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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Free movement of EU citizens and their families: Five actions to make a difference**

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**Free movement of EU citizens and their families: Five actions to make a difference**

1. Free movement within the EU
- 1.1. A fundamental right of EU citizens

The right of EU citizens to freely move to and live in any EU country, along with their family members, is one of the four fundamental freedoms enshrined in EU law and a cornerstone of EU integration.

EU workers have benefited from this freedom since the 1960s<sup>1</sup>. Twenty years ago, with the Treaty of Maastricht, the right to free movement was recognised for all EU citizens, whether they are economically active or not. Since then, being able to move freely for purposes other than working, for instance to retire, study or accompany family, has become an essential feature of EU citizenship<sup>2</sup>.

In 2004, legislation and case-law setting out the conditions for and limitations on the right of residence were codified. In 2009, the Commission provided guidance to Member States on the correct application of the rules and since then has pursued a rigorous enforcement policy, as a result of which nearly 90 % of transposition issues have been solved. The focus is now on application on the ground.

All EU citizens are entitled to free movement. The conferral of the right of free movement on the citizens of a Member State is a direct consequence of its accession to the EU. Such decisions are taken by unanimous agreement of the Member States.

As part of the single market, free movement of workers has positive effects on economies and labour markets. The four fundamental freedoms, which are inextricably linked, create the conditions for more efficient allocation of resources within the EU. Free movement of EU citizens stimulates economic growth by enabling people to travel, study and work across borders and by allowing employers to recruit from a larger talent pool. In view of the significant imbalances in Europe's labour markets and its declining working-age population, labour mobility contributes to addressing skills and job mismatches.

For the EU-15, GDP is estimated to have increased by almost 1 % in the long term as a result of post-enlargement mobility (2004-2009)<sup>3</sup>.

To EU citizens, free movement is the right most closely associated with EU citizenship<sup>4</sup>. Altogether 56 % of European citizens see it as the most positive achievement of the EU<sup>5</sup>. In addition, 67 % of EU citizens think that free movement brings economic benefits for their country's economy<sup>6</sup>.

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<sup>1</sup> Articles 45 and 48 of the Treaty on the Functioning of the European Union (TFEU).

<sup>2</sup> Article 21 TFEU.

<sup>3</sup> Employment and Social Developments in Europe 2011, intra-EU labour mobility and the impact of enlargement, p. 274.

<sup>4</sup> Flash Eurobarometer (EB) 365, February 2013, [http://ec.europa.eu/public\\_opinion/flash/fl\\_365\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_365_en.pdf).

<sup>5</sup> Standard EB 79, May 2013, [http://ec.europa.eu/public\\_opinion/archives/eb/eb79/eb79\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_en.htm).

<sup>6</sup> Flash EB 365, cited above.

At the same time as free movement brings benefits to Europeans and to the EU economy as a whole, it can create challenges for local communities faced with new inflows. The economic crisis has accentuated a debate in some Member States on the impact of free movement on national social systems and on the pressures on local services.

At the same time, all Member States have reiterated their support for free movement and acknowledge the mutual benefits it brings. This was reaffirmed on several occasions, such as during a recent debate in the Justice and Home Affairs Council on 8 October 2013.

This communication aims to clarify EU citizens' rights and obligations as well as the conditions and limitations under EU law, and aims to address the concerns raised by some Member States. It sets out five actions to help Member States and their local authorities to apply EU laws and tools to their full potential. This includes the full use of EU structural and investment funds.

## 1.2. Who are the mobile EU citizens?

At the end of 2012, 14.1 million EU citizens were residing in another Member State (2.8% of the total population). This is lower than the share of non-EU nationals (4.0%). Starting at around 1.6% of the total population at the end of 2004, the share of mobile EU citizens increased to 2.4% four years later (end-2008) and then more slowly (to 2.8% at the end of 2012<sup>7</sup>) due to both the economic recession and the gradual reduction in the mobility potential from central and eastern Member States<sup>8</sup>.

The main motivation for EU citizens to make use of free movement is work-related<sup>9</sup>, followed by family reasons<sup>10</sup>. Of all the EU citizens residing in another EU country ('mobile EU citizens') in 2012, more than three quarters (78%) were of working age (15-64), compared to around 66% among nationals. On average the employment rate of mobile EU citizens (67.7%) was higher than among nationals (64.6%).

Mobile EU citizens not in employment<sup>11</sup> represent only a limited share of total mobile EU citizens<sup>12</sup>; moreover, 64% of them had worked previously in their current country of residence<sup>13</sup>. 79% are living in a household with at least one member in employment<sup>14</sup>. The overall rate of inactivity among intra-EU mobile citizens declined between 2005 and 2012<sup>15</sup>.

## 1.3. The impact of mobile EU citizens on the welfare systems of host Member States

On average, mobile EU citizens are more likely to be in employment than nationals of the host country<sup>16</sup>. They help the host country's economy to function better because they help to

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<sup>7</sup> European Commission, DG Employment estimates based on Eurostat migration statistics and the EU-Labour Force Survey (LFS).

