

Universität Bremen
Fachbereich für Sozialwissenschaften

EUROPEAN CITIZENSHIP, SOCIAL RIGHTS AND STUDENT MOBILITY

**CROSS-BORDER ACCESS TO UNIVERSITY TUITION AND
STUDY FINANCE IN THE EUROPEAN UNION**

Dissertation
zur Erlangung der Doktorwürde
durch den
Promotionsausschuss Dr. rer. pol.
der Universität Bremen

vorgelegt von
Angelika Wiebke Schenk

Bremen, 7. Mai 2019

Gutachter
Prof. Dr. Susanne K. Schmidt
Prof. Dr. Arndt Wonka

Doktorandin

Angelika Wiebke Schenk (M.Sc.)

Arndtstraße 9

22085 Hamburg

Gutachter

Prof. Dr. Susanne K. Schmidt

Universität Bremen, InIIS

Mary-Somerville-Straße 7

28359 Bremen

skschmidt@uni-bremen.de

+49 421 218 67484

Prof. Dr. Arndt Wonka

Universität Bremen, IES

Mary-Somerville-Straße 9

28359 Bremen

awonka@uni-bremen.de

+49 421 218 66370

EUROPEAN CITIZENSHIP, SOCIAL RIGHTS AND STUDENT MOBILITY

**CROSS-BORDER ACCESS TO UNIVERSITY TUITION AND
STUDY FINANCE IN THE EUROPEAN UNION**

Angelika Schenk

Preface and acknowledgments

This PhD journey, I must modestly admit, has been my very own path of enlightenment. For the past 15 years, EU integration has been running like a *fil rouge* through my life. From reading the (eventually unratified) EU Constitutional Treaty as a high school student, to working one year as a volunteer in the World War II Memorial Oradour-sur-Glane in France, with numerous moving and heart-rending encounters with Holocaust survivors, to studying Chinese social and labour policy and local miners' severe working conditions in Guangzhou, unavoidably led to but one single conclusion for me: studying and advancing EU social policy in the best possible ways as a pro-European. So, I have not only been a volunteer with the Young European Federalists/JEF and the Union of European Federalists/UEF and a Social Democrat active in EU politics for more than a decade but also worked as a senior policy advisor at the EU policy department of the German Federal Ministry of Labour and Social Affairs. Along the way, conducting my PhD project has extensively contributed to putting my political convictions on European integration into perspective. With this – for me essential – recalibration, I endeavour to shed a critical light on what we know of European integration, its major inventions and aspirations so far: European citizenship and cross-border social rights, particularly for those not in work such as mobile university students. I intend to portray what has originally been the “grand idea” behind the founding fathers’ and their successors’ original motivation to think as big as they could for the ultimate objective of peace and security on our continent – and the story that reality tells us on the ground level after more than 60 years of integration in Europe. In so far, the story much resembles my own journey: From a solely enthusiastic pro-European to someone who is eager to add as well a critical voice with more finetuned insights and proposals to the academic, political and civil society debate. Only through my deepened and broadened learnings gained within my PhD dissertation journey this could eventually become possible; an experience I am profoundly grateful for.

This project could not have been conducted without extensive founding from two research grants: First, the Collaborative Research Center (Sfb) 597 “Transformations of the State,” project A6 “Political autonomy in the EU multi-level legal system,” and second, the research project “TransJudFare – Transnationalization and the Judicialization of Welfare,” funded by NORFACE Welfare State Futures, both situated at University of Bremen. This research was further facilitated through funding from “BremenIDEA” at University of Bremen as well as from the German Academic Exchange Service (DAAD). Last but not least, I have deeply benefitted from

being integrated into two mutually fruitful institutional settings at University of Bremen: on the one hand, the “Research Centre for International Relations, European Politics and Political Theory (InIIS),” for which I had the pleasure to be employed for more than three years, and on the other, the “Bremen International Graduate School of Social Sciences (BIGSSS),” which I was offered the possibility to join as affiliated fellow. Both have contributed to this research not only by making me remember my time in academia as fun as it had been but most of all through inspiring discussions with numerous colleagues, in colloquia and beyond. Above all, this dissertation would not have been possible without the empirical evidence I could gain on the ground; so, I am very much grateful for my interviewees’ openness, their time and valuable insights.

I owe huge debt to both my supervisors, Susanne K. Schmidt and Arndt Wonka, who have greatly supported me in countless hours discussing my ideas and in giving me intensive feedback on all my smaller and bigger steps during this PhD journey. Your constant backing, encouragement and inspiration has been the bedrock, on the basis of which this dissertation could grow at all. Also, I am grateful for my colleagues and the enriching research time spent together, both academically and on a personal level, at the NORFACE TransJudFare project: Benjamin Werner, my colleague at University of Bremen, Michael Blauburger and Anita Heindlmaier at University of Salzburg, Dorte Sindbjerg Martinsen and Jessica Sampson Thierry at University of Copenhagen, Gareth Davies, Dion Kramer and Franca van Hooren at University of Amsterdam. I thank Damian Chalmers as my postgraduate studies mentor for teaching me the fundamental knowledge for this PhD on EU law and for encouraging me in pursuing this path from the start. This dissertation has received further constructive feedback from supportive collaboration in several research meetings, most of all from Miriam Hartlapp, Martin Höpner, Daniel Seikel and Floris de Witte. Additionally, I thank Dorte Sindbjerg Martinsen and Cornelia Woll for having facilitated my research stays at University of Copenhagen and Sciences Po, Paris, respectively. Further, I thank Lukas Antoine, Pauline Anton, Laura Baade and Lea Feldhaus for their valuable research support.

Last but not least, thanks are due to my dear friends who have kept me going, coincidentally mostly being in the PhD game together while balancing it: Carla, Johanna, Kina, Mascha, Michelle, Mirgul and Tania. I owe deep thanks to my mom, Helga, and my much-missed dad, Bernd, for all their support, encouragement and patience over all these years of my educational path. And I am profoundly grateful for my partner-in-crime, Jens, for his invaluable, infinite tolerance from the very beginning of this dissertation project and for sharing life on both our finishing line PhD desks and, mostly, beyond.

Contents

Preface and acknowledgments	i
List of abbreviations	iv
1 INTRODUCTION	1
2 CITIZENSHIP, NATIONALITY AND SOCIAL JUSTICE	5
3 THE EMERGENCE OF A NEW FORM OF CITIZENSHIP IN EUROPE	7
4 EUROPEAN CITIZENSHIP AND STUDENTS' FREE MOVEMENT AND SOCIAL RIGHTS	10
4.1 Cross-border Access to University Tuition in the EU	12
4.2 Exportability of Maintenance Support in the EU	13
4.3 Access to Maintenance Aid in Host States in the EU	14
5 EUROPEAN CITIZENSHIP ENVISAGED AS A GRAND IDEA	16
5.1 Opening: Enhancing EU Citizens' Social Rights	17
5.2 Closure: Preserving Member States' Welfare Systems	18
5.3 Strengthening Democratic Legitimacy	20
6 EUROPEAN CITIZENSHIP REVEALING A FLAWED CONCEPT	22
6.1 Enhancing Cross-border Social Rights – Not for Anyone	22
6.2 Member States' Varied Adjustment Pressure on Their Welfare Systems	30
6.3 The Democratic Impossibility of Reconciling European Integration with Nation-based Welfare States	38
7 CONCLUSION: EUROPEAN CITIZENSHIP AND ITS PROMISES FOR THE FUTURE	46
Bibliography	55
Appendix	66
Individual Journal Articles of this PhD Dissertation	86

List of abbreviations

AfD	Alternative für Deutschland
AG	Advocate General
BAföG	Bundesausbildungsförderungsgesetz (German legislation on study finance)
BIS	UK Department for Business, Innovation and Skills
BMAS	Bundesministerium für Arbeit und Soziales (German Federal Ministry of Labour and Social Affairs)
BMBF	Bundesministerium für Bildung und Forschung (German Federal Ministry of Education and Research)
BMBWF	Bundesministerium für Wissenschaft, Forschung und Wirtschaft (Austrian Federal Ministry of Education, Science and Research)
BMI	Bundesministerium des Inneren (German Federal Ministry of the Interior)
CEE	Central and Eastern Europe
CDU	Christlich Demokratische Union Deutschland (German Christian Democratic Union)
COM	European Commission
CSU	Christlich-Soziale Union in Bayern (Bavarian Christian Social Union)
DfES	UK Department for Education and Skills
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EGF	European Globalisation Adjustment Fund
ELA	European Labour Authority
ERASMUS	European Community Action Scheme for the Mobility of University Students
ESF	European Social Fund
EU	European Union
EURES	European Employment Services
HESA	UK Higher Education Statistics Agency
NAO	National Audit Office UK
NESSIE	Network of Experts on Student Support in Europe
OECD	Organisation for Economic Co-operation and Development
SLC	Student Loans Company UK
TFEU	Treaty on the Functioning of the European Union

This dissertation addresses the question of reconciling this “opening” up of a European Union through European citizenship with today far-reaching free movement and cross-border social rights with the traditional “closure” of domestic welfare states (Ferrera 2005: 2, 2009: 220–22). Back in the early days of European integration, the founding fathers had been convinced that welfare states would flourish best when being left untouched by the supranational level and operating in a prosperous economic environment based on minimum European coordination to “rescue the nation state” (Milward, 2000). In practice, European integration in the sphere of social policy had thus been confined to target the portability of social security benefits of mobile workers and their dependents, hence leaving welfare regulation in the hands of member-state governments.

However, these domestically based European welfare states have now undergone dynamics of “opening” (Ferrera 2009: 220–22), not only through coalescent markets in ever-growing globalisation but particularly due to two major processes completed within the framework of the 1992 Maastricht Treaty: The Single Market and European citizenship. These two important cornerstones in the history of European integration have been the necessary basis for broadening cross-border social rights in the European Union: By inferring cross-border welfare rights in accordance with non-discrimination provisions and the prohibition of (most) restrictions on free movement, the group of beneficiaries had incrementally been extended to those citizens who were not economically active. And importantly, this development of “opening” had largely been driven by European Court of Justice (ECJ) case law, particularly since the end of the 1980s. Today, we can observe vast arrays of European integration in policy fields that had originally been explicitly exempt from harmonisation, particularly in the area of social policy. This “motor of integration” accelerated the broadening of the *acquis* considerably beyond the extent that could have been established solely on the basis of political negotiations (Scharpf 2010: 228).

In recent years, Europeanisation research has increasingly devoted its attention to the effects of this development and what it means on the ground-level by analysing not only legislative transposition but as well administrative transposition and application. So, we have started to understand better the relevance of this “opening up” of nation-based welfare states through judicialisation of European integration and the expansion of free movement and cross-border welfare rights to an extended group of beneficiaries, i.e., the non-economically active, and what it means for both domestic administrations and beneficiaries themselves (e.g. Martinsen and

Vollaard, 2014; Heindlmaier and Blauburger, 2017; Schmidt et al., 2018; Bruzelius, 2019). This dissertation will take up exactly this ground-level analysis of domestic transposition and application of EU legal provisions, including ECJ jurisprudence, on EU citizenship. Yet, the research will not stop at this point: In addition, this PhD dissertation will demonstrate the relevance of the afore-mentioned empirical results for social justice and democratic legitimacy in the European Union.

Therefore, this dissertation will answer the over-arching research question of whether both welfare “opening” and “closure,” that is, extending EU citizens’ free movement and cross-border welfare rights while preserving member states’ autonomy in delicate policy areas such as the welfare and education system, can effectively be achieved while at the same time reconciling such a development with social justice and democracy in the European Union.

Empirically, this dissertation analyses student mobility in the European Union and mobile students’ free movement and cross-border welfare rights as an example for this recent development that attempts to reconcile welfare “opening” and closure” in the Union. Not only have mobile students seen a drastic enhancement of their EU citizenship-based free movement rights in the past two decades through a large series of ECJ cases that have significantly contributed to their improved legal situation as concerns facilitating their studies abroad across member states. But also have several member states experienced large inflows of incoming EU students into their higher education systems, requiring significant adaptations to their administrative practices. At the same time, the empirical example of student mobility elegantly combines two of the most vulnerable policy areas within member states: welfare and education systems.

Belgium, Germany and the UK serve as three case studies on student mobility in the European Union. Together, these three member states have been subject to the majority of ECJ cases – 14 out of 25 – that have to date extended and clarified mobile students’ free movement and cross-border welfare rights since the seminal *Grzelczyk* judgment (C-184/99) in 2011, grounding EU mobile students’ rights for the first time in EU citizenship. At the same time, and as presented in more detail in the three papers of this PhD dissertation, these three case countries are exemplary for the three central issues in EU student mobility, as also addressed in respective ECJ case law: first, cross-border access to university tuition (Belgium), second, portability of home state-funded student benefits abroad (Germany), and third, access to host state-funded student benefits (UK).

The three case countries have been analysed through, first, semi-structured interviews with a total of 51 experts conducted between 2013 and 2016 in various locations in Belgium, Germany and the UK as well as in Brussels. Experts came from member-state administrations, including both ministries (13) and implementing agencies (16), national parliaments (5), domestic courts (2) and a law firm (1), advocacy groups (3), the European Commission (6), the ECJ (1), and academia (4). Second, domestic policy documents such as national/state legislation, implementing provisions, written observations and oral submissions presented before the ECJ, as well as domestic statistics, authorities' websites, and newspaper articles have been analysed.

This "bracket" of the PhD dissertation will be the uniting element of the three papers, of which this PhD consists. The first one, "Failing on the Social Dimension: Judicial Law-making and Student Mobility in the EU," (published in the *Journal of European Public Policy*; Schenk and Schmidt, 2018) compares mobile EU students' free movement rights in two case studies, namely their access to university tuition across borders in Belgium and Austria. The second paper, "Free Movement and EU Citizens' Social Rights: Explaining Transposition Leeway on the Ground" (submitted to the *Journal of European Social Policy*, currently under revision after second submission/revise & resubmit), analyses the other part of mobile students' EU citizenship-based rights, namely cross-border access to welfare rights by comparing benefits funded by the home (Germany) and host state (UK). Lastly, the third paper, "The Role of Politicisation in the Implementation of EU Free Movement and Cross-border Welfare Rights" (submitted to *European Politics and Society*, first submission) researches the role of politicisation as a mediating explanatory factor in the implementation and transposition process of EU legal provisions in member states.

Altogether these three papers, in an exemplary way, stand for the three major issue that had originally been set out as major aspirations within EU citizenship as a "grand idea" and that current legal provisions and politics of EU citizenship will have to tackle if EU citizenship is to be kept sustainable in the future: First, in fact extending EU citizenship rights for as many Europeans as possible, second, assuring that member states enjoy sufficient leeway in appropriately organising vulnerable policy areas in a Union with open border such as their welfare systems, and third and most critical, enhancing social justice and democracy in the Union.

This overarching analysis of the PhD subject matter will proceed as follows: The next chapter on "citizenship, nationality, and social justice" will lay the theoretical basis for the subsequent

analysis by portraying the interlinkages between domestically routed welfare states and citizenship entitlements, European integration and supranational attempts to achieve democracy and social justice. The third and fourth chapter will then present the historical grounds of EU citizenship as well as EU citizens cross-border free movement and welfare rights in more detail – an understanding which will be essential for grasping the essentials on the “grand idea of EU citizenship” and its concomitant aspirations detailed in chapter 5. Then, chapter 6 will lie at the heart of this research and discussion: It does not only discuss the attempted enhancement of EU citizens’ cross-border free movement and welfare rights while ensuring, concomitantly, sufficient leeway for member states to organise their welfare systems appropriately. Most critically, this chapter will present the “European welfare trilemma,” explaining, thus, the impossibility of reconciling European integration with nation-based welfare systems. Lastly, the concluding chapter 7 will present the way forward, including potential future solutions to this welfare trilemma.

2 Citizenship, Nationality and Social Justice

Citizenship as a concept serves to differentiate those belonging to a specific entity from those who do not. It is thus, classically, a binary concept, delineating insiders from outsiders (Brubaker, 1992; Bauböck, 2017: 65). In his foundational study on citizenship, T.H. Marshall (2009 [1950]: 151) argues that being included as such an insider requires “a direct sense of community membership based on loyalty to a civilisation which is a common possession. It is a loyalty of free men endowed with rights and protected by common law.” Consequently, member do not only enjoy certain citizenship *rights* but are also required to fulfil specific citizenship *duties*. These *citizenship rights and duties* encompass three domains: civil, political and social (Marshall, 2009 [1950]: 149).

Clearly, citizenship, welfare rights, solidarity and social justice are strongly intertwined (Ferrera, 2014: 825; O’Brien, 2017: 9). While civil and political citizenships rights bring democracy to life, social citizenship rights lay its foundation and include “the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the country” (Marshall, 2009 [1950]: 149). This implies that the proper functioning of the welfare state will not only require a feeling of solidarity within a predefined community (cf.

Myrdal, 1960), but also equality of treatment for its beneficiaries to render any notion of social citizenship meaningful (Spaventa, 2017: 204). What follows is that social rights are often largely redistributive in nature, comprising, on the one hand, beneficiaries who enjoy welfare benefits or services that have been, on the other hand, funded by a group of contributors. The redistribution of income and wealth – mostly between the poor and the rich, the young and the old but potentially also among different regions – clearly raises questions of both a state’s fiscal capacity to effectuate such transfers and on the contributors’ willingness to accept the redistribution of their own financial resources.

Traditionally, such citizenship communities have been deeply rooted in the Westphalian model of the nation state, creating a strong link between citizenship and residence within pre-defined national boundaries (Ferrera, 2014: 825). Presupposing national citizens’ self-identification with others in this shared community, members are expected to accept pecuniary transfers, balancing *citizenship rights* and *duties*, more eagerly. Indeed, it will be most likely to find such sense of togetherness among individuals residing within the territory of the same nation-state (Klausen, 1995: 249). During the twentieth century, citizenship struggles and calls for equality as well as social inclusion in various Western democracies have repeatedly been mitigated through welfare settlements, buttressing societal change and containing political stability, specifically in the course of the 1970s social movements (Newman, 2012: 40–41; Thym, 2017a: 711). Similarly, most student funding systems existing in Europe, specifically in the Western and Northern part, had been established during that very decade.

Next to this sense of togetherness, Klausen (1995: 244–46) developed a second precondition for redistributive social rights to function. A welfare system will crucially also depend on its ability to politically mobilise contributors and beneficiaries. On the one hand, contributors are only expected to willingly fulfil their duties as long as they agree on the conditions that regulate such transfers of income and wealth (cf. also Emmenegger and Careja, 2013: 83). Therefore, drawing a clear line between those two groups is vital for welfare states to function properly (Entzinger, 2007: 119). On the other hand, beneficiaries might be particularly disadvantaged if they do not possess the same opportunities for mobilisation.

While welfare settlements could historically be facilitated on the domestic level, globalisation and Europeanisation, bringing with them migration and free movement, have increased pressure on nation-states and their respective citizenship and welfare regimes, leading to new struggles for citizenship rights and inclusion (Newman, 2012: 40–41). Taking the above

twofold preconditions, a sense of community membership and political mobilisation, it becomes apparent that a state's fiscal capacity to finance its welfare system will be specifically challenged in an open-border European Union: social rights will be particularly contested when redistribution occurs among different regions or even among nation-states, all with their own specific, historically grown understanding of a welfare system. Also, contributors neither necessarily have a clear picture of respective beneficiaries migrating from other countries, nor do they necessarily have the opportunity to decide on conditions of redistribution on the supranational level. Lastly, migrants can be expected to face much larger difficulties of political mobilisation, especially if they are lowly skilled (Delanty, 2007: 65).

Conceptually, it follows that citizens can be serially or simultaneously members of different communities – while citizenship is conceptually constructed in a binary way, this does not indicate singularity (Bauböck, 2017: 65). Thus, in a sense of *supranational citizenship*, citizens can deliberately belong to different communities, and enjoy concomitant citizenship rights across national borders (Strumia, 2016: 670–74). It is additionally possible for citizens to be *quasi-*, or, *semi-members* of a specific community: Such citizens enjoy a certain number of citizenship rights under the condition of specific citizenship duties without being recognised as full members (Bauböck, 2017: 66). Therefore, citizens in Europe are not only *national citizens* but also *EU citizens*, the origin of which the next chapter will present.

3 The Emergence of a New Form of Citizenship in Europe

The introduction of EU citizenship, bringing with it far-reaching changes in free movement and welfare rights for large proportions of Europeans, particularly those who are economically non-active, came late down the integration path with the 1992 *Maastricht Treaty*. Conversely, workers' free movement and social rights had already been protected for long, specifically under articles 48 to 50 in the *EEC Treaty* as of 1957 (today's articles 45 to 48 *TFEU*). These provisions have since prohibited any form of restriction to workers' free movement rights, including discrimination on grounds of nationality with regard to employment, remuneration and working conditions (article 45(2) *TFEU*). In addition, Article 51 *EEC Treaty* had specified that further EU secondary legislation was to be drafted in order to clarify cross-border workers' residence and welfare rights. This had, first, been effectuated by Regulation 1612/68/EC (now 492/2011) “on freedom of movement for workers within the Union.” Secondly, Regulation

1408/71/EEC (now 883/2004) “on the coordination of social security systems,” which had been considered Europe’s then “most advanced social policy achievement” (Martinsen, 2003: 2), also further specified article 51 *EEC Treaty*. Both these Regulations grant cross-border workers the right to reside in their host state as well as access the same welfare benefits and tax advantages as nationals of this host country (article 7(2) Regulation 492/2011; article 4 Regulation 883/2004) as well as the right to portability of social security across member states (articles 5 and 6 Regulation 883/2004) such as pension fund benefits.

Despite EU citizenship’s late legal birth, its original invention predated the 1957 establishment of the *Treaty of Rome*, marking the beginning of the Union as we know it today. In his famous 1946 speech delivered at the University of Zurich, Winston Churchill had called for “European group which could give a sense of enlarged patriotism and common citizenship to the distracted peoples of this mighty continent” (Churchill, 2019 [1946]). Two years later, he painted his picture of “The Good European,” detailing his vision of European citizenship further:

“We hope to reach again a Europe united, [...] in which men will be proud to say ‘I am a European.’ We hope to see a Europe where men of every country will think as much of being a European as of belonging to their native land [...] We hope that wherever they go in this wide domain, to which we set no limits in the European continent, they will truly feel ‘Here I am at home, I am a citizen of this country too.’ [...] Let us meet together, let us work together, let us do our utmost, all that is in us, for the good of all.” (Churchill, 2012 [1948])

The idea of European citizenship had then been taken up again as early as during the founding days of the European Communities (Maas, 2005: 1009). But it was not until 1961 that a more concrete conceptualisation of the European citizenship concept had been put forward by the Commission for the first time. That year, socialist Commissioner Lionello Levi Sandri, then in charge with the Community’s social affairs, formulated his aspirations for European citizenship:

“The [migrant] worker must everywhere feel his European citizenship to be a source of strength and pride. For this, in the last analysis, must and will be the most important political and social result of the liberalisation of the labour market: to the extent to which it is attained, we shall all be made to appreciate the effective range of European solidarity and the progress of the idea of unity in the minds of our peoples.” (Levi Sandri, 1961: 10)

However, these initial enthusiastic approaches to European citizenship rights, albeit limited to economic activity, were soon halted by sceptical member states such as Luxembourg as well as the 1973 newly joined members Denmark and the United Kingdom (Maas, 2007: 9). It was not until the well-known 1975 report “[o]n European Union” by Belgian Prime Minister Leo Tindemans, better known as the “Tindemans-Report,” that the idea of European citizenship

rights came back onto the political agenda. Just as Levi Sandri, Tindemans had realised early on that the project of European integration was deemed to fail unless citizens in Europe were to understand, accept and support its development, so that eventually, “citizens [themselves would] give [Europe] its social [...] dimension.” Therefore, he included in this piece of work a section headed “A Citizen’s Europe.” In detail, he proposed some sort of supranational rights’ protection of Europeans “where this can no longer be guaranteed solely by individual states,” and to support instruments of “European solidarity by means of external signs discernible in everyday life” (Tindemans, 1976: 26). He also specifically pointed towards fundamental rights, including social rights, which individuals could invoke in front of the European Court of Justice.

Yet it was not until the *Maastricht Treaty* that EU citizenship had formally been introduced in European law. Headed by an initiative by then Spanish Prime Minister Felipe Gonzalez who voiced, just as Leo Tindemans, concerns about the on-going form of European integration led solely by a small group of political leaders and bureaucratic experts but lacking public support, he proposed to add a new part to the Treaty draft by circulating a paper labelled “The Road to European Citizenship” (Chalmers et al., 2010: 444; Dubiel, 2014: 122). This Spanish vision of European citizenship was presented as follows:

“The personal and indivisible status of nationals of the Member States, whose membership of the Union means that they have special rights and duties that are specific to the nature of the Union and are exercised and safeguarded specifically within its boundaries.” (Council of the European Communities, 1990a)

The Commission then joined the Spanish rhetoric in its opinion issued only one month after the Spanish proposal yet making clear that European and national citizenship would exist in juxtaposition:

“European Citizenship [...] would take shape gradually, without encroaching in any way on national citizenship, which it would supplement rather than replace. [...] [T]he object would be to encourage a feeling of involvement in European integration [for European citizens].” (Commission of the European Economic Communities, 1990: 79)

Even more important to this research at hand is the fact that this document mentioned the extension of EU citizenship rights to non-economically active citizens for the very first time. Thus, in detail, the document explicates that also those who were not covered under the category of migrant workers were to enjoy residence and free movement rights. Finally, European citizenship was codified within articles 8 to 8e in the *Maastricht Treaty* (today’s articles 20 to 25 *TFEU*) which specified that all European citizens holding the nationality of

one of the member states should be endowed equally with EU citizenship. On this basis, they were not only granted the right to move and reside freely within the Union, but also to vote and stand in municipal and European Parliament elections across member states, enjoy consular protection in the territory of a third country by any of the other member states, as well as the right to petition the European Parliament and apply to the European Ombudsman. Yet, while the introduction of EU citizenship within the *Maastricht Treaty* had vast implications to Union citizens' social rights as will be seen in later chapters, these had not been addressed directly in the above Treaty articles. Article 8a(2) specified that “[t]he Council may adopt provisions with a view to facilitating the exercise of [free movement and residence] rights,” which was eventually effectuated by three 1993 mobility directives: the *General Mobility Directive* (90/364/EEC “on the right of residence”), the *Retired Workers' Mobility Directive* (90/365/EEC “on the right of residence for employees and self-employed persons who have ceased their occupational activity”), as well as the *Student Mobility Directive* (93/96/EEC “on the right of residence for students”).¹

Later, these three directives had been replaced with the 2004 *Citizenship Directive* (also often called *Free Movement Directive*, 2004/38/EC), and further detailed by a large row of judgments by the European Court of Justice. The next chapter will present how these free movement and social rights for non-economically active EU citizens, particularly regarding university students, play out in detail.

4 European Citizenship and Students' Free Movement and Social Rights

Since the seminal 2001 *Grzelczyk* (C-184/99, paras 31 and 44) ECJ judgment, “Union Citizenship is destined to be the fundamental status of nationals of the member states,” presetting a “certain degree of financial solidarity” among member states. Paired with Treaty provisions on non-discrimination and EU citizenship as well as the 2004 *Citizenship Directive*, this judgment laid the important foundation for EU citizens today enjoying broad free

¹ The *Student Mobility Directive* had been adopted after the initial directive on that matter, 90/366, had been annulled by the ECJ for choice of incorrect legal basis in C-295/90 *Parliament v Council*.

movement and welfare rights. Specifically, this now also includes non-economically active citizens, i.e. those neither working nor paying taxes in the hosting state, such as university students. This chapter will show in how far students are able, on the basis of these EU provisions to access university tuition across member states (4.1) and as well be entitled to welfare benefits, so-called “maintenance support” covering students’ living expenses, consisting of either grants or loans or a combination of both, funded by the home (4.2) or host state (4.3).

While cross-border access to higher education is largely unrestricted under EU law, the question of access to maintenance benefits strikes a more delicate balance between welfare state openness and closure: it is well established that it would be largely unreasonable to require member states to allow just any student to access student benefits, including those without any meaningful connection to the funding state. Thus, benefit entitlements are generally restricted to those students who are sufficiently integrated into the society of the funding state. In this vein, mobile students should be kept from becoming an “unreasonable burden” on the study benefits system (as mentioned eight times in the *Citizenship Directive*). Otherwise, unregulated access risks having severe consequences on the level of assistance that is overall available, both to mobile and non-mobile students (as pointed out by the Advocate General in *Förster*, C-158/07, para 102; and *Prinz and Seeberger*, C-523/11 and C-585/11, para 70).

