



## Report on the rights and obligations of citizens and non-citizens in selected countries

*Principles of eligibility underpinning access to state territory, citizenship and welfare*

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## **EXECUTIVE SUMMARY**

This report derives from the work of partners involved in Work Package 10 of the FP7 programme bEUcitizen: Utrecht University (The Netherlands); the University of Zagreb (Croatia); University College Dublin (Ireland); the Hebrew University of Jerusalem (Israel); the University of Oviedo (Spain) and the London School of Economics and the University of Oxford (UK). The report explores the complex dynamics of insiders and outsiders, and their mutual dependence. For inclusion and exclusion are in practice seldom binaries, but marked by shades of difference, by differential inclusion and exclusion. WP10 focuses on the three key axes of mobility, naturalisation, and welfare benefits, all of which intersect to explore the ways in which ‘citizenship’ is both a legal and a normative status, that is, how formal in/exclusion is related to ideas of deservingness and ‘Good Citizenship’. This report explores the interactions of these axes and the differential in/exclusions that result via the six states under study, which enable us to examine EU15 (Ireland, Netherlands, UK, and Spain as a Southern EU state), new member (Croatia) and non-EU (Israel) states.

### **Access to state territory (mobility).**

In EU member states hierarchies of entry are dependent upon citizenship status, wealth or skills except for those considered part of the diaspora understood as shared ethnicity/common descent (Croatia, Spain, Ireland), or religion (Israel: Law of Return). There is an evident move towards a knowledge-based economy and attracting the ‘brightest and the best’ across the EU, with resultant restricted access for family migration and lower skilled workers. Thus, access revolves around the management of the mobility of ‘the poor’, except where co-ethnicity/ religion provides access to ‘poor’ but in some cases this is curtailed by EU membership.

### **Access to citizenship (naturalisation)**

Increasingly, in what has been termed the commodification of citizenship, citizenship is premised upon wealth and income, under the guise of ‘integration’. However, there is a difference between those for whom naturalisation is a prize and those for whom it is an entitlement. For those whose access to naturalisation is not shaped by ethnicity/diaspora, naturalisation is a ‘privilege’. In contrast, those whose access is shaped by ethnicity/diaspora often have facilitated naturalisation processes. Thus preferential access to citizenship is evident for some groups. Formal citizenship is an acknowledgment of a prior community.

### **Access to Social Security**

European citizenship not only reinforces but extends the worker-citizen model: Work (effective and genuine) is increasingly a central requirement to access welfare for both citizens and EEA, save for those whose access is shaped by ethnicity/diaspora.

### **Conclusions**

Differential inclusion and exclusion: EU nationals residing in an EU state of which they are not a citizen are not totally *included* – but, neither, necessarily, are nationals (e.g. Roma). Neither are TCNs totally *excluded*: e.g. TCNs with legal permanent residence have many of the rights of citizens (though not rights as EU nationals). A clear disjunction between state and nation: for nations large populations are good and lend credibility; for states large populations are expensive. Concerns about the instrumental use of EU citizenship (access to work and benefits) have consequences for member states’ national social security and naturalisation policies.

## INTRODUCTION

*"Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and shall not replace national citizenship."*

The establishment of EU citizenship in 1992 entailed the establishment of the 'Third Country National' (TCN). As citizens of EU member states became EU insiders so citizens of non-EU states were turned into EU outsiders. Work Package 10 of the FP7 programme bEUcitizen explores the complex dynamics of insiders and outsiders, and their mutual dependence. Inclusion and exclusion are in practice seldom binaries, but marked by shades of difference, that is inclusion and exclusion are *differential*. EU nationals residing in an EU state of which they are not a citizen are not totally included – and importantly, neither, necessarily, are nationals, Roma people for instance may have formal national citizenship but may be excluded in multiple ways. Neither are TCNs totally excluded: TCNs with legal permanent residence for example can enjoy many of the rights of citizens of the state where they reside (though not rights as EU nationals). Furthermore 'Accession state nationals' sit between EU nationals and TCNs, while the European Neighbourhood Policy offers TCNs facilitated access to Schengen visas and so on. We are particularly interested in the ways in which measures directed against TCN/EU nationals impact on resident and non-resident citizens.

There are multiple axes of in/exclusion. WP10 focuses on the three key axes of mobility, naturalisation, and welfare benefits, all of which intersect. These have been selected to enable us to explore the ways in which 'citizenship' is both a legal and a normative status, that is, how formal in/exclusion is related to ideas of deservingness and 'Good Citizenship'. This is apparent in immigration and naturalisation procedures but also claiming welfare benefits, being in need of care or providing care, may also limit access to full citizenship. Not having 'work' can mean a person is a not-quite-good-enough citizen (Anderson, 2013) – and certainly not quite good enough to be an EU citizen in terms of freedom of movement. Thus WP10 will use these three axes to consider differentiated inclusion and its relations to multiple hierarchies of belonging and deservingness. It does not assume that all those with formal citizenship are equally included. It is not simply that the citizen is deserving and the migrant undeserving, but that there are (un)deserving citizens and (un)deserving migrants. It will examine the increasingly complex institutional framework through which rights (and obligations) are stratified among formal citizens as well as between citizens and non-citizens and provide a comparative analysis of the interactions between the restructuring of labour markets and welfare states, citizenship and immigration.

This report is the first deliverable for WP10. It considers the rights and obligations of citizens and non-citizens across the three key policy areas that are the focus of the research of this work package: immigration, naturalisation, and welfare, with a view to examining the *hierarchies of deservingness/undeservingness, belonging and non-belonging* that underpin citizenship. The analysis refers to the selected countries in this study (as indicated above). It will contribute to the overarching project, Barriers to EU Citizenship, through consideration of the hierarchies of deservingness manifest in law and policy that constitute *barriers* to national citizenship, but with a focus on barriers that are usually deliberately erected by states. One of the direct consequences of barriers to national citizenship is to form barriers to EU citizenship, both in the sense of citizenship as a status in itself, and in the sense of the rights accorded individuals by that status.

- These barriers, and their interactions have implications for EU nationals' access to EU citizenship rights;
- These barriers have implications for Third Country nationals' access to EU citizenship;
- These barriers have implications for nationals' enjoyment of full citizenship, normatively understood.

Seven partners participated in this work package, most members come from a sociology/social policy background. Five have expertise in EU15 states - Utrecht University (The Netherlands), University College Dublin (Ireland), the co-ordinators from the London School of Economics and the University of Oxford (UK), and the University of Oviedo (Spain, importantly a Mediterranean bordering state) one has knowledge of a new member state the University of Zagreb (Croatia); and one is from a non-EU state the Hebrew University of Jerusalem (Israel). They were all partners who expressed an interest in the work package and its particular focus rather than being purposively selected. We are conscious that we have no participation from core EU states such as France and Germany, nor from the 2004 accession states, and the study is limited in this respect. However, the topic under consideration in WP10 is necessarily highly sensitive to historical, political and cultural differences. States have very different immigration, emigration and citizenship histories, and a range of different welfare regimes and we have not attempted to produce generalizable 'results' and we doubt whether this would be possible even had we had a wider range of participants. What is possible is to pick out common patterns, to see where it is possible to draw comparisons and contrasts, and where there are potential tensions with EU citizenship. Our intention is firstly to demonstrate the limitations of assuming that citizenship necessarily denotes inclusion or that non-citizenship straightforwardly denotes exclusion, and secondly that using the same analytical lens to examine marginalised citizens on the one hand, and migrants on the other, can yield important insights.