<sup>8</sup> European Commission, EU Employment and Social Situation Quarterly Review, June 2013, pp. 42-43, based on Eurostat, EU-LFS.

<sup>9</sup> ICF GHK Milieu: *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*, Chapter 4 and p. 61, <http://ec.europa.eu/social/BlobServlet?docId=10972&langId=en>.

<sup>10</sup> Eurostat, EU-LFS, 2008 module on Labour market situation of migrants, online table: Ifso\_08cobr.

<sup>11</sup> These are typically students, retired persons, jobseekers and inactive family members.

<sup>12</sup> ICF GHK Milieu report cited above, Chapter 3, p. 16, based on Eurostat, EU-LFS.

<sup>13</sup> ICF GHK Milieu report cited above, Chapter 3, p. 25, based on Eurostat, EU-LFS.

<sup>14</sup> ICF GHK Milieu report cited above, p. 24, based on Eurostat, EU-LFS.

<sup>15</sup> Eurostat, EU-LFS. The share of mobile EU citizens (aged 15 and over) who are economically inactive decreased from 34.1% in 2005 to 30.7% in 2012 (Eurostat, EU-LFS).

<sup>16</sup> Eurostat, EU-LFS.

tackle skills shortages and labour market bottlenecks<sup>17</sup>. In most Member States, mobile EU citizens are net contributors to the host country's welfare system — they pay more in tax and social security contributions than they receive in benefits. EU mobile citizens also tend to be net contributors to the costs of public services they use in the host Member State<sup>18</sup>. They are therefore unlikely to represent a burden on the welfare systems of host Member States. This is confirmed by recent independent studies<sup>19</sup>. It is also corroborated by recent data that Member States have submitted to the Commission, showing that EU citizens do not use welfare benefits more intensively than the host country's nationals<sup>20, 21</sup>.

The EU Survey on Income and Living Conditions also confirms that in most countries EU citizens are equally or less likely than nationals to receive social benefits.

Due to their age and employment status, mobile EU citizens, when receiving social benefits, are in general more likely to be in receipt of unemployment, housing and family-related benefits than old-age, sickness or invalidity benefits. Yet they represent only a small share of those receiving such benefits, in line with their relatively low share in the total population in most Member States.

Furthermore, data show that mobile EU citizens account for a very small share of recipients of special non-contributory benefits, which are benefits combining features of social security and social assistance at the same time: less than 1% of all beneficiaries (who are EU citizens) in six countries (Austria, Bulgaria, Estonia, Greece, Malta and Portugal); between 1% and 5% in five other countries (Germany, Finland, France, the Netherlands and Sweden), and above 5% in Belgium and Ireland (although figures for Ireland are estimates based on claims)<sup>22</sup>.

Recent studies<sup>23</sup> conclude that there is no statistical relationship between the generosity of the welfare systems and the inflows of mobile EU citizens.

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<sup>17</sup> Employment and Social Developments in Europe 2011, intra-EU labour mobility and the impact of enlargement, pp. 268-276.

<sup>18</sup> Dustmann et al., *Assessing the Fiscal Costs and Benefits of A8 Migration to the UK*, <http://ideas.repec.org/p/crm/wpaper/0918.html>; OECD, *Fiscal Impact of Migration*, in OECD International Migration Outlook 2013, <http://www.oecd.org/els/mig/imo2013.htm>.

<sup>19</sup> OECD, *Fiscal Impact of Migration*, in OECD International Migration Outlook 2013, <http://www.oecd.org/els/mig/imo2013.htm>; ICF GHK Milieu report cited above; Dustmann et al., *Assessing the Fiscal Costs and Benefits of A8 Migration to the UK*, <http://ideas.repec.org/p/crm/wpaper/0918.html>; CEPS, *Social Benefits and Migration, A contested relationship and policy challenge in the EU* (Chapters 1 and 7); *EU Labor Markets After Post-Enlargement Migration*, Martin Kahanec, Klaus F. Zimmermann (eds.), Springer-Verlag Berlin Heidelberg, 2010; Ian Preston, *The Effect of Immigration on Public Finances*, Centre for Research and Analysis of Migration, 2013, [http://www.cream-migration.org/publ\\_uploads/CDP\\_23\\_13.pdf](http://www.cream-migration.org/publ_uploads/CDP_23_13.pdf).

<sup>20</sup> Evidence collected by the Administrative Commission for the coordination of social security systems points to factual and legal difficulties in the application of the coordination provisions and the granting of residence-based tax-financed benefits to non-active persons. However, no evidence is available on extensive fraudulent behaviour.

<sup>21</sup> See Statistical Annex, Chart 2. Following a request by the Council, the Commission asked Member States in June 2013 to provide, inter alia, information on mobile EU citizens who asked for or received social benefits. Of the 21 Member States that replied, Austria, Belgium, Croatia, Hungary, Poland, Sweden and the United Kingdom were unable to provide this data. Lithuania provided data on exported social security benefits. Data from the remaining 13 Member States concern different benefits and are not comparable; they are therefore graphically presented in country-specific doughnut charts.

<sup>22</sup> ICF GHK Milieu report cited above, Chapter 5, p. 84.