Behind such legal reasoning lies the idea that it is generally difficult to assess whether a student – who, different from other welfare recipients, generally only pays into the system *after* her benefit take-up period during her studies – is likely to return contributions to the funding state via future employment, taxation, or consumption.² So, it is unclear whether a student is not simply a “free-rider,” exercising some kind of “benefit tourism.” Or whether he will in fact return to his funding home state or remain in the funding host state, respectively. Or whether he will in fact remain in his host state (in the cases of cross-border university access and of maintenance benefits funded by the host state, cf. chapters 4.1 and 4.3) or return to his funding state (as regards exportable benefits from the home state, cf. chapter 4.2).³

² Certainly, a student contributes, to a modest extent, to the local economy also during his studies via indirect taxation, consumption and the like (cf. Martinsen and Pons Rotger, 2017).

³ See on this, generally, for example *Commission v Austria*, C-147/03, opinion AG, paras 36 and 40; *Bressol*, C-73/08, opinion AG, para 95.

4.1 Cross-border Access to University Tuition in the EU

Higher education systems in European member states differ along two major dimensions: first, as regards access which is either unrestricted and universal or linked to certain preconditions such as specific grades in entry exams or secondary education diplomas. Second, tuition is covered either indirectly through taxation or directly through fees which are paid up-front. Both dimensions know numerous variations: for instance, in some countries, university tuition access is generally open (e.g. in Austria or Belgium), others restrict access only to some degree programmes (e.g. medicine and psychology as in Germany), or offer means-tested tuition fees (e.g. in France) or repayable tuition fee loans under favourable conditions (e.g. in the UK).

Whichever system a member state chooses – it must allow for incoming EU students to access it in a non-discriminatory manner (*Bressol*, C-73/08, para 29). This very cross-border access to university tuition has been the pivotal point of EU students' free movement rights from early on. In 1974, the Court stressed university students' general access to educational systems across member states (*Casagrande*, 9/74). However, the right to cross-border access to education had been preserved exclusively to children of migrant workers at that time (*Commission v Belgium*, 42/87).⁴

Since the 1993 *Student Mobility Directive* and the subsequent 2004 *Citizenship Directive*, also non-economically active students have been granted wide-ranging rights to access university tuition in other member states. While access needs to be non-discriminatory, this does not mean unconditional: member states strike a delicate balance between, for instance, educating the necessary number of medical doctors needed for its own health care system, and complying with EU non-discrimination provisions on freedom of movement.

The Court has been rather explicit in its reply to such discrepancies: member states may not restrict access to their higher education systems via aptitude tests (*Commission v Belgium*, C-65/03), additional proof of admission for the specific study programme from the home state (*Commission v Austria*, C-147/03), or a fixed number of non-domestic students allowed in specific programmes (*Bressol*) since this puts incoming EU students at disadvantage as compared with their domestic counterparts. Nevertheless, the ECJ proposes a few non-

⁴ See also *Forcheri*, 152/82; *Gravier*, 193/83; *Blaizot*, 24/86; *Commission v Council*, 242/87.

discriminatory measures to regulate inflows of EU students: establishing general entry examinations or requiring a minimum grade (*Commission v Austria*, para 61), as well as regulating the overall number of students admitted to specific degree programmes (*Bressol*, opinion AG, para 120). Importantly, these measures need to include both incoming and domestic students equally. Also, the Court suggests counterbalancing the allegedly high number of returning students by incentivising them to find employment in the state of their studies (*Bressol*, para 78).

4.2 Exportability of Maintenance Support in the EU

Several education systems mainly in Western and Northern Europe, such as Germany, the Netherlands, Sweden and Finland⁵ provide for their students to be awarded maintenance support when they decide to study abroad. In the EU, member states are generally free in their decision to organise their student support systems in such a way that they award loans or grants for education abroad. However, if states allow for such exportability of maintenance benefits, they are required under Union law to grant this support in a non-discriminatory manner (*Morgan and Bucher*, C-11/06 and C-12/06, para 28). Any type of non-proportional restrictions that would hinder its citizen students from exercising their free movement rights are unlawful.

In the interpretation of these legal prerequisites, difficulty arises when establishing the exact demarcation of those falling within the boundary of beneficiaries. In line with the already mentioned prerequisite to assess whether a student has a “sufficient degree of integration” in the funding state, applicants are required to justify their “real link” with the state. This link is tested on the basis of proportionality, so that it “must not be too exclusive in nature or unduly favour one element which is not necessarily representative of the real and effective degree of connection between the claimant and this Member State” (*Prinz and Seeberger*, para 37).⁶ All cases before the ECJ on this matter exclusively concerned nationals from the funding state who aimed at pursuing studies abroad. The ECJ made clear that restrictions such as a certain period of previous studies or a continuation of studies abroad (*Morgan and Bucher*), prior residence

⁵ Full portability for maintenance support is also granted by Austria, Belgium (Flanders only), Denmark, France, Ireland, and the UK (Scotland only; European Commission, 2016a: 32).

⁶ See also *D’Hoop*, C-224/98, para 39; *COM v AT*, para 62; *Stewart*, C-503/09, para 95; *Commission v the Netherlands*, C-542/09, para 86; *Giersch*, C-20/12, para 76; *Thiele Meneses*, para 36; *Martens*, para 37.

or even permanent residence status in the home state (*Prinz and Seeberger*; *Thiele Meneses*, C-220/12; *Martens*, C-359/13), or a narrow specification or prescribed duration of studies pursued abroad (*Elrick*, C-275/12) were not compatible with legal provisions on EU Citizenship and non-discrimination.

Clearly, other factors such as having been raised, educated and schooled in the relevant country (*Morgan and Bucher*, para 45) as well as “family, employment, language skills or the existence of other social and economic factors” (*Prinz and Seeberger*, para 38; *Thiele Meneses*, para 38; *Martens*, para 41) need to be taken into account. Importantly, these factors are to be considered irrespective of the locus of current (permanent) residence (*Prinz and Seeberger*, para 38).

4.3 Access to Maintenance Aid in Host States in the EU

In the same vein as establishing portable study benefits, member states are free in their choice whether to build maintenance aid systems for their domestic students. Similarly, if they do so, these benefits must as well be granted to incoming EU students in a non-discriminatory manner within the limits of EU provisions. Today, most European states have such systems in operation with the earliest having been implemented back in the 19060s and 1970s such as maintenance grants within the *Education Act* in the UK (1962), *Statens Uddannelsesstøtte* in Denmark (1970), or *BAföG* in Germany (1971).

Again, the crucial question addresses the specific conditions under which an incoming student is eligible to student support in the host state. As in the previous section, member states can limit access to maintenance benefits to those students who can demonstrate a real link with the society of the funding state (and originally put much more narrowly: to those with a link to the relevant geographical *employment* market, cf. *D’Hoop*, C-224/98; and *Collins*, C-138/02). Similar to cross-border university access, what has been quite clear legally since the 1980s, are eligibility rights of those attesting their “real link” via worker status. Thus, students who are children of cross-border workers or who retain their worker status from previous or current employment can be entitled to maintenance support (*Lair*, 39/86; and *Brown*, 197/86).⁷ Interesting enough is the markedly low level of working hours necessary to be conferred

⁷ See also *Echternach and Moritz*, 389/87 and 390/87; *Di Leo*, C-308/89; *Raulin*, C-357/89; *Bernini*, C-3/90; *Gaal*, C-7/94; *Meeusen*, C-337/97; *Geven*, C-213/05; *Commission v the Netherlands*, C-542/09; *Giersch*, C-20/12.

worker status: an eight month-long pre-university vocational training (*Brown*) and a 10-week training course (*Bernini*, C-3/90), part-time work of 12 hours a week (*Kempf*, 139/85) or two days' employment a week (*Meeusen*, C-337/97) and even as little as 5 and a half hours working time per week (*Genc*, C-14/09) all pass the eligibility test in the above cases.

The entitlement question is more complex as regards non-economically active students. For long, not only social rights for non-active citizens, but also educational policy was considered to fall outside of Treaty provisions. This had been clarified by the Court in two cases, *Lair* (para 15) and *Brown* (para 18), concerning a French student in Germany, as well as a student with dual French and British nationality studying in Cambridge. As a concession, the Court however granted cross-border access to assistance covering solely registration and tuition fees (*Lair*, para 16). With the prominent 2001 *Grzelczyk* judgment, the ECJ altered its approach as compared to its 1988 judgments, by stating that cross-border mobility had now become a reality of the Union (*Grzelczyk*, paras 34 and 35).

While the general prerequisite sounds rather familiar (demonstrating a “certain degree of integration into the [host] society,” *Bidar*, C-209/03, para 57), the legal threshold to funding eligibility has evolved to be much more demanding for incoming than for outgoing non-active students from the previous section: the former are clearly required not to become an “unreasonable burden” on the social assistance system of the host member state (as in article 14(1) Directive 2004/38/EC).

Yet, earlier case law still depicted an “apparently flexible” interpretation of the notion of “unreasonable burden” (*Bidar*, opinion AG, para 31) with more generous concessions to incoming students: a period of three-year fulltime studies paired with unforeseen, exceptional financial hardship (*Grzelczyk*; *Chakroun*, C-578/08, para 52; *Brey*, C-140/12, para 84) as well as a three-year residence period combined with the presence of close relatives and schooling in the host state (*Bidar*) could both suffice to maintenance support eligibility. Later legal reasoning of the ECJ as well as the *Citizenship Directive* set a clear entitlement threshold: a period of five years' uninterrupted residence, that is, permanent residence status in the host state (*Förster*, paras 52–58, mirroring the soon-after adopted *Citizenship Directive*, article 16(1) in conjunction with article 24(2)). This aimed at increasing legal certainty and transparency (*Förster*, para 57) and was considered to still remain within the legal limits of attaining the objective of a claimant's sufficient degree of integration (*Förster*, para 58). And certainly, this residence prerequisite is logically in line with the *Citizenship Directive's*

requirements: during the first five years of residence as an EU citizen in another member state, one needs to demonstrate having sufficient resources to secure one's own living expenses in the host member state – and this, in general, logically contradicts applying for maintenance benefits (cf. also *Bidar*, opinion AG, para 44). Clearly, the *Citizenship Directive* (article 24(2)) also excludes EU citizens from accessing social assistance before reaching permanent residence status.

In sum, three points follow from the three above presentations of EU students' free movement and cross-border social rights as based on Treaty provisions, EU citizenship legislation and relevant ECJ case law. First, mobile EU students' rights have clearly been altered when compared to earlier legal situations (cases *Lair* and *Brown*). Second, EU provisions on student mobility depict a rather uniform approach despite member states demonstrating a large variation of university access regulation. And third, questions of social justice arise – of whether this legal approach to EU citizenship attains what it had originally been set out to achieve. The next two chapters will dive more into detail of all these three aspects by, first, presenting the original aspirations of EU citizenship (chapter 5), and then linking them with their empirical reality on the basis of this PhD's three studies and further state-of-the-art scientific research (chapter 6).

5 European Citizenship Envisaged as a Grand Idea

The previous chapter has demonstrated, by taking the example of mobile students' free movement and cross-border social rights in the European Union, in which ways the introduction of EU citizenship has altered the legal situation for a large share of Europeans over the past two decades. In this chapter, the many-faceted aspirations that the introduction of EU citizenship had attempted to achieve will be presented. The subsequent three sections will thus outline these core ideas, namely enhancing EU citizens' social rights by, *inter alia*, extending the groups of beneficiaries (5.1), preserving member states' welfare systems by safeguarding their national autonomy in central respects (5.2), and lastly, strengthening the European Union's democratic legitimacy by increasing Union citizens' political participation and identification of the integration process (5.3). All of these original theoretical aspirations will, in the following chapter 6, be discussed and weighed against their practical implications and value.

5.1 Opening: Enhancing EU Citizens' Social Rights

Two central points had been envisaged when it comes to the then newly introduced social rights as based on EU citizenship, coined by Ferrera (2014: 828) as the EU Social Citizenship Space: first, expanding the scope of Union citizens' social rights, and second, broadening the group of beneficiaries by not only granting cross-border social rights to mobile workers but including as well the mobile non-economically active. Altogether, this development is exemplary for what Ferrera (2005: 2, 2009: 220–22) had earlier described as “opening” up of national welfare states.

Throughout, the overarching question guiding EU citizens' enhanced access to cross-border social rights, can be described as *when should non-citizens in a specific member state be entitled to welfare rights provided by the state* (cf. Bellamy and Lacey, 2018: 16)? As presented in chapter 3, the altered 1992 *Maastricht Treaty* provisions, introducing EU citizenship, has given us some initial answers. With it, the Treaty brought above all two new categories of rights: political and social. EU citizens could, from then on, not only vote and stand in municipal and European Parliament elections, but also enjoy a vast array of newly established social rights for the non-economically active. The *Citizenship Directive* 2004/38/EC, replacing the three EU citizenship directives from the 1990s (cf. chapter 3), brought up the first comprehensive framework on EU citizens' free movement and cross-border social rights as based on EU citizenship. According to this directive, each and every Union citizen is conferred a “primary and individual right to move and reside freely within the territory of the [m]ember [s]tates.” And if they take advantage of these rights, “Union citizenship should be [their] fundamental status,” including specifically non-active citizens such as university students. Vitality, in areas covered by the Treaty, provisions of non-discrimination apply, so that EU citizens should be treated equally with nationals.⁸ Ultimately, these measures aim at “strengthen[ing] the right of free movement and residence of all Union citizens” (recitals nos. 1, 3 and 20, Directive 2004/38/EC). So, altogether, EU legal provisions on free movement, including equality of treatment, were no longer limited to mobile economically active

⁸ The centrality of the equal treatment provision is as well emphasized in article 24(1) of the *Citizenship Directive*.

European citizens – aiming at making the body of EU social law more coherent overall (Dougan, 2005: 953).

As a result, the previous “market citizenship,” granting encompassing free movement and cross-border social rights solely to workers, was aimed at becoming a “(new) real, social and political citizenship” (Thym, 2017b: 5). Instead of expressing the *reciprocity between rights and duties* merely in economic and financial terms, the introduction of European citizenship and its concomitant cross-border social rights for non-active persons originally intended to create a broader vision of reciprocity: The new category of EU citizen was expected to commit to her hosting member state as well in political and social terms, agreeing to moral values defining that very state. Thus, in an understanding of *communitarian solidarity*, non-economically active EU citizens were intended to subordinate themselves under the authority of the host polity and, ultimately, to actively contribute to the community’s specific sharing practices (De Witte, 2012: 707). At the same time, the extension of EU citizens’ free movement and social rights was to be designed in a way to avoid, conversely, the disempowerment of national citizens (Lenaerts and Gutiérrez-Fons, 2017: 779). Thus, those large proportions of Europeans who deliberately decided not to move and stay at home had been envisaged not to be disadvantaged through the introduction of EU citizenship rights.

Taken together, the introduction and proliferation of EU citizenship attempted to (1) expand the scope of European citizens’ political and social rights by (2) extending the group of beneficiaries from the economically active to the non-active while (3) not being realised to the detriment of national citizens opting not to move.

5.2 Closure: Preserving Member States’ Welfare Systems

While the introduction of EU citizenship marked the “opening” of national welfare states (Ferrera, 2005: 2, 2009: 220–22), its political constructors had at the same time as well reflected upon the idea of “closure”, that is, preserving member states’ welfare systems by safeguarding their national autonomy in central respects. Two central aspects deserve closer attention here: first, the supplementary nature of EU citizenship *vis-à-vis* national citizenship, leading to member states’ right to exclude EU citizens from unconditional and full free movement and cross-border social rights. The second idea in this regard concerns member states’ leeway to choose their preferred path of domestic administrative application.

Treaty provisions since Maastricht make clear, that “[c]itizenship of the Union shall be additional to and not replace national citizenship” (article 20(1) *TFEU*). Thus, while EU citizenship status follows automatically from possessing the nationality of one of the member states (Strumia, 2016: 674), EU citizenship was not intended to replace but to *complement* national citizenship (own emphasis; Lenaerts and Gutiérrez-Fons, 2017: 779). In more detail, the *Citizenship Directive* 2004/38/EC makes clear that EU citizens’ free movement and cross-border welfare rights are confined within certain limits. Regarding the specific example of mobile university students, the previous chapter has already portrayed the nature of such limits for, e.g., accessing maintenance funding in the host state. In general terms, EU citizens should not “become an unreasonable burden on the social assistance system of the host [m]ember [s]tate” (as mentioned eight times in the directive). Specifically, free movement and cross-border residence rights for non-economically active citizens are conditional upon sufficient financial resources and valid health insurance coverage for stays longer than three months and shorter than five years (article 7 *Citizenship Directive*). During this period of time, member states are also not obliged to grant cross-border access to social assistance measures (article 24(2) *Citizenship Directive*). Also, member states “may restrict the freedom of movement and residence of Union citizens [...] on grounds of public policy, public security or public health” (article 27(1) read in conjunction with article 15(1) *Citizenship Directive*). What follows is that a mobile EU citizen will be subject to the hosting state’s political authority, including its specific *duty* part of the citizenship idea. In the EU, citizens are free to move as long as they fulfil the above legal conditions, thus legitimising the idea of legal coercion in the host state. So, just because EU citizens are largely free to choose their destination state, this does not imply that they do not have specific duties towards it (Bellamy, 2015: 563–64).⁹

As comes to the realisation of EU citizenship rights in member states, it is clear that the Union possesses a rather weak institutional framework to enforce its legal provisions (Ferrera, 2014: 826). Thus, it comes to no surprise that EU citizens’ free movement and cross-border social rights have been spelled out in a directive, requiring the implementation through member states’ laws, regulations and administrative provisions, and not a regulation as with workers’ cross-border welfare rights. So, member states are intended to be granted at least some leeway

⁹ This “thick notion of EU citizenship” is contrary to others in the literature such as Kochenov (2014) who argues for a “thin notion of EU citizenship” deprived of substantial duties.

in designing the specific implementation and application of mobile non-active EU citizens' social rights. Specifically, administrative application on the ground is expected to reflect a significant room for manoeuvre when it comes to safeguarding member states' sovereignty with regard to their social policies.

In sum, the design of EU citizenship had attempted to square the circle: not only were EU citizens' social rights to be enhanced as explicated in the previous section, reflecting dynamics of "opening," but also did EU policy-makers aim at safeguarding member states' welfare systems at the same time, keeping their traditional "closure." This section has shown in how far dynamics of (1) EU citizenship's supplementary nature, including member states' leeway to (2) impose certain citizenship duties, and (3) to choose their preferred path of domestic policy implementation as well as administrative application, have shaped the origins of the concept of EU citizenship.

5.3 Strengthening Democratic Legitimacy

Linking together welfare state opening through European integration and member states' traditional closure of their core policy areas inevitably leads to overarching questions addressing the viability of such altered redistribution processes among nationals of different member states. Not least, these issues profoundly affect matters of social justice and democratic legitimacy. While the evaluation of such questions will be of concern in the subsequent chapter, this section covers the initial aspirations that the introduction of European citizenship had attempted to reach in order to enhance the Union's democratic legitimation.

As already shown in chapter 3, EU citizenship had, from its very beginning, aimed at increasing Union citizens' identification with the European integration project as such (cf. also Thym, 2017c: 133). Lionello Levi Sandri's (1961: 10) words, then Commissioner in charge with the Community's social affairs, who had called for the migrant worker to "feel his European citizenship to be a source of strength and pride," recall this idea. Little time after the actual introduction of EU citizenship through the 1992 *Maastricht Treaty*, the European Commission similarly states:

"[T]he concept of European citizenship [had been o]ne of the Treaty's basic innovations in terms of democracy [... through] giv[ing] Europe's citizens an added benefit and strengthening their sense of belonging to the Union. [...] [T]he task of building Europe is centred on democracy and human rights. [...] [S]uch an instrument [such as European citizenship developed to the

full] would constitute a powerful means of promoting equal opportunities and combatting racism and xenophobia.” (European Commission, 1995: 4)

Some years later, the *Citizenship Directive* 2004/38/EC reflects these extensive aspirations in several of its recitals: Not only should Union citizenship “be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence” (para 3), but “strengthen[ing] the feeling of Union citizenship” is also supposed to “promote social cohesion” (para 17) and “be a genuine vehicle for integration” (para 18).

Overall, the introduction of EU citizenship had attempted to legitimise the European integration process along two different lines, which have famously been described by Scharpf (1970; 1997: 153) as “input-” and “output-oriented legitimacy.” Or, as Craig (2011: 28–29) puts it with regard to EU citizenship, “the different views of the cathedral,” a metaphor reflecting the weight one gives to either input- or output driven legitimacy of the EU. Is Union citizenship solely a tile on the cathedral’s façade, beautifying internal market edifice, or is it one of the core pillars of EU integration, facilitating the functionality and endurance of the edifice’s structure (Kochenov, 2017b: 78)? First, as concerns the input-driven path, that is, legitimacy derived from agreement of those concerned, the introduction of increased political rights such as participation in the European Parliament elections and the right to petition attempted to strengthen the legitimacy of the Union in that regard (Føllesdal and Hix, 2006; Scharpf, 1997). Thus, the ultimate aim – through the introduction of EU citizenship – had been to mobilise EU citizens to actively participate in the Union’s political processes (Lenaerts and Gutiérrez-Fons, 2017: 780).

Second, the social rights part of EU citizenship largely concerns output-oriented legitimacy, that is, a legitimisation derived from its actual effects on European citizens, delivering a common good and corresponding to general ideas of redistributive justice (Majone, 1996; Scharpf, 1997). So, Union citizenship was set out to enhance EU citizens’ well-being in line with political visions of what it means to conduct a good life within a just society (De Witte, 2012: 699; Thym 2017b: 3). Attaining these far-reaching aspirations was not only supposed to be tackled through enhancing the group of mobile welfare beneficiaries in the Union from the economically active to the non-active and by enhancing their concomitant free movement and cross-border social rights (cf. previous section 5.1; see also Schmidt et al., 2018: 1392). Also, the establishment of specific funding programmes such as the European Structural and Investment Funds, most prominently the European Social Fund (ESF), but also the European Globalisation Adjustment Fund (EGF), and other EU policies such as EURES or ERASMUS

followed the rational of increasing EU citizens' support of the Union through improving their very own personal situation. Ultimately, as stated also in the above 1995 Commission report, nationalism was to be curbed through the successful proliferation of European citizenship (De Witte, 2012: 699).

Taken together, the overarching idea of strengthening the legitimacy of the European integration project through the introduction of EU citizenship was to patch the offsets of simultaneous welfare opening and closure in the Union. Through mainly output-driven legitimacy as regards to social rights part of European citizenship, EU citizens were to feel their personal lives to be significantly improved as a result of European integration. In how far such aspirations, as well as those presented in the previous section, could indeed become reality through the realisation of European citizenship will be discussed in the following chapter.

6 European Citizenship Revealing a Flawed Concept

The last chapter has shown EU policy-makers' threefold aspirations at the point in time when European citizenship had been introduced. First, EU citizens' social rights were to be enhanced through, *inter alia*, expanding the group of beneficiaries from the economically active to the non-active. Second, they intended to largely keep member states' welfare systems intact by safeguarding their autonomy in central respects. And third, the overarching aim of European citizenship had been to ameliorate the legitimacy of the European integration project overall on the basis of increasing Union citizens' political participation as well as their personal benefits from the Union as a result of deeper social integration. These high-toned aspirations are worthy of further examination: On the basis of this PhD dissertation's empirical results as presented in the three journal articles, coupled with further insights from other scholarly work, these threefold aspects of EU citizenship will be analysed and discussed in this chapter.

6.1 Enhancing Cross-border Social Rights – Not for Anyone

There is little disagreement that the past three decades have seen a particular acceleration of EU law provisions on free movement rights and cross-border welfare entitlements, faster in pace and broader in scope than any other decade since the first introduction of mobile workers' social rights. Yet, the evaluation of this development, in particular with regard to whether

citizens have indeed experienced a significant enhancement of their own rights and individual well-being, has proven controversial.

On the one hand, pro-arguments have demonstrated in how far EU citizens could in fact improve their personal free movement and cross-border welfare rights over the years since the introduction of European citizenship with the 1992 *Maastricht Treaty* (Ferrera, 2014: 830; Sarmiento and Sharpston, 2017: 227). In their well-known study, Caporaso and Tarrow (2009: 595, 610–1) argue that the European Court of Justice has, *inter alia* in its jurisprudence on EU citizenship, embedded Europe into a social dimension by enhancing individual cross-border social rights. Specifically, they contend that that the European Court’s rights-based case law has expanded into new areas that are not primarily driven by economic interests of capital owners, thus, not resulting in market-liberalisation as in other fields but instead extending market-correcting solidarity (cf. also Wollenschläger, 2011). Regrettably, Caporaso and Tarrow (2009) had never made their theoretical arguments subject to empirical scrutiny, so that the actual viability of these arguments had remained to be analysed at that time.

Certainly, the European Court of Justice, as Caporaso and Tarrow (2009) have shown, has played a major role in detailing the originally rather short list of EU citizenship rights in the Treaties (Kochenov, 2017a: 40; Strumia, 2017: 674). This brief enumeration of free movement and social rights had not only been further spelled out in respective EU secondary law provisions, but vitally also through case law of the ECJ. With no doubt, the Court had crucially paved the way for departing from mere reciprocity of the non-economically active, leading to a “certain degree of financial solidarity” among member states also for the non-active on the basis of “Union Citizenship [as] destined to be the fundamental status of nationals of the member states” (2001 *Grzelczyk* judgment; cf. also Everson, 2014: 970; Ferrera, 2016: 794; Schmidt et al., 2018: 1394).

Taking the policy example of this PhD dissertation, EU student mobility, the ECJ has, through its jurisprudence, vastly extended non-economically active Union citizens’ free movement and social rights: Today, as compared to the situation in the 1980s (cf. cases *Lair* and *Brown*), they cannot only attend university programmes across the Union without any additional restrictions, including supplementary placement tests or enrolment fees. But also, mobile university students can, under certain conditions, access maintenance funding from the home or the host state (as described in more detail in chapter 4 as well as in the three journal articles). Specifically, several of the Court’s Advocate Generals have argued that this development has

led to a genuinely political form of European citizenship independent of their corresponding status such as economic activity or a link to the internal market (see, with regard to student mobility, specifically Advocate General Ruiz-Jarabo Colomer in joined cases *Morgan and Bucher*, para 82, and Advocate General Mazák in case *Förster*, para 54). This view of a new form of EU citizenship that is independent of the so-called “market citizenship” based on economic links, is also shared by different prominent scholars in the legal and political science literature (such as Ferrera, 2014: 830, and 2018: 7–8; Maas, 2014: 803).

Such a development of an extended group of beneficiaries is as well demonstrated in the empirics of all three journal articles: While the increase in numbers of EU students deciding to study in another member state has not increased tremendously during recent years in the Union, which is very much in line with rather low overall EU-wide citizens’ mobility,¹⁰ the numbers of mobile students have indeed increased dramatically for some degree programmes and countries (such as medicine and paramedical studies in Austria and Belgium, respectively) as well as regards the number of beneficiaries receiving maintenance funding from the home (e.g. Germany) or host state (e.g. the UK). As had been shown in chapter 3, this could be credited to the cases for which mobile students – both incoming and outgoing – could access maintenance funding, which had as well been extended through ECJ jurisprudence. This included, for instance, taking study funding with them from the first day of their studies abroad and abolishing previous qualifying periods (cf. joined cases *Morgan and Bucher*, joined cases *Prinz and Seeberger*, case *Thiele Meneses*).

On the other hand, yet, frequent criticism has been raised regarding European citizens’ free movement and social rights as established on the basis of EU citizenship. Two main arguments are of importance here: first, the persistent economic link, curtailing European citizenship of its genuine nature, and second, EU citizenship being to the detriment of the vast majority of citizens in Europe, namely the non-mobile.

In general terms, we can observe that non-economically active EU citizens – despite the introduction of novel rights through European citizenship in 1992 – are still largely disadvantaged as opposed to their economically active counterparts, that is, cross-border workers in the Union (Schiek, 2017: 356). The reason for this lies in the original set-up of the

¹⁰ Between 2007 and 2017, EU citizens’ mobility has merely risen from 2.5 to 3.8% (Eurostat, 2018d).