In order to prepare the D10.1. report, each of the participating partners in WP10 contributed a country report with data on the respective countries on the principles of eligibility that underpin formal access to state territory (immigration policy); to citizenship (naturalisation policy); and to welfare (focusing on access to social security in relation to unemployment and income related needs). Partners' reports explored the gendered and racialised aspects of these three regimes and how they have changed over time. The contradictions that emerge when considering eligibility of access to these different regimes, particularly in relation to the impact of EU citizenship and tensions between the national and the European were examined. Drawing on the information provided by partners, the WP10 coordinators, London School of Economics and the University of Oxford, UK, then drew out the lines of comparison from each country, including the UK, to explore the overarching themes of WP10 and the interconnections between hierarchies of deservingness across these three policy areas, as set out in this report.

The report is structured as follows. Section One sets out the concept of citizenship underpinning this report; Section Two examines the hierarchies of deservingness with regard to entry to state territory (immigration); Section Three, with regard to naturalisation; and Section Four, with regard to social security (entitlement to cash benefits on the basis of unemployment and income-related needs). Who is considered to be deserving of rights to enter and reside in a state territory, to naturalise and make claims on the welfare state, and on what basis, is inflected with national histories and concerns. In these sections, the principles that underpin hierarchies of deservingness across the selected states are examined. Section Five considers the interconnections between these hierarchies of deservingness. It will note the consequences of efforts to exclude some (formal non-citizens, non-nationals) on those who are formally included (formal citizens). Finally, Section Six presents the conclusions of the report.

## **1. CITIZENSHIP AND ITS OTHERS**

Before examining laws and practices in different states it is important to explain that we are deploying “Citizenship” as describing a legal, political and social relation. We take as our starting point that citizenship designates a legal relation between an individual and a state: a person must be granted entry to the territory of the state of which they are a citizen and they cannot be deported from that state. It also fuses the legal and the political: a citizen is a stakeholder, or has a membership in the political community delineated by the (nation) state. ‘Citizenship’ also describes the relation between belonging and political community. The position of people like those who are considered ‘migrants’ (non-Citizen) or ‘criminals’ (Citizen) exposes the distinction between citizenship as legal status, and the rich content of citizenship, and relations with other people with whom one lives. Anti-deportation campaigns for example often claim that people threatened with deportation ‘belong’ in their city or are part of their community and base their claims to stay on this. Thus people may be considered to belong but may nevertheless not be formal citizens. The converse may also be the case and sometimes formal citizens may find that they are no longer regarded as belonging to the state of which they are a national. For example, UK nationals who have been resident abroad for many years and who are returned having served criminal sentences are often treated in the press as not ‘really’ British and should not really have been admitted to the country.

For all this ambivalence, citizenship generally continues to be imagined and represented as a good. There is no single liberal citizenship tradition but what is common is the central place that is given to the individual. The liberal individual is reasonable and capable of perceiving his own self-interest and of respecting the rights of others, that is, he has a certain moral disposition and is thereby able to enter into relations of equality with other self-owning liberal selves. Those legally or socially constructed as vulnerable or dependent often could not be citizens. At various times and places certain types of people such as racialised others, women, slaves, children, beggars, those who were not able bodied or of ‘unsound mind’, were not legally recognized as having a right to their own person. Those who were not recognized as self-owners were often held to be *naturally* unfit for citizenship. They could not (and some cannot) contract, inherit, choose or not to labour and so on (Welke, 2010). Such people were subject to a differentiated inclusion, a partial and often mediated membership, through husbands, fathers and masters. The relation between liberal citizens and those not suitable for citizenship were relations of domination and subordination, and these relations were highly varied. At certain times and under certain regimes, both master’s wife and slave were not legally recognised as full persons, yet a wife was not the same as a slave. Thus the development of citizenship in liberal democracies has generally been viewed in a cumulative and linear way as a history of the expansion of rights and membership to previously excluded groups. T.H. Marshall famously traced the development of citizenship in Britain as moving from the establishment of civil rights, to political rights, to social rights. These rights were gradually extended to non-property owning men, to women, and in limited way to children. The Marshallian tale of progress, where, through citizenship, recognition and equality are gradually expanded to incorporate new social groups, has now, it seems, reached its end. The unfolding of citizens’ rights cannot be extended beyond nation state boundaries, and the contemporary challenge is generally seen as not about increasing the purview of citizenship, but enriching it – how to deepen rather than widen citizenship.

Our approach problematizes this kind of analysis. Firstly it highlights the implications of the fact that the relations of universalism and equality that are held to characterize contemporary citizenship in liberal democracies are typically imagined as enacted within bounded national societies (Bosniak, 2006). Indeed, citizenship rights and boundedness are inextricably bound up together. What happens to political theories of rights when faced with people who do not all stay in their states claiming their citizens’ rights, or participating as active citizens? While a core value of citizenship is the moral equality of citizens, liberalism espouses recognition of equality of rights of *persons*. What happens when persons seek to improve, develop or save their lives by entering a state of which they are not a citizen? Examining the principles underpinning the entry of non-citizens to liberal states helps to delineate the relations between citizenship rights on the one hand, and

core human rights on the other. For example, while there has been a high profile campaign to end female genital mutilation (FGM) in the UK and throughout the world, non-citizen women and girls seeking to enter the UK in order to escape FGM can find that this does not constitute grounds for asylum. Questions of entry are related to questions of stay as the lengthy presence of non-citizens on state territory has become recognised as a challenge to states and citizenship in law theory and practice (Carens, 2013) and it raises the question of how the claims of citizenship as signifying equality and resistance to subordination can be reconciled with its designation of 'outsiders'. Non-citizens are subject to the law, but they are typically not sovereign over it (Cole, 2010) and in this way they bear comparison to groups who were/are not granted rights of legal personhood.

Secondly our approach draws attention to the ways in which the law continues to lend weight to certain characteristics, giving them significance and consequence and thereby helping to create identity (Welke, 2010: 8). Children continue to have an ambivalent relation to citizenship. They may be formally citizens yet they cannot necessarily independently exercise a right to family life at a national level (though as EU citizens the position is rather more complex). In some states, citizen children with foreign parents may be tolerated by rather than protected by their state of citizenship (Sawyer, 2006). Those who are physically disabled may find themselves penalised by a social security system that emphasises employment as a means of social contribution and their citizenship rights consequently limited.

Thirdly, unpacking the requirements placed on those who want to naturalise indicates the delineations of the community of value, for the migrant is expected to be a Good Citizen and comply with the idealised citizen. It has been argued that formal and substantive citizenship should be kept apart for analytical purposes, and that the issues raised by citizenship acquisition are purely legal. Phillip Cole among others has argued in contrast that 'the question of the legal acquisition of citizenship is a central and theoretically complex area for political theory' (Cole, 2010: 3). Ways in which non-citizens can become citizens, or acquire citizenship are not simply legal details and technicalities but indicate and shape the foundations of how membership is imagined (Cole, 2010; Honig, 2003). The ways in which individuals become citizens, and who is able to become a citizen, reveal ideals of citizenship, membership and statehood in specific states, and how the nation/state community is imagined. In this way, formal and substantive citizenship are inextricably linked and we can see citizenship's moral space, a space that extends beyond the migrant to encompass migrant and citizen alike.