<sup>23</sup> See for instance the literature review in the ICF-GHK Milieu report and in CEPS, *Social benefits and migration, A contested relationship and policy challenge in the EU*.

## 2. Rights and obligations of EU citizens under EU law

The right to free movement and entitlements to social assistance and social security benefits are conditional under EU law, although Member States can apply more favourable conditions. EU law is designed to facilitate cross-border mobility to the mutual benefit of those who move and those who stay.

Conditions for and limitations on the right of EU citizens to move and reside freely within the EU are set out in Directive 2004/38/EC ('the Directive')<sup>24</sup>. Specific workers' rights are set out in Regulation (EU) No 492/2011<sup>25</sup>. Social security rights of mobile EU citizens at EU level are governed by Regulations (EU) Nos 883/2004 and 987/2009 ('the Regulations')<sup>26, 27</sup>.

### 2.1. Who is entitled to free movement?

For the first three months, every EU citizen has the right to reside in the territory of another EU country without any conditions or formalities other than holding a valid identity card or passport<sup>28</sup>.

After the first three months, EU citizens need to fulfil certain conditions, depending on their status in the host country, to have the right to reside. Students and other economically non-active persons, such as retired persons, and their families have the right to reside for longer than three months only if they have comprehensive health insurance and sufficient financial resources for themselves and their family so as not to become a burden on the host Member State's social assistance system. Jobseekers can reside for up to six months without conditions and possibly longer if they show that they have a genuine chance of finding a job<sup>29</sup>.

After five years, EU citizens and their family members obtain the right to permanent residence<sup>30</sup>.

### 2.2. Who is entitled to social assistance benefits?

Social assistance benefits are typically benefits that a Member State grants to those who do not have sufficient resources to meet their basic needs.

Mobile EU workers and their family members are entitled to the same social assistance benefits as nationals from the beginning of their stay<sup>31</sup>. Other EU citizens who reside legally in another EU Member State must also be treated equally with nationals<sup>32</sup>, but safeguards are in place to protect host Member States from unreasonable financial burdens.

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<sup>24</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004, p. 77.

<sup>25</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ L 141, 27.5.2011, p. 1.

<sup>26</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p. 1; Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30.10.2009, p. 1.

<sup>27</sup> Specific provisions on patients' rights in cross-border health care are covered by Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, OJ L 88, 04.04.2011, p. 1.

<sup>28</sup> Article 6 of the Directive.

<sup>29</sup> Recital 9 and Articles 7 and 14(4)(b) of the Directive.

<sup>30</sup> Article 16 of the Directive.

<sup>31</sup> Article 7(2) of Regulation (EU) No 492/2011, cited above.

<sup>32</sup> Article 24 of the Directive.

During the first three months of residence the host Member State is not obliged by EU law to grant social assistance to economically non-active EU citizens. Neither is it obliged to grant social assistance to first-time jobseekers<sup>33</sup>.

For the ensuing period of residence up to five years, EU citizens are unlikely in practice to be eligible for social assistance benefits, since to acquire the right to reside they would have needed to show the national authorities that they had sufficient resources, which are indicatively equal to or higher than the income threshold under which social assistance is granted<sup>34</sup>.

If, however, non-active EU citizens applied for a social assistance benefit, for example where their economic situation changes over time, their request must be assessed in the light of their right to equal treatment. In specific cases, claiming social assistance can give rise to a reasonable doubt on the part of the national authorities that the person may have become an unreasonable burden on the social assistance system<sup>35</sup>.

In this context, a Member State may make the grant of a social assistance or special non-contributory benefit<sup>36</sup> to an EU citizen from another Member State conditional upon that citizen meeting the requirements for obtaining a legal right of residence for a period exceeding three months<sup>37</sup>. However, Member States cannot refuse the grant of these benefits automatically to non-active EU citizens nor can they automatically consider those claiming these benefits as not possessing sufficient resources and thus as not having a right of residence<sup>38</sup>. Authorities should assess the individual situation taking into account a range of factors such as the amount, duration, temporary nature of the difficulty or overall extent of the burden which a grant would place on the national assistance system<sup>39</sup>. If, on this basis, authorities conclude that the persons have become an unreasonable burden, they may terminate their right of residence<sup>40</sup>.

After five years of legal residence, EU citizens are entitled to social assistance in the same way as nationals of the host Member State.

### 2.3. Who is entitled to social security benefits?

The Regulations ensure that mobile EU citizens do not lose acquired rights when moving within the EU. Typical social security benefits include old-age pensions, survivor's pensions, disability benefits, sickness benefits, birth grants, unemployment benefits, family benefits or health care.

Workers — employed or self-employed — and their family members are covered by the host country's social security system under the same conditions as own nationals, because they contribute, like all other national workers, through their contributions and taxes to the public funds from which the benefits are financed.

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<sup>33</sup> Benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to employment in the labour market of the host Member State cannot be regarded as constituting 'social assistance' within the meaning of Article 24(2) of the Directive: Joined Cases C-22/08 and C-23/08 *Vatsouras and Koupatantze*, paragraph 45.

<sup>34</sup> Article 8(4) of the Directive.