Union, soon further extended by the European Court of Justice, reflecting the *lex mercatoria* of the European single market (Benhabib, 2008: 46–7). In the EU, we can observe processes of a “horizontal rebalancing” of markets and the social policy with a clear favour in respect of the former (Ferrera, 2016: 794). Or, as Scharf (2002: 645) had famously coined it, in Europe’s “constitutional asymmetry,” with a European integration process skewed towards the economic, neglecting the social sphere. In turn, Union citizenship reflects these economic rationales of exclusionary market structures and, thus, continues to remain a “market citizenship,” stripped from equal treatment aspirations (Menéndez, 2014: 922–28; O’Brien, 2017: 1, 10; Spaventa, 2017: 206). The needy and the weak are not treated based on their human dignity status but uniquely on the basis of their economic contribution to the host society; bluntly put as Kochenov (2017a: 51–52) does, they are conceived as “disposable and unworthy of protection, recognition and respect.” It follows that some citizens of the Union clearly remain more equal than others (Martinsen and Pons Rotger, 2017: 625). It has been shown in empirical research analysing not solely the ECJ’s case law but as well implementation and application on the ground that non-economically active citizens such as jobseekers a severely disadvantaged in terms of their equal treatment rights; while their residence might be de facto tolerated, they still face precarious situations particularly in terms of access to social benefits (Heindlmaier and Blauburger, 2017: 1214). Hence, European citizenship could not achieve T.H. Marshall’s (2009 [1950]) conceptualisation of a social citizenship. Or, as Weiler (1998: 10) has famously coined EU citizenship as an “embarrassment” looking alike a book of vouchers to free attractions, which are free exactly since they not attractive. The idea that EU citizenship lays the basis for attaining citizenship duties in more comprehensive ways beyond mere economic activity has been miscarried.

Taking a closer look at the legal provisions, specifically ECJ jurisprudence, governing mobile students’ social rights, it can be stated that students are generally required to demonstrate a higher level of qualifying factors than economically active persons. If incoming students do not fall under the worker category, for instance since they had previously been employed, they need to demonstrate at least sufficient financial resources and valid health insurance coverage to be granted residence rights for a stay beyond a duration of three months. Moreover, accessing student funding in the hosting state is generally only possible after a five year-long stay, taking earlier case law such as *Grzelczyk* and *Bidar* aside where financial hardship and exceptional circumstances had played a major role.

Here, we can clearly observe the “market nature” of EU citizenship. Even if one was to argue for a more holistic “social EU citizenship” on the basis of EU students’ non-economically active status that simultaneously grants them substantial cross-border social rights in the form of maintenance aid entitlements, this dissertation aims at making an important contribution to the literature: Also in such cases, EU citizenship distinctively remains a “market citizenship.” The alteration in citizenship norms *vis-à-vis* mobile workers does not reflect a shift from economic and financial balancing of rights and duties towards a more comprehensive conceptualisation of citizenship in moral terms as described in the previous chapter. Instead, the sole alteration that is in place here is the shift of the reference time period according to which citizenship rights are acquired and concomitant duties fulfilled. Workers are entitled to cross-border social rights on the basis of *previous* or *simultaneous* economic activity in the form of paid occupation and, thus, they *directly* pay their dues to the host society and tax system. Conversely, non-active citizens such as university students, are granted social rights solely on the perspective of anticipated substantial *future* contribution, if not as well *present indirect* contribution during their stay, despite not being economically active.¹¹

This dissertation coins such processes “prospective reciprocity,” that is, reciprocity is not at work on the basis of *past* contribution as is the case for cross-border workers but based on largely *future* fulfilment of citizenship duties. In the case of mobile university students, the underlying mediate rationale expects highly qualified students not only to make use of their market freedoms in the most efficient ways but also to eventually contribute to the funding state’s economy in above-average terms at a later point in time (see Randelzhofer, 1995: 589 for an early discussion of this idea). Such conceptual ideas also go along similar lines as “earned citizenship,” where non-economically active citizens, different from mobile workers, need to earn their cross-border welfare rights through “wealth, health and good behaviour” (Spaventa, 2017: 220–21; see also O’Brien, 2017: 271).

This idea of “prospective reciprocity” permeates through ECJ case law on EU student mobility not only in a mediate way, but also in a straight forward manner: So, as regards *future* economic contribution, for instance in *Bidar*, the Court made clear that one of the factors which would justify maintenance aid entitlement, was “the likelihood that he indeed will enter the national

¹¹ See Martinsen and Pons Rotger (2017) for an extensive study on EU non-economically active citizens’ – positive – economic contribution to their host society.

employment market,” (para 63), reflecting the British government’s claim that it was “legitimate for a [m]ember [s]tate to ensure that ... the students themselves are likely to make, a sufficient contribution through work and hence taxation to justify the provision of subsidised loans” (para 56). In addition, also mobile students’ economic link as based on *present indirect* contribution has been ascertained: “Students [...] participate in the local social and cultural life and, in many cases, will tend to integrate in the host [m]ember [s]tate,” leading to being a “source of income for local economies where the university is located, and also, to a limited extent, for the national treasuries via indirect taxes” (opinion by Advocate General Jacobs in case *Commission v Austria*, paras 35 and 36; see also opinion by Advocate General Sharpston in case *Bressol*, para 96). Also, the empirical findings in the three articles of this PhD dissertation reflect the rationale of such a “prospective reciprocity,” specifically as regards member states’ willingness and capability of funding such cross-border social rights. Here, as shown with the above UK government example, member states’ rhetoric in Court cases and beyond has repeatedly made use of questions concerning students’ present and future contribution to the funding state’s economy and tax system. Since this issue particularly concerns member states’ implementing practices, it will be discussed in more detail in the next section. It can nevertheless be foreshadowed that this type of “market citizenship” adds to member states’ legal, political and administrative challenges when implementing respective EU law provisions, particularly ECJ jurisprudence, with regard to attaining social justice objectives (O’Brien, 2017: 243).

Next, EU citizenship has been repeatedly criticised for its non-encompassing nature, being only to the advantage of very few mobile citizens while being to the detriment of the large proportion of non-mobile Europeans (Spaventa, 2017: 223). Indeed, while numbers of mobile European citizens have been on the rise in the past years, they still are considerably small: The latest numbers available demonstrate that in 2017, a mere 3.8% of EU citizens of working age (i.e. between 20 and 64 years old), equalling a rough 20 million in absolute numbers, had been living in another member state. This number had been up from 2.5% ten years earlier (Eurostat, 2018d). Consequently, that more than 96%, or, more than 490 million citizens of the Union decide to stay at home.

As has been demonstrated, EU citizenship status is granted to any citizen possessing a nationality of one of the 28 member states. However, the crucial free movement and social rights that have come with the introduction of Union citizenship have an important qualifier:

namely the necessity of a cross-border element; that is, they uniquely apply to constellations where citizens move to another member state. So, EU citizenship solely applies to a very specific group of usually young, cosmopolitan, and often highly educated citizens from the (Western) industrial class; or, as Favell (2008) has famously called them in his prominent study, “stars” (see also Everson, 2014: 981; Damay and Mercenier, 2016: 7).

It follows, crucially, that citizens in purely internal situation are excluded from relying on social rights based on EU citizenship (De Witte, 2012: 703, 709). So, cases disputed on EU citizenship that end up being referred to the European Court of Justice inevitably need to concern mobile citizens. On the basis of this institutional set-up, the Court will never see cases on the non-mobile majority of EU citizens, thus, not changing their legal situation to the same extent as for the small mobile minority (Fligstein, 2008).

This divide of the mobile *vis-à-vis* the non-mobile population has tremendous effects: it leads to the emergence of a new cleavage between the pro-Europeans, on the one hand, and the pro-nationalists (Kriesi et al., 2008, 2012; Bauböck, 2016). As analyses of the 2016 Brexit referendum could show, there had been a strong positive correlation between those British voters not holding a passport – taken as an indicator for not having travelled abroad¹² – and those having voted in favour for exiting the Union (see study in Financial Times on the basis of data from 382 voting areas: Burn-Murdoch, 2016). Such issues, which closely touch matters of social justice in the Union, will also be covered more extensively in subsequent section 6.3.

Eventually, such situations which disadvantage the non-mobile as opposed to the few mobile citizens can be described as “reverse discrimination” (Strumia, 2017: 679–80): That is, those citizens deciding to stay at home can solely rely on national legal provisions, while their incoming neighbours are additionally protected under EU citizenship rights. The empirics of this PhD dissertation have clearly reverberated this kind of problematic constellation, particularly shown in the journal article on incoming student mobility in Austria and Belgium (Schenk and Schmidt, 2018). Here, the respective two member states experienced much difficulty in justifying their chosen restrictions on incoming student mobility to safeguard not only the necessary number of university places in medical and para-medical programmes for

¹² British citizens can only exit the UK to travel abroad, including to other EU member states, if they possess a valid British passport; identity cards (as in other EU member states such as Germany) do not exist in the UK; they had been abolished in 2011 (UK Government 2019; Visa Central 2019).

their own students, but also, in more far-reaching and crucial terms, their own health systems. As had been shown, the European Commission eventually gave in with its infringement procedure, admitting the delicate nature of open borders in nation-based higher education and welfare systems.

Taken together, it can be concluded that the picture portrayed in this section deviates widely from the original vision of EU citizenship rights as presented in chapter 5.1. Certainly, it must be conceded that EU citizens' free movement and cross-border welfare rights have been significantly altered since the introduction of EU citizenship through the 1992 *Maastricht Treaty*. Those citizens who decide to be on the move have without doubt in many cases enhanced their individual situation. And also, one can certainly ask whether the rise from 2.5% mobile citizens in 2007 to 3.8% in 2017 could not at least in parts be attributed to this enhanced legal situation and citizens extended free movement rights. As shown in the German case study in the respective journal article of this PhD dissertation, for instance, the number of outgoing students, including those accessing portable maintenance funding, had increased significantly since certain EU citizenship related ECJ judgments.

Yet, the weak points that have come with the introduction of EU citizenship rights are just as clear. Most severely, Union citizenship has failed in becoming a truly novel concept of "social citizenship" on the European level and continues to remain a "market citizenship" instead. In any sense, mobile citizens need to demonstrate a close economic link in order to enjoy free movement and welfare rights across member states. While one of the reasons behind this development can certainly be found in question of member states' welfare system sustainability, as will be discussed in the subsequent section, it still falls way behind original aspirations, and certainly to the disappointment of the needy and the weak. In addition, EU citizenship has been miscarried in so far as it has come to the detriment of the large proportion of more than 490 million EU citizens who are not mobile. This latter group can only rely on their individual national legal provisions, while mobile EU citizens additionally enjoy the protection under EU citizenship rights. The next section will analyse and discuss the other side of this same coin: member states' welfare systems and their traditional closure in times of open border in the European Union.

6.2 Member States' Varied Adjustment Pressure on Their Welfare Systems

As foreshadowed in the previous section, the enhancement in scope and depth of EU citizens' free movement and cross-border welfare rights through the introduction of European citizenship has brought with it complex consequences for member states' welfare systems. Clearly, member states are required to strike a delicate balance between "closure" and "opening," between safeguarding their welfare systems and complying with EU rules on equal treatment and non-discrimination. Whether this has led to leaving member states' social policies largely intact on the ground, or whether it has led to domestic welfare systems being put under far-reaching pressure has been much debated in the academic literature. While early research had focused almost exclusively on evaluating EU free movement law per se (with a central focus on ECJ rulings), more recent studies have explored the array of options member states can potentially select when implementing EU law (for an overview cf. Martinsen and Vollaard, 2014). Finally, latest studies have started to increasingly focus on the application stage of the implementation process, that is, researching the concrete consequences for member-state administrations and other ground-level agencies.

On the one hand, several scholars have drawn a picture of an increasingly social Europe, which, nevertheless, leaves member states welfare systems largely intact. In the following, this camp has underlined the EU's potential for adding a new social layer to member states' welfare policy fabric (cf. Leibfried and Pierson, 1995 for one of the first analyses). This is argued to be as well due to the supplementary nature of EU citizenship as demonstrated in the previous chapter, leaving sufficient room for derogations from the principle of open borders with regard to "public policy, public security or public health" (article 27(1) read in conjunction with article 15(1) Directive 2004/38/EC). In addition, the requirement for non-economically active citizens to demonstrate sufficient financial resources and valid health insurance coverage (article 7 *Citizenship Directive*) and the five year-long qualifying period before accessing social benefits in the host state (article 24(2) *Citizenship Directive*) is considered to leave member states sufficient room for manoeuvre (Bellamy and Lacey, 2018: 1406–07). With regard to the specific policy area of this PhD dissertation, student mobility in the European Union, Dougan (2005: 958–59) argues in an early-on analysis that the European Court of Justice has been at least partly receptive to member states' insistence of safeguarding their higher education and

concomitant social benefit systems by ensuring a “real link” between the claimant and the funding state.¹³

As comes to implementation of these EU legal provisions on EU citizenship, a significant number of scholars have demonstrated member states’ leeway to shield their welfare systems from unwarranted “opening.” Relevant mechanisms here include, most well-known, contained compliance and pre-emption (Conant, 2002: 32) or anticipation (Blauberger, 2014: 458) of domestic policy reform where adjustments larger than necessary are successfully avoided. For instance, member states opt for solely complying with the ruling in question (*inter partes*) instead of considering larger implications of other related jurisprudence (*erga omnes*). For one, the often high degree of legal uncertainty, that is, the vague nature of many ECJ rulings, leaves member states with larger leeway in deciding on the concrete implementation as compared with secondary legislation (Wasserfallen, 2010: 1133). Complexity of EU case law also partly results from a frequent case-by-case analysis requirement of European court rulings, hampering their straight-forward implementation.

Member states might not only deliberately delay domestic implementation but may also simply be unaware of case-law implications, which particularly regards responses by national administrations. As O’Brien (2017: 5–6, 271) has shown in her extensive empirical study, member-state administrations may also delay or avoid implementation altogether due to poor information-gathering and poor decision-making, as well as by not feeling to be the responsible member state for benefit entitlement. According to her research, domestic administrations might even, and more severely, lack the “will to get it right” through normalising delay, and through mechanisms such as refusing first before asking questions at a later point in time. Ferrera (2014: 831) additionally makes clear that member states’ leeway in orchestrating their implementation processes is especially large with regard to state administrations’ handling of legal residence requirements. Indeed, empirical studies on residence requirements (Heindlmaier and Blauberger, 2017; O’Brien, 2017; Bruzelius, 2019) have confirmed member-state practices that protect welfare systems from overly large cross-border access. Ultimately,

¹³ Dougan (2005: 959) cites the early cases *D’Hoop* and *Collins*. Further case law relying on this “real link” with regard to EU students’ cross-border social rights includes, among others, *Bidar*, paras 24, 62 and 63; *Ioannidis*, C-258/04, paras 30 and 33; *Commission v Austria*, C-75/11, paras 59 and 61–64; *Commission v the Netherlands*, paras 65 and 66; *Martens*, paras 36, 39 (see also chapter 4 for more detail on this).

domestic administrations can fulfil important gate-keeping functions in the transposition process of EU legal provisions on EU citizenship, including both secondary law and ECJ jurisprudence.

As comes to actual empirical effects of (non-)economically active Union citizens on hosting member states' welfare and tax systems, research has found a large overall positive net contribution by EU citizens, refuting the “welfare tourism” hypothesis: Since most mobile EU citizens move to another member state to seek employment, they contribute perceptibly to the host state's economy both indirectly via consumption and directly via tax contribution (Dustmann et al., 2010; OECD, 2013; Dustmann and Frattini, 2014; ICF GHK, 2013; Martinsen and Pons Rotger, 2017).

The empirical analyses of this PhD dissertation have shown that member states can in fact shield their welfare system under favourable conditions. For instance, the German case study has shown that those *Länder* that had effectively organised their administrative processes in their ground-level agencies had been best suited to cope with the challenges of an open border maintenance funding system. The underlying success factor included, *inter alia*, well-targeted dissemination of information, adequate staffing, and knowledge sharing both within Germany and with administrators from other member states, which all facilitated avoiding broader than necessary adjustments. Also, the fact that sustainable reciprocity of EU citizenship rights and duties could be reached had played a major role: As highlighted in the interviews, research conducted by order of the German government had found that the share of students returning back home to Germany and contributing to its tax system is to date more than large enough to keep its study finance system running.

What could not be confirmed, different from other studies (such as O'Brien, 2017) is a general lack of domestic administrations' willingness to feel responsible as the competent authority, or general poor decision-making and the like. While the empirical analyses of this PhD dissertation has certainly also found instances in which local authorities had been less well prepared in implementing ECJ-induced legislative changes on student mobility (mostly found to be in smaller *Länder* for the German case study), the general picture had been one of extremely willing local administrators, trying to find the best possible solutions for the individual student in questions. By being in close contact with other national and EU experts, seeking answers to possibly difficult legal questions, and even playing an active role in

initiating reference procedures through cooperation with – also much willing – local courts (in ECJ cases such as *Morgan and Bucher*, or *Prinz and Seeberger*) portrays a different picture.

On the other hand, other scholars have questioned these manifold arguments on member state' capability to safeguard their domestic welfare system to a sufficiently level. This line of research doubts the potential for a social Europe to come about and underlines the risks member states' welfare systems face in the course of free movement (for an overview see Wasserfallen, 2010; Kelemen, 2011; Schmidt, 2012; Alter, 2014). Newdick (2006) and, prominently, Scharpf (2009, 2010) contend that this dynamic has resulted from spill-over effects, particularly through ECJ jurisprudence, to policy fields that had previously been excluded from integration in EU legislation. This development eventually risks resulting in deregulatory and liberalising effects that undermine the adequate functioning of national welfare systems (Menéndez, 2009; Scharpf, 2009, 2010). As will be presented here, three specific aspects deserve further attention with regard to such criticisms: first, the activist role of the European Court of Justice; second, the varying adjustment pressure on member states' welfare systems; and third, mediating factors with politicisation playing a major role in shaping the implementation process of EU citizenship provisions in member states.

First, with regard to EU secondary law on non-economically active EU citizens' free movement and cross-border social rights, it could be shown that the numerous remaining open and legally unclear concepts of this "incomplete contract" (Stone Sweet, 2004: 24) had been the reason for many of the subsequent ECJ procedures. The Court had, then, been repeatedly in the position to interpret these in ways that limited member states' options to exclude incoming non-active EU citizens from accessing welfare benefits (Rennuy, 2013). Specifically, the original safeguards put into the *Citizenship Directive* that had deliberately supposed to protect member states' welfare systems (such as articles 7, 24(2), and article 27(1), see above) had been significantly weakened by ECJ case law (Bellamy and Lacey, 2018: 1408). This is even more severe considering in how far the Court's jurisprudence and its interpretations of the Treaty in fact influences subsequent EU legislation. The *Citizenship Directive* is no exemption here: For instance, while the *Student Mobility Directive* 93/96/EEC had still excluded students from accessing "any entitlement to the payment of maintenance grants by the host Member State on the part of students benefiting from the right of residence" (article 3), the ECJ distinctively deviated from such general non-provision logic in its case law (see, for instance, *Grzelczyk*) by directly basing its argumentation on Treaty provisions. As a result, legislative over-ride of this

over-constitutionalised legal framework is extremely unlikely (Schmidt, 2017: 27; Schmidt, 2018: 47). Any corrections to these interpretations would require a Commission initiative and support by at least a qualified majority in the Council as well as generally an absolute majority in the Parliament, which are highly improbable in practice, given the heterogeneity of member states' interests (Scharpf, 2010: 217). As concerns implementation of ECJ rulings in member states, their often large degree of legal uncertainty as well as ensuing difficulty for member-state administrations to implement such vague and very much case-specific rulings, requiring case-by-case application and disallowing general rules, aggravate the problematics of judge-made law further (Blauberger and Schmidt, 2014: 2–3; Schmidt, 2017: 18).

Second, it follows that, on the domestic level, this ECJ induced “integration through law” widely constrains member state regulatory autonomy (Scharpf, 2010: 224; Wollenschläger, 2011: 5–6; Ferrera, 2012: 21), and, therefore, also the principle of subsidiarity (article 5(3) *TFEU*; see Wollenschläger, 2011: 15). Eventually, and through focussing on strengthened individual social rights in the Union, the Court's case law has come to the detriment of member states' collective welfare provision (Höpner and Schäfer, 2012: 448). Specifically, the adjustment pressure that member states face depends on their specific welfare state type (Scharpf, 2010: 238; Ruhs and Palme, 2018: 22). While first European integration steps towards cross-border rights of the mobile population had still worked considerably well within the architecture of the six founding members as community rules matched their insurance-based welfare logic, the EU is today much more heterogeneous (Höpner and Schäfer, 2012: 431). During the Union's founding days, European integration of social policy was still solely confined to the portability of cross-border workers' social security benefits – a cost that would be borne by beneficiaries themselves via prior contribution into the tax system. Enlargement bringing new types of welfare states into the community, such as the British liberal system, soon shook up this homogeneity (cf. Scharpf, 2010: 215, 238). Today, we can witness that those member states and respective welfare systems with social policies that closely match contributions and benefits are least likely to confront major welfare state restructuring. This implies, by contrast, that countries where the lines between social rights and duties are blurred due to universal welfare provision funded out of general taxation face the largest degree of problem pressure stemming from ECJ induced EU citizenship and free movement rules (Scharpf, 2010: 238; Ruhs and Palme, 2018: 1492).

Adding to this second point about adjustment pressure on member states' welfare systems, we can notice a further challenge that potentially affects member states across the board: Different from the pro-camp, it is contended here that – despite EU citizenship being vitally based on an economically founded market nature – is everything else than clear whether a significant number of, for instance, incoming students does in fact stay in the hosting (and funding) state after their graduation to contribute to this state's tax and welfare system. (Dogan, 2005: 954). While this “free rider” argument naturally also applies to the situation in member states themselves – not every student can certainly be expected to sufficiently contribute to her state after graduation even when studying in her country of citizenship – the EU vitally lacks the necessary mechanisms for redistribution, which member states possess, e.g. for redistributing federal funding among its economically varying states.¹⁴ Indeed, as Ferrera (2016: 794) has argued, European integration had not, as opposed to nation-state building, been accompanied by institutional standardisation and resource centralisation. The duty of welfare provisions, and thus, financial redistribution among different societal groups, also today remains a central member-state obligation.

Taken this first and second point together, the empirical analyses of this PhD dissertation have distinctively shown the manifold problem pressure that member states face in the course of conforming to EU legal provisions on EU citizenship, equal treatment and non-discrimination. Concerning mobile students' cross-border access to university tuition, our JEPP article (Schenk and Schmidt, 2018) shows the incompatibility of open higher education systems with a heterogenous Union. By taking the example of Austria and Belgium, the study has shown member states' incapability in steering an open-access higher education system next to their closed-access, same-language neighbours, namely Germany and France. This had not only led to disproportionately high numbers of students applying for university places for certain medical and paramedical programmes, making university funding much more difficult, specifically when regarding the costly equipment required for such studies. Also, it had risked

¹⁴ This also explains why Advocate General Geelhoed's argument in his opinion in the *Bidar* case (para 65) could not come to a logical conclusion: He criticises the United Kingdom government's statement, calling for a sustainable prior or subsequent financial contribution to the British tax system by maintenance benefit claimants, for it being contrary to the fact that also British students could receive study finance without proving such contribution. In his view, it would be “illogical to require that a person has first contributed to public finances in order to be eligible for a loan.” He, though, does not mention that the EU lacks the financial redistributive mechanisms that member states possess.

to severely destabilise the health care systems in these member states. Despite these heavily weighing arguments, the two member states concerned had first, and for long, failed to convince both the European Commission and the European Court of Justice of their problem pressure. Clearly, concessions had also been made for completely other reasons: namely, to assure these two member states' approval of the 2007 *Lisbon Treaty*. Finally, the European Commission gave in and accepted the above arguments by dropping the infringement procedure against Austria in 2017 (European Commission, 2017b).

Then, concerning mobile students' cross-border access to welfare benefits, the paper on the German and British case study demonstrates the difficulty of effectuating a uniform approach to Union citizenship since it puts largely varying problem pressure on member states. Certainly, member states' welfare and education systems predate the origins of the EU, now leading to their incompatibility with certain Union policies and ECJ case law. Specifically, a higher degree of public, instead of private and individual, funding of welfare policies as well as their particular design results in being incompatible with legal provisions on EU citizenship. So, the UK had experienced a specific difficulty in retracing its student loans from EU claimants, leading to exponentially increasing amounts of spending on EU students. This point is underlined by the fact that, as pointed towards in interviews, newer CEE member states, not yet possessing, for instance, portable study finance, are hesitant to implement such rights since they fear complications arising from EU legal provisions on equal treatment and non-discrimination. So, while member states are *de jure* free in choosing their type of study finance system, they are *de facto* quite limited in their actual policy decisions and their effectuation (on this see also Damjanovic, 2012: 164–66).

Third, several mediating factors trigger further exacerbation of member states' difficulty in complying with EU citizenship provisions. In particular, these include increased politicisation of free movement and Euroscepticism (Geddes and Hadj-Abdou, 2016: 235), as well as enlargement, financial crises and, more recently, the influx of refugees into the EU (Martinsen and Vollaard, 2014: 683–84; Ferrera, 2016: 804). Recent research has delved much into the inner workings of politicisation in EU politics, explaining its drivers and frames (De Wilde et al., 2016; Grande and Hutter, 2016b; Hutter et al., 2016). As comes to the effects of politicisation, first, on policy-making on the EU level, scholars disagree whether it will lead to more (Hix, 2008) or less integration (Hooghe and Marks, 2009). Another recent study, which has been co-authored by the author of this PhD dissertation, has also found evidence that “ECJ

judges read their morning papers,” that is, ECJ jurisprudence on EU Citizenship law is being shaped by politicisation (Blauberger et al., 2018).¹⁵ Second, we still know little about the outcomes of politicisation on the implementation of EU legislation and ECJ jurisprudence in member states. Research that could answer the question whether “increasing politicisation translate[s] into reform pressures of highly developed welfare states to continue financing their benefits” (Schmidt et al., 2018: 1399) is scarce to this point. Particularly, as Beyers et al. (2018: 1727, 1734–5) have stressed, the salience that different actors ascribe to a policy and its effects on policymaking in the context of EU law largely remains uncharted territory to this point. In addition, they argue, research needs to investigate further into diachronic comparisons of politicisation, including different actors’ assessments of salience over time. Crucially, the quantitative analysis of politicisation here will have to be complemented with qualitative case studies.

The third paper of this PhD dissertation has answered exactly such questions and has delved deeper into the role that politicisation plays as a mediating factor in the implementation and transposition process of EU legal provisions on Union citizenship. By taking the puzzling example of delayed legal reform in one of the judgments by the European Court of Justice concerning the UK, *Bidar*, this analysis could show the tremendous impact that politicisation can have in shaping the ways in which EU citizenship provisions are conceived in practice on the ground-level; a topic which directly addresses issues of social justice, which will be further discussed in the next section here.

Taken together, the conclusions of this section on member states’ adjustment to the altered legal situation under Union citizenship provisions are as disheartening as those of the previous sub-chapter on EU citizens’ free movement and cross-border social rights. Certainly, one cannot solely reproach EU policy-makers for having been completely unaware of member states’ implementation hurdles in a Union with heterogenous welfare systems – which had clearly already been quite a bit more varied at the time of the introduction of Union citizenship as compared to the homogenous situation of the six founding states. Particularly the *Citizenship Directive* included several important legal safeguards aimed at protecting member states’ delicate welfare systems. Also, the analysis of the German case study has demonstrated which

¹⁵ This article (Blauberger et al., 2018), while being co-authored by the author of this PhD dissertation, is not formally counted towards those articles that are part of this cumulative PhD dissertation.

factors can lead to successful implementation of EU citizenship provisions, safeguarding domestic social policies to a certain extent.

However, policy-makers at that time must have clearly underestimated and everything else than foreshadowed the role of the European Court of Justice and its judgments based on Treaty provisions on equal treatment and non-discrimination, leading to severe consequences for domestic welfare states as the analyses of this PhD dissertation have shown. Least, hope remains in the Court's altered approach that has given more leeway to member states in implementing EU citizenship provisions. Our paper (Blauberger et al., 2018) has shown in how far the ECJ in its latest judgments on non-economically active citizens' free movement and cross-border welfare rights (see, inter alia, cases *Dano*, C-333/13; *Alimanovic*, C-67/14; *García-Nieto*, 299/14). Ultimately, these intermediate conclusions call for one last analysis: on the social justice dimension of EU citizenship and on the ultimate feasibility of squaring the circle in reconciling welfare "opening" and "closure."

6.3 The Democratic Impossibility of Reconciling European Integration with Nation-based Welfare States

The original endeavours of Union citizenship back in 1992 when it had been established through the *Maastricht Treaty* can certainly be described as "grand": As could be seen in the previous analyses, enhancing EU citizens' free movement and cross-border welfare rights as well as simultaneously safeguarding member states' autonomy and leeway in sustainably organising their welfare systems had been anything else than evident to achieve. Yet, one might argue, that these challenges are rather miniscule as compared to the large, over-arching ultimate aspiration of EU citizenship: strengthening the European Union's democratic legitimacy. This section will finally analyse this superordinate question, linking the previous issues of welfare "opening" and "closure." It will follow the "input-" *vis-à-vis* "output-oriented legitimacy" structure of the previous chapter (see section 5.3; cf. Scharpf, 1970, 1997: 153).

