitutionalisation” of Social Europe’ in Monica Claes and Ellen Vos (eds), *Making Sense of European Union Law* (Hart Publishing 2022); Joanna Ryszka, ‘Protection of Social Rights as a Permament Challenge for the European Union’ (2021) 46 Review of European and Comparative Law 109. [↑](#footnote-ref-25)
25. Bruno de Witte, Elise Muir and Mark Dawson (eds), *Judicial Activism at the European Court of Justice* (Edward Elgar Publishing 2013); Elise Muir, ‘The Transformative Function of EU Equality Law’ (2013) 21 European Review of Private Law; Joseph Weiler, ‘Deciphering the Political and Legal DNA of European Integration, An Exploratory Essay’ in Julie Dickson and Pavlos Eleftheriadis, *Philosophical Foundations of European Union Law* (Oxford University Press 2012). [↑](#footnote-ref-26)
26. Cf Mark Dawson, ‘The Political Face of Judicial Activism: Europe’ s Law-Politics Imbalance’ in Bruno de Witte, Elise Muir and Mark Dawson (eds), *Judicial Activism at the European Court of Justice* (Edward Elgar Publishing 2013). [↑](#footnote-ref-27)
27. See Michael A Wilkinson, ‘Politicising Europe’s Justice Deficit: Some Preliminaries’ in Dimitry Kochenov, Andrew T Williams and Gráinne de Búrca (eds), *Europe’s Justice Deficit?* (Hart Publishing 2015) 112. [↑](#footnote-ref-28)