<sup>35</sup> Article 14(2) of the Directive.

<sup>36</sup> Covered by Regulation 883/2004, see Chapter 1.3 above; case C-140/12 *Brey*.

<sup>37</sup> Case C-140/12 *Brey*, paragraph 38 and 42.

<sup>38</sup> Article 14(3) of the Directive.

<sup>39</sup> Article 15 of the Directive and Case C-140/12 *Brey*, paragraph 72.

<sup>40</sup> Article 14(1) of the Directive.

However, there is no EU harmonisation in this area. The host country's laws determine which benefits are provided for, under which conditions they are granted and for how long and how much is paid. Benefit entitlement therefore varies from one Member State to another.

Social security coverage must be ensured by the country of employment and for economically non-active EU citizens by the country of residence.

There can be only one place of residence within the meaning of the coordination provisions, and this corresponds to the centre of interest of the person concerned (Member State of 'habitual residence'). Economically non-active people can only obtain social security benefits once they pass a strict habitual residence test, proving that they have a genuine link with the Member State in question. This test includes an overall assessment of the claimant's individual situation in accordance with strict criteria (duration of stay, motivation, family situation and intention)<sup>41</sup>. Persons who move temporarily to another country and maintain their former residence in their country of origin usually do not change their habitual residence.

### 3. Conditions and limitations under EU law

EU law contains a range of robust safeguards to help Member States to fight abuse and fraud. It is the responsibility of Member States to make full use of these safeguards. The Commission supports their efforts.

#### 3.1. Fight against abuse and fraud under the Directive

For the purposes of the Directive, abuse and fraud may be defined<sup>42</sup> as follows.

- *Fraud*: deliberate deception or contrivance made to obtain the right of free movement and residence under EU law. Common cases are forgery of identity or residence documents or false representation of a material fact concerning the conditions attached to the right of residence, such as false pretences about having sufficient resources or being self-employed.
- *Abuse*: an artificial conduct entered into solely with the purpose of obtaining the right to free movement and residence under EU law which, albeit formally observing the conditions laid down by EU rules, does not comply with the purpose of those rules.

Typical examples of abuse are marriages of convenience. Data submitted by Member States on identified marriages of convenience<sup>43</sup> show that this phenomenon exists but its extent

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<sup>41</sup> See Cases C-76/76 *Di Paolo*, C-102/91 *Knoch* and C-90/97 *Swaddling*.

<sup>42</sup> COM(2009) 313, section 4.1.

<sup>43</sup> Following a request by the Council, the Commission asked Member States to provide information on abuse of free movement by marriages of convenience. 12 Member States provided statistics on **identified** cases. In the period 2010-2012, Cyprus recorded 174 such marriages and Portugal 144; in the same period, Poland refused 2 (out of a total of 391) applications for residence cards on these grounds; the Czech Republic recorded 51 such marriages in 2012 and 22 between January and July 2013; in 2012, Denmark identified 8 marriages of convenience and Finland refused 10 (out of a total of 650) visa applications on these grounds; in 2012-2013 Sweden refused the right of residence in 30 cases on grounds related to marriages of convenience and document fraud (out of 26546 residence applications); the Netherlands had identified 368 marriages of convenience (out of 550 marriages investigated in three pilot projects) since 2007; Ireland recorded 9 marriages of convenience in 2010; between May and October 2011, the UK rejected, based on concerns about the authenticity of marriages, 176 applications for EEA family permits (out of 256 cases where abuse was suspected and which represent approximately 2% of the applications received in this period); finally, Estonia and Romania indicated that they had not identified any marriages of convenience in the period January 2011–July 2013 and since January 2007 respectively. In two cases, data were submitted on **suspected** marriages of convenience: UK: reports by civil registrars of 934 (2010), 1741 (2011) and 1891 (2012) suspected

varies significantly between Member States. Despite low figures, the implication of organised crime is a worrying factor. According to Europol<sup>44</sup>, some organised crime networks arrange marriages of convenience between third-country nationals and mobile EU citizens to gain entry and legal stay in the EU. In this field, Europol and Eurojust can offer assistance and support to national authorities, particularly in cases linked to trafficking in human beings.

### 3.2. Restrictions to free movement under the Directive on grounds of public order

EU rules on free movement allow Member States to take effective measures to fight abuse and fraud by restricting rights granted by the Directive, in particular by refusing or terminating these rights.

Any measure that restricts free movement may only be justified if it respects the principle of proportionality. This principle<sup>45</sup>, based directly on the Treaty, is valid for all fundamental freedoms and is accordingly reflected in the Directive<sup>46</sup>. Restrictions for general prevention purposes, such as expulsions and re-entry bans for all persons in a given situation without having regard to proportionality, individual circumstances and the gravity of the offence, must never be imposed.

The form such restrictions may take depends on each Member State but typically this includes:

- Denying entry or expelling a person on grounds of public order or public security.