After the previous analyses, it surely comes to little surprise that the following will portray a rather doubtful and alarmed picture, with the latter aspects conclusively outweighing the more positive ones. Still, some elatingly encouraging points are not to be neglected here. On the one hand, with respect to the input-oriented part of legitimacy, it has principally been argued that the introduction of novel political rights as based on the EU citizenship articles in the Treaty constitutes a major improvement for EU citizens' democratic status. For certain, when reading

such arguments from the President of the European Court of Justice, Koen Lenaerts, or other ECJ judges such as Eleanor Sharpston, one must be aware of the rather biased nature of such arguments (see Lenaerts and Gutiérrez-Fons, 2017; Sarmiento and Sharpston, 2017). Still, EU citizens' enhanced political rights such as participating not only in European Parliament elections but also in municipal ones wherever they reside in the Union does have a significant potential in strengthening the European Union's democratic condition (Lenaerts and Gutiérrez-Fons 2017: 780–1).

Furthermore, what had often been considered the underlying basis for input legitimacy, is citizens' identification with the European integration project as such (Scharpf, 1970, 1997). So, as Eurobarometer surveys could show, EU citizens' opinion of Union citizenship has improved in the recent years and continues to be predominantly positive: The majority of EU citizens feels connected with their European identity by stating that they see themselves as their nationality and European (55% in 2018, up from 44% in 2007), European and their nationality (6% / 8%), or European only (2% / 4%). Altogether, this sums up to a staggering 63% of EU citizens who call themselves "European" in 2018 (up from 56% in 2007). A minority of 35% (down from 42% in 2007) feels solely attached to their own nationality (European Commission, 2010: 113, 2018b: 35). Yet, variation across member states is high: While the large majority of citizens consider themselves "European" in Luxembourg (87% in 2018), Spain (74%), Hungary (75%), Germany, Malta, the Netherlands (all 71%), and Belgium (70%), these figures are lowest in Austria and Estonia (both 58%), Latvia and Lithuania (both 55%), Romania (50%), Bulgaria, Greece and the UK (all 48%). Another insightful variation goes along generational lines: While those born before 1946 call themselves "European" only to 47% (in 2018), figures for those belonging to "generation Y," that is, those who were born after 1980, amount to a much higher 69%, giving some hope for the future. It is noteworthy with respect to the group of mobile EU citizens who had been the core of this PhD dissertation, university students, that these rank among those groups scoring the highest in considering themselves "Europeans," namely 72% (European Commission, 2018b: 37–38). And surely, experiencing one's European neighbours as a mobile university student enrolled in another member state does have a real potential of making young people feel their European identity, and also, to build some degree of reciprocal trust between citizens of very different national backgrounds.

Indubitably, a broader discussion of political rights, their various characteristics and underlying mechanisms as well as their concomitant potential for enhancing Europe's democracy is

beyond the scope of this dissertation. Nevertheless, an analysis of social rights based on EU citizenship and their relevance for EU-level democracy is critical here, reflecting the output dimension of legitimacy. To this regard, Eurobarometer surveys also deliver worthwhile insights. The following two measures have repeatedly scored highest in citizens' opinion as to what would best strengthen EU citizens' feeling about being a European citizen: "a European welfare system harmonised between the [m]ember [s]tates (healthcare, education, pensions, etc.)" (scored 37% in 2012, up from 34% in 2010), and "being able to move to any EU country after your retirement and to take your pension with you" (24% in 2012, slightly down from 27% in 2010). Relevant input dimensions score much less such as a "President of the EU directly elected by the citizens of all [m]ember [s]tates" (17% / 18%), or "being able to vote in all elections organised in the [m]ember [s]tate where you live even if you are not a citizen of this [m]ember [s]tate (13% / 17%; European Commission, 2012: 26). Altogether, these survey results surely demonstrate that EU citizens feel sympathetic not only to the idea of being a genuinely European citizen but most of all, they call for strengthened free movement and cross-border social rights. So, with regard to positive conclusions on social justice and the Union's legitimacy, we can find some hope: Not only do large parts of people in EU member states consider themselves as "Europeans," reflecting a vital precondition for input-legitimacy, but particularly the output-driven dimensions demonstrate that EU citizens have evaluated a deeper integration of free movement and cross-border welfare rights in overwhelmingly positive ways. Thus, as Ferrera (2018: 6) concludes, EU citizenship has truly brought out a level playing field as precondition for experimenting and, eventually, creating a genuine European democracy as well as, though to a more limited extent, EU-level redistribution.

Yet, as foreshadowed, it is the completely opposite side of the coin whether such a European democracy, leave alone relevant preconditions concerning social justice in the Union, could *de facto* be realised. As will be seen, the pitfalls that remain in bringing the EU citizenship concept to life are still manifold. Arguments here, again, concern both sides of the Union's legitimacy, input- and output-driven. Regarding, first, the input side, Eurobarometer surveys hold again noteworthy insights here. It is, overall, remarkable in how far socio-economic factors further shape variation as regards the above cited question of citizens' identification with their European identity. While, as we have seen, the European-wide average amounts to 63% of citizens who consider themselves as "European" of some sort, with no clear dividing lines along specific groups of member states or regions, these figures vary widely when taking personal factors into account. So, concerning different employment status groups, those with

possibly highest earnings and highest education status are also those most in favour of calling themselves “European”: Herein, managers (77%), students (72%), self-employed and other white collars (both 71%) score highest while manual workers (60%), house persons (56%), the retired (54%), and the unemployed (53%) are on the opposite side of the spectrum. This trend is continued when considering financial status of interviewees: Those agreeing with the statement “I have difficulty paying my bills most of the time” identify themselves less often with their European identity (46%) as compared to those who have such difficulties only from time to time (60%), or who never experience such financial difficulties (67%). The most drastic picture in that regard is drawn when taking a closer look at different socio-economic classes, from the working class (50% “European”) to the middle class (69%) to the upper class (80%; European Commission, 2018b: 38).¹⁶ Additionally, solely an overall number of 24% of respondents consider “democracy” as something that the EU stands for in 2018. Again, students (35%) and managers (33%) are most positive here – though still to a quite limited extend – as compared with much lower agreement by house persons (16%) or the unemployed (14%; European Commission, 2018c: 74). From such evidence, we can consent to O’Brien (2017: 244) who accurately concludes that the EU “concerns itself with the economic elite,” and that “[the majority of] citizens have felt disillusioned, alienated and excluded from [the] EU.”

Taken together, lacking support for the Union, and absent identification with the European integration project as such from as many societal groups as presented is highly problematic as comes to European legitimacy, not least to its input-driven dimension. As has been crucially argued, redistributive measures will only be feasible on the basis of common identification and feelings of mutual belonging of the citizens concerned, ultimately reflecting complex dynamics of ancestral belonging and political membership (De Witte, 2012: 697–98). Consequently, the *legal* and *political* construction of the European integration project does not readily translate into Europe’s *social* construction of a common identity (Halter, 2003: 26–32; Bellamy, 2008: 601–06; Thym, 2017c: 126–27). Nor will the Union simply replicate those processes of state-building in member states with their very own norms of mutual recognition and reciprocal trust

¹⁶ Interestingly, the group of the „lower upper class” scores even slightly higher, that is, 83% (European Commission, 2018b: 38). Overall, similar findings are also found in Favell’s (2010) study on the effectuation of EU citizenship, including citizens’ opinion about the Union in different European cities.

as well as solidarity among citizens. It can be doubted that, one day, an emergent genuinely supranational EU citizenship will completely replace national citizenship (Strumia, 2017: 678; Bellamy and Lacey, 2018: 1410). It follows that, albeit non-discrimination provisions and EU citizenship grant far-reaching cross-border social rights, redistribution cannot adequately be organised in a Union that lacks not only the necessary collective political identity but also a thick political system.

Ultimately, the strongest argument with regard to malfunctioning input legitimacy, particularly in the sphere of cross-border social rights, concerns the activist role of the European Court of Justice. As Strumia (2017: 679) rightly finds, many European citizens are not only little interested in identifying themselves with the Union and in casting their votes on EU issues – they also have little real chance in doing so; the Union continues to be rather impermeable to citizens’ input (see also Shaw, 2011: 646–47; Weiler, 2012: 829; Menéndez, 2014: 931). And exactly this development can be explained by the specific role that the ECJ has played over the years in extending EU legal provisions on mobile non-economically active citizens’ free movement and cross-border welfare rights. Early on, based on the legal principles of direct effect (*Van Gend en Loos*, 26/62)¹⁷ and supremacy over member-state jurisprudence (*Costa v ENEL*, 6/64),¹⁸ the European Court of Justice had established essential individual rights for European citizens. Based on these mechanisms, its preliminary reference procedure specifically fuelled a litigation-driven European integration process, not least with the aid of member-state courts (Scharpf, 2012: 133–34).¹⁹ Thym (2017c: 126) aptly summarises this consequential integrationist role of the ECJ as an “effort of social engineering to enhance the democratic legitimacy of the European project by way of constitutional fiat,” stressing the

¹⁷ This judgment made clear that the Treaty created “individual rights which national courts must protect” (*Van Gend en Loos*, 26/62, p. 13).

¹⁸ The Court ruled that the Treaty established law that “could not, because of its special and original nature, be overridden by domestic legal provisions” (*Costa v ENEL*, 6/64, p. 594). It has even been argued that the ECJ claims the function of a constitutional court *vis-à-vis* member states on the basis of this legal doctrine (Scharpf, 2010: 228).

¹⁹ Albeit domestic courts being required to refer cases to the ECJ in certain circumstances, they enjoy discretion in their referring decision in cases of existing previous rulings on similar issues (*doctrine of precedent*) or in cases of evident decisions (*doctrine of acte clair*). This option, thus, enabled ordinary national judges, especially also those from lower domestic courts, to refer cases to the ECJ to not only request an interpretation of EU law but also to question and review national legislation (Scharpf, 2010: 216). Nyikos (2006) has shown that national judges even highlight their preferred answers in the reference questions.

imposed, top-down nature of legitimising the Union through the introduction of EU citizenship (see also Stone Sweet et al., 1998 on “integration through law” and its concomitant constitutionalisation). Ultimately, European integration has been pushed much further by the ECJ than would possibly have been feasible on the basis of intergovernmental negotiations; specifically, also in areas that had originally been excluded from further integration (Scharpf, 2010: 228). Higher education is a case in point here: To recall just one example of the empirical analysis, while in the 1980s, the Court had still argued for this policy area to fall outside of Treaty provisions (cf. *Lair and Brown*), it has changed this view by the time of the 2001 *Grzelczyk* judgment. And – vitally – this had not been on the base of substantially altered Treaty or secondary law provisions. Conversely, the then *Student Mobility Directive* explicitly excluded students from accessing social benefits in the host member state. Nevertheless, the ECJ vastly pushed EU integration by granting *Grzelczyk* the social benefits in question.

As we have already seen in the previous sections on the shortcomings of court-made law, specifically with regard to member states’ autonomy in deliberately effectuating their social policies, the effects of an activist European Court of Justice and its interpretation of primary law are far-reaching: European Citizenship today remains a “market citizenship” with the non-mobile left behind, and welfare systems including particularly those with universal funding are intensely pressured by open borders coupled with EU provisions on equal treatment and non-discrimination. Due to this very role of the ECJ, the non-mobile Belgian student will not, neither through her vote in domestic, nor – and this is the more important – in European elections, be able to cast her vote on how European integration with respect to solving the question of university access of European *vis-à-vis* Belgian students will be shaped. Nor will the British or the German student be able to do so. It follows that the input-oriented part of European legitimacy has been severely constrained due to judge-made EU legal provisions on student mobility, as we could observe in the case studies of this dissertation.

Turning to the output-driven aspects of legitimacy in the Union, Eurobarometer survey results mirror those of the input dimensions. So, for instance, since the economic crisis in 2008, a growing number of respondents have found things to “go in the wrong direction in the EU,” outweighing those who believe things to go in the right direction. In 2018, a mere overall 31% of respondents across the EU agreed to the latter, positive statement (down from its climax of

42% in early 2008).²⁰ Again, the younger in age and the higher the educational and employment status, the larger the confidence: So, while 40% of those aged between 15 and 24 years old agree with “things going in the right direction in the EU,” only 27% of those aged 55 years and older do so. A mere 24% of those who had ended their highest education by a maximum age of 15 years old agree, while 44% of those still studying do so. And, lastly, e.g. 44% of students and 37% of managers agree as opposed to as few as 27% of the retired and house persons, with 24% of the unemployed representing the lowest percentage (European Commission, 2018c: 60–64). When asking EU citizens about concrete changes in their life as a result of being a citizen of the Union, the same pattern persists: Overall, most citizens consider “freedom to travel, study and work anywhere in the EU” as most important as to what the EU means to them personally, that is, a high overall 52%. Again, only 47% of the unemployed as compared to 64% of students agree. It is noteworthy that “social protection” ranks lowest overall with a total of 10%; “economic prosperity” as another output-driven factor ranks also remarkably low (16%), again with similar patterns of respondent groups in place (European Commission, 2018c: 71–76). On the basis of such survey results, we can utterly agree with Ferrera (2018: 8–9) who aptly states that citizens today no longer trust in the “efficiency and fairness” of the ways in which the European Union is governed, increasingly leading to overt Euroscepticism in various member states.

Consequently, the critique towards the European Court of Justice also carries important relevance with regard to output-driven legitimacy aspects. As O’Brien (2017: 1) concludes, the Court’s case law has not substantially changed the legal situation for most European citizens on the ground. Thus, while one would want to argue that the ECJ’s input-related deficits could at least be outweighed by output-driven results, this is evidently not the case for the vast majority of Europeans. As could be seen, EU citizenship rights apply only to as few as 4% of European citizens, namely the mobile ones, not safeguarding or empowering the large rest of 490 million Europeans (Eurostat, 2018d).

Altogether, it follows that the Union, as it stands today, is lacking the both the preconditions and mechanisms to effectuate redistribution that would ultimately be necessary in a Union with

²⁰ On the national level, these figures are slightly higher: In 2017 and 2018, between 35% and 37% of respondents found “things to go in the right direction” in their respective country (European Commission, 2018c: 58).

open border and integrated cross-border social rights (see also Chalmers et al., 2010: 449; De Witte, 2012: 696). So, while necessary redistribution on the EU level is not feasible and since, as has been shown earlier, political reversal of ECJ judgments is extremely unlikely (Schmidt, 2017: 27; Schmidt, 2018: 47), member states have often opted for the obvious solution of reorganising redistribution at the domestic level, leading to liberalisation of welfare policies in member states, that is, also limiting redistribution at the national level (Höpner and Schäfer, 2012: 448). Rather often, such policies are the result of voters' calls for excluding "outsiders" and the "non-deserving" from benefit access (De Witte, 2012: 703). As we could see in the British case study, politicisation of the topic of EU students' access to study finance in the UK has played a major role in leading to a critical policy change, further excluding benefit access, evidently also targeted at British citizens who have previously resided abroad.

Taken together, we can conclude from this section that, first, the original aspiration of strengthening EU citizens' identification with the European integration project has partly been reached, yet largely only as regards the specific group that has been researched in this dissertation: mobile university students. Or, to put it more generally: the mobile, young, well-off, and highly educated European population – which reflects a single digit percentage when compared with the overall population of Europeans. This evident deficit in the Union's legitimacy – EU citizens' overall identification with European integration – has been, one major reason why we can, second, conclude that the EU's input-driven legitimacy has seen little improvement albeit the introduction of political rights through EU citizenship. Third, the European Court of Justice has been shown to be the major further reason why input-oriented legitimacy has been constrained to such a large extent. And fourth, also output-driven legitimacy can be concluded to exist to solely a very limited extent: most citizens are disillusioned with the direction which the European Union is facing, which is a worrisome conclusion considering the growing Eurosceptic and nationalist sentiments, increasingly manifested in election results and newly established movements and parties such as the Alternative für Deutschland (AfD) or Pegida in Germany. In order to end on a more hopeful and positive note, the conclusion will discuss ways in which this integration dilemma could be ameliorated in the future.

7 Conclusion: European Citizenship and Its Promises for the Future

This PhD dissertation has discussed the central research question of how welfare “opening” (Ferrera, 2005: 2), that is, EU citizenship and ensuing free movement and cross-border social rights, can be reconciled with welfare “closure,” i.e. the traditional closure of nation state-based welfare systems in the European Union. To that respect, the case of mobile university students, as an example for non-economically active EU citizens, and free movement and cross-border social rights, as broadened particularly by judgments of the European Court of Justice in recent years, has been analysed. In particular, Belgium, Germany and the UK have served as case studies with regard to their domestic legislative implementation and administrative transposition processes on the ground.

In three papers, specific aspects of this overall research question have been devoted more detail to. As the previous chapters 5 and 6 have shown, central lines of research ran along, first, the question of the actual extended scope of rights for EU citizens, second, the domestic challenges and leeway in implementing and transposing EU legal provisions on Union citizenship and non-discrimination, and third, the question of the potential of EU citizenship to enhance democracy within the European Union.

The first paper, entitled “Failing on the Social Dimension: Judicial Law-making and Student Mobility in the EU” (Schenk and Schmidt, 2018) has analysed EU students’ free movement entitlements and their rights to access university tuition across member states. It has contributed to the above three aspects by showing that (1) EU citizenship and its corresponding rights entitlements does not apply equally to all groups of EU citizens: While mobile university students (i.e., here, those moving from Germany and France to study in Austria and Belgium, respectively) enjoy far-reaching rights to largely unrestricted access of a broad range of university programmes both at home and abroad, their domestic stay-at-home counterparts see themselves losing university places against their incoming fellow EU students. At the same time, the case study has shown that EU citizenship can – at least – be praised for its rights-extending nature for this very group of EU citizens, thus, having achieved the envisioned amelioration of free movement and welfare rights to a recognisable degree. The paper has further shown (2) that specific welfare and university systems face a disproportionately high adjustment pressure as culminated in the infringement procedures against the Austria and Belgian policy of restricting their university systems. Specifically, those states with an open

access system neighbouring a larger, same-language EU member state, have been found to face particular challenges in implementing and transposing respective EU legal provisions on Union citizenship and non-discrimination. And (3) it could be concluded that this very problem pressure could, to a large extent, be contributed to the vast array of European Court of Justice case law, which significantly limits the realisation of enhanced democracy and social justice in the Union due to its largely irreversible legal nature.

The second paper, “Free Movement and EU Citizens’ Social Rights: Explaining Transposition Leeway on the Ground,” has analysed, in addition to mobile university students’ free movement rights as in the first paper, specifically EU students’ cross-border social rights as well as member states’ reactions to the altered legal situation. Here, by researching two case studies in Germany and the UK, it could be shown that (1) the numbers of, both, outgoing and incoming student benefit recipients had tremendously increased due to the introduction of EU citizenship and its legal interpretation by the ECJ. So, both, study finance benefits funded by the home state (German case study) and host state (British case study) did increase to a significant level, certainly enhancing the individual funding situation of respective mobile students. Nevertheless, it could also be demonstrated that such citizenship rights remain largely market-based, far from a genuinely social citizenship as originally envisaged. Further, this paper has also demonstrated that (2) member states had faced varying problem pressure in adjusting their study finance system to the altered legal situation. Here, the analysis could show that – other than the conventional institutional account would suggest – also welfare systems with liberal social policies as in the British system can be pressured to a significant extent under certain circumstances. While a market- and loan-based system generally depicts a higher share of private funding (as in the UK) than one funded largely out of general taxation (as in Germany), the very nature of this system with necessary cross-border collection of loan repayments proved to be inadequately prepared in a Union with open borders. So, it could be concluded here that (3) the European Union still faces structural deficits in effectively effectuating EU citizens’ cross-border social rights. This “one size fits all” approach, without any mediating infrastructure assisting the organisation of such cross-border rights, foreshadows limits in output legitimacy, let alone the input-driven part.

And lastly, the third paper, “The Role of Politicisation in the Implementation of EU Free Movement and Cross-border Welfare Rights” has demonstrated that politicisation can play a considerable role in explaining delayed implementation and transposition effects. By taking

the example of policy and administrative reactions to ECJ case law on EU students' cross-border rights to access maintenance benefits in England, a comprehensive quantitative and qualitative politicisation analysis could show in how far politicisation has accounted for an almost ten-year delayed transition effect, finally retrenching EU students' welfare rights in England. In so far, this analysis has spoken to both points, (1) and (2), by depicting the ways in which mobile citizens' free movement and cross-border welfare rights have been altered in member states through a crucial mediating factor. This had eventually resulted in, for one, EU citizens' free movement and cross-border welfare rights being circumscribed in the particular situation of the English case. Crucially, it also highlights a member state's struggle in effectively applying corresponding EU legal provisions on the ground, demonstrated in an administration's years-long miscarriage to collect student loans from EU students. And last, while the specific dynamics of the to-date ongoing Brexit procedures are not at the centre of this research, the paper has as well highlighted to that regard (3) the vastly incompatible nature of European integration and national welfare states: The public perception of student mobility as well as, most notably, EU citizens' access to welfare benefits in England more generally, had been one of the major pain points eventually leading to the Brexit referendum and its uncomfortable result.

Thus, altogether, and as demonstrated in more extent in chapter 6, this dissertation as based on the above three journal articles, leads to one major overarching conclusion: the European Union's current trilemma of reconciling, first, open borders, free movement and an ECJ-induced push for extensive cross-border social rights with, second, safeguarding domestically regulated welfare states and, third, advancing social justice and democracy in the Union. Thus, first, while a certain group of beneficiaries does indeed profit from the introduction of Union citizenship as originally foreseen, it does in fact still largely remain a market and a genuinely social citizenship, crucially not including the very large majority of non-mobile citizens. Second, while EU legal provisions on Union citizenship and non-discrimination do, at least *de jure*, do provide for member-state safeguards and, also, member states have found their leeway in successfully containing compliance under specific conditions, the jurisprudence of the ECJ has certainly pushed domestic problem pressure beyond its originally envisaged limits, varying to considerable extents along member states. And third, the original aspirations of increasing EU citizens' identification with the integration project, the Union's democratic legitimacy and its scope of social justice through the introduction of EU citizenship could certainly only be realised to a limited extent. It has been mostly the group of well-educated, mobile and young

citizens that have increased their identification with the Union – while the less well-off feel and often are, *de facto*, left behind. This conclusion is certainly disheartening considering the current trend of an increasing right- and left-populism and Euroscepticism, with respective parties extending their vote share tremendously across the Union not least since the financial crisis.

Yet, there is hope. This dissertation will not conclude without presenting the current scholarly debate on what could in fact be done to enhance EU citizenship-based rights, member states' domestic handling of welfare entitlements, as well as democratic legitimacy and social justice in the European Union in the future. First of all, as regards the first deficiency analysed in this PhD dissertation, that is, the lack of an overall amelioration of social rights to all EU citizens, including not just the mobile ones, a broad range of scholars agree that the future nature of European citizenship should be grounded in a “more human, citizen-based assessment,” treating European “as citizens – humans – not as things” (Kochenov, 2017b: 79; O'Brien, 2017: 251; see on this also De Witte, 2012: 704, 709). If, as Everson (2009: 462–63) denotes, one would not want to jeopardise the European integration project as such, careful diligence will be necessary in designing the future of EU citizenship by not only including the (already) privileged but also those less well-off. As concrete ways forward, two proposals have been put onto the table: on the one hand, a re-interpretation of the principle of proportionality, and, on the other hand, a ‘reversed Solange doctrine.’ As concerns the former, several scholars have called for re-interpreting the principle of proportionality, putting the citizen again into the centre, and at the same time addressing the overly activist role of the European Court of Justice. In more detail, such a re-working would require the reaffirmation of the primacy of primary EU law, laying the grounds for equal treatment and free movement. And, as O'Brien (2017: 272) puts it, this resurrection of the principle of proportionality equally entails making “fair decisions, where fairness is a rights-giving principle of administrative justice.” With respect to the empirical questions of this PhD dissertation, EU university students' free movement and cross-border welfare rights, this certainly implicates a fair distribution of access to university studies for both, mobile and non-mobile university students, as well as – despite certainly remaining a highly complex matter – fair administrative decisions on their access to corresponding study finance benefits. The fact that the European Commission had ended its infringement procedure against Austria on incoming EU students' university access is a case in point here: It acknowledges the fact that specific means inevitably need to be implemented in order to ensure fair distribution of a specific public service – that is in this case, access to

university tuition and the safeguarding of the Austrian health care system, overall – for both incoming EU citizens and domestic tax-payers (cf. European Commission, 2017b). This approach of an altered interpretation of what EU citizenship and fundamental rights already entail as of today, crucially, also underlines that a positive shift in EU citizens’, both the mobile and immobile ones, is feasible without any high-threshold Treaty change.

Then, in addition, there has been a wide international scholarly reception of a proposal to install a “reverse Solange doctrine” as first prominently spelled out by Bogdandy et al. (2012). Behind lies the idea that, in order to protect all EU citizens’ rights, also in purely internal situations concerning, for instance, non-mobile EU citizens, European can redress to EU fundamental rights. In other words, member-state legislation that does not implement EU rules falls outside of the scope of Union law as long as it would not breach EU fundamental rights. For cases which, however, give rise to such systemic violation doubts, EU citizens do enjoy protection under EU fundamental rights as well as EU citizenship legislation. In consequence, this installs “a common minimum level of fundamental rights protection throughout the EU” (Van den Brink, 2017: 104; see on this also Von Bogdandy et al., 2012: 489; Sarmiento and Sharpston, 2017: 204–41). Certainly, advancing such a novel legal doctrine would require at least some form of judicial re-interpretation on the behalf of the ECJ to gain ground. Also, its consequences – extending into purely internal situations within member states – could be rather far-reaching on the domestic level. Thus, what will be largely at stake here, is an adequate balancing of a potentially drastically altered situation of EU citizens’ entitlements *vis-à-vis* member states (already circumscribed) autonomy to regulate their welfare systems. As discussed previously (see Schmidt, 2017: 27; Schmidt, 2018: 47), hedging the European Court of Justice in its activist push for further opening up of welfare systems will only be feasible through change of EU primary law.

This brings us to the second set of possible solutions concerning the issue of member states’ difficulties in safeguarding their domestic welfare systems in a Union with open borders and with an activist European Court of Justice. Herein, existing proposals concern mainly three major issues: enhancing cross-border administrative cooperation within the Union, granting member states the possibility to flag non-negotiable areas of national interest, as well as finding a solution to the fair redistribution of financial burdening resulting from EU citizens’ cross-border welfare rights. To date, administrative coordination in the Union in the realm of cross-border access to welfare benefits remains peculiarly burdensome, as, for instance, the cases of

German students exporting study benefits to their countries of study in the Union, or, the UK struggling to recollect study loans from EU students after their return to their home countries have shown. One central proposal that goes into largely this direction and which is currently in its implementation phase has been the so-called European Labour Authority, which addresses the correct and effective enforcement of EU law on the free movement of workers (ELA; European Commission, 2019). Once set-up in 2019 – and reaching its full operational capacity in 2023 – its main responsibilities will include, *inter alia*, supporting member states in their cooperation to enforce relevant Union law across borders, providing national authorities with the necessary technical and operational support to exchange information, and aiding with settling cross-border disputes among national authorities all in one-stop shop. It can certainly be concluded from the results of this PhD dissertation that such an EU-level agency could as well provide meaningful support in the area of free movement of non-economically active EU citizens, not solely to workers' mobility in the Union. Thus, addressing the analysed deficiencies in administering member states' cross-border cooperation of non-active EU citizens via an extended form of the ELA could prove a feasible first solution to the issue. Certainly, this would require legislative change – but considering the momentum of the current ELA set-up, this could indeed prove viable.

Then, as regards the issue of granting member states the option to flag non-negotiable areas of national interest, a particular challenge rests in specifically defining such areas of protected member-state competences. In order to solve this, former President of Germany and President of the German Federal Constitutional Court, Roman Herzog, had proposed to establish a European Constitutional Court staffed with all member states' Presidents of their Constitutional Courts (Herzog and Gerken, 2008). Then, ECJ judgments could be appealed through a formal procedure to this European Constitutional Court. Certainly, this is a purely legalistic solution and can – as will be seen in the following part – not be a complete solution to the remaining open legitimacy and democratic deficit issues. Another proposal that goes in such a more political direction had been put forward by Scharpf (2010: 243), arguing for granting member states' governments the possibility to appeal respective ECJ decisions to their EU counterparts in the European Council. Yet, since such a far-reaching alteration of the balancing of powers within the Union would require Treaty change, its likelihood of seeing the light of the day remains more than uncertain.