EU citizenship and its interactions with national sovereignty and citizenship add a dimension to debates about the nature of citizenship that only now are being explored. What is particularly striking is how in the case of EU citizenship, citizenship is related to mobility and movement (essentially for the purposes of work) rather than stasis and belonging. Central to the emergence of European citizenship has been the reconstruction of the boundaries of citizenship and its relationship to nation states, welfare states and labour markets. This has involved changing relations at the interstate level with regard to the legal construction of EU citizens and non-EU citizens, and the associated rights of citizenship. At the same time, at the level of individual member states' citizenship policies and immigration controls, there has been a continuing diversification of legal statuses and associated rights, not simply between citizens and non-citizens of those states, but also among non-citizens (such as work permit holders, family members, asylum seekers and students). While EU citizenship is in populist discourse often seen as undermining national sovereignty (principally, but not exclusively, through free movement within the Union), we will pay attention to the ways in which EU citizenship adds value to national citizenship and sovereignty.

## **2. ENTRY**

A state cannot refuse entry to their citizen; the citizen being part of the territorial community of the nation state via either *ius sanguinis* (blood based descent) or *ius soli* (birth on the territory). This is the sine qua non of the global citizenship regime, operationalised through the nation-state system where individuals appertain to a sovereign nation-state by virtue of their legal citizenship and therefore have rights and privileges states are held to respecting, such as the right to entry. This is typically analysed as the citizen's right to reside in their territory of citizenship in defiance of the wishes of other citizens. However, it may usefully also be understood as the state's duty to admit, since the requirement to admit can often be made in defiance of individual citizen's wishes, and even of the state itself: a state must accept their deported/removed national even if the person in question does not want to return. Thus, when it is a question of formal citizens, there are no hierarchies of entry, all have equal right of access to the territory of their state of citizenship on the basis of their formal citizenship<sup>1</sup>. Citizens also enjoy the right of permanent residence in their state, and the right not to be deported (though they may be forcibly removed from their state under extradition arrangements<sup>2</sup>).

Nevertheless there are global hierarchies of citizenship, both in terms of the claims that can be made of the state of citizenship and in terms of ease of travel. EU nationals have the right of free movement across the EU but TCNs are subject to differential entry criteria. Broadly speaking there are four categories of non-EU citizens who enjoy preferential access to EU state territory: asylum seekers, the diaspora, the wealthy, and the highly skilled. Those who are not within these categories, face greater barriers to mobility. Israel has its own hierarchies, based around its ethnic conception of nationhood and definition of the state as a Jewish state; part of the legitimacy given for this definition is that it should provide a shelter and safe haven for Jews (Gal, 2008; Joppke & Rosenhek, 2002 in Gal & Halevy, 2014). Individual states also have highly complex, bilateral and multilateral arrangements with other states regarding entry, visa and stay arrangements. Each state has its own hierarchy of entry of entry for non-citizens, informed by history, trade and geopolitics. Membership of the European Union can require changes to these historical relations. For example, Croatia had a visa free regime with Turkey and some facilitated visa conditions with Ukraine and Russian Federation but following accession to the EU on April 1 2013 it was required to align its visa conditions with tougher EU requirements.

This section will first consider EU citizens moving within Europe, and then Third Country Nationals. It will discuss the differential treatment between different nationalities of TCNs, and then consider the underlying principles that structure the access of TCNs as a group. It will first examine those that have easier access, asylum seekers, those from diaspora groups, the wealthy and the skilled, and then those who have restricted access: those seeking to enter as family members and as 'low skilled' workers.

### **2.1 EU CITIZENS**

Free movement of citizens of Member States, and of labour, within the EU was one of the founding principles set out in the 1957 Treaty of Rome. Directive (2004/38/EC)<sup>3</sup> - usually referred to as the free movement

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<sup>1</sup> In practice certain document holders may be subject to more scrutiny than others of course. <http://fra.europa.eu/en/publication/2010/situation-roma-eu-citizens-moving-and-settling-other-eu-member-states>

<sup>2</sup> For example, the European Arrest Warrant (EAW) is intended to increase the speed and ease of extradition throughout EU countries and is valid for all EU countries. It was created in 2004 to ensure direct enforcement by a judge in one Member State of a warrant for arrest issued by the judicial authority of another Member State. For further details see: <http://www.euromove.org.uk/index.php?id=14973>

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

directive – was adopted in 2004. Under the Directive, EEA<sup>4</sup> citizens have the right of free movement and residence across the European Economic Area with no conditions on their stay for the first three months. After this, residence is contingent upon them not becoming an ‘undue burden’ on the country of residence and they must exercise their treaty rights as a jobseeker, worker, self-employed, self-sufficient person or student. Such constraints are reflective of the idea of an ‘economic market’ which still underpins them (Rossi dal Pozzo, 2013: 65). Thus, broadly speaking, an EEA/EU citizen who moves from one EEA country to another has a right to reside (after an initial three months) if they are economically active or are able financially to support themselves. After five years, the right of residence becomes permanent. Inactive individuals however do not have the right of movement or, in particular, residence in a member state other than their own (*Ibid.*). The aim of the free movement directive was to enable workers from states with high unemployment levels to move to those with high labour needs (Barnard, 2004 in Muir, 2012: 19) thus regulating supply and demand within EU labour markets. However, this right is understood as a right to move between national labour markets, as opposed to a fully integrated European labour market, hence the transitional restrictions imposed by ‘old’ member states, as discussed below.

The expansion of the EU since 2004 has involved the differential inclusion of citizens of new member states. Transitional restrictions imposed by existing member states on their rights of entry, residency, work and social security, in effect resulted in a temporally regulated two-tier system of EU citizenship<sup>5</sup>. In accordance with this principle as nationals of a new member state, Croatian citizens have the right of free movement across the EU, but their right to access employment is limited by transitional restrictions in a number of member states. The UK (until 2018), Spain (until 2020) and the Netherlands currently require Croatian nationals to have a work permit before they can take up employment. Croatia has in turn introduced transitional restrictions on freedom of movement of workers for citizens of those member states which have imposed restrictions on Croatians<sup>6</sup>.

For the five EU member states to which this report refers (Croatia, Ireland, the Netherlands, Spain, the UK), it is evident that this directive has had varying impact on immigration flows. In the UK, for example, there has been a significant change in the composition of the non-UK national population, with significant inflows post 2004 from Poland, Bulgaria, Latvia, Romania, Slovakia and Lithuania<sup>7</sup>. The 2011 Census suggests there was almost a ten-fold increase in Polish-born residents in the UK from 58,000 in 2001 to 579,000 in the 2011. In 2008 Spain

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<sup>4</sup> The Directive provides right of free movement for EU citizens, and citizens of the European Economic Area (EEA) i.e. Iceland, Lichtenstein, Norway. Switzerland, which is not a member of the EEA, is not bound by the Directive but has a bilateral agreement on free movement with the EU which came into force in 2002. In effect Swiss nationals and their family members have the same rights as EEA nationals. For a full list of EEA countries see: <http://www.dwp.gov.uk/international/social-security-agreements/list-of-countries/>

<sup>5</sup> Transitional restrictions on the free movement of workers can be applied for a period of up to seven years after states join the EU to prevent disruption to Member States’ labour market (Muir, 2012). The Accession Treaties of 2003 and 2005 allowed Member States to temporarily restrict the free access of workers from the Member States that joined in 2004 (thus, Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovenia, the Slovak Republic and Hungary (the EU-8), with the exception of Malta and Cyprus) and 2007 (Romania and Bulgaria) to their labour markets. Transitional arrangements can only be applied to workers but not to self-employed persons or any other category of EU citizens. Transitional arrangements irrevocably ended for the EU-8 on 30 April 2011 and for Bulgaria and Romania on 31 December 2013. For further information, see: <http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=nG7pTNVHkktTFzXVcLShCBppbnrPN0gWx1LJmhvQxRJhw1IPyTL!317487007?uri=CELEX:52008DC0765>