The notions of ‘public order’ and ‘public security’ are determined by Member States in accordance with national needs. However, these concepts must be interpreted strictly<sup>47</sup> and presuppose a present, genuine and sufficiently serious threat to one of the fundamental interests of society<sup>48</sup>. In exceptional circumstances, persistent petty criminality may represent a threat to public order, despite the fact that any single crime/offence, taken individually, would be insufficient to represent a sufficiently serious threat. However, the single existence of multiple convictions is not sufficient in itself to represent a serious threat to public order. National authorities must show that the personal conduct of the individual concern represents a threat to the requirements of public policy<sup>49</sup>. Furthermore, conduct which a Member State accepts on the part of its own nationals cannot lead to restrictive measures<sup>50</sup>. Restrictive

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cases. Germany: reports of 250 currently suspected cases in all *Länder*; 167 (State of Hesse), 43 (Berlin) and 71 (Munich) suspected cases in 2012.

<sup>44</sup> *EU Serious and Organised Crime Threat Assessment 2013*, Section 1.9, <https://www.europol.europa.eu/sites/default/files/publications/socta2013.pdf>; *2011 EU Serious and Organised Crime Threat Assessment*, Chapter on Facilitated Illegal Immigration, <https://www.europol.europa.eu/sites/default/files/publications/octa2011.pdf>.

<sup>45</sup> Cases C-55/94 *Gebhard*, paragraph 37, and C-100/01 *Olazabal*, paragraph 43.

<sup>46</sup> Recital 16 and Articles 15(1), 15(3) and 27(2).

<sup>47</sup> Cases 41/74 *Van Duyn*, paragraph 18, C-348/09 *P. I.*, paragraph 23, and C-434/10 *Aladzhev*, paragraph 34.

<sup>48</sup> Article 27(1) of the Directive and Cases 30/77 *Bouchereau*, paragraph 35, and C-348/09 *P. I.*, paragraph 34.

<sup>49</sup> Case C-349/06 *Polat*, paragraph 39; Communication on guidance for better transposition and application of Directive 2004/38/EC, COM(2009) 313, end of section 3.2.

<sup>50</sup> Joined Cases 115/81 and 116/81 *Adoui and Cornouaille*, paragraph 8, and Case C-268/99 *Jany*, paragraph 61.

measures cannot be taken on general prevention grounds<sup>51</sup> or to serve economic ends<sup>52</sup>.

- Re-entry bans<sup>53</sup> can be imposed together with an expulsion order only in grave cases where it is shown that the offender is likely to continue to be a serious threat to public order in the future. They cannot automatically follow a criminal conviction<sup>54</sup>.

Persons who are subject to a re-entry ban may apply for it to be lifted after a reasonable period<sup>55</sup>.

In cases where the right of free movement is abused or obtained fraudulently, it will depend on the seriousness of the offence whether the persons can be considered as a serious threat to public order, which can justify expulsion and in some cases a re-entry ban.

### 3.3. Combating fraud and error in the field of social security coordination

For the purpose of social security coordination, fraud and error are defined as follows.

- *Social security fraud*: any act or omission to act, in order to obtain or receive social security benefits or to avoid obligations to pay social security contributions, contrary to the law of a Member State<sup>56</sup>.
- *Error*: an unintentional mistake or omission by officials or citizens<sup>57</sup>.

The Commission supports Member States in their efforts to combat fraud and error in the field of social security. A well-established system to improve cooperation between Member States is operating in the framework of the Administrative Commission on the coordination of social security systems. Within this framework Member States have established a network of Contact Points to improve their cooperation and provide annual reports on fraud and error.

Social security fraud may also be subject to penalties — criminal or administrative — within the Member States' legal systems. Fraud against social security does not in itself amount to abuse or fraud to free movement within the meaning of Article 35 of the Directive. However, when a legally resident mobile EU citizen fraudulently obtains a benefit on false declarations, expulsion and imposition of a re-entry ban is possible under the general rules of the Directive if the EU citizen can be considered to be a serious threat to public order, in conformity with the above-mentioned principle of proportionality.

## 4. Social inclusion

Some Member States report challenging situations in some of their cities. In particular, even if it concerns only a minority of mobile EU citizens, low employment prospects and other difficult situations can place a particular strain on already disadvantaged areas, notably on local services such as schooling, health care and housing. Homelessness is reported as a

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<sup>51</sup> Reflected in Article 28(1) of the Directive and Case 67/74 *Bonsignore*, paragraph 6.

<sup>52</sup> Cases C-434/10 *Aladzhev*, paragraphs 29 and 30, and C-249/11 *Byankov*, paragraphs 35 and 36.

<sup>53</sup> In this communication the term 're-entry ban' refers to 'exclusion orders' under Article 32 of the Directive.

<sup>54</sup> Case C-348/96 *Calfa*, paragraphs 27 and 28.

<sup>55</sup> Article 32(1) of the Directive and Joined Cases 115/81 and 116/81 *Adoui and Cornuaille*, paragraph 12.

<sup>56</sup> Part A, Section 2(a) of the Council Resolution of 22 April 1999, OJ C 125, 6.5.1999, p. 1.

<sup>57</sup> Decision No H5 of the Administrative Commission for the coordination of social security systems of 18 March 2010 concerning cooperation on combating fraud and error within the framework of Council Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems, OJ L 149, 8.6.2010, p. 5.

growing phenomenon which, despite being small in absolute numbers, gives cause for concern and is a strong expression of social exclusion<sup>58</sup>.