In addition, solutions regarding a fair redistribution of financial burdening resulting from EU citizens' cross-border welfare rights have been discussed in the recent scholarly debate. So far, policy makers have not yet found a viable answer to an equitable funding of mobile students' cross-border university access within the Union, let alone the much broader question of balancing free movement and social rights in a Union with largely heterogenous member states, including wealthier and much less fortunate member states. Here, several groups of scholars have called for some form of direct financial rebalancing, going beyond the current European Structural Funds such as the European Social Fund or the European Globalisation Adjustment Fund, which only allow for indirect social policy funding through, for instance, granting trainings and other qualification measures to European citizens. So, current proposals on the negotiation table include, *inter alia*, a Euro-dividend (Van Parijs and Vanderborght, 2017) and a European social minimum (Viehoff, 2017), that is, a Union-wide income support scheme for EU citizens (see also Bellamy and Lacey 2018: 1417). Also, with specific regard to the funding of mobile university students' cross-border access to university tuition across the Union, an EU-wide compensation mechanism at first seems to be the most obvious solution, reimbursing member states for their additional expenditures (Damjanovic, 2012: 162–66). However, the major issue with such an approach is that it requires member states to cover the costs incurred by other member states (Van der Mei, 2005: 233). Particularly in a Union with widely varying amounts of university funding and largely differing funding systems (e.g. tax-based as compared up-front, see chapter 4), the feasibility of agreeing on such a novel system among member states' governments – though not requiring change of primary but solely secondary Union law – is more than unlikely in current times. The fact that such a scheme had already been brought up for discussion by the European Commission in the early days of the establishment of the European higher education space in 1991 and has not been pushed forward since does indeed speak for itself (European Commission, 1991: 42).

Finally, regarding the third set of questions on democratic legitimacy and social justice in the European Union, the most promising proposal on the scholarly landscape as of today involves the idea of a European *demoicracy*. In order to solve issues of lacking identification of Union citizens with the integration project and corresponding legitimacy deficits, the Union's future should be “based on a social contract between both the member states of the Union and their various individual citizens” (Bellamy and Lacey, 2018: 1410–11). Further, the vision centres around the – quite demanding – idea of Union citizens mutually recognising their individual histories and traditions, current political systems as well as cultural identities (Nicolaidis, 2007:

682, 2012: 248; Eleftheriadis, 2014: 795–96; Strumia, 2017: 678). What is mostly interesting about this concept is the idea that, in a multilevel system of governance, supranational democracy does not need to eliminate national democracy but rather mutually reinforce each other (Cheneval and Schimmelfennig, 2013: 343; Nicolaïdis, 2013: 362–63). Ultimately, decision-making processes at both the domestic and EU level should complement each other by striking the balance between these two largely varying approaches to citizens' representation – in so far as they, in their sum, increase democratic legitimacy overall (Lenaerts and Gutiérrez-Fons, 2017: 756–57).

In practice, such *demoicratic* considerations entail a balancing of, at the one hand, EU-wide solidarity among its citizens with, at the other hand, the heterogeneity and sustainability of member states' welfare regimes (Bellamy and Lacey, 2018: 1415 – 16).²¹ This can be resolved through the insightful concept of “stakeholdership,” as developed by Bauböck (2015: 826) and further spelled out by Bellamy and Lacey (2018: 1416–17) in an attempt to finding a meaningful conceptualisation of how to solve the trilemma between enhancing EU citizens' free movement and welfare rights, while safeguarding member states' autonomy and paying sufficient respect to the Union's legitimacy and democracy. In more detail, stakeholders should demonstrate a “willingness and capacity to contribute to the socioeconomic fabric of the receiving state” (Bellamy and Lacey, 2018: 1416), for instance based on consumption, taxes, or employment. Such criteria are to be determined and set by the paying member state to grant them sufficient leeway in steering their domestic welfare systems. Yet, common principles setting the limits on such domestic flexibility are to be agreed upon on the EU level and further enforced by the European Court of Justice. So, ultimately, mobile EU citizens should not be granted the same welfare rights as their domestic counterparts simply based on non-discrimination rules but rather, they should be entitled to specific set of rights and duties based on EU citizenship as a supplementary nature to national citizenship (Bellamy and Lacey, 2018: 1412).

Certainly, additional measure complementing such a *demoicratic* approach will be necessary to alleviate the Union's democratic deficit. While the major argument of this dissertation points

²¹ Habermas (2012: 53) makes the point that the Union should establish certain indispensable basic rights towards its citizens, that is, the EU “must guarantee what the Basic Law of the (1415) German Federal Republic calls the ‘uniformity of living standards’ (Art. 106, para 3).”

to European Union's welfare trilemma, that is, the impossibility of reconciling open borders and free movement with autonomous domestic welfare systems and a fully-fledged EU democracy, this does not entail that nothing could be done to improve the current situation at least to some degree. As Ferrera (2014: 840) has argued, one of the major challenges – in an output-driven approach to legitimacy – will be to enhance EU citizens' social situation by counter-balancing the Union's negative externalities resulting from negative integration in the economic sphere and by making them feel the positive impacts of the European integration project. Thus, apart from an improved balancing between mobile and non-mobile citizens' welfare rights, also an improvement of positive communication on EU integration and its positive effects will be necessary on all political levels. Indeed, “[w]hat is needed is a shift of focus in our debates from constraints to opportunities, from economic and institutional necessities to possibilities [and] choices [... to] open a constructive discussion forum on the prospects for (social) Europe” (Ferrera, 2018: 11). Despite the strong prevalence of the EU's welfare trilemma, such a constructive discussion on Social Europe should not be evaded – European disintegration can still be deflected. Yet only if we decide to take the Union's current deficiencies and opportunities very seriously.

Bibliography²²

- Alter, K.J. (2014) *The New Terrain of International Law. Courts, Politics, Rights*. Princeton: Princeton University Press.
- Bauböck, R. (2015) ‘Morphing the demos into the right shape. Normative principles for enfranchising resident aliens and expatriate citizens,’ *Democratization* 22(5): 820–39.
- Bauböck, R. (2016) ‘The new cleavage between mobile and immobile Europeans,’ *EUI RSCAS Working Paper 2016/69*: 19–20, available at: <https://tinyurl.com/y56j3268> (last accessed 28/04/2019).
- Bauböck, R. (2017) ‘Political membership and democratic boundaries,’ in: Shachar, A., Bauböck, R., Bloemraad, I. and Vink, M. (eds) *The Oxford Handbook of Citizenship*, pp. 60–82. Oxford: Oxford University Press.
- Beck, G. (2012) *The Legal Reasoning of the Court of Justice of the EU*. Oxford: Hart Publishing.
- Bellamy, R. (2008) ‘Evaluating Union citizenship: Belonging, rights and participation within the EU,’ *Citizenship Studies* 12(6): 597–611.
- Bellamy, R. (2015) ‘A duty-free Europe? What’s wrong with Kochenov’s account of EU citizenship rights,’ *European Law Journal* 21(4): 558–65.
- Bellamy, R. and Lacey, J. (2018) ‘Balancing the rights and duties of European and national citizens: a democratic approach,’ *Journal of European Public Policy* 25(10): 1403–21.
- Benhabib, S. (2008) *Another Cosmopolitanism*. Oxford: Oxford University Press.
- Beyers, J., Dür, A. and Wonka, A. (2018) ‘The political salience of EU policies,’ *Journal of European Public Policy* 25(11): 1726–37.
- Blauberger, M. (2014) ‘National responses to European Court Jurisprudence,’ *West European Politics* 37(3): 457–74.
- Blauberger, M. and Schmidt, S.K. (2014) ‘Welfare migration? Free movement of EU citizens and access to social benefits,’ *Research and Politics* 1(3): 1–7.
- Blauberger, M. and Schmidt, S.K. (2017a) ‘The European Court of Justice and its political impact,’ *West European Politics* 40(4): 907–18.
- Blauberger, M. and Schmidt, S.K. (2017b) ‘Free movement, the welfare state, and the European Union’s over-constitutionalization: Administrating contradictions,’ *Public Administration* 95(2): 437–49.

²² Full list of references, including those cited in the three single articles of this dissertation.

- Blauberger, M., Heindlmaier, A., Kramer, D., Martinsen, D.S., Sampson Thierry, J., Schenk, A. and Werner, B. (2018) 'ECJ judges read the morning papers. Explaining the turnaround of European citizenship jurisprudence,' *Journal of European Public Policy* 25(10): 1422–41.
- Brubaker, R.W. (1992) *Citizenship and Nationhood in France and Germany*. Cambridge: Harvard University Press.
- Bruzelius, C. (2019) 'Freedom of Movement, Social Rights and Residence-based Conditionality in the European Union,' *Journal of European Social Policy* 29(1): 70–83.
- Bussemeyer, M.R. and Trampusch, C. (2011) 'Review article: Comparative political science and the study of education,' *British Journal of Political Science* 41(2): 413–43.
- Cantillon, B., Verschueren, H. and Ploscar, P. (eds) (2012) *Social Inclusion and Social Protection in the EU: Interactions between Law and Policy*. Antwerp: Intersentia.
- Caporaso, J.A. and Tarrow, S. (2009) 'Polanyi in Brussels: Supranational institutions and the transnational embedding of markets,' *International Organization* 63(4): 593–620.
- Chalmers, D., Davies, G. and Monti, G. (2010) *European Union Law. Cases and Materials*. 2nd ed. Cambridge: Cambridge University Press.
- Cheneval, F. and Schimmelfennig, F. (2013) 'The case for democracy in the European Union,' *Journal of Common Market Studies* 51(2): 334–50.
- Cichowski, R.A. (2007) *The European Court and Civil Society: Litigation, Mobilization and Governance*. Cambridge: Cambridge University Press.
- Conant, L.J. (2002) *Justice Contained: Law and Politics in the European Union*. Ithaca, NY: Cornell University Press.
- Conway, G. (2012) *The Limits of Legal Reasoning and the European Court of Justice*. Cambridge: Cambridge University Press.
- Craig, P.P. (2011) 'Integration, democracy, and legitimacy,' in Craig, P.P. and De Búrca, G. (eds) *The Evolution of EU Law*, 2nd ed., pp. 13–40. Oxford: Oxford University Press.
- Craig, P.P. and De Búrca, G. (eds) (2011) *The Evolution of EU Law*, 2nd ed. Oxford: Oxford University Press.
- Damay, L. and Mercenier, H. (2016) 'Free movement and EU citizenship: A virtuous circle?' *Journal of European Public Policy* 23(8): 1139–57.
- Damjanovic, D. (2012) 'Reserved areas' of the member states and the ECJ: The case of higher education,' in: Micklitz, H.-W. and De Witte, B. (eds). *The European Court of Justice and the Autonomy of the Member States*, pp. 149–74. Cambridge, Antwerp, Portland: Intersentia.
- Davies, G. (2016) 'The European Union legislature as an agent of the European Court of Justice,' *Journal of Common Market Studies* 54(1): 1–16.

- Davies, G. (2018): 'Has the court changed, or have the cases? The deservingness of litigants as an element in Court of Justice citizenship adjudication,' *Journal of European Public Policy* 25(10): 1442–60.
- Delanty, G. (2007) 'European citizenship: A critical assessment,' *Citizenship Studies*, 11(1): 63–72.
- De Wilde, P. (2011) 'No polity for old politics? A framework for analyzing the politicization of European integration,' *Journal of European Integration* 33(5): 559–75.
- De Wilde, P., Leupold, A. and Schmidtke, H. (2016) 'Introduction: The differentiated politicisation of European governance,' *West European Politics* 39(1): 3–22.
- De Witte, F. (2012) 'Transnational solidarity and the mediation of conflicts of justice in Europe,' *European Law Journal* 18(5): 694–710.
- De Witte, F. (2013) 'Who funds the mobile student? Shedding some light on the normative assumptions underlying EU free movement law,' *Common Market Law Review* 50(1): 203–15.
- Dickinson, J. and Eleftheriadis, P. (eds) (2012) *Philosophical Foundations of European Union Law*. Oxford: Oxford University Press.
- Dougan, M. (2005) 'Fees, grants, loans and dole Cheques: Who covers the costs of migrant education within the EU?' *Common Market Law Review* 42(4): 943–86.
- Dougan, M. and Spaventa, E. (eds) (2005) *Social Welfare and EU Law*. Oxford: Hart Publishing.
- Dubiel, H. (2014) 'The paradoxes of European citizenship,' in: Wiesner, C. and Schmidt-Gleim, M. (eds) *The Meanings of Europe. Changes and Exchanges of a Contested Concept*, pp. 119–29. New York: Routledge.
- Dustmann, C., Frattini, T. and Halls, C. (2010) 'Assessing the fiscal costs and benefits of A8 migration to the UK,' *Fiscal Studies* 31(1): 1–41.
- Dustmann, C. and Frattini, T. (2014) 'The fiscal effects of immigration to the UK,' *The Economic Journal* 124(580): 593–643.
- Eleftheriadis, P. (2014) 'The content of European citizenship,' *German Law Journal* 15(5): 777–96.
- Emmenegger, P. and Careja, R. (2013) 'The other dualism: Welfare state nationalism and migration policies in Western Europe,' in: Karolewski, I.P. and Suszycki, A.M. (eds) *European Welfare States – Citizenship, Nationalism and Conflict*, pp. 75–106. Osnabrück: fibre Verlag.
- Entzinger, H. (2007) 'Open borders and the welfare state,' in: Pécoud, A. and de Guchteneire, P. (eds) *Migration without Borders. An Investigation into the Free Movement of People*, pp. 119–34. New York, Oxford: Berghahn.
- Esping-Andersen, G. (1990) *The Three Worlds of Welfare Capitalism*. Princeton: Princeton University Press.

- Everson, M. (2009) 'Class bites back: Europe and the delusion of the common man,' *European Political Science* 8(4): 462–86.
- Everson, M. (2014) 'A citizenship in movement,' in *German Law Journal* 15(5): 965–83.
- Favell, A. (2008) *Eurostars and Eurocities. Free Movement and Mobility in an Integrating Europe*. Oxford: Blackwell.
- Favell, A. (2010) 'European identity and European citizenship in three 'Eurocities': A sociological approach to the European Union,' *Politique Européenne* 30(1): 187–224.
- Ferrera, M. (2005) *The Boundaries of Welfare. European Integration and the New Spatial Politics of Social Protection*. Oxford: Oxford University Press.
- Ferrera, M. (2009) 'The JCMS annual lecture: National welfare states and European integration: In search of a 'virtuous nesting',' *Journal of Common Market Studies* 47(2): 219–33.
- Ferrera, M. (2012) 'Modest beginnings, timid progress: What's next for Social Europe?' in: Cantillon, B., Verschueren, H. and Ploscar, P. (eds) *Social Inclusion and Social Protection in the EU: Interactions between Law and Policy*, pp. 17–27. Antwerp: Intersentia.
- Ferrera, M. (2014) 'Social Europe and its components in the midst of the crisis: A conclusion', *West European Politics* 37(4): 825–43.
- Ferrera, M. (2016) 'The contentious politics of hospitality: Intra-EU mobility and social rights,' *European Law Journal* 22(6): 791–805.
- Ferrera, M. (2018) 'Disproved or vindicated? Stein Rokkan's 'impossibility theorem' on welfare democracy and European integration,' *Journal of European Social Policy* 29(1): 3–12.
- Fligstein, N. (2008) *Euro-Clash: The EU, European Identity and the Future of Europe*. Oxford: Oxford University Press.
- Føllesdal, A. and Hix, S. (2006) 'Why there is a democratic deficit in the EU,' *Journal of Common Market Studies* 44(3): 533–62.
- Freeman, G.P. and Mirilovic, N. (eds) (2016) *Handbook on Migration and Social Policy*. Cheltenham: Edward Elgar.
- Geddes, A. and Hadj-Abdou, L. (2016) 'An unstable equilibrium: Freedom of movement and the welfare state in the European Union,' in: Freeman, G.P. and Mirilovic, N. (eds) *Handbook on Migration and Social Policy*, pp. 222–38 Cheltenham: Edward Elgar.
- Gideon, A. (2015) 'The position of higher education institutions in a changing European context: An EU law perspective,' *Journal of Common Market Studies* 53(5): 1045–60.
- Grande, E. and Hutter, S. (2016a) 'Introduction: European integration and the challenge of politicisation,' in: Hutter, S., Grande, E. and Kriesi, H. (eds) *Politicising Europe. Integration and Mass Politics*, pp. 3–31. Cambridge: Cambridge University Press.

- Grande, E. and Hutter, S. (2016b) 'Beyond authority transfer: Explaining the politicisation of Europe,' *West European Politics* 39(1): 23–43.
- Greve, B. (ed) (2012) *The Routledge Handbook of the Welfare State*, 1st ed. London and New York: Routledge.
- Habermas, J. (2012) *The Crisis of the European Union: A Response*. Cambridge: Polity Press.
- Halter, U. (2003) 'Pathos and patina,' *European Law Journal* 9(1): 14–44.
- Heindlmaier, A. and Blauburger, M. (2017) 'Enter at your own risk: Free movement of EU citizens in practice,' *West European Politics* 40(6): 1198–217.
- Hix, S. (2008) *What's Wrong with the European Union and How to Fix it*. Cambridge: Polity Press.
- Hoeglinger, D. (2016) 'The politicisation of European integration in domestic election campaigns,' *West European Politics* 39(1): 44–63.
- Hoogenboom, A. (2013) 'Mobility of students and the financial sustainability of Higher education systems in the EU: A Union of harmony or irreconcilable differences?' *Croatian Yearbook of European Law and Policy* 2013: 15–60.
- Hooghe, L. and Marks, G. (2009) 'A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus,' *British Journal of Political Science* 39(1): 1–23.
- Höpner, M. and Schäfer, A. (2012) 'Embeddedness and regional integration: Waiting for Polanyi in a Hayekian setting,' *International Organization* 66(3): 429–55.
- Hutter, S. and Grande, E. (2014) 'Politicizing Europe in the national electoral arena: A comparative analysis of five West European countries, 1970–2010,' *Journal of Common Market Studies* 52(5): 1002–18.
- Hutter, S., Grande, E., and Kriesi, H. (eds) (2016) *Politicising Europe. Integration and Mass Politics*. Cambridge: Cambridge University Press.
- Karolewski, I.P. and Suszycki, A.M. (eds) (2013) *European Welfare States – Citizenship, Nationalism and Conflict*. Osnabrück: fibre Verlag.
- Kelemen, R.D. (2011) *Eurolegalism. The Transformation of Law and Regulation in the European Union*. Cambridge: Harvard University Press.
- Keohane, R.O. (1986) 'Reciprocity in International Relations,' *International Organization* 40(1): 1–27.
- Klausen, J. (1995) 'Social rights advocacy and state building: T.H. Marshall in the hands of social reformers,' *World Politics* 47(2), 244–67.
- Kochenov, D. (2014) 'EU citizenship without duties,' *European Law Journal* 20(4): 482–98.
- Kochenov, D. (2017a) 'The citizenship of personal circumstances in Europe,' in: Thym, D. (ed) *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU*, pp. 37–56. Oxford: Hart Publishing.

- Kochenov, D. (2017b) 'On tiles and pillars: EU citizenship as a federal denominator,' in: Kochenov, D. (ed) *EU Citizenship and Federalism. The Role of Rights*, pp. 3–82. Cambridge: Cambridge University Press.
- Kochenov, D. (ed) (2017c) *EU Citizenship and Federalism. The Role of Rights*. Cambridge: Cambridge University Press.
- Kostakopoulou, D. and Thym, D. (2017) 'Conclusion: The non-simultaneous evolution of citizens' rights,' in: Thym, D. (ed) *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU*, pp. 309–22. Oxford: Hart Publishing.
- Kriesi, H., Grande, E., Lachat, R., Dolezal, M., Bornschier, S. and Frey, T. (2008) *West European Politics in the Age of Globalization*. Cambridge: Cambridge University Press.
- Kriesi, H., Grande, E., Dolezal, M., Helbling, M., Hoeglinger, D., Hutter, S. and Wüest, B. (2012) *Political Conflict in Western Europe*. Cambridge: Cambridge University Press.
- Lam, Q.K.H., Oste, D. and Wächter, B. (2013) *Portable State Grants and Loans: An Overview and Their Contribution to Outgoing Student Mobility*. Bonn: Lemmens Medien GmbH.
- La Torre, M. (ed). (1998) *European Citizenship: An Institutional Challenge*. The Hague: Kluwer Law International.
- Laursen, F. and Vanhoonacker, S. (eds) (1992) *The Intergovernmental Conference on Political Union: Institutional Reforms, New Policies and International Identity of the European Community*. Dordrecht: Martinus Nijhoff.
- Leibfried, S. and Pierson, P. (eds) (1995) *European Social Policy: Between Fragmentation and Integration*. Washington, DC: Brookings Institution.
- Lenaerts, K. and Gutiérrez-Fons, J. (2017) 'Epilogue on EU citizenship: Hopes and fears,' in: Kochenov, D. (ed) *EU Citizenship and Federalism. The Role of Rights*, pp. 751–81. Cambridge: Cambridge University Press.
- Maas, W. (2005) 'The genesis of European rights,' *Journal of Common Market Studies* 43(5) (2005): 1009–25.
- Maas, W. (2007) *Creating European Citizens*. Plymouth: Rowman & Littlefield Publishers.
- Maas, W. (2014) 'The origins, evolution, and political objectives of EU citizenship,' *German Law Journal* 15(5): 797–819.
- Maas, W. (2017) 'Boundaries of political community in Europe, the US, and Canada,' *Journal of European Integration* 39(5): 575–90.
- Majone, G. (1996) *Regulating Europe*. London and New York: Routledge.
- Marshall, T.H. (2009 [1950]) 'Citizenship and social class,' in: Manza, J. and Sauder, M. (eds) *Inequality and Society*, pp. 148–54. New York: W.W. Norton and Co.
- Martinsen, D.S. (2015) *An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union*. Oxford: Oxford University Press.

- Martinsen, D.S. and Pons Rotger, G. (2017) 'The fiscal impact of EU immigration on the tax-financed welfare state: Testing the 'welfare burden' thesis,' *European Union Politics* 18(4): 620–39.
- Martinsen, D.S., Pons Rotger, G. and Sampson Thierry, J. (2018) 'Free movement of people and cross-border welfare in the European Union: Dynamic rules, limited outcomes,' *Journal of European Social Policy*. Epub ahead of print 30 May 2018. DOI: 10.1177/0958928718767300.
- Martinsen, D.S. and Vollaard, H. (2014) 'Implementing Social Europe in times of crises: Re-established boundaries of welfare?' *West European Politics* 37(4): 677–92.
- Martinsen, D.S. and Werner, B. (2018) 'No welfare magnets – free movement and cross-border welfare in Germany and Denmark compared,' *Journal of European Public Policy* 26(5): 637–55.
- Menéndez, A.J. (2009) 'European citizenship after Martinez Sala and Baumbast. Has European law become more human but less social?' *RECON Online Working Paper 2009/05*, available at: <https://tinyurl.com/y6n2koeo> (last accessed 28/04/2019).
- Menéndez, A.J. (2014) 'Which citizenship? Whose Europe? The many paradoxes of European citizenship,' *German Law Journal* 15(5): pp. 907–33.
- Micklitz, H.-W. and De Witte, B. (eds) (2012) *The European Court of Justice and the Autonomy of the Member States*. Cambridge, Antwerp, Portland: Intersentia.
- Milward, A. (2000) *The European Rescue of the Nation State*, 2nd ed. London: Routledge.
- Myrdal, G. (1960) *Beyond the Welfare State: Economic Planning and its International Implications*. New Haven, Conn., Yale University Press.
- Newdick, C. (2006) 'Citizenship, free movement and health care. Cementing individual rights by corroding social solidarity,' *Common Market Law Review* 43(6), 1645–68.
- Newman, J. (2012) 'Citizenship,' in: Greve, B. (ed) *The Routledge Handbook of the Welfare State*, 1st ed., pp. 40–46. London and New York: Routledge.
- Nicolaïdis, K. (2006) 'Trusting the poles? Constructing Europe through mutual recognition,' *European Journal of Public Policy* 14(5): 682–98.
- Nicolaïdis, K. (2012) 'The idea of European democracy,' in: Dickinson, J. and Eleftheriadis, P. (eds) *Philosophical Foundations of European Union Law*, pp. 247–74. Oxford: Oxford University Press.
- Nicolaïdis, K. (2013) 'European Democracy and its crisis,' *Journal of Common Market Studies* 51(2): 351–69.
- Nyikos, S.A. (2006) 'Strategic interaction among Courts within the preliminary reference process – Stage 1: National court preemptive opinions,' *European Journal of Political Research* 45(4), 527–50.
- O'Brien, C. (2017) *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK*. Oxford and Portland: Hart Publishing.

- Pécoud, A. and de Guchteneire, P. (eds) (2007) *Migration without Borders. An Investigation into the Free Movement of People*. New York, Oxford: Berghahn.
- Pierson, P. and Leibfried, S. (1995) 'Multitiered institutions and the making of social policy,' in: Leibfried, S. and Pierson, P. (eds) *European Social Policy. Between Fragmentation and Integration*, pp. 1–39. Washington, D.C.: The Brookings Institution.
- Randelzhofer, A. (1995) 'Marktbürgerschaft – Unionsbürgerschaft – Staatsbürgerschaft,' in: Randelzhofer, A., Scholz, R. and Wilke, D. (eds) *Gedächtnisschrift für Ebbhard Grabitz*, pp. 581 – 94. München: C.H. Beck'sche Verlagsbuchhandlung.
- Randelzhofer, A., Scholz, R. and Wilke, D. (eds) (1995) *Gedächtnisschrift für Ebbhard Grabitz*. München: C.H. Beck'sche Verlagsbuchhandlung.
- Rennuy, N. (2013) 'The emergence of a parallel system of social security coordination,' *Common Market Law Review* 50(5), 1221–66.
- Ruhs, M. (2017) 'Free movement in the European Union: National institutions vs common policies?' *International Migration* 55(1): 22–38.
- Ruhs, M. and Palme, J. (2018) 'Institutional contexts of political conflicts around free movement in the European Union: A theoretical analysis,' *Journal of European Public Policy* 25(10): 1481–500.
- Sarmiento, D. and Sharpston, E. (2017) 'European citizenship and its new Union: Time to move on?' in: Kochenov, D. (ed) *EU Citizenship and Federalism. The Role of Rights*, pp. 226–42. Cambridge: Cambridge University Press.
- Scharpf, F.W. (1970) *Demokratietheorie zwischen Utopie und Anpassung*. Konstanz: Universitätsverlag.
- Scharpf, F.W. (1997) *Games Real Actors Play. Actor-centered Institutionalism in Policy Research*. Boulder, CO: Westview Press.
- Scharpf, F.W. (2001) 'Notes toward a theory of multilevel governing in Europe,' *Scandinavian Political Studies* 24(1): 1–26.
- Scharpf, F.W. (2002) 'The European Social Model: Coping with the challenges of diversity,' *Journal of Common Market Studies* 40(4): 645–70.
- Scharpf, F.W. (2009) 'Legitimacy in the multilevel European polity,' *European Political Science Review* 1(2), 173–204.
- Scharpf, F.W. (2010) 'The asymmetry of European integration, or why the EU cannot be a 'Social Market Economy',' *Socio-Economic Review* 8(2): 211–50.
- Scharpf, F.W. (2012) 'Perpetual momentum: directed and unconstrained?' *Journal of European Public Policy* 19(1): 127–39.
- Schenk, A. and Schmidt, S.K. (2018) 'Failing on the social dimension: Judicial law-making and student mobility in the EU,' *Journal of European Public Policy* 25(10): 1522–40.
- Schiek, D. (2017) 'Perspectives on social citizenship in the EU: From status positivus to status socialis activus via two forms of transnational solidarity,' in: Kochenov, D. (ed) *EU*

- Citizenship and Federalism. The Role of Rights*, pp. 341–70. Cambridge: Cambridge University Press.
- Schmidt, S.K. (2012) ‘Who cares about nationality? The path-dependent case law of the CJEU from goods to citizens,’ *Journal of European Public Policy* 19(1), 8–24.
- Schmidt, S.K. (2017) ‘Extending citizenship rights and losing it all: Brexit and the perils of ‘over-constitutionalisation’,’ in: Thym, D. (ed) *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU*, pp. 17–36. Oxford: Hart Publishing.
- Schmidt, S.K. (2018) *The European Court of Justice and the Policy Process: The Shadow of Case Law*. Oxford: Oxford University Press.
- Schmidt, S.K., Blauburger, M. and Martinsen, D. (2018) ‘Free movement and equal treatment in an unequal Union,’ *Journal of European Public Policy* 25(10): 1391–1402.
- Schmidtke, H. (2016) ‘The differentiated politicisation of European tax governance,’ *West European Politics* 39(1): 3–22.
- Schrauwen, A. (2011) *Access to and Portability of Student Grants and Loans: Where Targets Meet Free Movement Law*. Amsterdam: Amsterdam Centre for European Law and Governance.
- Shachar, A., Bauböck, R., Bloemraad, I. and Vink, M. (eds) (2017) *The Oxford Handbook of Citizenship*. Oxford: Oxford University Press.
- Shaw, J. (2011) ‘Citizenship: Contrasting dynamics at the interface of integration and constitutionalism,’ in: Craig, P. and De Búrca, G. (eds) *The Evolution of EU Law*, 2nd ed., pp. 575–609. Oxford: Oxford University Press.
- Spaventa, Eleanor (2017) ‘Earned citizenship – Understanding Union citizenship through Its scope,’ in: Kochenov, D. (ed) *EU Citizenship and Federalism. The Role of Rights*, pp. 204–25. Cambridge: Cambridge University Press.
- Statham, P. and Trezn, H.J. (2015) ‘Understanding the mechanisms of EU politicization: Lessons from the Eurozone crisis,’ *Comparative European Politics* 13(3): 287–306.
- Strumia, F. (2016) ‘European citizenship and EU immigration: A Demoi-cratic bridge between the Third Country Nationals’ right to belong and the member states’ power to exclude,’ *European Law Journal* 22(4): 417–47.
- Strumia, F. (2017) ‘Supranational citizenship,’ in: Shachar, A., Bauböck, R., Bloemraad, I. and Vink, M. (eds) *The Oxford Handbook of Citizenship*, pp. 669–93. Oxford: Oxford University Press.
- Stone Sweet, A. (2004) *The Judicial Construction of Europe*. New York: Oxford University Press.
- Stone Sweet, A., Fligstein, N. and Sandholtz, W. (1998) *The Institutionalisation of Europe*. Oxford: Oxford University Press.