<sup>6</sup> Austria, Belgium, Cyprus, France, Germany, Greece, Italy, Luxemburg, Malta, the Netherlands, Slovenia, Spain and the UK. See: <http://ec.europa.eu/social/main.jsp?catId=1067&langId=en>

<sup>7</sup> Office for National Statistics (2013) *Immigration Patterns of Non-UK Born Populations in England and Wales in 2011* [http://www.ons.gov.uk/ons/dcp17176\\_346219.pdf](http://www.ons.gov.uk/ons/dcp17176_346219.pdf)

was the main EU destination country for Romanians and Bulgarians whose state had joined the EU in 2007, accounting for well over 50% of these intra-EU movers (Muir, 2012: 60)<sup>8</sup>. This has led to a demographic change in Spain's population and Romanians are now the largest migrant group in Spain (Martín Díaz et al. 2012). In the Netherlands the total number of migrants from new member states has been steadily increasing. In absolute terms, the highest level of migration is from Poland (20,532 registered migrants in 2013)<sup>9</sup>. By contrast, in Croatia, which joined the EU in 2013, there has been very limited effects of intra EU migration on the population. Clearly, the directive has also had a huge impact on the sending states, however, it is outside the scope of this report to explore that side of the movement.

In summary, for EU member states the hierarchies of entry may be broadly characterised as falling into three categories: entry for national citizens, entry for EU nationals, and entry for TCNs. Entry for national citizens has no *formal* hierarchies, though in practice some formal citizens may face more interrogation on entry than others. Entry for EU citizens to other EU member states has no formal hierarchies, but for those who wish to reside for longer than three months there are hierarchies of stay. Entry for TCN is subject to multiple hierarchies, detailed in the next section.

## **2.2 THIRD COUNTRY NATIONALS**

The emergence of the category of the EU citizen has also led to the emergence of the category of the Third Country National (TCN), i.e. a non-EEA national. This is a new category of non-citizen. From 1993 a series of Europe-wide policy measures were adopted aimed at curbing TCN migration from outside the European Union (King, 1993 in Bloch, 2002:54). TCNs have no automatic right of entry, and if they are one of the few 'visa free' nationals, they may still be refused at the border. TCNs often, but not always, have to be endorsed or sponsored by a citizen or permanent resident (an employer or a spouse for instance) in order to be able to access national territory. TCN often have to register with the authorities and present themselves for regular checks ('signing on').

However, this should not be read as blanket exclusion. Not all TCNs are equivalent, and there are bilateral arrangements between states and EU multilateral partnerships. One such partnership is the European Neighbourhood Policy (ENP)<sup>10</sup>. This aims to move beyond cooperation to a significant degree of integration through a stake in the EU's Internal Market offering the possibility for ENP states to participate in aspects of EU policies and programmes. The ENP conceptualises the gains on offer as 'membership-minus' and foresees a policy process that emulates formal accession. While common rules are to guide the EU's relations with all neighbours, the approach is bilateral and based on the neighbours' specific capability and willingness to move forward and agreements are set out in individual Action Plans (Del Sarto & Schumacher 2005). Whilst the ENP had the ambition of extending EU free movement, EU member states have clarified that the ENP can, at the most, offer three of the "four freedoms", and the free movement of persons has gradually been excluded (Tocci, 2005; Del Sarto & Schumacher, 2005). This is of relevance to movement between the states under

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<sup>8</sup> For further information on the impact of enlargement on intra-EU mobility, see: <http://register.consilium.europa.eu/doc/srv?I=EN&f=ST%2016162%202008%20INIT>

<sup>9</sup> <http://statline.cbs.nl/StatWeb/publication/?DM=SLEN&PA=03742ENG&D1=0&D2=0&D3=0&D4=8,26,37,57,59,61-62,75-76,81,84,96,102,104,120,127,170-171,175,198,202-203,212,217,234,246,252&D5=0&D6=9-18&LA=EN&HDR=T,G3&STB=G1,G2,G4,G5&VW=T>

<sup>10</sup> The ENP was developed in the context of 2004 enlargement. It involves 16 of the EU's closest neighbours – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine. Although Russia is also a neighbour of the EU, relations are instead developed through a strategic partnership. See: [http://eeas.europa.eu/enp/about-us/index\\_en.htm](http://eeas.europa.eu/enp/about-us/index_en.htm)

consideration by our work package. The EU-Israel Association Agreement which came into force in 2000 provides the legal basis for relations between the two parties<sup>11</sup>. Under the ENP, the three-year Israeli Action Plan aims to gradually integrate Israel into European policies and programmes, but it does not mention free movement of people, although Israeli passport holders (including Palestinian Arabs in Israel who are Israeli citizens by status) can travel to the EU without the need for a visa for short stay visits and vice versa under the EU's Common Visa Policy.

The Common Visa Policy (under the Schengen Agreement and Council Regulation (EC) No 539/2001 of 15 March 2001 and its successive amendments) lists non-EU Member states whose nationals must be in possession of visas when crossing external borders and those whose nationals are exempt from that requirement for short stays (up to 90 days). It has not been adopted by Ireland or the United Kingdom who operate their own national visa policies. The EU also has a number of visa facilitation agreements with other countries, such as Albania, Russia, and Ukraine.<sup>12</sup> The EU aims at achieving full visa reciprocity with the non-EU countries whose nationals are exempt from the visa requirement such that EU citizens are not required to obtain a visa to travel to these non-EU countries.

Thus there is a hierarchy of entry that means it is significantly easier for the nationals of some 'Third Countries' to enter national territory/the EU than it is for others. These hierarchies may be manifest not only in terms of who is allowed in, but also in restrictions on the length of time that an individual is permitted to stay (is their visa renewable) and restrictions attached to status (can they access social security and other welfare provisions, such as health care). To discern the broad principles that govern TCN hierarchies of entry to different states we have considered, firstly those characteristics that tend towards enabling TCN, or, in the case of Israel, non-Israelis (i.e. non-Jewish migrants without Israeli citizenship), preferential access to state territory, and secondly those characteristics that make it more difficult for those people to access the EU/Israel.

#### 2.2.1 *PREFERENTIAL ACCESS*

The specifics are highly varied across countries but crudely speaking there are four categories of non-(EEA) citizens who enjoy preferential access to state territory: asylum seekers, the diaspora, the wealthy, and the highly skilled.