Social inclusion policies focus on the obstacles citizens face in accessing education, employment services, financial services, and family and child benefits. The Commission continues to support Member States in the implementation of integrated active inclusion strategies<sup>59</sup>, which can play a positive role in the inclusion of mobile EU citizens into the host society.

EU funding for social inclusion is designed to assist in this context. The European Social Fund (ESF) can be used by the Member States when elaborating their programmes to support local authorities facing the challenge of marginalised citizens on their territory, be they nationals or citizens entering from other EU Member States. EUR 12.9 billion of the ESF budget is allocated to social inclusion over the period 2007-2013. Mobile EU citizens can also benefit from other ESF actions such as lifelong learning, help in access to employment and strengthening of the capacity of stakeholders. A total of EUR 17.8 billion is available in 2007-2013 for social infrastructures from the European Regional Development Fund (ERDF), supporting housing and investments in education, health, and childcare. Member States are invited to use the possibilities offered by the ESF and the ERDF to continue supporting social inclusion activities in the 2014-2020 programming period.

The Commission has proposed setting up a Fund for European Aid to the Most Deprived (FEAD) for the period 2014-2020. The Fund's aim is to alleviate the worst forms of poverty by providing non-financial assistance to the most deprived persons, addressing food deprivation, the consequences of homelessness and the material deprivation of children.

#### 5. Five actions

To help national and local authorities to effectively apply EU free movement rules and use available funds on the ground, the Commission presents five concrete actions that are being implemented together with the Member States:

##### ***1. Helping Member States fight marriages of convenience***

*The Commission will help authorities implement EU rules which allow them to fight potential abuses of the right to free movement by preparing a handbook on addressing marriages of convenience.*

This handbook, under preparation with Member States, will provide national authorities with more clarity on the legal framework in which they can operate when examining suspected cases and deciding on whether to withdraw or deny free movement rights on grounds of marriage of convenience. This should help them tackle any such cases of abuse while not compromising the fundamental goal of safeguarding and facilitating the free movement of EU citizens and their family members using EU law in a *bona fide* way.

<sup>58</sup> See Commission Staff Working Document *Confronting homelessness in the European Union*, SWD (2013)42 final, accompanying the Commission Communication of 20 February 2013 *Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014-2020*, COM(2013) 83 final.

<sup>59</sup> Commission Communication of 3 October 2008 on a Recommendation on the active inclusion of people excluded from the labour market, COM(2008) 639 final; Commission Communication of 20 February 2013 *Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014-2020*, cited above; Commission Communication of 5 April 2011 *An EU Framework for National Roma Integration Strategies up to 2020*, COM(2011) 173 final.

## **2. Helping authorities apply EU social security coordination rules**

*The Commission is working closely with the Member States to improve the application of social security coordination rules. In this context, a practical guide to clarify the ‘habitual residence test’ used in the EU social security rules is being prepared.*

Closer and more effective cooperation between social security institutions is a key factor in allowing persons to access their rights as quickly as possible under optimum conditions, but also to prevent overpayments and unjustified claims. The authorities and institutions represented in the Administrative Commission work together to ensure uniformity, efficiency, exchange of information and the necessary procedures for implementing these provisions. Important tools under discussion are the establishment of a system based on electronic communication between institutions, which should also include a secure electronic platform for exchanging personal data to combat fraud and error.

The Commission is working closely with the Member States in the Administrative Commission on a practical guide to assist effective application of the Regulation. This will be published on the Commission’s website by the end of 2013.

The practical guide will clarify the notion of ‘habitual residence’ used for the purpose of the Regulations and provide Member States with useful guidance and clarification<sup>60</sup>.

## **3. Helping authorities meet social inclusion challenges**

*The Commission has proposed that in the 2014-2020 programming period at least 20% of the ESF should be spent on promoting social inclusion and combating poverty in each Member State.*

*The Commission will keep up its efforts to help build the capacity of local authorities to use European structural and investment funds efficiently.*

For the new 2014-2020 programming period, at least 20% of the whole ESF allocation in each Member State (compared to the current share of around 17%) must be spent on promoting social inclusion and combating poverty and any form of discrimination. In addition, the ESF will also be able to fund capacity building for all stakeholders at national, regional or local level. Policy guidance will be provided to Member States, of both origin and destination of mobile EU citizens, for developing social inclusion programmes with the support of the ESF. Special attention is given to the social inclusion of disadvantaged people, including Roma. The Commission is working closely with the Member States and urges them to be ambitious when addressing specific challenges in this area in their partnership agreements, and subsequently into their relevant Operational Programmes, and to provide adequate funding. Furthermore, to surmount capacity issues, such as the lack of know-how and administrative capacity of managing authorities, the Commission calls on Member States to consider entrusting the management and implementation of some parts of their programmes to intermediary bodies with proven experience and knowledge of actors on the ground. Focusing on areas where help is needed, the Commission, in a coalition with other international organisations<sup>61</sup>, is exploring concrete actions to offer a comprehensive package of additional support to municipalities that commit to improving the inclusion of marginalised communities, in particular Roma, on their territories. The Commission is also supporting

<sup>60</sup> The practical guide will be limited to the application of the Regulations and will not cover the application of the Directive.