- Thym, D. (2015) 'The elusive limits of solidarity: Residence rights of and social benefits for economically inactive Union citizens,' *Common Market Law Review* 52(1): 17–50.
- Thym, D. (2017a) 'Frontiers of EU citizenship: Three trajectories and their methodological limitations,' in: Kochenov, D. (ed) *EU Citizenship and Federalism. The Role of Rights*, pp. 705–30. Cambridge: Cambridge University Press.
- Thym, D. (2017b) 'Introduction: The judicial deconstruction of Union citizenship,' in: Thym, D. (ed) *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU*, pp. 1–14. Oxford: Hart Publishing.
- Thym, D. (2017c) 'The evolution of citizens' rights in light of the European Union's constitutional development,' in: Thym, D. (ed) *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU*, pp. 111–34. Oxford: Hart Publishing.
- Thym, D. (ed) (2017d) *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU*. Oxford: Hart Publishing.
- Treib, O. (2014) 'Implementing and complying with EU governance outputs,' *Living Reviews in European Governance* 9(1): 1–47.
- Van den Brink (2017) 'The origins and the potential federalising effects of the substance of rights test,' in: Kochenov, D. (ed) *EU Citizenship and Federalism. The Role of Rights*, pp. 85–106. Cambridge: Cambridge University Press.
- Van der Mei, A.P. (2005) 'EU law and education: Promotion of student mobility versus protection of education systems,' in: Dougan, M. and Spaventa, E. (eds) *Social Welfare and EU Law*, pp. 219–40. Oxford: Hart Publishing.
- Van Parijs, P. and Vanderborght Y. (2017) *Basic Income: A Radical Proposal for a Free Society and a Sane Economy*. Harvard: Harvard University Press.
- Viehoff, J. (2017) 'Maximum convergence on a just minimum: a pluralist justification for European social policy,' *European Journal of Political Theory* 16(2): 164–87.
- Von Bogdandy, A., Kottmann, M. Antpöhler, C., Dickschen, Hentrei, J.S. and Smrkolj, M. (2012) 'Reverse Solange—protecting the essence of fundamental rights against EU Member States,' *Common Market Law Review* 49(2): 489–519.
- Wasserfallen, F. (2010) 'The Judiciary as legislator? How the European Court of Justice shapes policy-making in the European Union,' *Journal of European Public Policy* 17(8): 1128–46.
- Weatherill, S. (2012) *Cases and Materials on EU Law*, 10th ed. Oxford: Oxford University Press.
- Weiler, J.H.H. (1991) 'The transformation of Europe,' *The Yale Law Journal* 100(1): 2402–83.

- Weiler, J.H.H. (1998) 'European Citizenship: Identity and differentity' in: la Torre, M. (ed) *European Citizenship: An Institutional Challenge*, pp. 1–26. The Hague: Kluwer Law International.
- Weiler, J.H.H. (2012) 'In the face of crisis: Input legitimacy, output legitimacy and the political messianism of European integration,' *Journal of European Integration* 34(7): 825–41.
- Werner, B. (2017) 'Das Europäische Freizügigkeitsregime als Herausforderung für die nationalen Sozialsysteme: Reaktionen des deutschen Wohlfahrtsstaates und die Folgen,' *Politische Vierteljahresschrift* 58(4): 509–32.
- Wiesner, C. and Schmidt-Gleim, M. (eds) (2014) *The Meanings of Europe. Changes and Exchanges of a Contested Concept*. New York: Routledge.
- Wollenschläger, F. (2011) 'A new fundamental freedom beyond market integration: Union citizenship and its dynamics for shifting the economic paradigm of European integration,' *European Law Journal* 17(1): 1–34.

Appendix

Annex I – Legal References and Documents

EU Legislation and Documents²³

Council of the European Communities/Commission of the European Economic Communities (1957) *Treaty Establishing the European Economic Community [Rome Treaty]*. Luxembourg: Official Journal of the European Union.

Council of the European Communities (1968) *Regulation 1612/68/EEC on Freedom of Movement for Workers Within the Community*. Luxembourg: Office for Official Publications of the European Communities.

Council of the European Communities (1971) *Regulation 1408/71/EEC on the Application of Social Security Schemes to Employed Persons and Their Families Moving Within the Community*. Luxembourg: Office for Official Publications of the European Communities.

Commission of the European Economic Communities (1990) *Commission Opinion of 21 October 1990 on the Proposal for Amendment of the Treaty Establishing the European Economic Community with a View to Political Union*, COM (90) 600 final. Luxembourg: Office for Official Publications of the European Communities.

Council of the European Communities (1990a) *Council Document of 24 September 1990*, SN 3940/90. Luxembourg: Office for Official Publications of the European Communities.

Council of the European Communities (1990b) *Directive 90/364/EEC on the Right of Residence*. Luxembourg: Office for Official Publications of the European Communities.

Council of the European Communities (1990c) *Directive 90/365/EEC on the Right of Residence for Employees and Self-employed who Have Ceased Their Occupational Activity*. Luxembourg: Office for Official Publications of the European Communities.

Council of the European Communities (1990d) *Directive 90/366/EEC on the Right of Residence of Students [Annulled]*. Luxembourg: Office for Official Publications of the European Communities.

Commission of the European Communities (1991) *Memorandum on Higher Education in the European Community*, COM (91) 349 final. Luxembourg: Office for Official Publications of the European Communities.

²³ In order of date of publication.

Council of the European Communities/Commission of the European Economic Communities (1992) *Treaty on European Union [Maastricht Treaty]*. Luxembourg: Office for Official Publications of the European Communities.

Council of the European Communities (1993) *Directive 93/96/EEC on the Right of Residence of Students*. Luxembourg: Office for Official Publications of the European Communities.

Commission of the European Communities (1995) *Report on the Operation of the Treaty on European Union*, SEC (95) 731 final. Luxembourg: Official Journal of the European Union.

European Parliament/Council of the European Union (2004a) *Regulation 883/2004/EC on the Coordination of Social Security Systems*. Luxembourg: Official Journal of the European Union.

European Parliament/Council of the European Union (2004b) *Directive 2004/38/EC on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely Within the Territory of the Member States*. Luxembourg: Official Journal of the European Union.

Council of the European Union/European Commission (2007) *Consolidated Version of the Treaty on the Functioning of the European Union [Lisbon Treaty]*. Luxembourg: Official Journal of the European Union.

European Commission (2010) *Eurobarometer 73, Spring 2010: Public Opinion in the European Union*. Brussels: European Commission.

European Parliament/Council of the European Union (2011) *Regulation 492/2011/EU on Freedom of Movement for Workers Within the Union*. Luxembourg: Official Journal of the European Union.

European Commission (2012) *Standard Eurobarometer 77, Spring 2012: European Citizenship*. Brussels: European Commission.

European Commission (2016a) *Mobility Scoreboard: Higher Education Background Report, Eurydice Report*. Luxembourg: Publications Office of the European Union.

European Commission (2016b) *Questions and Answers on the Revision of Social Security Coordination Rules*, available at: <https://tinyurl.com/ybnewbrb> (last accessed: 25/01/2019).

European Commission (2017a) *National Student Fee and Support Systems in European Higher Education – 2017/18*. Luxembourg: Publications Office of the European Union.

European Commission (2017b) *Free movement of students: Commission closes infringement case against Austria*. Press release IP/17/1282. Brussels: European Commission.

European Commission (2018b) *Standard Eurobarometer 89, Spring 2018: European Citizenship*. Brussels: European Commission.

European Commission (2018c) *Standard Eurobarometer 89, Spring 2018: Public Opinion in the European Union*. Brussels: European Commission.

European Commission (2019) *European Labour Authority*, available at: <https://tinyurl.com/y4mbsquo> (last accessed: 27/04/2019).

ECJ Cases²⁴

Case 26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*, EU:C:1963:1.

Case 6/64 *Flaminio Costa v E.N.E.L.*, EU:C:1964:66.

Case 9/74 *Donato Casagrande v Landeshauptstadt München*, EU:C:1974:74.

Case 152/82 *Sandro Forcheri and his wife Marisa Forcheri, née Marino, v Belgian State and asbl Institut Supérieur de Sciences Humaines Appliquées - Ecole Ouvrière Supérieure*, EU:C:1983:205.

Case 293/83 *Françoise Gravier v City of Liège*, EU:C:1985:69.

Case 139/85 *R. H. Kempf v Staatssecretaris van Justitie*, EU:C:1986:223.

Case 24/86 *Vincent Blaizot v University of Liège and others*, EU:C:1988:43.

Case 39/86 *Sylvie Lair v Universität Hannover*, EU:C:1988:322.

Case 197/86 *Steven Malcolm Brown v The Secretary of State for Scotland*, EU:C:1988:323.

Case 42/87 *Commission of the European Communities v Kingdom of Belgium*, EU:C:1988:454.

Case 242/87 *Commission of the European Communities v Council of the European Communities*, EU:C:1989:217.

Case 308/89 *Carmina di Leo v Land Berlin*, EU:C:1990:400.

Joined cases 389/87 and 390/87 *G. B. C. Echternach and A. Moritz v Minister van Onderwijs en Wetenschappen*, EU:C:1989:130.

Case C-357/89 *V. J. M. Raulin v Minister van Onderwijs en Wetenschappen*, EU:C:1992:87.

Case C-3/90 *M. J. E. Bernini v Minister van Onderwijs en Wetenschappen*, EU:C:1992:89.

Case C-295/90 *European Parliament v Council of the European Communities*, EU:C:1992:294.

²⁴ In order of date of publication.

Case C-7/94 *Landesamt für Ausbildungsförderung Nordrhein-Westfalen v Lubor Gaal, with the Oberbundesanwalt beim Bundesverwaltungsgericht*, EU:C:1995:118.

Case C-337/97 *C.P.M. Meeusen v Hoofddirectie van de Informatie Beheer Groep*, EU:C:1999:284.

Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, EU:C:2001:458.

Case C-224/98 *Marie-Nathalie D'Hoop v Office national de l'emploi*, EU:C:2002:432.

Case C-413/01 *Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst*, EU:C:2003:600.

Case C-138/02 *Brian Francis Collins v Secretary of State for Work and Pensions*, EU:C:2004:172.

Case C-65/03 *Commission of the European Communities v Kingdom of Belgium*, EU:C:2004:402.

Case C-147/03 *Commission of the European Communities v Republic of Austria*, EU:C:2005:427.

Case C-209/03 *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills*, EU:C:2005:169.

Case C-258/04 *Office national de l'emploi v Ioannis Ioannidis*, EU:C:2005:559.

Case C-213/05 *Wendy Geven v Land Nordrhein-Westfalen*, EU:C:2007:438.

Joined cases C-11/06 and C-12/06 *Rhiannon Morgan v Bezirksregierung Köln and Iris Bucher v Landrat des Kreises Düren*, EU:C:2007:626.

Case C-158/07 *Förster v Hoofddirectie van de Informatie Beheer Groep*, EU:C:2008:630.

Case C-73/08 *Nicolas Bressol and Others and Céline Chaverot and Others v Gouvernement de la Communauté française*, EU:C:2010:181.

Case C-578/08 *Rhimou Chakroun v Minister van Buitenlandse Zaken*, EU:C:2010:117.

Case C-14/09 *Hava Genc v Land Berlin*, EU:C:2010:57.

Case C-542/09 *European Commission v Kingdom of the Netherlands*, EU:C:2012:346.

Case C-75/11 *European Commission v Republic of Austria*, EU:C:2012:605.

Joined cases C-523/11 and C-585/11 *Laurence Prinz v Region Hannover and Philipp Seeberger v Studentenwerk Heidelberg*, EU:C:2013:524.

Case C-20/12 *Elodie Giersch and Others v État du Grand-Duché de Luxembourg*, EU:C:2013:411.

Case C-46/12 *L.N. v Styrelsen for Videregående Uddannelser og Uddannelsesstøtte*, EU:C:2013:97.

Case C-140/12 *Pensionsversicherungsanstalt v Peter Brey*, EU:C:2013:565.

Case C-220/12 *Andreas Ingemar Thiele Meneses v Region Hannover*, EU:C:2013:683.
Case C-275/12 *Samantha Elrick v Bezirksregierung Köln*, EU:C:2013:684.
Case C-333/13 *Elisabeta Dano, Florin Dano v Jobcenter Leipzig*, EU:C:2014:2358.
Case C-359/13 *B. Martens v Minister van Onderwijs, Cultuur en Wetenschap*, EU:C:2015:118.
Case C-67/14 *Jobcenter Berlin Neukölln v Nazifa Alimanovic, Sonita Alimanovic, Valentina Alimanovic, Valentino Alimanovic*, EU:C:2015:597.
Case C-299/14 *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto, Joel Peña Cuevas, Jovanlis Peña García, Joel Luis Peña Cruz*, EU:C:2016:114.
C-308/14 *European Commission v United Kingdom of Great Britain and Northern Ireland*, EU:C:2016:436.

Member-state Legislation and Documents

BIS/Department for Business, Innovation and Skills (2010a) *Statutory Instruments 2010 No. 3020, The Higher Education (Higher Amount) (England) Regulations 2010*. London: The Stationary Office.

BIS/Department for Business, Innovation and Skills (2010b) *Statutory Instruments 2010 No. 3021, The Higher Education (Basic Amount) (England) Regulations 2010*. London: The Stationary Office.

BIS/Department for Business, Innovation and Skills (2014) *Consultation on Extending the Eligibility Criteria for Access to Higher Education Student Living Cost Support for EU Nationals*. Sheffield: BIS.

BIS/Department for Business, Innovation and Skills (2016) *Government Response to the Consultation on Extending the Eligibility Criteria for Access to Higher Education Student Living Cost Support for EU Nationals*. London: BIS.

BMBWF/Bundesministerium für Wissenschaft, Forschung und Wirtschaft (2014) *Beantwortung der schriftlichen parlamentarischen Anfrage Nr. 2721/J betreffend 'der Zugangsregelungen an Österreichischen Universitäten' (2721/J 09.10.2014) des Abgeordneten Dr. Nikolaus Scherak vom 5. Dezember 2015 (2572/AB 05.12.2014)*, Wien: Österreichisches Parlament.

Bolton, P. (2018) *Student Loan Statistics*. Briefing Paper No. 1079. London: House of Commons Library.

Bundesrat (2007) *Entwurf eines Zweiundzwanzigsten Gesetzes zur Änderung des Bundesausbildungsförderungsgesetzes. Gesetzesentwurf der Bundesregierung*. Drucksache 120/07. Köln: Bundesanzeiger Verlagsgesellschaft mbH.

- Bundestag (2010) *Achtzehnter Bericht nach § 35 des Bundesausbildungsförderungsgesetzes*. Drucksache 17/485. Köln: Bundesanzeiger Verlagsgesellschaft mbH.
- Bundestag/Bundesrat (1971) *Bundesausbildungsförderungsgesetz (BaföG)*. Bundesgesetzblatt Jahrgang 1971 Teil I S. 1409. Köln: Bundesanzeiger Verlagsgesellschaft mbH.
- Bundestag/Bundesrat (2007) *Zweiundzwanzigstes Gesetz zur Änderung des Bundesausbildungsförderungsgesetzes (22. BaföGÄndG)*. Bundesgesetzblatt Jahrgang 2007 Teil I Nr. 70. Köln: Bundesanzeiger Verlagsgesellschaft mbH.
- Bundesverwaltungsgericht Österreich (2014) Beschluss W128 2009681-1/2E, 01/12/2014.
- Bundesverwaltungsgericht Österreich (2015) Entscheidung BVwG W129 2008055-2, 26/11/2015.
- DfES/Department for Education and Skills (2005a) *Statutory Instruments 2005 No. 1341, Amendment to the Education (Student Support) Regulations 2005*. London: The Stationary Office.
- DfES/Department for Education and Skills (2005b) *Statutory Instruments 2005 No. 2084, Amendment (No. 2) to the Education (Student Support) Regulations 2005*. London: The Stationary Office.
- Hubble, S. and P. Bolton (2019) *International and EU students in higher education in the UK FAQs*, Briefing Paper No. CBP 7976. London: House of Commons Library.
- Ministeriet for Forskning, Innovation og Videregående Uddannelser (1970) *Statens Uddannelsesstøtte*. København: UFM.
- NAO/National Audit Office (2013) *Student loan repayments*. London: The Stationery Office.
- NAO/National Audit Office (2014) *Investigation into financial support for students at alternative higher education providers*. London: The Stationery Office.
- Österreichische Studienbeihilfenbehörde (2015) *Studienbeihilfe: Wer hat Anspruch?*, available at: <https://tinyurl.com/y93543lk> (last accessed: 25/01/2019).
- Parliament of the United Kingdom (1998) *Teaching and Higher Education Act 1998*. London: The Stationary Office.
- Parliament of the United Kingdom (1962) *Higher Education Act 1962*. London: The Stationary Office.
- Parliament of the United Kingdom (2004) *Higher Education Act 2004*. London: The Stationary Office.
- SLC/Student Loans Company (2018) *Student Loan Repayment, Plan 1 – Overseas Thresholds*, available at: <https://tinyurl.com/6vu6us3> (last accessed: 10/12/2018).
- UK Government (2019) *Identity Cards*, available at: <https://tinyurl.com/yxmqdyqp> (last accessed: 28/04/2019).
- Verwaltungsgerichtshof Österreich (2016) Ro 2015/10/0012, 21/12/2016.

Visa Central (2019) Passport FAQs, available at: <https://tinyurl.com/y22opkgo> (last accessed: 28/04/2019).

Newspaper Articles

Burn-Murdoch, J. (2016) 'Opinion Article,' *Financial Times*, 27 June.

Cameron, D. (2014) 'We're building an immigration system that puts Britain first,' *The Telegraph*, 28 July.

Der Standard (2006) 'Plus 111 Deutsche Studenten,' *Der Standard*, 11 February.

Die Presse (2011) 'Offener Uni-Zugang wackelt,' *Die Presse*, 9 July.

The Telegraph (2004) 'Students face EU fight for places,' *The Daily Telegraph*, 4 March.

The Telegraph (2005) 'European student had right to UK loan,' *The Daily Telegraph*, 16 March.

The Telegraph (2005) 'Foreign students 'will evade millions in university fees',' *The Daily Telegraph*, 11 June.

The Telegraph (2005) 'Taxpayers' pounds 50m bill for EU students,' *The Daily Telegraph*, 10 August.

The Telegraph (2006) 'Agents will chase student fees,' *The Daily Telegraph*, 24 May.

The Telegraph (2010) 'Why should we pay to educate French and Latvian students?' *The Daily Telegraph*, 22 March.

The Telegraph (2012) 'Thousands of EU students fail to repay loans,' *Telegraph.co.uk*, 21 January.

The Telegraph (2012) 'Foreign students owe millions to Britain,' *The Sunday Telegraph*, 3 June.

The Telegraph (2012) 'Student loans: Nearly half EU students 'fail to repay loans',' *The Telegraph Online*, 10 August.

The Telegraph (2012) 'Funding for EU students soars by £50m in two years,' *The Telegraph Online*, 5 October.

The Telegraph (2013) 'Britain hands over £100m to Polish students,' *The Telegraph Online*, 1 February.

The Telegraph (2013) 'Student loans bill for EU undergraduates tops £100m,' *The Telegraph Online*, 8 March.

The Telegraph (2013) 'Foreign student loans, Letters to the Editor,' *The Daily Telegraph*, 25 March.

The Telegraph (2013) 'Student loans to Bulgarians and Romanians frozen,' *The Telegraph Online*, 19 November.

The Telegraph (2013) 'Freeze on loans to students from Bulgaria and Romania,' *The Daily Telegraph*, 20 November.

The Telegraph (2013) 'Student loans: thousands of Europeans 'failing to repay debts',' *The Telegraph Online*, 28 November.

The Telegraph (2014) 'Probe launched into waste of money at 'cashpoint college',' *The Telegraph Online*, 22 May.

The Telegraph (2014) 'Student loans to be investigated,' *The Daily Telegraph*, 23 May.

The Telegraph (2014) 'Loans to foreign students blocked,' *The Telegraph Online*, 14 June.

The Telegraph (2014) 'EU students 'fail to repay record £40m in university loans',' *The Telegraph Online*, 23 June.

The Telegraph (2014) 'Ministers to crackdown on escalating EU student loans bill,' *The Telegraph Online*, 1 September.

The Telegraph (2014) 'University reforms 'will lead to surge in students from EU',' *The Telegraph Online*, 18 September.

The Telegraph (2014) 'EU students wrongly claimed £5.4m to study in the UK,' *The Telegraph Online*, 2 December.

The Telegraph (2014) 'Illiterate builder in £400,000 fake student loan trafficking scam, court hears,' *The Telegraph Online*, 2 December.

The Telegraph (2014) 'Private colleges risk 'tarnishing the reputation' of UK higher education system,' *The Telegraph Online*, 14 December.

Statistics

Destatis (2003) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2002*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.

Destatis (2004) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2003*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.

Destatis (2005) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2004*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.

Destatis (2006) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2005*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.

Destatis (2007) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2006*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.

- Destatis (2008) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2007*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2009) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2008*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2010) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2009*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2011) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2010*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2012) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2011*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2013) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2012*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2014) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2013*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2015) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2014*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2016) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2015*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2017) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2016*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2018) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2017*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Eurostat (2018a) *Students*, Code: tps00062, available at: <https://tinyurl.com/yckjczfr> (last accessed: 10/12/2018).
- Eurostat (2018b) *Mobility of Students*, Code: tps00064, available at: <https://tinyurl.com/ydf9oefy> (last accessed: 10/12/2018).
- Eurostat (2018c) *EU Citizens Living in another Member State*, available at: <https://tinyurl.com/y78oq2ae> (last accessed: 10/12/2018).
- Eurostat (2018d) *4% of EU citizens of working age live in another EU Member State*, available at: <http://tinyurl.com/y3y76obt> (last accessed: 14/04/2019).
- HESA/Higher Education Statistics Agency (2005). *Publications – Students in Higher Education, Table 6a: Non-UK domiciled students by domicile, location of institution and qualification aim, 2003-04*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2006). *Publications – Students in Higher Education, Table 6a: Non-UK domiciled students by domicile, location of institution and qualification aim, 2004-05*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).

- HESA/Higher Education Statistics Agency (2007). *Publications – Students in Higher Education, Table 6a: Non-UK domiciled HE students by domicile, location of institution and qualification aim, 2005-06*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2008). *Publications – Students in Higher Education, Table 6a: Non-UK domiciled HE students by domicile, location of institution and qualification aim, 2006-07*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2009). *Publications – Students in Higher Education, Table 6a: Non-UK domiciled HE students by domicile, location of institution and qualification aim, 2007-08*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2010). *Publications – Students in Higher Education, Table 6a: Non-UK domiciled HE students by domicile, location of institution and qualification aim, 2008-09*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2011). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2009-10*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2012). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2010-11*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2013). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2011-12*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2014). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2012-13*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2015). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2013-14*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2016). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2014-15*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).

- HESA/Higher Education Statistics Agency (2017). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2015-16*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- HESA/Higher Education Statistics Agency (2018). *Publications – Students in Higher Education, Table 8: Non-UK domiciled HE students by country of domicile, location of HE provider and level of study, 2016-17*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 25/01/2019).
- SLC/Student Loans Company (2008) *Student Loans for Higher Education in England, Financial Year 2007-08*. Glasgow: SLC.
- SLC/Student Loans Company (2011) *Student Loans for Higher Education in England, Financial Year 2010-11*. Glasgow: SLC.
- SLC/Student Loans Company (2013) *Student Loans for Higher Education in England, Financial Year 2012-13*. Glasgow: SLC.
- SLC/Student Loans Company (2014) *Student Loans for Higher Education in England, Financial Year 2013-14*. Glasgow: SLC.
- SLC/Student Loans Company (2017) *Student Loans for Higher Education in England, Financial Year 2016-17*. Glasgow: SLC.
- SLC/Student Loans Company (2018) *Student Loans for Higher Education in England, Financial Year 2017-18*. Glasgow: SLC.

Miscellaneous

- Bilderbuch (2019) *Bilderbuch EUROPA 22*, available at: <https://bilderbucheuropa.love> (last accessed: 28/04/2019).
- BR/Bayrischer Rundfunk (2019) Europa-Pässe: Promo-Aktion von "Bilderbuch" mit Botschaft, 19/02/2019, available at: <https://tinyurl.com/y5b6jn6b> (last accessed: 28/04/2019).
- Churchill, W. (2019 [1946]) *Speech Delivered at the University of Zurich*. Published by the Council of Europe, Strasbourg, available at: <https://tinyurl.com/y3y355zu> (last accessed: 28/04/2019).
- Churchill, W. (2012 [1948]) *The Good European*. Published by the University of Luxembourg/CVCE, Luxembourg, available at: <https://tinyurl.com/y3nxdu5n> (last accessed: 28/04/2019).
- Deutschlandfunk (2019) *EU-Pass von Bilderbuch. Europa-Bekanntnis und Promo-Aktion in einem*, 19/02/2019, available at: <https://tinyurl.com/y3apw49u> (last accessed: 28/04/2019).

- Herzog, R. and Gerken, L. (2008) *Stop the European Court of Justice*, EUobserver Opinion, available at: <https://tinyurl.com/y4lzjfpb> (last accessed: 28/04/2019).
- ICF GHK, Milieu Ltd (2013) A Fact Finding Analysis on the Impact on the Member States' Social Security Systems of the Entitlements of Non-active Intra-EU Migrants to Special Non-contributory Cash Benefits and Healthcare Granted on the Basis of Residence. Final Report prepared for the European Commission.
- Leidenmühler, F. (2016) *Quotenregelung für Studierende der Human- und Zahnmedizin auf dem europäischen Prüfstand*. ÖGfE Policy Brief, 31, Wien.
- Levi Sandri, L. (1961). 'The Free Movement of Workers in the Countries of the European Economic Community', in: *Bulletin of the European Economic Community* 6-1961, pp. 5-10. Luxembourg: Publication Office of the European Economic Communities.
- NESSIE/Network of Experts on Student Support in Europe (2012) *Report of the Network of Experts on Student Support in Europe (Nessie), 2009-2011*. Bucharest: EHEA.
- OECD (2013) 'The Fiscal Impact of Immigration in OECD Countries', in: OECD (ed) *International Migration Outlook*, pp. 125–89. Paris: OECD.
- ShanghaiRanking (2019) *Academic Ranking of World Universities 2018*, available at: <https://tinyurl.com/ybboqgct> (last accessed: 16/01/2019).
- Strumia, F. and Brown, C. (2015) 'The Asymmetry in the Right to Free Movement of European Union Citizens: the Case of Students', *EU Law Analysis Blog*, available at: <https://tinyurl.com/yajehhmu> (last accessed: 25/01/2019).
- The Observatory on Borderless Higher Education (2010) *Mutatis Mutandis? The Court of Justice of the European Union Rules that Member States May be Allowed to Impose Non-resident Student Quotas*, available at: <https://tinyurl.com/y8tvr48m> (last accessed: 25/01/2019).
- Tindemans, L. (1976). *European Union*. Report, Supplement 1/76, 29 December 1975. Brussels: Commission of the European Communities.