Given the poor record of the states under consideration with respect to asylum it may seem surprising to suggest that asylum seekers have preferential access to state territory. However, all states included in the study have signed the 1951 Refugee Convention which means, in theory at least, they must not return asylum seekers to their country of origin without hearing their case. Asylum seekers generally represent a very small proportion of TCNs accessing entry to the states in question. There is considerable evidence that EU states are not abiding by this Convention (for example, Fekete, 2005), and Israel too has been subject to criticism<sup>13</sup>. In the EU under arrangements such as The Dublin Regulation<sup>14</sup>, EU readmission agreements with border states<sup>15</sup>, and

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<sup>11</sup> [http://eeas.europa.eu/delegations/israel/index\\_en.htm](http://eeas.europa.eu/delegations/israel/index_en.htm)

<sup>12</sup> For further information see EU Visa Policy: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm)

<sup>13</sup> For example, in January 2014 the UN refugee agency representative in Israel criticised the country's amendments to its asylum law for 'not being in line with the 1951 convention'. See: <http://www.reuters.com/article/2014/01/05/us-israel-migrants-idUSBREA0409820140105>

<sup>14</sup> The Dublin Regulation, is the European Union law that determines which Member State is responsible for deciding an application for asylum or humanitarian protection. Under the Dublin Regulation where an applicant for protection makes a claim in one European Union (EU) member State, but has previously made a claim in (or been present in) another, the

bi-lateral agreements between member states and non-EU states asylum seekers can be refused entry in practice because they are not returned to their country of origin. Thus liberal states can acknowledge a right to asylum without this meaning that they must, therefore, permit its exercise on their territory. Rates of recognition are low (the average recognition rate across the EU in 2011 was 11.6% and in Ireland in 2011 only 5% of asylum applications were successful (Conlan et al., 2012), although recognition rates have recently increased, and according to Eurostat in 2012 10% of decisions on asylum, humanitarian protection and subsidiary protection (excluding appeals) decisions were positive,<sup>16</sup> and in 2013, 17.9% of decisions (excluding appeals) were reportedly positive<sup>17</sup>). Furthermore, while asylum seekers may indeed be given access to state territory, and the principle of asylum is thereby acknowledged, the post entry conditions can be very harsh (including detention, limited or no access to the labour market or to welfare benefits). That is, the case of asylum seekers demonstrates not only the ways in which states have sought to limit their responsibilities under international conventions, but also that legal access to territory should not be read as access to labour markets or state welfare provisions.

Far more significant in numbers than asylum seekers are those to whom individual states give preferential access on the basis of shared ethnicity (Croatia), religion (Israel), colonial history (Spain). The immigration policies of Croatia, Ireland and Spain were to varying degrees designed with the diaspora in mind. In these instances immigration policies must be contextualised within historical relations, and ideas about 'return', and 'the nation'. Under the law of Return, Jewish people can enter Israel and automatically claim citizenship on arrival. This does not have to be based on direct descent. Spanish immigration controls made special provision for immigrants from countries with historically close ties to Spain (Latin America, Portugal, Brazil, Andorra, the Philippines and Equatorial Guinea). Indeed, prior to 1985, Spain had a barely defined immigration policy. As a condition for inclusion in the European Economic Community in 1986, the first Spanish Immigration Law (Organic Law 7/1985) was drafted, and for the first time, it became compulsory for all foreign nationals wishing to enter Spain to be in possession of visas. However, owing to Spain's express desire to establish preferential policies for its former colonies, the law included clauses to facilitate the entry of Latin Americans as tourists, and they were exempt from visa requirements for short stays<sup>18</sup> (Martín Díaz et al. 2012:7). EU membership has had restrictive consequences for these types of arrangement. In Spain for example, whilst Herrera (2006 in Martín Díaz et al. 2012:7) argues that the political and economic convergence of the European Union member states created an attractive alternative to the United States, the traditional destination of Latin American emigration, eventually the Schengen harmonisation of entry visas for short stays entailed the imposition of visas on nationals of Cuba, Ecuador and Bolivia, and thus restricted their access to Spain<sup>19</sup>.

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person may be transferred back to the first EU State, which in general will be deemed to hold the responsibility for determining their claim. It was recently amended and EU Regulation No 604/2013 or 'Dublin III' entered into force in 2013. For further details see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

<sup>15</sup> For example, the EU recently signed a Readmission agreement with Turkey, whereby Turkish nationals gain visa-free entry to the EU in exchange for the EU being able to return irregular migrants who entered the EU via Turkey to Turkey. See: <http://www.mintpressnews.com/turkey-eus-new-border-police/185636/>

<sup>16</sup> [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF)

<sup>17</sup> [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF)

<sup>18</sup> Additionally, nationals from former colonies were also favoured in areas such as access to employment (Martín Díaz et al. 2012:22, note 3)

<sup>19</sup> Spain had already implemented visa requirements on Peru (1992) and the Dominican Republic (1993) prior to the implementation of common European border policies (Martín Díaz et al. 2012)

A third category granted privileged access to a territory are the wealthy. All the EU countries in the study offer premium entry routes to investors. Since 2013 in the Netherlands those TCNs in possession of at least € 1,250,000 (to be) invested in the Dutch economy (*bedrijfsleven*) have benefitted from a simplified entry and residence procedure for one year and then, upon successful verification, for another four years. The capital has to be invested in a company that constitutes an ‘added value’ to the Dutch economy (Lepianka, 2014).<sup>20</sup> Spanish Law 14/2013, commonly known as the “Entrepreneur’s Act”, facilitated entry and residence for those making a ‘significant investment’ in the country, (such as an investment of over €2 million in Spanish government bonds, over €1 million in deposits in a Spanish bank or acquisition of real estate worth over €500,000) (Jiménez, Espiniella, & van den Broek, 2014). The UK also has an investor entry route which requires migrants to have £1m (cash) capital to invest in the UK or £2m personal assets with £1m to invest as a loan. In Ireland a new investor programme was initiated in 2012 for those investing between €500,000 (in a public project) and €2 million who could thereby access a five-year residence permit (Finlay, 2014). In Croatia, facilitated access for investors is outlined within the Law on Aliens, Art. 76, stipulating that the annual quota of work permits may be circumvented in the case of migrants being “key personnel” or majority shareholders of companies receiving incentive measures or carrying out strategic investment projects, both as defined by relevant national legislation (Baričević & Hoffman, 2014).

The final category who have privileged access are the ‘highly skilled’<sup>21</sup>. In what has been termed the “*race for talent*” (Shachar, 2006), countries across the world are adopting skilled-stream, recruitment strategies. Ireland, the UK, and the Netherlands, have introduced fast-track admission processes for highly skilled professionals, which facilitate access to residence and provide a route to permanent residence. In the Netherlands, length of residence is determined by a migrant’s assessed skills and economic value and the hierarchies of residence rights by ‘skill’ are explicit: residence rights are granted up to five years for highly-skilled worker, one year (but renewable) for ‘regular salaried workers’, and for au pairs a maximum of one year with no extension possible. Furthermore, highly-skilled-employees are exempted from the voluntary ‘Declaration of Participation’, introduced in 2014 for all (EU and non) labour migrants with the aim of facilitating their integration<sup>22</sup>. Rather, their contribution to the realisation of Dutch values appears to be taken for granted (Lepianka, 2014).

In the UK, skills are also a route to privileged access to settlement. The UK government has recently restricted the possibility for most migrant workers from outside the EU to stay in the UK for longer than five years in order to curb access to settlement, and to break the link between coming to the UK to work and permanent stay. However, those who meet a minimum income threshold or have particular desirable skills are exempt. ‘Exceptionally talented people’, investors and entrepreneurs will continue to have the option to stay. Similarly, in Ireland, the Green Card scheme “is designed to attract highly skilled people into the labour market with the aim of encouraging them to take up permanent residence in the State.”<sup>23</sup> Essentially, these migration

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<sup>20</sup> Letter of F. Teeven (Staatssecretaries van Veiligheid en Justicie) to the Chairman of the Lower House (20 Sept. 2013).

<sup>21</sup> The meaning of ‘skills’ of course is gendered and highly contested (see Anderson and Ruhs, 2010)

<sup>22</sup> In January 2014, a pilot programme ‘Declaration of participation’ was introduced in 18 municipalities. The programme is addressed to all EU and non-EU residents who have come to the Netherlands for the purpose of paid employment (with an exception of highly-skilled migrants – *kennismigranten*). Its aim is to facilitate the integration of (newly arrived) migrants. The declaration informs migrants about the basic values of Dutch society (participation, freedom, equality and solidarity), and by signing the document, migrants declare to contribute to the realization of those values (through participation in the labour market, education or voluntary work) with the assistance of the fellow citizens. The signing of the declaration is voluntary and does not constitute a condition or requirement of residence.

