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Sustainable Migration: EU Citizenship as the Prototype of Sustainable Migration¹

The establishment of the EU citizenship has challenged the way in which citizenship has been understood and theorised. After offering a brief overview of different theoretical accounts on EU citizenship, this entry suggests that it can be understood as a key status for the purposes of sustainable migration. EU citizenship is not only a status which connects the nationals of the Member States to EU, but also it aligns and regulates free movement to ensure the sustainable development of Europe under Article 3(3) TEU. By ensuring political rights, the freedom to move and pursue one's aspiration of good life and economically conditioned social rights, EU citizenship operates as the prototype of a sustainable migration framework. Understanding EU citizenship through the lens of sustainable migration can better explain the economic conditioning of free movement rights and it can deliver more social legitimacy for the EU.

Keywords: EU citizenship, sustainability, social rights, political rights, free movement, economic activity, migration

I. The many conceptualisations of EU citizenship

The way in which economic and political integration has taken place in the EU together with the establishment of EU citizenship has challenged the way in which citizenship as a legal, political and social status can be understood and theorised. After the adoption of EU citizenship as additional to national citizenship in the Maastricht Treaty, various scholars have investigated the potentials and limits of this status. Specifically, EU citizenship has been conceptualised as a post-national citizenship (Soysal [1994]), as a bundle of rights (drawing on Marshall [1950]) and as a peculiar case of citizenship without duties (Kochenov [2014]). Some scholars have criticised the status for its weak political rights (Bellamy 2008; Kostakopoulou 2020) but also for its emphasis on economic rights. In this regard, various scholars have criticised the weakness of EU citizenship when it comes to delivering social protection and have suggested that the status and its corresponding rights are a form of market citizenship (Everson [1995]; Nic Shuibhne [2010]; Scharpf [1999]). Some scholars have also suggested that market citizenship was a feature of the past that would eventually be overcome, and that EU citizenship has a transformative potential (Guild [2004]; Kostakopoulou [2005], [2007]; Maas [2005], [2014]). Moreover, recent historical work has suggested that the establishment of the EU citizenship status which aimed at the creation of constitutional identity for the EU had little regard to the practical implications of generalised free movement rights (Barnard and Leinarte [2022]). In a political and economic project comprising of 27 Member States with extremely diverse economic development levels, national welfare systems and cultural ideas of belonging, any attempt to create a model of citizenship that would replicate the rights and duties of national citizenship was bound to meet resistance. The current framework of weak political rights, strong economic rights and formal equality, and variable social rights and substantive equality depending on the EU citizen's economic contribution to the internal market should instead be understood as the prototype framework of sustainable migration.

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II. Free Movement Limitations and Sustainable Migration

EU citizenship is key for sustainable migration in the sense that it aligns the movement of EU citizens to the economic and social objectives of Article 3(3) TEU. By ensuring a set of political rights (Article 20(2)(b)-(d), 22-24 TFEU), the freedom to move and pursue one's aspiration of good life (Articles 20(2)(a) and 21(1) TFEU) and economically conditioned access to social rights (Directive 2004/38), EU citizenship becomes part of the pursuit of the sustainable development of Europe based on a competitive social market economy aiming at social progress and environmental protection.

The right to free movement under Article 21(1) TFEU which allows EU citizens to move without any restrictions to other Member States and pursue their aspiration of good life is key for the pursuit of social progress. Moreover, the direct enforceability of EU citizens' rights ensures their legal protection across all the Member States. At the same time, the objective of balanced economic growth is pursued by ensuring that free movement rights are not unlimited. Since EU citizens can move without prior authorization, the exercise of their rights without any restriction could have the potential of undermining the objective of balanced economic growth in a Union where Member States' economic conditions, social policy and cultural valuations are extremely diverse. To ensure the maintenance of growth, free movement rights are subject to conditionalities connected to one's contribution to the EU internal market.