Annex II – List of Consulted Experts / Interviews

	Date	Position	Institution	Length	Interview type	Recording/transcript/notes
1	November 2013	Policy advisor	European Commission, DG Employment, Social Affairs & Inclusion, Brussels, Belgium	35 mins	Personal interview	Notes (not recorded)
2		Professor	University of Antwerp, Belgium	20 mins	Expert talk	Recorded/transcribed
3		Academic assistant	University of Louvain-la-Neuve, Belgium	10 mins	Expert talk	Recorded/transcribed
4		Policy advisor	Ministère de l'Enseignement Supérieur et de la Recherche, Luxembourg	10 mins	Expert talk	Recorded/transcribed
5		Advocate General	European Court of Justice, Luxembourg	15 mins	Expert talk	Recorded/transcribed
6		Legal expert	Direction Générale de l'Enseignement non obligatoire et de la Recherche scientifique, La Fédération Wallonie-Bruxelles, Belgium	5 mins	Expert talk	Recorded/transcribed
7		Lawyer	Law Firm, Liège, Belgium	5 mins	Expert talk	Recorded/transcribed
8		Legal expert	European Commission, Legal Service, Brussels, Belgium	5 mins	Expert talk	Recorded/transcribed
9		President emeritus	Cour constitutionnelle, Brussels, Belgium	20 mins	Expert talk	Recorded/transcribed
10	September 2014	Professor	London School of Economics and Political	20 mins	Personal interview	Notes (not recorded)

			Science, United Kingdom			
11		Member of Parliament	Labour Party, Parliament of the United Kingdom, London, United Kingdom	30 mins	Personal interview	Notes (not recorded)
12		Member of Parliament	Labour Party, Parliament of the United Kingdom, London, United Kingdom	35 mins	Personal interview	Notes (not recorded)
13		Member of Parliament	Christian Social Union (CSU), Bundestag, Berlin, Germany	40 mins	Personal interview (together with #14 and #15)	Recorded/transcribed
14		Member of Parliament	Christian Democratic Union (CDU), Bundestag, Berlin, Germany	40 mins	Personal interview (together with #13 and #15)	Recorded/transcribed
15		Assistant to Member of Parliament (#14)	Bundestag, Berlin, Germany	40 mins	Personal interview (together with #13 and #14)	Recorded/transcribed
16	January 2015	Lawyer/ Legal representative at the ECJ	Law firm, Karlsruhe, Germany	50 mins	Phone interview	Recorded/transcribed
17	February 2015	Policy advisor	Federal Ministry of Education and Research, Berlin, Germany	60 mins	Personal interview (together with #18 and #19)	Recorded/transcribed
18		Policy advisor	Federal Ministry of Education and Research, Berlin, Germany	60 mins	Personal interview (together	Recorded/transcribed

					with #17 and #19)	
19		Policy advisor	Federal Ministry of Education and Research, Berlin, Germany	60 mins	Personal interview (together with #17 and #18)	Recorded/transcribed
20		Policy advisor	Federal Ministry of the Interior, Berlin, Germany	30 mins	Personal interview	Notes (not recorded)
21		Policy advisor	Federal Ministry of Education and Research, Berlin, Germany	15 mins	Phone interview	Recorded/transcribed
22	March 2015	Social worker	University of Oldenburg, Student Services, Germany	60 mins	Personal interview	Notes (not recorded)
23		Case manager	Central Administration Munich, Germany	40 mins	Phone interview	Recorded/transcribed
24		Legal expert/ Agent of the German Government at the ECJ	Federal Ministry for Economic Affairs, Berlin, Germany	140 mins	Personal interview	Notes (not recorded)
25		Case manager	Region of Hannover, Central Administration, Germany	120 mins	Personal interview (together with #26 and #27)	Notes (not recorded)
26		Case manager	Region of Hannover, Central Administration, Germany	120 mins	Personal interview (together with #25 and #27)	Notes (not recorded)
27		Case manager	Region of Hannover, Central Administration, Germany	120 mins	Personal interview (together	Notes (not recorded)

					with #25 and #26)	
28		Case manager	BAföG Amt Karlsruhe, Germany	40 mins	Phone interview	Recorded/transcribed
29		Case manager	BAföG Amt Bremen, Germany	20 mins	Personal interview	Notes (not recorded)
30		President	Student interest group 1, Bremen, Germany	60 mins	Personal interview	Notes (not recorded)
31	April 2015	President	Student interest group 2, Bremen, Germany	70 mins	Personal interview	Notes (not recorded)
32		Social worker	University of Bremen, Student Services, Germany	20 mins	Personal interview (together with #33)	Notes (not recorded)
33		Social worker	University of Bremen, Student Services, Germany	20 mins	Personal interview (together with #32)	Notes (not recorded)
34	May 2015	Professor/former Belgian Minister of Social Affairs	University of Amsterdam, Netherlands	70 mins	Personal interview	Notes (not recorded)
35		Policy advisor	Department for Business, Innovation & Skills, London, United Kingdom	30 mins	Personal interview	Notes (not recorded)
36		Policy advisor	Universities UK (advocacy group), London, United Kingdom	60 mins	Personal interview	Notes (not recorded)
37		Case manager	Central Administration of Cologne, Germany	120 mins	Personal interview (together with #38)	Notes (not recorded)

38		Case manager	Central Administration of Cologne, Germany	120 mins	Personal interview (together with #37)	Notes (not recorded)
39		Policy advisor	Flemish Ministry of Education and Training, Brussels, Belgium	50 mins	Personal interview	Notes (not recorded)
40		Legal expert	European Commission, Legal Service, Brussels, Belgium	60 mins	Personal interview	Notes (not recorded)
41	August 2015	Legal expert/ Agent of the Belgian Government at the ECJ	Ministry for Foreign Affairs, Brussels, Belgium	80 mins	Personal interview	Notes (not recorded)
42		Legal expert	European Commission, Legal Service, Brussels, Belgium	50 mins	Personal interview	Notes (not recorded)
43		Case manager	Department for Study Grants, Flemish Agency for Higher Education, Adult Education, and Qualifications, Brussels, Belgium	85 mins	Personal interview (together with #44)	Notes (not recorded)
44		Case manager	Department for Study Grants, Flemish Agency for Higher Education, Adult Education, and Qualifications, Brussels, Belgium	85 mins	Personal interview (together with #43)	Notes (not recorded)
45		Policy advisor	Administration for International Relations of Ghent University, Belgium	70 mins	Personal interview (together with #46)	Notes (not recorded)
46		Policy advisor	Administration for International Relations	70 mins	Personal interview	Notes (not recorded)

			of Ghent University, Belgium		(together with #45)	
47		Policy advisor	European Commission, DG Justice, Union Citizenship and Free Movement Unit, Brussels, Belgium	45 mins	Personal interview (together with #48)	Notes (not recorded)
48		Policy advisor	European Commission, DG Justice, Union Citizenship and Free Movement Unit, Brussels, Belgium	45 mins	Personal interview (together with #47)	Notes (not recorded)
49	September 2015	Policy advisor	Académie de Recherche et d'Enseignement Supérieur, Brussels, Belgium	50 mins	Phone interview	Recorded/ transcribed
50	December 2016	Policy advisor	Federal Ministry of Education and Research, Berlin, Germany	35 mins	Personal interview (together with #51)	Notes (not recorded)
51	December 2016	Policy advisor	Federal Ministry of Education and Research, Berlin, Germany	35 mins	Personal interview (together with #50)	Notes (not recorded)

Exact interview dates are omitted to ensure interviewees' full anonymity.

Additional Interviews²⁵

Federal aid for students ('Studienbeihilfebehörde'), Vienna, Austria, 08/03/2016.

Federal Ministry of Education, Science and Research, Vienna, Austria, 08/03/2016.

²⁵ These interviews for an Austria case study had been conducted by NORFACE TransJudFare project partners at University of Salzburg. With their consent, the first article published within the framework of this cumulative PhD dissertation (Schenk and Schmidt, 2018) has drawn further empirical insights from these interviews.

Annex III – Recorded and Transcribed Interviews

Please refer to data files containing transcribed interviews and interview notes under the following link: <http://tinyurl.com/interviews-schenk>

Annex IV – Declaration

I hereby declare that this PhD dissertation is my own work and effort without recourse to any unauthorised aids. I have only used such sources and aids as are included in the references and appendix. I have cited by appropriate reference all the works either quoted or used as the basis for ideas.

Hamburg, 7. Mai 2019

Angelika Wiebke Schenk

Individual Journal Articles of this PhD Dissertation

1. Schenk, A. and Schmidt, S.K. (2018) 'Failing on the Social Dimension: Judicial Law-making and Student Mobility in the EU,' *Journal of European Public Policy* 25(10): 1522–40.
2. Schenk, A. (2019) 'The Role of Politicisation in the Implementation of EU Free Movement and Cross-border Welfare Rights,' *European Politics and Society*. Epub ahead of print 15 November 2019. DOI: 10.1080/23745118.2019.1693858.
3. Schenk, A. (2019) 'Free Movement and EU Citizens' Social Rights: Explaining Transposition Leeway on the Ground.' Published in this dissertation; see subsequent section in here.

Free Movement and EU Citizens' Welfare Rights: Implementing Students' Cross-border Benefit Access on the Ground

Abstract: This article analyses member states' reactions to adjustment pressure on their originally closed welfare systems in a European Union with open borders by taking the example of mobile university students' cross-border rights to access study grants and loans. In recent years, EU rules on non-discrimination and EU citizenship, particularly including case law by the European Court of Justice, have broadly enhanced EU citizens' free movement and welfare rights. A large volume of research has analysed legislative transposition of such EU rules with more recent findings focussing on administrative application on the ground, which this analysis adds further insights to. The analysis follows an institutional account, which has conventionally considered liberal welfare systems, i.e. with low degrees of universal, tax-based funding, to be least prone to larger than necessary adjustments. It covers two case studies of mobile students' rights in Germany and the UK. The findings show, first, that such problem pressure also extends to liberal welfare policies. Second, this research finds effective administrative organisation to be a crucial mediating factor that cushions broader than necessary adjustments on the domestic level and allows member states to contain compliance.

Keywords: EU citizenship, European Court of Justice, EU student mobility, free movement, member state administrations, migration, welfare states

1. Introduction

The EU as we know it today has developed widely from the founding fathers' ideal: 'removing obstacles to the free movement of persons' is now reflected in both EU citizens' free movement and far-reaching social rights, which stands in stark contradiction to the traditionally closed welfare systems in nation states. Such EU-wide rights existing today include cross-border access to social benefits also for non-economically active citizens such as health care, job seekers' allowance, or study benefits. The latter group, university students, have seen both a particular enhancement in their EU-level rights, and massive growth in mobile student numbers in recent years. Under current EU rules, particularly broadened through a vast array of judgments by the European Court of Justice (ECJ) on EU citizenship and non-discrimination, students cannot only freely access universities across the Union but are, under certain conditions, also eligible to study grants and loans that support their studies abroad. The number of mobile students has increased by more than 80 % just between 2002 and 2012, reaching 715.000 mobile students across the EU (Eurostat, 2018b).

Addressing this altered situation within member states has shown that 'there are indeed obstacles to portability of grants and loans and differences between the various student financial support systems' as a group of high-level representatives from EU states has warned (NESSIE, 2012: 3). This clearly portrays member states' difficulty in opening up their originally closed welfare systems, which had for long developed independent of each other. Thus, it foreshadows the challenges that member states face in applying such EU rules in their administrative processes.

While Europeanisation research on domestic effects of EU free movement rules had for long focused on the transposition stage of implementation, more recent research has turned its attention to specific effects during the application process within domestic administrations (e.g. Bruzelius, 2018; Heindlmaier and Blauburger, 2017; Martinsen and Vollaard, 2014; Schmidt et al., 2018), also including the topic of mobile EU students' free movement rights more specifically (Schenk and Schmidt, 2018). This paper asks for the factors explaining domestic reactions to the adjustment pressure put on member-state welfare systems due to EU free movement rules by taking the example of mobile students' access to study benefits. In particular, this research will enhance our understanding of existing Europeanisation research by complementing it with insights into concrete effects on the application level. Therefore, this paper follows an institutional account by analysing how this adjustment

pressure plays out differently in varying welfare state types and simultaneously asks which role domestic administrations play as mediating factors.

This analysis compares Germany and the UK as case studies. These two countries are exemplary for the adjustment pressure stemming from EU legal provisions on student mobility: In both member states, large numbers of students have increasingly taken the opportunity to access cross-border welfare benefits from their home (Germany) and host state (UK), respectively. At the same time, these two cases represent varying degrees of reciprocity with regard to study benefits in higher education: The German system reflects a large share of public funding with half of the benefit made up by a public grant and the other half consisting of a government-backed loan, whereas the British system is a purely loan-based one, with only a minor degree of public funds involved to secure the loan, thus having the closest link between contributions and benefits.

The analysis is based, first, on semi-structured interviews with a total of 38 experts conducted between 2013 and 2016 in various locations in Germany and the UK as well as in Brussels. Experts came from member-state administrations, including both ministries (9) and implementing agencies (11), national parliaments (4), advocacy groups (3), a domestic law firm (1), the European Commission (6), the ECJ (1), and academia (3). Second, domestic policy documents such as national/state legislation, implementing provisions, written observations and oral submissions presented before the ECJ, as well as domestic statistics, authorities' websites, and newspaper articles have been analysed to triangulate results from the interviews.

The article proceeds in three steps. The next section will present the scholarly debate on the varying adjustment pressure of EU integration on domestic welfare states and derive the analytical model for the argument of this paper. The following part will address EU legal foundations on mobile students' welfare rights. The main section will then analyse legislative and particularly administrative reactions to mobile students' cross-border access to study grants and loans, followed by the concluding chapter.

2. The varying adjustment pressure of EU integration on domestic welfare states

Since the advancement of modern statehood, welfare states have been central to providing for equal opportunities and an approximation of living standards to their citizens. This requires both pooling risks and organising reciprocity and redistribution through linking social rights to certain duties within a spatially defined society (cf. Marshall, 2009 [1950]: 149–50). So, traditionally, long-term residence and national citizenship have been the principal preconditions to gain access to social rights. Within lies the reasoning of citizens' 'willingness ... to share with 'others' within the same political community' (De Witte, 2012: 697) as a crucial prerequisite for redistributive justice.

Such 'closure' of the welfare state (Ferrera, 2016: 793) worked considerably well within the architecture of the six founding members as community rules matched their insurance-based welfare logic. Also, European integration of social policy at the time was confined to the portability of cross-border workers' social security benefits codified in today's regulations 492/2011 and 883/2004 – a cost that would be borne by beneficiaries themselves via prior contribution into the tax system. Enlargement bringing new types of welfare states into the community, such as the British liberal system, soon shook up this homogeneity. This triggered an increased 'opening' of welfare systems (cf. Scharpf, 2010: 215, 238).

This development was further amplified by the completion of the Single Market and the introduction of EU citizenship within the framework of the 1992 Maastricht Treaty. Combined with an integrationist push by the Court of Justice, European citizens' free movement rights have since been largely extended, now also including vast social policy rights for non-economically active mobile EU citizens such as university students. This 'motor of integration' accelerated the broadening of the *acquis* substantially beyond the extent that could have been established solely on the basis of political negotiation (Scharpf, 2010: 228).

Member states, on their side, are required to strike a delicate balance between 'closure' and 'opening' in order to organise for cross-border reciprocity, between safeguarding their welfare systems and complying with EU rules.¹ So far, researchers have come to varying conclusions of this development. While early research had focused almost exclusively on a legal evaluation of EU free movement law *per se*, later studies have explored the array of

¹ See Keohane (1986) for an early-on conceptualisation of reciprocity in a multilateral context.

options member states can potentially select when implementing EU law. Recent research has begun to analyse actual empirical effects on the domestic level, including not only legislative but also administrative reactions on the ground (for an overview cf. Martinsen and Vollaard, 2014).

On the one hand, several scholars have drawn a picture of an increasingly social Europe, which, nevertheless, leaves member-state welfare systems largely intact. So, this camp has underlined the Union's potential for adding a new social layer to member states' social policy fabric (cf. Leibfried and Pierson, 1995 for one of the first analyses). In their well-known – yet purely theoretical – study, Caporaso and Tarrow (2009: 595, 610–11) argue that the ECJ has embedded Europe into a social dimension by enhancing individual cross-border social rights. Others clearly see member states' leeway to shield their welfare systems from unwarranted 'opening' through mechanisms such as contained compliance and pre-emption (Conant, 2002: 32) or anticipation (Blauberger, 2014: 458) of domestic policy reform where adjustments larger than necessary are successfully avoided. Empirical studies on residence requirements (Bruzelius, 2018; Heindlmaier and Blauberger, 2017) have confirmed member-state practices that protect welfare systems from overly large cross-border access through complex mechanisms of actively containing compliance such as adapted registration processes. In addition, research has found a large overall positive net contribution by EU citizens, refuting the 'welfare tourism' hypothesis: Since most mobile EU citizens move to another member state to seek employment, they contribute perceptibly to the host state's economy both indirectly via consumption and directly via tax contribution (Dustmann and Frattini, 2014; ICF GHK, 2013; Martinsen and Pons Rotger, 2017; OECD, 2013).

On the other hand, a second group of scholars question the potential for a social Europe to come about and underline the risks member-state welfare systems face in the course of free movement. Through focussing on strengthened individual social rights in the Union, they argue, the Court's case law has come to the detriment of collective welfare provision (Höpner and Schäfer, 2012: 448). In particular, social rights and duties have been decoupled as a result of ECJ jurisprudence: While non-discrimination provisions and EU citizenship grant far-reaching cross-border social rights, redistribution cannot adequately be organised in a Union that lacks not only the necessary collective political identity but also a thick political system. Yet, the ECJ's interpretation of the Treaty starkly influences subsequent EU legislation, and as a result, legislative over-ride of this over-constitutionalised legal

framework is extremely unlikely (Schmidt, 2018: 47). Thus, several researchers contend that social justice has been fundamentally flawed in the Union (De Witte, 2012: 695–98; O’Brien, 2017: 11). On the domestic level, this ECJ induced ‘integration through law’ widely constrains member state regulatory autonomy (Scharpf, 2010: 224). Specifically, the adjustment pressure that member states face depends on their specific welfare state type (Ruhs and Palme, 2018: 1496; Scharpf, 2010: 238) and has been exacerbated by legal uncertainty of ECJ rulings (Blauberger and Schmidt, 2014: 2–3), increased politicisation of free movement and Euroscepticism (Geddes and Hadj-Abdou, 2016: 235), as well as enlargement, financial crises and, more recently, the influx of refugees into the EU (Ferrera, 2016: 804; Martinsen and Vollaard, 2014: 683–84).

This article follows such institutional account and tests whether differing welfare state types face varying degrees of adjustment pressure due to free movement and European citizenship rules in the EU. At the same time, this contribution analyses the inner workings of domestic administrations and their capacities to countervail such adjustment pressure.

So, first, by adapting the logic of reciprocity, the analysis will test whether welfare systems with social policies that closely match contributions and benefits will be less likely to confront major welfare state restructuring. This implies, by contrast, that countries where the lines between social rights and duties are blurred due to universal welfare provision funded out of general taxation will face larger problem pressure stemming from ECJ induced free movement rules (Ruhs and Palme, 2018: 1492; Scharpf, 2010: 238). Second, we will anticipate that this problem pressure will be mediated by administrations’ capabilities to successfully cope with their exposure to free movement, thus, containing compliance. Expected mechanisms include administrative efficiency (e.g., the pace of information dissemination) and administrative capacity (e.g. the number of staff per file), as well as knowledge accumulation and knowledge sharing.

3. EU students’ cross-border welfare rights

While EU workers’ free movement and cross-border welfare rights had already been established during the Union’s founding times and codified in today’s regulations 492/2011 and 883/2004, similar rights had been granted to non-economically active citizens only much later through the 1992 Maastricht Treaty establishing European citizenship. Since the seminal

2001 *Grzelczyk* (C-184/99) ECJ judgment, ‘Union citizenship is destined to be the fundamental status of nationals of the member states’, presetting a ‘certain degree of financial solidarity’ among member states. Paired with Treaty provisions on non-discrimination and EU citizenship as well as the Citizenship Directive (2004/38/EC), this judgment laid the important foundation for EU citizens today enjoying broad free movement and welfare rights. Specifically, this now also includes non-economically active citizens, i.e. those neither working nor paying taxes in the hosting state, such as university students. While we have covered students’ cross-border residence rights and their access to higher education across the EU elsewhere (Schenk and Schmidt, 2018), this section will show in how far students are entitled to welfare benefits designed to support their studies, either funded by the home (3.1) or host state (3.2).

3.1 Study benefits funded by the home state

Several higher education systems mainly in Western and Northern Europe, such as Germany, the Netherlands, and Finland² provide for their students to be awarded maintenance support when they decide to study abroad. In the EU, member states are free in their decision whether or not offer portable maintenance support to their students. However, if states allow for such exportability of maintenance benefits, they are required under Union law to grant this support in a non-discriminatory manner to all its citizens (*Morgan and Bucher*, C-11/06 and C-12/06).

Yet, the interpretation of such EU non-discrimination provisions, that is, setting the demarcation line of who is to be considered a rightful beneficiary, is little straightforward: In line with the already mentioned prerequisite to assess whether a student has a ‘sufficient degree of integration’ in the funding state, applicants are required to justify their ‘real link’ with the state. This link is tested on the basis of proportionality, so that it ‘must not be too exclusive in nature or unduly favour one element which is not necessarily representative of the real and effective degree of connection between the claimant and this Member State’ (*Prinz and Seeberger*, C-523/11 and C-585/11). The ECJ made clear that restrictions – additional to nationality – such as a certain period of previous studies or a continuation of studies abroad (*Morgan and Bucher*), prior residence or even permanent residence status in

² Full portability for maintenance support is also granted by Austria, Belgium (Flanders and Germanophone Community only), Cyprus, Denmark, France, Ireland, Luxembourg, Sweden, and the UK (Scotland only); European Commission, 2016: 32).

the home state (*Prinz and Seeberger*; *Thiele Meneses*, C-220/12; *Martens*, C-359/13), or a narrow specification or prescribed duration of studies pursued abroad (*Elrick*, C-275/12) were not compatible with legal provisions on EU citizenship and non-discrimination.

Clearly, other factors such as having been raised, educated and schooled in the relevant country (*Morgan and Bucher*) as well as ‘family, employment, language skills or the existence of other social and economic factors’ (*Prinz and Seeberger*; *Thiele Meneses*; *Martens*) need to be taken into account. Importantly, these factors are to be considered irrespective of the locus of current (permanent) residence (*Prinz and Seeberger*).

3.2 Study benefits funded by the host state

In the same vein as establishing portable study benefits, member states are free in their decision which support system they build for their students, while this must likewise be constructed in line with EU free movement rules. Principally, there are two main categories of study benefits: tuition fee and living cost support. First, since cross-border access to higher education must be regulated in a non-discriminatory manner, including a restriction on additional enrolment fees (*Gravier*, 293/83), any tuition fee support must also be granted to EU students. With the exception of Germany, the Nordics and Greece, all EU states levy tuition fees. Financial support consisting of either grants and/or loans is available throughout those latter countries. The UK is a unique case here since it not only levies by far the highest tuition fees per student as will be seen but is also the only member state with an exclusively loan-based system (European Commission, 2017: 13–15, 53).

Second, most EU states have established maintenance support systems covering living costs. The earliest introductions could be seen in the UK (*Education Act*, 1962), Denmark (*Statens Uddannelsesstøtte*, 1970) and Germany (*BAföG*, 1971). In general, member states can limit access to maintenance benefits to those students who can demonstrate a ‘real link’ with the society of the funding state. What has been quite clear legally since the 1980s, are eligibility rights of those attesting their link via worker status. Thus, students who are children of cross-border workers or who retain their worker status from previous or current employment can be entitled to maintenance support (*Lair*, 39/86; and *Brown*, 197/86). As regards non-economically active students, the entitlement question is more complex. They do not only need to demonstrate a ‘certain degree of integration into the [host] society’ (*Bidar*, C-

209/03), but are also required not to become an ‘unreasonable burden’ on the social assistance system of the host member state.

Earlier EU citizenship case law had still depicted an ‘apparently flexible’ interpretation of the notion of ‘unreasonable burden’ (*Bidar*, opinion AG) with more generous concessions to incoming students: A period of three-year fulltime studies paired with unforeseen, exceptional financial hardship (*Grzelczyk*) as well as a three-year residence period combined with the presence of close relatives and schooling in the host state (*Bidar*) could both suffice to maintenance support eligibility. Later legal reasoning of the ECJ set a clear entitlement threshold: a period of five years’ uninterrupted residence, that is, permanent residence status in the host state (*Förster*, C-158/07; mirroring the soon-after adopted *Citizenship Directive*). This aimed at increasing legal certainty and transparency and was considered to still remain within the legal limits of attaining the objective of a claimant’s sufficient degree of integration (*Förster*). And certainly, this residence prerequisite is logically in line with the *Citizenship Directive*’s requirements: During the first five years of residence as an EU citizen in another member state, one needs to demonstrate having sufficient resources to secure one’s own living expenses in the host member state – and this, in general, plausibly contradicts applying for maintenance benefits.

Taken together, both types of cross-border access to study benefits – from the home and host state – are a perfect example of the delicate balance between welfare system opening and closure that member states face: It would clearly be unreasonable to require member states to allow just any student to access student benefits. Conversely, EU free movement regulation requires member states to open up their study finance systems to a certain degree to facilitate student mobility. Thus, benefit entitlements are generally restricted to those students who have a meaningful connection to the funding state. Behind such ambivalences lies the idea that it is generally difficult to assess whether a student – who, different from other welfare recipients, in general only contributes significantly to the system *after* her studies – is likely to return contributions to the funding state via future employment, taxation, or consumption. The ways in which member states address this complexity in implementing respective EU law will be at the centre of the next section.

4. Member-state implementation

The following chapter will analyse domestic implementation of EU provisions on student mobility and respective welfare provisions by comparing two case studies: on the one hand, Germany, as a case for welfare benefits funded by the home state, simultaneously reflecting a large share of public funding, and on the other hand, the UK, as a case for funding through the hosting state in a mostly privately funded system.

4.1 Germany

Germany offers means-tested maintenance support, so-called *BAföG*, to its university students. Eligibility is tested on grounds of income, savings, housing and family situation as well as disability up to the age of 35. It is awarded as half a grant and half a loan without interest rate, and currently amounts to EUR 499 per month on average (mean value) but can range up to EUR 865. Further, there is a repayment cap settled at EUR 10,000 for the loan part (Destatis, 2018: 5–8, 11; European Commission, 2017: 30).

German students and EU nationals with permanent residence status in Germany who want to study in another member state can apply for *BAföG* funding, which also covers a lump-sum for travel costs and study fees to a maximum of EUR 4.600 (Bundestag, 2010: 24).³ As table 1 shows, numbers of recipients have risen drastically in 2008 and after, following legislative reform induced by ECJ ruling *Morgan and Bucher*, which required Germany to drop its legislation that made receiving *BAföG* abroad conditional upon prior one-year long studies in Germany. Spending on outgoing students has more than quadrupled in ten years, reaching its high at EUR 105 million in 2012 and representing 4 % of the overall *BAföG* budget today (Destatis, 2018). To compare: *BAföG* spending inside of Germany had not even doubled in the same time frame. Clearly, most of this growth is driven by students enrolled in the Netherlands, the UK – the two destination countries in *Morgan and Bucher* – and Austria.

³ Conversely, incoming who would want to access *BAföG* for their studies in Germany require a prior residence period of five years in Germany under EU legal provisions.