<sup>23</sup> Department of Jobs, Enterprise and Employment, ‘Green Card Employment Permits’, <http://www.djei.ie/labour/workpermits/greencardemploymentpermit.htm> (in Finlay, 2014)

processes have been termed ‘talent for citizenship’ where the exchange is seen as viable in order to gain the net positive effects associated with skilled migration (Shachar, 2006; Murray, 2011).

In Spain, due to the economic crisis and the growing unemployment rate<sup>24</sup>, net migration has been negative over the past few years and, unlike in previous decades, it is highly-skilled Spaniards leaving the country, often to other EU member states. As a result, Spain has amended its immigration legislation to offer more favourable entrance conditions to highly qualified workers (Jiménez, Espiniella, & van den Broek, 2014). Similarly, various categories of highly-skilled workers to Croatia are not subject to quota systems. The key focus then is to attract the highly skilled, valorise and reward them, as they are seen to make the most valuable contribution to the state.

Privileged access to the EU on the basis of skill is likewise underpinned by the European Blue Card, which is ‘Europe’s equivalent to the US’ Green Card’ and aims to attract highly educated non-EU migrants to Europe in order to make the EU “the most competitive and dynamic knowledge-based economy in the world”.<sup>25</sup> Under the scheme, Blue Card holders have the right to free movement within the Schengen area and facilitated access to permanent residence. The card can be issued for between one and four years and entitles the holder to family reunification. Blue card workers receive equal treatment as nationals of the EU Country issuing the card including the access to education, training, and welfare benefits. Holders must be highly educated and have a binding job offer with a higher salary than that of the national average in the state in which they are moving to work. The card may be withdrawn if the holder does not have sufficient resources to maintain him-/herself and family members without social assistance or if the holder has been unemployed for more than three consecutive months or more than once during the period of validity of the card.

In theory, under the scheme after eighteen months of legal residence in the first member state as an EU Blue Card holder, the migrant and his/her family may move, under certain conditions, to another member state for the purpose of highly-skilled employment. However, whilst no data is yet available, differences in the way member states apply the Directive, including minimum salary requirements, mean moving from one state to another is not straightforward (European Commission, 2014). The majority of Blue Cards in 2012 were issued by Germany, who granted over 70% of Blue Cards (n. 2,584), with Spain granting 12.58% (n. 461) and the Netherlands only 1, (compared to 5,514 work permits for highly-skilled migrants via its national initiatives) (European Commission, 2014). Considering the differences in use of the scheme across member states, the Commission is “concerned about flaws in the transposition, the low level of coherence, the limited set of rights and barriers to intra-EU mobility” (*Ibid.* :10).

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<sup>24</sup> Around 26% in February 2013 (Jiménez, Espiniella, & van den Broek, 2014).

<sup>25</sup> <http://www.apply.eu/BlueCard/>

## 2.2.2 RESTRICTED ACCESS

One can contrast the groups with facilitated access to those whose access is highly constrained. For all the states examined these generally fall into the categories of those entering as family members and those entering for the purposes of 'low skilled' work.

### Family Migration<sup>26</sup>

The right to private and family life is a fundamental liberal principle and family members, like asylum seekers, have protections and rights accorded to them under international conventions and human rights law (such as the European Convention of Human Rights and the European Social Charter). In this respect it might be argued that family migration belongs in the preferential rather than restricted access section of this paper. However, unlike asylum, family migration is a part of immigration law, and while families have a right to be together, the question of where they can be together is up for debate. Indeed, according to the Irish Supreme Court, the immigration of family members is a 'gift' of the state, rather than a right<sup>27</sup>.

Family members may either join relations who are already resident in another state, or they may migrate simultaneously with the primary migrant. In the EU the latter is restricted to particular categories of migrants such as the highly-skilled, those entering via entrepreneurial route or holders of the EU Blue Card. In any event, the movement of the family is dependent upon the worker status of the primary migrant.

Questions about who counts as a family member, who can sponsor family members, and what constitutes a genuine relationship all allow considerable scope for restriction. As immigration policies are constructive of certain types of subjects, the rules governing their construction are intensely ideological. Legislation governing family migration reflects deeply held assumptions about the nature of the family and the nation. A family's definition of their membership is not enough to warrant recognition by the state, and those permitted to enter with or join relatives have been increasingly limited to the monogamous nuclear family, with the definition of 'child' restricted to under 18 year olds. All EU member states except Ireland and the UK have signed the Family Reunification Directive (2003/86/EC). The purpose of this directive is to determine the conditions under which non-temporary legally resident TCN can exercise rights to family reunion, with 'family' understood in the most restricted sense of the nuclear family (Ivanescu & Suvarierol, 2013). It states that children over the age of 12 migrating independently from their family may be subject to the state's discretion as to their ability to integrate and therefore may not be eligible for family reunification. Applications should also be submitted prior to the child's 15<sup>th</sup> birthday<sup>28</sup>.

In contrast to the independence and self sufficiency of the worker, in Europe dependence is perceived as a fundamental characteristic of family life (for example, see European Court of Human Rights, 2010, para.43). This is a key premise in the family migration of parents to EU states and legislated under Art. 2 (2) (c) of Directive 2004/38, which states that the family member must show that s/he is materially supported by an EU citizen exercising his/her free movement rights, or by the latter's spouse. Furthermore, in determining the existence of the dependence, the host Member State must assess whether the family member is not in a

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<sup>26</sup> For the purposes of this paper we have restricted discussion to what might be described as 'family reunion' rather than short term family visit visas.

<sup>27</sup> Bode (A Minor) -v- Minister for Justice, Equality & Law Reform & Ors, [2007] IESC 62 (2007),, Supreme Court [S.C. No: 485 of 2006] cited in INIS, 2013: 18

<sup>28</sup> This is due to the considerable time that family reunification applications can take to be processed, meaning that otherwise children risk being over 18 years old by the time their application is accepted, and would therefore no longer be eligible.

position to support himself or herself in the country of origin at the time when s/he applies for a residence permit in order to join the EU citizen in that Member State. However, the Court of Justice of the European Union (ECJ) held in its judgement of *Reyes v Sweden* [2014] EUECJ C-423/12<sup>29</sup> that, ‘there is no need to determine the reasons for that dependence or therefore for the recourse to that support’.

Member states then set their own criteria or measurement of dependency, for example, in Spain dependence is gauged by remittances sent to the parent/s by the migrant or the migrant’s partner during the year before the application, and must represent at least 51% of the National Domestic Product per capita in the country of origin. Reunified ascendants should be over sixty-five years of age, save in the case of humanitarian reasons, such as physical disability (Brey & Stanek, 2013: 14). Similarly in Ireland, the degree of dependence must be evidenced and be such as to render independent living at a subsistence level by the family member in his/her home country impossible if that financial and social support were not maintained. However, this dependence must be on the family and not translate into dependence on the state. In the UK only in ‘the most exceptional compassionate circumstances’ of ‘illness, isolation and poverty’ are relatives such as parents aged over 65 permitted entry (Immigration Directorate, 2011), and sponsors are required to demonstrate that they can care for a dependent relative for five years without recourse to public funds. According to the All Party Parliamentary Group on Migration Report of June 2013, the stringency of this requirement is such that the route has been ‘effectively closed’.