First, EU citizens enjoy a right to move and reside freely in any Member state for a period of up to three months only if they do not become an unreasonable burden on the social assistance system of the host state (Articles 6 and 14(1) Directive 2004/38). For a period of residence longer than three months, EU citizens need to prove economic activity or, at the very least, self-sufficiency (Article 7 Directive 2004/38). Such conditions function as a guarantee that EU citizens will positively contribute or at least will not negatively affect the economies of the Member States where they migrate. EU citizens can retain a right to reside in cases of economic inactivity under specific conditions (Articles (3) and 14(4) Directive 2004/38) but their security of residence is always dependent them not becoming an unreasonable burden on the public finances of the host state (Article 14(2) Directive 2004/38; CJEU *Commission v the UK* [2016]). The residence of EU citizens becomes decoupled from economic conditions only after they access the permanent residence status after five years of stay in a Member State (Article 16, Directive 2004/38). However, the length of residence is not the only qualifying factor. Accessing the permanent residence status is closely tied to economically activity or at the very least self-sufficiency in the years leading up to the status (CJEU, *Ziolkowski and Szeja* [2011]).

Second, the extent to which EU citizens enjoy equal access to social rights depends on their economic activity. Member States are allowed to limit equal treatment to exclusively cover economically active EU citizens, and to allow such rights for economically inactive ones only after the acquisition of permanent residence (Article 24(2) Directive 2004/38). While in early case law the Court of Justice of the EU had suggested the possibility of equal access to social rights for all EU citizens derived directly from their citizen status (CJEU, *Martínez Sala* [1998]), in recent years, it has become clear that unlimited social rights would not be sustainable in a system of diverse interdependent economies which are under stress. (Kochenov, Cambien, and Muir 2020; Nic Shuibhne 2018; CJEU *Dano* [2014]; *Alimanovic* [2015]).

Finally, workers enjoy more extensive protection as regards social rights and are entitled to quicker access to permanent residence (Articles 17 and 24 Directive 2004/38; Regulation 492/2011). The more extensive attribution of rights for workers, lies in the presumption they can never become a burden to public finances, but will rather be net contributors to the system. Overall, the rights granted to EU citizens and the conditionalities set to protect national economies express a balancing between economic and social objectives so as to guarantee that

intra-EU migration is sustainable in the long-term. The system is based on unlimited freedom to move to another Member States and rights which are limited due to the legitimate objective of protecting public finances.

III. Conclusion: EU Citizenship as the Prototype of Sustainable Migration

By now it has become clear that the intention to create residence rights for all EU citizens on the move in light of the objective of an ever-closer Union under Article 1 TEU meets an ultimate limit of self-sufficiency. EU citizens should be able to enjoy rights, even if they are not net contributors to the host state, with extra right attributed to those citizens who make an active contribution by their work. However, this does not mean that rights could be created for those that negatively impact the public finances of the Member States. In parallel, social cohesion within the Member States is promoted by the creation of a permanent resident status that disconnects the attribution of social rights from economic considerations. The due consideration and parallel pursuit of economic and social objectives, as well as the related attribution and limitation of social rights frame EU citizenship and the free movement framework it structures as the prototype sustainable migration framework (Loxa [2025]).

In a scenario where the EU is not bound by Article 3 TEU, the pursuit of an internal market and the sustainable development of Europe, EU citizenship could lead to full political rights, unlimited free movement between the Member States and equal social rights for all EU citizens. Under the current Treaty framework, such extensive rights could risk the maintenance of economic growth and progress. If the EU is to deliver on the parallel pursuit of economic and social objectives, then a balanced attribution of rights under the EU citizenship status is required. While not morally desirable, this means that EU citizens who do not contribute to the economy and who are in vulnerable situations or precarious employment are very often excluded from the extensive protection of EU law.

Such exclusion is the outcome of a very specific balancing of economic and social objectives that lie behind the reality of sustainable migration concealed in the free movement framework. Despite this legal reality, which comes with the limitations presented earlier, the EU citizenship framework is connected to an institutional discourse that refers to EU citizens as the primary subjects of EU law and as central in the creation of an closer Union of the peoples of Europe. The very different lived experience of those excluded from EU law has led to the failure to create transnational solidarity, it has fractured the social legitimacy of the EU and it has provided space for Eurosceptic tendencies (Nic Shuibhne [2012]; O'Brien [2016]; Somek [2016]). Understanding EU citizenship as the prototype of a sustainable migration framework in the EU could be a first step in coming to terms with the limitations of the current system and restoring some of its social legitimacy.

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