<sup>61</sup> Such as the EEA Norway Fund, the Council of Europe, the UNDP, the Open Society Foundation and the EU Agency for Fundamental Rights.

cooperation among European cities on the inclusion of Roma through the PROGRESS programme.

In addition, the Commission will publish country-specific booklets presenting available European structural and investment funds to help regional and local authorities find funding possibilities for their projects promoting social inclusion and combating poverty.

#### **4. Addressing the needs of local authorities by promoting the exchange of best practices**

*The Commission will help local authorities to share best practices developed across Europe in implementing free movement rules and addressing social inclusion challenges.*

The Commission will produce, by the end of 2013, a study evaluating the impact of free movement in six major cities<sup>62</sup> across Europe that implement policies to promote and facilitate the free movement and social inclusion of mobile EU citizens, such as providing one-stop shop information services to newcomers. On this basis, the Commission will organise, in cooperation with the Committee of the Regions, a first conference in February 2014 with representatives of regional and local authorities, to exchange best practices.

#### **5. Helping local authorities to apply EU free movement rules on the ground**

*The Commission will set up an online training module to help staff in local authorities fully understand and apply the free movement rights of EU citizens.*

*The Commission has proposed that legal support and information bodies for mobile EU workers be set up in all the Member States and is working on reinforcing the EURES network as regards the assistance given to jobseekers and employers in matching jobseekers with vacancies.*

As indicated in the EU Citizenship Report 2013<sup>63</sup>, local administrations play a key role in enforcing citizens' free movement rights as they are often the first interface for citizens settling in a new city. Complaints to the Commission show that in certain cases front-desk officials are not sufficiently familiar with free movement rights. The Commission will develop, by the end of 2014, in cooperation with Member States, an online training tool (action 10) designed to improve local authorities' knowledge of EU citizens' free movement rights and assist them when faced with uncertainties or complex cases.

In April 2013 the Commission put forward a proposal for a Directive on measures to facilitate the exercise of rights conferred on mobile EU workers. It calls on the European Parliament and the Council to adopt it as soon as possible<sup>64</sup>. The Directive would ensure that national bodies provide mobile workers and their family members with advice and assistance in enforcing their rights.

The Commission will also present — in line with the Commission's 2013 Work Programme and action 2 of the 2013 EU Citizenship Report<sup>65</sup> — a proposal for modernising EURES, the European network of employment services, to enhance the role and impact of employment services at national level, improve the coordination of labour mobility in the EU and develop EURES into a fully-fledged European placement and recruitment tool.

<sup>62</sup> Barcelona, Dublin, Hamburg, Lille, Prague and Turin.

<sup>63</sup> Commission Report *EU citizenship Report 2013 — EU citizens: your rights, your future*, COM(2013) 269 final, 8.5.2013.

<sup>64</sup> COM(2013) 236, 26.4.2013.

<sup>65</sup> COM(2013) 269 final, 8.5.2013.

## 6. Conclusion

Free movement is the EU Treaty right which citizens value the most and see as the most important achievement of EU integration. It goes to the heart of Union citizenship.

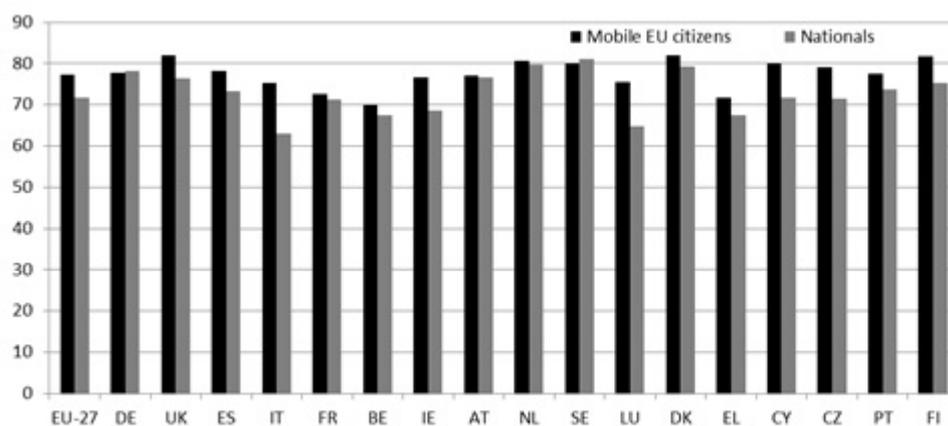
Member States and the EU share the responsibility to make the free movement rules work to the benefit of citizens, growth and employment.

EU rules on free movement and access to social assistance and social security facilitate the effective exercise of the right to free movement and protect those who genuinely make use of it. At the same time they contain robust safeguards to ensure that the rights afforded to EU citizens are not abused, that the obligations under EU law are respected and that unreasonable burdens are not placed on the social assistance schemes of the host Member States. It is the joint responsibility of Member States and the EU institutions to uphold the right to free movement, including by countering public perceptions that are not based on facts or economic realities. In exercising this responsibility, national authorities can count on the Commission's support on the basis of the approach and through the five actions set out in this Communication.