In accordance with this logic of non-state dependence, those entering as spouses/partners, though cast as dependents, often have the right to work and limited access to welfare benefits. Additionally, the right to work is generally seen as way of improving integration, and is in line with overall responsibilisation discourse and self-sufficiency requirements on family migrants.

For the purposes of analysing the principles of entry and deservingness we will first consider who counts as a family member, then who can sponsor a family member, and finally, what conditions family members must fulfil.

#### MARRIAGE, REGISTERED PARTNERSHIPS AND THE RIGHT TO ENTRY

Marriage is no longer a necessary requirement for entry as a partner and all countries in this study currently recognise unmarried couples as long as the couple is in a mutually exclusive relationship akin to a marriage or civil partnership<sup>30</sup>. Same sex relationships, both registered and non-registered are also recognised in all countries in this study except Croatia. This has been a relatively recent development, particularly in Spain and Ireland. For example in Spain, until the last reform of the Migration Law in 2011, non-married couples did not have the right to family reunification and same-sex couples were eligible for family reunification only if their union had been celebrated in Spain, the Netherlands, Belgium, and Canada. Since 2011, however, partners involved in any stable and intimate relationship in Spain, with no difference between homosexuality and heterosexuality became eligible for family reunification. In the case of a non-registered relationship, the primary migrant needs to present some evidence that a stable relationship was established before the application for reunification (Brey & Stanek, 2013). In Ireland, recognition of the rights of non-married couples, both hetero- and homosexual was implemented in the Civil Partnership and Certain Rights of Cohabitants Act 2010, which came into effect in 2011.

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<sup>29</sup> <http://europeanlawblog.eu/?p=2329>

<sup>30</sup> Although this appears subject to change depending on the political situation. For instance, in the Netherlands, in October 2012 unmarried partners lost the right to family reunification and same-sex partners were also asked to show evidence of a registered partnership. However, the Modern Migration Policy Law of 1st June 2013 allows family reunification for unmarried partners who have a permanent and exclusive relationship (Entzinger et al. 2013).

In Israel in 2000 the Ministry of Interior moved to recognize unmarried relationships—both heterosexual and homosexual—for immigration purposes and couples are required to prove that their relationship is genuine or “sincere” and that they are running a home together; the foreign national is then granted a one-year work permit, which is then renewable yearly<sup>31</sup>. Additionally, the Law of Return has been found applicable to a married/registered same sex couple following a 2011 legal ruling<sup>32</sup>. However, in Ireland and the UK, there is a temporal requirement of a minimum two years duration placed upon an unregistered couple that is not applied to marriage or civil partnerships; and in the case of a non-EEA couple in Ireland it is longer, with a four year relationship necessary<sup>33</sup>. In Croatia, the Law on Aliens defines a de facto relationship as the union between an unmarried woman and an unmarried man, of a duration of at least three years – or less, if the couple have a child together. Thus same-sex couples are excluded; however as there is currently a debate on the recognition of civil partnerships for same-sex couples, this may change<sup>34</sup>. The onus is also on the couple to provide evidence of the sincerity of their relationship.

Marriage may be recognised, but policies to respond to concerns about ‘sham marriages’ have been introduced across all the EU member states, often in practice restricting entry via family migration route. Sham marriages are understood as those arranged for the sole purpose of evading statutory immigration controls; typically a marriage of a person from a non EU country (who does not otherwise qualify to remain in the member state) to a national citizen, an EU national or a person settled in the member state. This raises the question of what constitutes a ‘genuine marriage’ and what can serve as evidence of a ‘genuine and subsisting’ relationship. In the UK guidance for caseworkers indicates the importance of evidencing that the couple are in a current, long-term relationship or that they share financial responsibilities. The Netherlands conducts ‘Honesty checks’ on family migrants and their sponsors. Failure to demonstrate a *genuine family bond or long-term<sup>35</sup> and exclusive relationship* may result in a refusal or withdrawal of a residence permit (Lepianka, 2014). In Ireland concerns about ‘sham’ marriages have led to attempts to deport a large number of non-EEA spouses of EEA citizens; only halted by a decision of the European Court of Justice (Blaise Beheten Metock and Others v Minister for Equality, Justice and Law Reform, C-127/08, 2008), citing the centrality of freedom of movement to EU citizenship. Ireland had claimed that this power was necessary to prevent ‘sham marriages’, but many ‘genuine’ partners (by any standard) were caught up in the deportation drive (Finlay, 2014).

Forced marriage is not a term that has explicit legal content and it is defined differently in different countries. However, the EU Parliamentary Assembly defines forced marriage as the union of two persons at least one of whom has not given their full and free consent to the marriage.<sup>36</sup> The Council of Europe’s (2005) study ‘*Forced marriages in Council of Europe member states*’ recommended that a specific offence of forced marriage be enacted in European countries; of the countries in this study the UK and the Netherlands recently enacted legislation to this effect. Under the Family Reunification Directive, minimum age limits for partners can be set,

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<sup>31</sup> <http://www.acri.org.il/en/2008/02/07/the-immigration-rights-of-same-sex-couples/>

<sup>32</sup> <http://www.haaretz.com/weekend/anglo-file/ministry-grants-citizenship-to-gay-spouse-of-immigrant-1.382066>

<sup>33</sup> See Gay and Lesbian Equality Network (GLEN, 2011) *Same sex couples and immigration provisions in Ireland* <http://www.lgbtdiversity.com/attachments/508d76bb-46a8-472d-a780-509e7cecb6c7.PDF>

<sup>34</sup> Presently, there is a public debate on the draft of the Law on life partnership, which seeks to allow registered partnership (but not marriage) for the same sex couples. Whether the first such law will be adopted and how it will affect Law on Aliens (and will it), remains to be seen in future (Baričević & Hoffmann, 2014).

<sup>35</sup> Defined as having lived together and run a joint household for a period of at least 6 months

<sup>36</sup> Under Recommendation (2002) 5 of the Council of Europe Committee of Ministers to member states on the protection of women against violence, forced marriage should be regarded as an act of violence and should cease to be practised in Europe.

up to a maximum of 21. One of the solutions to the problem of forced marriage in both the UK and the Netherlands, conceived as effectively the importation of uncivilised practices, has been to raise the age of marriage visa applicants to 21. In the Netherlands, the sponsor also needs to be at least 21. This is on the grounds that greater maturity and independence make it easier for those vulnerable to forced marriage to refuse; though there is no evidence this is in fact the case (Chantler et al., 2009). Thus these policies have been critiqued as creating a hierarchy of marriage practices.

#### SPONSOR REQUIREMENTS

In some states there is clearly the expectation that those entering as long term partners of citizens will be seeking long term residency – so the temporary visa for family reunion in the Netherlands for example is considered a temporary residence permit for a non-temporary purpose. Family reunion is strongly associated with settlement. In Israel this is strongly discouraged: a migrant worker will receive a permit to enter only if they do not have a close family member in the country and if two migrant workers get married in Israel, one is required to leave (Shamir, 2013; Elias & Kemp, 2010 in Gal & Halevy, 2014). Under the 2003 Citizenship and Entry into Israel Law, Palestinian spouses of Israeli citizens are only permitted to enter on temporary residence permits and are not eligible for citizenship. Palestinians from the Occupied Territories (OPT) are not permitted permanent residence permits, even if immigration is to be in the context of family reunification. Temporary permits can be granted to Palestinians from the OPT by the Civil Administration. However, these permits are not considered legal status, and their holders are not entitled to social rights or work permits<sup>37</sup>. The scope of this law has been widened to apply to spouses and family members from “enemy states” (Syria, Iran, Iraq and Lebanon)<sup>38</sup>. Since 2008, there has been an absolute prohibition of family reunification for any person from Gaza over the age of 14<sup>39</sup>. The law was most recently extended for another year in March 2014. In the same way the rules governing immigration for work can have the effect of restricting naturalisation opportunities to the wealthy, so too can the rules governing entry for the purposes of family making or reunion.