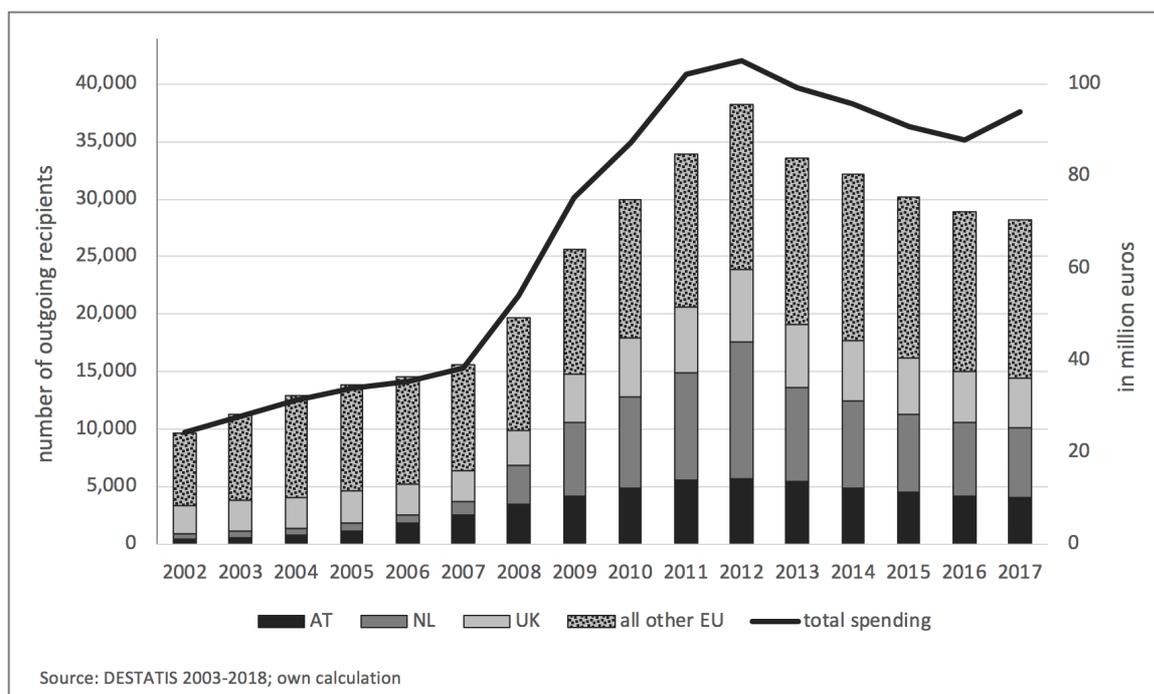


Table 1: Numbers (along country of destination) and spending on outgoing BAföG recipients

Most interview partners have voiced a strong general commitment to student mobility, including being in favour for rising cross-border student numbers and outgoing BAföG recipients: ‘International mobility is a reality for students today; so, study funding should no longer be a matter of the geographic location of an educational institution.’⁴ Nonetheless, the German government has been keen to limit broader than necessary effects of ECJ rulings – although with limited success. After *Morgan and Bucher*, rendering a prior studies requirement unlawful, the German government opted for a prior residence requirement of three years instead.⁵ The aim was to balance the amount of BAföG spending and recipients’ subsequent contribution to the German tax system after their studies, which was expected to be more likely for those having previously spent sufficient time in Germany. Otherwise, an overall strain of the BAföG system as a whole had been expected. Only five years later, this prior studies requirement was turned over by the ECJ’s *Prinz and Seeberger* and *Thiele Meneses* judgments. However, expectations of a severe burden on Germany’s study finance system following these 2012 ECJ rulings (as predicted in Germany’s written observations) can clearly be refuted as numbers above show. Certainly, overall diminishing numbers of

⁴ Entwurf eines Zweiundzwanzigsten Gesetzes zur Änderung des Bundesausbildungsförderungsgesetzes (22. BAföGÄndG), zu Nummer 13 a) (§ 17 Abs. 2 Nr. 1), p. 30; own translation.

⁵ 22. BAföGÄndG, §16(3) BAföG.

outgoing students (German nationals and EU citizens with permanent residence status in Germany) as well as stricter regulation in host states such as Austria and the Netherlands have also done their share.

As comes to implementation on the ground, interview partners have largely welcomed increased legal certainty by virtue of ECJ rulings. Though, two major challenges play a particular role in a country with an encompassing system of portable study benefits: case-by-case decisions in a Union with highly diverse education systems, and a potential duplication of funding. First, while experts describe *BAföG* application procedures as highly complex even in a purely domestic context, administrators face difficulties in their individual evaluation of a funding application even more so in a cross-border situation: Here, they are required to possess profound knowledge of both the applicants' personal circumstances and the hosting countries' higher education systems. This is partly solved by allocating certain *BAföG Ämter* (implementing agencies) to specific destination countries; e.g. the one in Munich is responsible for all outgoing *BAföG* applications with Austria as a destination. This facilitates knowledge accumulation but also leads to temporal over-burdening of certain *BAföG Ämter*, often solved through ramping up staff, as interview partners have highlighted.⁶ As a further solution, several *BAföG Ämter* report knowledge sharing among themselves and with the relevant *Länder* ministries – especially some of the larger *Länder* with a long history of cross-border mobility such as North Rhine-Westphalia or Baden-Württemberg apparently have much more sophisticated and well-targeted administrative systems at work than smaller ones without a border region.

Second, there is the, at least *de jure*, potential that students could, in certain cases, access study finance benefits from both the host and the home state. So, several administrators – from both sides of the border, i.e. both in Germany and in Austria – have highlighted the difficulty of avoiding such legally possible double funding.⁷ In their day-to-day work, their challenge is to overcome language and knowledge barriers in their funding decisions, which they often attempt to solve through bilateral contacts and knowledge networks (such as the so-called European level *NESSIE*, Network of Experts on Student Support in Europe). In that

⁶ Specifically, those *BAföG Ämter* bear a unproportionately high amount of work that process applications to Austria (Munich), the Netherlands (Cologne-Aachen) and the UK (Hannover), which are German students' most popular EU destination countries.

⁷ Administrators could not refer to any exact figures of such double-funding. The *de jure* possibility alone, however, has led to administrators being fairly sensitive towards this topic.

context, they have also reported that numerous EU states, which so far do not offer portable study benefits (among them almost all of the newest additions since the 2004 entry round), are rather reluctant to set up such systems since they fear an excessive financial burden on their budget due to EU non-discrimination rules.⁸

In sum, Germany has successfully contained compliance, yet on second glance: While on the legislative level, success was limited with legislation being corrected twice in a row by the ECJ, effective administrative organisation could cushion implementation pressure as shown in this section. Well-targeted dissemination of information, adequate staffing, and knowledge sharing both within Germany and with administrators from other member states all facilitated avoiding broader than necessary adjustments. In the end, representatives from the German government even conceded the size of the problem during the interviews: It has been found that the share of students returning back home to Germany and contributing to its tax system is to date more than large enough to keep its study finance system running.

4.2 UK

In the UK, students can generally apply for two types of non-means-tested loans as financial support: tuition fees loans and maintenance loans. First, students can cover the full amount of their tuition fees with a tuition fee loan, replacing the previous up-front payment system in England in 2006.⁹ Undergraduate fees are allowed to range up to GBP 9,250 (EUR 10,420) and are unregulated for postgraduate studies. The actual average fee (mean value) amounts to GBP 9,110 for undergraduates and to GBP 4,195 for postgraduates. Second, students can apply for maintenance loans with a maximum amount of GBP 11,002 per year for undergraduates and 10,280 GBP for postgraduates. Both types of loans need to be paid back at an income rate of 9 % as soon as the earnings threshold of GBP 18,330 per year is reached (European Commission, 2017: 53–57; SLC, 2018).

Students from EU states enrolled in England are charged the above ‘home rate’ tuition fees (European Commission, 2017: 53–57). Non-economically active EU students can access tuition fee loans right from the first day of their studies in England. In fact, 73 % of EU

⁸ Member states that do not currently offer full portable student support for degree mobility include: Belgium (Wallonia only), Bulgaria, Croatia, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, the UK (England, Northern Ireland and Wales only).

⁹ Tuition fees and loans also exist in Wales, Northern Ireland, and to a more limited extent in Scotland. The following analysis will focus on England.

students in England do so, as opposed to 94 % of British students (Bolton, 2018: 11). As table 2 shows, the number of EU students receiving student loans has increased tremendously since 2006. While EU students' tuition fee loan take-up amounted to GBP 30 million in 2007, it increased more than tenfold by 2017, reaching GBP 440 million (EUR 500 million). Inherent to a loan system with repayments reaching up to a maximum length of 30 years, EU students' accumulated debt increased by more than 50 times, today amounting to GBP 2.2 billion. Also, while the percentage of EU students' tuition fee liabilities is still a small part of overall student debt in the UK (2,1 % in 2017), it has continuously risen over the years.

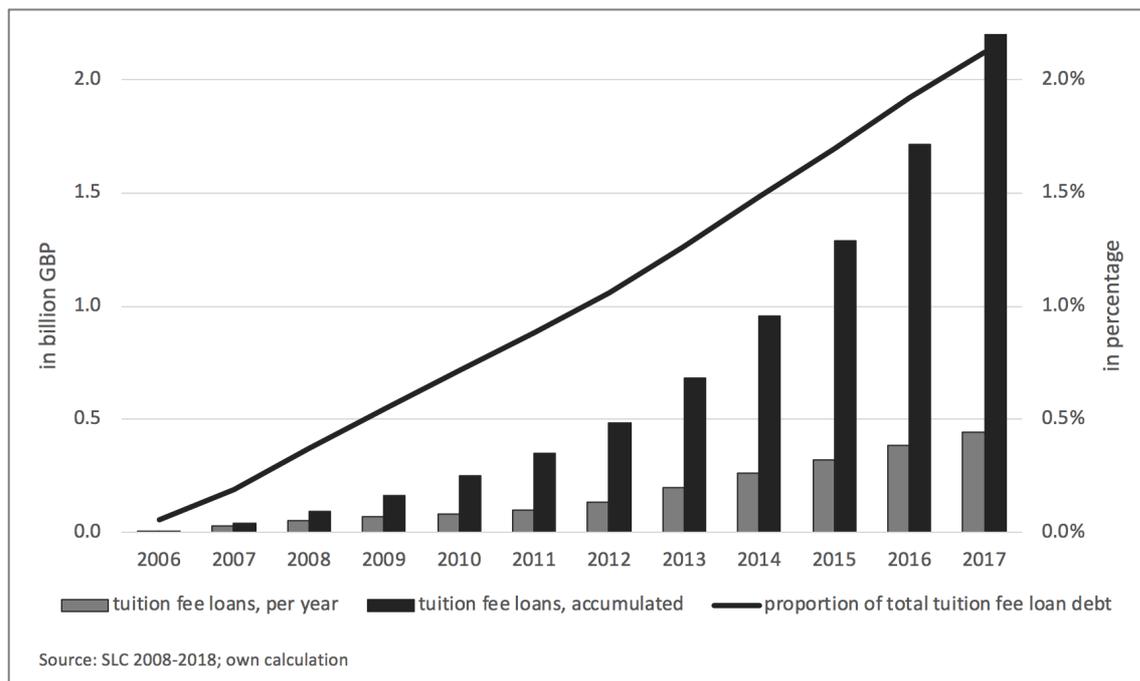


Table 2: Spending on tuition fee loans for incoming EU students

Contrary to tuition fee loans, EU students cannot access maintenance loans right from the start: here, prior residence in the UK for five years is mandatory (BIS, 2016: 3). The repayment threshold for EU students leaving the UK after their studies is adapted to the average earnings level in the country of residence. For most Western EU states such as Germany or the Netherlands, the earnings threshold amounts to the same as in the UK, while it is slightly higher for Denmark and Sweden (GBP 21,995, that is, EUR 24,780). For some Eastern states such as Poland or Romania, a yearly income of GBP 7,345 (EUR 8,275) suffices (SLC, 2018). In addition, EU students will remain eligible to both tuition fee and

maintenance loans for the whole duration of their studies even past Brexit if they have started their studies prior to the British withdrawal from the Union (Hubble and Bolton, 2019).¹⁰

As with tuition fee loans, a drastic increase in spending on EU students can be observed: While in 2009, there were 11,600 EU nationals receiving living cost support worth GBP 75 million, this increased to 31,500 awards in 2014 costing GBP 240 million – an increase of 220 %. During that time, maintenance support for UK students rose by a mere 35 % (BIS, 2014: 8, 2016: 5). Rising numbers of EU recipients could also not be attributed to increasing overall incoming EU student numbers; these remained comparable with a slight decrease of 2 % in these five years, totalling 23,225 incoming EU students in 2016 (own calculation; HESA, 2018). Among them, German, French and Irish student made up the largest share, which all have portable student benefits systems in place. In addition, EU students are much more likely to be in arrears: Only 29 % of EU students who could have started repaying by 2013 have done so, which compares to 50 % across all domiciles (BIS, 2014: 6).

When it comes to expert evaluation of the British case, interviewees from all ranks stress that EU students ‘bring substantial benefits to the UK’ (BIS, 2014: 3). Discussions on how to strive for international academic excellence by attracting the brightest students and scientists has by and large been a crucial matter in the UK, not least discussed since the Brexit referendum. Contrary to Germany, the issue of EU student mobility is quite a politicised one: As experts point out, it has for long been overshadowed by the discussion on incoming overseas students and plans to ‘bring net migration down from the hundreds of thousands to the tens of thousands’ (in former British Prime Minister David Cameron’s words). For instance, bogus colleges selling visa to their alleged ‘international students’ and Romanian students unduly receiving maintenance support all came to the media’s forefront (Cameron, 2014; Telegraph, 2014). And as concerns the tremendous increase in student recipient numbers, policy-makers had clearly underestimated the effects of the altered legal situation after *Bidar*: In 2005, the British government had expected the increase in spending on EU students to be ‘very limited’ and stated that ‘there’s no question of floodgates being opened’ (Telegraph, 2005). Eventually, politicians did not shy away from addressing incoming students’ welfare rights: On the policy level, they attempted to adapt eligibility criteria, and on the enforcement level, to improve loan repayment mechanisms.

¹⁰ Thanks to one anonymous referee for pointing this out.

First, ever since *Bidar*, the British government has argued for the necessity of students' financial contribution to the hosting member state before accessing study benefits. So, a major policy change had been introduced in 2016 to both increase the likelihood of students' contributions to the British system and decrease welfare spending: The government extended the period of prior residence before accessing maintenance loans from three to five years. The savings effect was estimated at GBP 10 million per year for every 1,000 EU students that enter higher education (BIS, 2014: 11–12). However, the government is unclear about exact savings without appropriate statistics on students' actual length of residence being available (BIS, 2014: 22). Yet, as interviewees have confirmed, this proposal was not least a reaction to the politicised debate of EU students' loan eligibility in the UK.

Second, since EU students' quickly accumulating loan debt cannot be automatically tracked and collected through the British tax system, administrative hurdles are manifold: keeping their contact details, identifying their income, or enforcing legal action. In addition, EU students more often earn below the – though geographically adapted – earnings threshold than British students (BIS, 2016: 6). Therefore, the Student Loans Company, which gives out student loans, has implemented specifically targeted repayment plans for EU students, facilitating repayment also via online tools and tracking students via automated phone calls. For more severe cases, it has resorted to the aid of debt collection agencies. Additionally, administrators keep in touch with their counterparts from other member states to share data and receive updates on students, and UK courts enforce their rulings across the Union (BIS, 2016: 7). In this context, British administrators, just as those in Germany, deliberately address the – at least legally possible – issue of double funding, e.g. through bilateral contact with their counterparts in other member states.¹¹

Taken together, albeit depicting a much lesser degree of redistribution than Germany due to its fully loan-based approach, the British study finance system has faced noticeable problem pressure stemming from free movement and, particularly, ECJ case law. Similar to the German case, successful administrative capabilities to cope with such problem pressure is clearly the decisive factor: An elaborate administrative system and well-functioning cross-border cooperation in loan collection is undoubtedly vital in order for the British study

¹¹ Again, the topic had been mentioned here on both sides of the border: As a case in point, those German administrators responsible for German students wanting to be covered under *BAföG* while being enrolled in the UK, have underlined the difficulty of assessing potential double funding.

finance system to work in a free movement context. In the end, the British case is also a rather ironic one: While a system with a lesser degree of redistribution and a higher degree of earnings-relatedness is generally expected to cope better in a cross-border context, the very nature of the British study finance system with its loan-based approach is fairly difficult to be implemented in an EU context with little to no formalised cross-border administrative cooperation in place.

5. Conclusion

This paper has demonstrated member states' reactions to problem pressure arising in a context of free movement and cross-border welfare rights in a heterogenous Union with largely differing welfare and higher education systems. First, on an institutional account, the analysis has tested whether welfare states with social policies that closely match contributions and benefits are better equipped in a Union with open borders than those with universal welfare provision funded out of general taxation (Scharpf, 2010: 238; Ruhs and Palme, 2018: 1492). Contrary to existing findings, here, it was not the welfare system with a higher share of universal provision (*Germany*) but the liberal one with closely matching contributions and benefits (*UK*) that effectuated the broadest adjustments to its welfare policies, namely a toughening of eligibility criteria and welfare retrenchment targeted at EU citizens, potentially also affecting its own British citizens. How could this be explained?

First, the German case confirmed existing literature certainly in so far as it has indeed seen a significant increase in benefit application numbers and overall spending following particularly ECJ case law on student mobility. Also, on first sight, Germany was not readily successful in avoiding broader than necessary adjustments on the legislative level with legislation being turned over by the ECJ twice in a row. Its success in containing compliance can clearly be attributed to its effective administrative organisation of students' cross-border welfare rights. This includes well-targeted dissemination of information, adequate staffing, and knowledge sharing both within Germany and with administrators from other member states.

Second, despite being a well-suited example of a liberal welfare policy with maintenance funded by students themselves through loans, the specific form of the British study finance system is ill-suited in a Union with little formalised cross-border administrative coordination.

Certainly, also in the British case, effective administrative organisation absorbed a large part of the adjustment pressure stemming from EU rules on student mobility. Nevertheless, the loan-based nature of the British maintenance support system required more drastic policy reform that in the end, led to tougher eligibility criteria by extending the prior residence period from three to five years.

This analysis further highlights the current challenges in the Union's free movement and social policy architecture: While the extent of the issue might be argued to be rather minor (with only 3.8 % of EU citizens living in another member state; Eurostat, 2018c), far-reaching challenges on the domestic level are manifest independent of the number of mobile citizens since they are structural in nature. Effective administrative organisation might cushion an array of broader effects on the member-state level as could be seen, yet certain welfare policies are inherently difficult to be organised in a cross-border context under non-discrimination and EU citizenship rules. Collecting study loans across borders, enforcing domestic judgments across borders, and avoiding double funding without formalised and more standardised EU-level administrative coordination is highly cumbersome. As discussed, quite a few member states even reject launching portable study benefits altogether since they fear excessive hurdles stemming from EU rules. Taken together, this paper aims at adding further evidence to the recent scholarly debate on a more sophisticated allocation of competences (e.g. Ferrera, 2016: 803–04), attempting a fairer distribution of financial burdening among member states by giving sufficient leeway back to member states while finding intelligent solutions for EU level policy. If not addressed appropriately, cross-border access to university studies and respective social rights might remain something of a distant dream – even for a legally and institutionally privileged and highly educated group of EU citizens such university students. The degree of discretion that is either formally required, or which is produced by institutional complexity, clearly demonstrates that straightforward EU social rights still do not exist today.¹²The Erasmus+ Master Loan Guarantee Facility, through which students can apply for EU-level loans to fund their studies abroad, and which, crucially, has an EU level administrative capacity to organise for funding distribution, certainly is a step into the right direction.

¹² Thanks to one anonymous referee for pointing this out clearly.

References

- BIS/Department for Business, Innovation and Skills (2014) *Consultation on Extending the Eligibility Criteria for Access to Higher Education Student Living Cost Support for EU Nationals*. Sheffield: BIS.
- BIS/Department for Business, Innovation and Skills (2016) *Government Response to the Consultation on Extending the Eligibility Criteria for Access to Higher Education Student Living Cost Support for EU Nationals*. London: BIS.
- Blauberger, M. (2014) 'National Responses to European Court Jurisprudence,' *West European Politics* 37(3): 457–74.
- Bolton, P. (2018) *Student Loan Statistics. Briefing Paper No. 1079*. London: House of Commons Library.
- Bruzelius, C. (2018) 'Freedom of Movement, Social Rights and Residence-based Conditionality in the European Union,' *Journal of European Social Policy*. Epub ahead of print 15 March 2018. DOI: 10.1177/0958928718756262.
- Bundesrat (2007) *Entwurf eines Zweiundzwanzigsten Gesetzes zur Änderung des Bundesausbildungsförderungsgesetzes*. Drucksache 120/07. Köln: Bundesanzeiger Verlagsgesellschaft mbH.
- Bundestag (2010) *Achtzehnter Bericht nach § 35 des Bundesausbildungsförderungsgesetzes*. Drucksache 17/485. Köln: Bundesanzeiger Verlagsgesellschaft mbH.
- Cameron, D. (2014) 'We're building an immigration system that puts Britain first,' *The Telegraph*, 28 July.
- Caporaso, J.A. and Tarrow, S. (2009) 'Polanyi in Brussels: Supranational Institutions and the Transnational Embedding of Markets,' *International Organization* 63(4): 593–620.
- Conant, L.J. (2002) *Justice Contained: Law and Politics in the European Union*. Ithaca, NY: Cornell University Press.
- Destatis (2003) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2002*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- Destatis (2018) *Ausbildungsförderung nach dem Bundesausbildungsförderungsgesetz (BAföG) 2017*. Fachserie 11 Reihe 7. Wiesbaden: Statistisches Bundesamt.
- De Witte, F. (2012) 'Transnational Solidarity and the Mediation of Conflicts of Justice in Europe,' *European Law Journal* 18(5): 694–710.
- Dustmann, C. and Frattini, T. (2014) 'The Fiscal Effects of Immigration to the UK,' *The Economic Journal* 124(580): 593–643.
- European Commission (2016) *Mobility Scoreboard: Higher Education Background Report, Eurydice Report*. Luxembourg: Publications Office of the European Union.
- European Commission (2017) *National Student Fee and Support Systems in European Higher Education – 2017/18*. Luxembourg: Publications Office of the European Union.
- Eurostat (2018a) *Students, Code: tps00062*, available at: <https://tinyurl.com/yckjczfr> (last accessed: 10/12/2018).
- Eurostat (2018b) *Mobility of Students, Code: tps00064*, available at: <https://tinyurl.com/ydf9oefy> (last accessed: 10/12/2018).

- Eurostat (2018c) *EU Citizens Living in another Member State*, available at: <https://tinyurl.com/y78oq2ae> (last accessed: 10/12/2018).
- Ferrera, M. (2016) 'The Contentious Politics of Hospitality: Intra-EU Mobility and Social Rights,' *European Law Journal* 22(6): 791–805.
- Geddes, A. and Hadj-Abdou, L. (2016) 'An Unstable Equilibrium: Freedom of Movement and the Welfare State in the European Union,' in: Freeman, G.P. and Mirilovic, N. (eds) *Handbook on Migration and Social Policy*, pp. 222–38 Cheltenham: Edward Elgar.
- Heindlmaier, A. and Blauburger, M. (2017) 'Enter at Your Own Risk: Free Movement of EU Citizens in Practice,' *West European Politics* 40(6): 1198–217.
- HESA/Higher Education Statistics Agency (2018) *Publications – Students in Higher Education*, available at: <https://tinyurl.com/yabd23ec> (last accessed: 05/01/2019).
- Höpner, M. and Schäfer, A. (2012) 'Embeddedness and Regional Integration: Waiting for Polanyi in a Hayekian Setting,' *International Organization* 66(3): 429–55.
- Hubble, S. and P. Bolton (2019) *International and EU students in higher education in the UK FAQs*, Briefing Paper No. CBP 7976. London: House of Commons Library.
- ICF GHK, Milieu Ltd (2013) *A Fact Finding Analysis on the Impact on the Member States' Social Security Systems of the Entitlements of Non-active Intra-EU Migrants to Special Non-contributory Cash Benefits and Healthcare Granted on the Basis of Residence*. Final Report prepared for the European Commission.
- Keohane, R.O. (1986) 'Reciprocity in International Relations,' *International Organization* 40(1): 1–27.
- Leibfried, S. and Pierson, P. (eds) (1995) *European Social Policy: Between Fragmentation and Integration*. Washington, DC: Brookings Institution.
- Marshall, T.H. (2009 [1950]) 'Citizenship and Social Class,' in: Manza, J. and Sauder, M. (eds) *Inequality and Society*, pp. 148–54. New York: W.W. Norton and Co.
- Martinsen, D.S. and Pons Rotger, G. (2017) 'The Fiscal Impact of EU Immigration on the Tax-Financed Welfare State: Testing the 'Welfare Burden' Thesis,' *European Union Politics* 18(4): 620–39.
- Martinsen, D.S. and Vollaard, H. (2014) 'Implementing Social Europe in Times of Crises: Re-established Boundaries of Welfare?' *West European Politics* 37(4): 677–92.
- NESSIE/Network of Experts on Student Support in Europe (2012) *Report of the Network of Experts on Student Support in Europe (NESSIE), 2009-2011*. Bucharest: EHEA.
- O'Brien, C. (2017) *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK*. Oxford and Portland: Hart Publishing.
- OECD (2013) 'The Fiscal Impact of Immigration in OECD Countries,' in: OECD (ed) *International Migration Outlook*, pp. 125–89. Paris: OECD.
- Ruhs, M. and Palme, J. (2018) 'Institutional Contexts of Political Conflicts around Free Movement in the European Union: A Theoretical Analysis,' *Journal of European Public Policy* 25(10): 1481–500.
- Scharpf, F.W. (2010) 'The Asymmetry of European Integration, or Why the EU Cannot Be a 'Social Market Economy',' *Socio-Economic Review* 8(2): 211–50.
- Schenk, A. and Schmidt, S.K. (2018) 'Failing on the social dimension: judicial law-making and student mobility in the EU,' *Journal of European Public Policy* 25(10): 1522–40.

- Schmidt, S.K. (2018) *The European Court of Justice and the Policy Process: The Shadow of Case Law*. Oxford: Oxford University Press.
- Schmidt, S.K., Blauburger, M. and Martinsen, D.S. (2018) 'Free Movement and Equal Treatment in an Unequal Union,' *Journal of European Public Policy* 25(10): 1391–1402.
- SLC/Student Loans Company (2008) *Student Loans for Higher Education in England, Financial Year 2007-08*. Glasgow: SLC.
- SLC/Student Loans Company (2018) *Student Loan Repayment, Plan 1 – Overseas Thresholds*, available at: <https://tinyurl.com/6vu6us3> (last accessed: 10/12/2018).
- Telegraph (2005) 'European student had right to UK loan,' *The Telegraph*, 16 March.
- Telegraph (2014) 'Loans to foreign students blocked,' *The Telegraph*, 14 June.

Appendix I – Interview experts

1. Policy advisor, European Commission, DG Employment, Social Affairs & Inclusion, 12/11/2013.
2. Professor, University of Antwerp, 12/11/2013.
3. Advocate General, European Court of Justice, 12/11/2013.
4. Legal expert, European Commission, Legal Service, 12/11/2013.
5. Professor, London School of Economics, 03/09/2014.
6. MP, UK Parliament, London, 04/09/2014.
7. MP, UK Parliament, London, 04/09/2014.
8. MP, German Bundestag, Berlin, 22/09/2014.
9. MP, German Bundestag, Berlin, 22/09/2014.
10. Lawyer, Law firm, Karlsruhe, 28/01/2015.
11. Policy advisor, German Federal Ministry of Education and Research, Berlin, 02/02/2015.
12. Policy advisor, German Federal Ministry of Education and Research, Berlin, 02/02/2015.
13. Policy advisor, German Federal Ministry of Education and Research, Berlin, 02/02/2015.
14. Policy advisor, German Federal Ministry of the Interior, Berlin, 02/02/2015.
15. Policy advisor, German Federal Ministry of Education and Research, Berlin, 26/02/2015.
16. Social worker, Student Services Oldenburg, 11/03/2015.
17. Case manager, Central Administration Munich, 19/03/2015.
18. Legal expert, Federal Ministry for Economic Affairs, Berlin, 20/03/2015.
19. Case manager, Region of Hannover, 24/03/2015.
20. Case manager, Region of Hannover, 24/03/2015.
21. Case manager, Region of Hannover, 24/03/2015.
22. Case manager, BAföG Amt Karlsruhe, 25/03/2015.
23. Case manager, BAföG Amt Bremen, 25/03/2015.
24. President, Student interest group 1, Bremen, 25/03/2015.
25. President, Student interest group 2, Bremen, 13/04/2015.
26. Social worker, University of Bremen, 13/04/2015.
27. Social worker, University of Bremen, 13/04/2015.
28. Professor, University of Amsterdam, 13/05/2015.
29. Policy advisor, UK Department for Business, Innovation & Skills, London, 20/05/2015.
30. Policy advisor, British interest group, 22/05/2015.
31. Case manager, Central Administration of Cologne, 26/05/2015.
32. Case manager, Central Administration of Cologne, 26/05/2015.
33. Legal expert, European Commission, Legal Service, Brussels, 27/05/2015.
34. Legal expert, European Commission, Legal Service, Brussels, 11/08/2015.
35. Policy advisor, European Commission, DG Justice, Brussels, 11/08/2015.
36. Policy advisor, European Commission, DG Justice, Brussels, 11/08/2015.
37. Policy advisor, German Federal Ministry of Education and Research, Berlin, 15/12/2016.
38. Policy advisor, German Federal Ministry of Education and Research, Berlin, 15/12/2016.