## STATISTICAL ANNEX

**Chart 1: Activity rate among mobile EU citizens and nationals (aged 15-64), 2012**

The chart is sorted according to the number of working-age (15-64) mobile EU citizens residing in the country.



Source: Eurostat, EU Labour Force Survey (table lfsa\_argan). Note: only the main destination countries of mobile EU citizens are shown in the chart. These 17 Member States account for 99% of the mobile EU citizens in 2012.

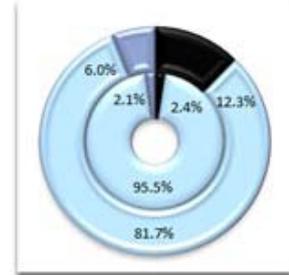
## Chart 2: Take-up of social benefits by mobile EU citizens in certain Member States

Outer ring: percentage of mobile EU citizens in comparison with national population; inner ring: percentage of recipients of welfare who are nationals and mobile EU citizens. Own nationals are presented in light blue, mobile EU citizens in black and non-EU nationals (where available) in violet.

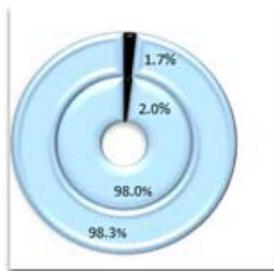
Data on population share: 2012 Eurostat migration statistics, supplemented by Eurostat Labour Force Survey, national data sources and own estimates.

Data on take-up of social benefits: data were provided by Member States, collected by the Commission through the FREEMO expert group. They are not comparable, also in the absence of harmonisation of benefits at EU level.

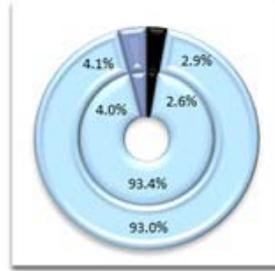
Cyprus — welfare benefits in July 2013



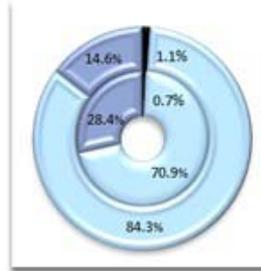
Czech Republic — welfare non-insurance benefits (*not dated*)



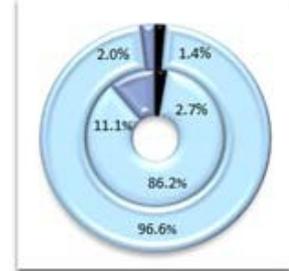
Denmark — recipients of social benefits or income from employment in 2012



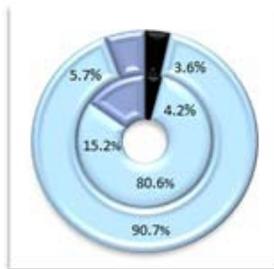
Estonia — welfare benefits in 2012



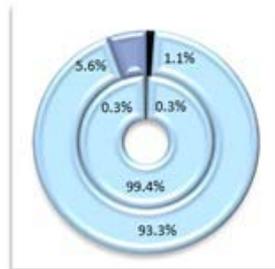
Finland — unemployment benefits in 2012



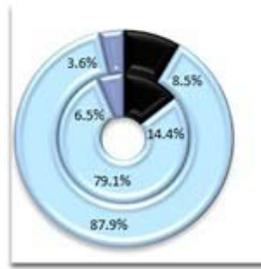
Germany — social benefits for jobseekers in 2012



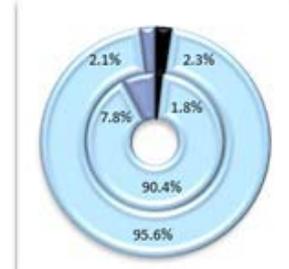
Greece — pensions in June 2013



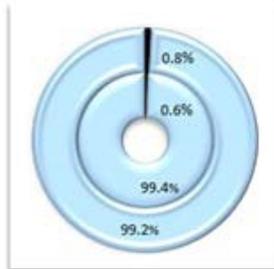
Ireland — jobseekers', housing and child benefits (families and children) in 2013



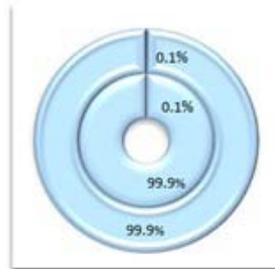
Netherlands — welfare benefits in 2012



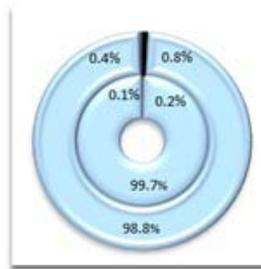
Portugal — social integration benefits, family benefits and support for elderly



Romania — welfare benefits in June 2013 (*aggregated mobile EU and non-EU nationals*)



Slovakia — welfare benefits in May 2013



Slovenia — social assistance in August 2013