All European countries require that the family is capable of financially sustaining themselves and will not be a ‘burden’ on society (Netherlands, Ireland, Spain, Croatia) or more specifically, ‘the taxpayer’ (the UK). This is in line with Directive 2004/38/EC under which beneficiaries of the right to residence must not be an unreasonable burden on the public finances of the host member state. As such, these states implement a minimum earnings threshold for family migration, whereby sponsors must earn about the minimum wage level in order to be eligible for family unification except for the case of those granted refugee status or humanitarian protection under the 1951 Convention, who are exempt from income requirements<sup>40</sup>. For example, in the UK entry for spouses and civil partners is only permitted for sponsors who earn more than £18,600 with additional requirements for each child. This threshold is set at the level at which couples generally cease to be able to access income-related benefits. However, over 60% of women in work in the UK do not earn enough to fulfil this requirement. This is likely to have a significant impact given that 68% of non-EEA partner applications in 2010 were made by female applicants<sup>41</sup>. Further, in the Netherlands should their income drop below the minimum wage level they can be forced to leave the country. In Ireland the sponsor must earn cumulative gross earnings of €40,000 over three years if the sponsor is an Irish citizen; and more if the sponsor is a TCN (INIS, 2013). In Croatia, in order to be considered self-supporting migrants must have a monthly income

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<sup>37</sup> See: [http://www.btselem.org/family\\_separation/east\\_jerusalem](http://www.btselem.org/family_separation/east_jerusalem)

<sup>38</sup> See: <http://focus-migration.hwwi.de/Israel.5246.0.html?&L=1>

<sup>39</sup> <http://www.aljazeera.com/indepth/features/2013/07/20137813932642619.html>

<sup>40</sup> As O’Brien argues, states may implement minimum income requirements owing to the difficulties in assessing migrant ‘burdensomeness’ which precludes rights of residence, thus the shift to making sufficient resources a precondition for non-worker equal access to benefits (2009: 1110).

<sup>41</sup> *Migration evidence and analysis*, Home Office, 2011 – cited in APPG report (2013: 19)

amounting to 400% of the basis for calculating social assistance outlays (at the time of writing this is set at about €264 for migrants living alone), with the percentage increasing with dependent family members<sup>42</sup>. The Law (Art. 156) states that the EEA citizens and their family members will not lose their temporary residence if they do not have the required financial means – as long as the EEA citizen is a worker or self-employed, or s/he came with intention to find employment – provided s/he continues to actively seek work and it may be reasonably assumed that he/she will be employed. According to the Law on Aliens (2013, Art. 153), the norms on family members of the EEA citizens also apply to family members of Croatian citizens, but not to family members of TCNs (Baričević & Hoffmann, 2014).

#### **ADDITIONAL ENTRY REQUIREMENTS FOR TCN FAMILY MEMBERS.**

Of the countries in this study, the UK and Netherlands impose the strictest family reunion requirements in terms of language and civic orientation tests for TCN family members. Family members are required to pass an English language test and ‘Life in the UK’ test, ostensibly to promote integration. In the Netherlands, “effective family bond criterion” in former Dutch immigration law, embodies cultural notions on what it is to be a good parent (van Walsum, 2009). Migrants must prove their motivation and perseverance in acquiring the knowledge (language and societal norms) deemed necessary to succeed in Dutch society (cf. Bonjour 2010 in Lepišanka 2014) through taking the Civic Integration Abroad pre-entry test. However, this requirement is only imposed upon what Dutch legislation terms ‘non-Western’ TCN family members, and TCN family migrants from certain Western countries<sup>43</sup>, particularly the richer ones, are exempt from this pre-entry test as are family members of highly skilled labour migrants (Entzinger et al. 2013). Similarly, family members of so-called ‘high-value migrants’ (entrepreneur or investor) in the UK are exempt from language requirements. In Croatia, there is no entry criteria placed upon migrants for family reunion, save meeting the income threshold.

Crucially, EU nationals resident outside their state of citizenship who sponsor TCN dependents to join them in their EU state of resident are exempt from that state’s sponsorship requirements. As a result, there seems to be some intra-European movement for the purpose of enabling couples to override stringent national immigration requirements. An EU member state national will move from their state of citizenship to another EU state, thereby invoking their rights as an EU citizen under free movement law to be able to be joined by a TCN spouse/dependent. As an EU citizen, rather than a national of the state where they are residing, they do not have to fulfil the requirements such as income thresholds that nationals have to fulfil. Having been joined by their TCN family they can then return to their state of citizenship without having to fulfil the requirements of their state of citizenship either. The ‘Surinder Singh’ route as it became known was based on the famous ECJ judgement in the Singh Case (C-370/90)<sup>44</sup>, which concerned obstacles to the free movement of workers. Thus,

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<sup>42</sup> I.e. increasing for 150 % for a family with two members, and further 100 % for each additional family member. As set out in the Law on Aliens (Art. 54; Art. 156) and Ordinance on Methods of Calculating and Amount of Means of Subsistence for Aliens in Republic of Croatia (Art. 2) (Baričević & Hoffmann, 2014)

<sup>43</sup> Citizens of Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, the Vatican and the USA are exempt (De Hart et al., 2013 in Entzinger, 2013: 8). The rationale behind the exemptions used by the Dutch state is that ‘Western’ countries are socio-economically comparable to the Netherlands, so that admitting migrants from these countries “does not lead to undesirable and uncontrollable migration flows to the Netherlands and to substantial integration problems in Dutch society” (Strik et al. 2010 in Entzinger et al. 2013: 21) and secondly, imposing pre-entry conditions would be “potentially harmful to [Dutch] foreign and economic relations” (*Ibid.*)

<sup>44</sup> In its judgment the ECJ held that a European citizen might be deterred from leaving his/her country of origin in order to work in another EU country if, on returning to his/her home country, his/her spouse and children were not also permitted to enter and reside in the citizen’s country of origin under the same conditions that apply to an EU citizen going to live in an EU country other than his home country. The ECJ therefore ruled that an EU citizen who has gone to another Member State in order to work there and returns to his home country has the right to be accompanied by his spouse and children whatever their nationality.

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61990CJ0370&qid=1396704743754&from=EN>

EU legislation has then created an inequality between national and EU citizens as entry and settlement policies are more favourable for family members joining EU citizens residing in another member state than those joining national citizens of that state. Even where it is recognised that EU citizens may be exercising their free movement rights purely with the aim of increasing their spouse's rights, the reason for exercising this right is irrelevant as long as the marriage is genuine (Muir, 2012).

However, there is still some uncertainty as to how much 'movement' is required in order to invoke residence rights for family members in the home EU state. The European Court of Justice judgements of Case C-456/12 and Case C-457/12 find that a minimum of three months residency in another member state (in accordance with Article 7 of Directive 2004/38) or regular cross-border work is sufficient evidence for the residence to be considered 'genuine' *'so as to enable that citizen to create or strengthen family life in that Member State'* in accordance with Article 21(1) of the **Treaty** on the Functioning of the European Union (TFEU). Nonetheless, there is still some uncertainty as to what movement exactly constitutes a 'genuine' link and how member states will determine this<sup>45</sup>.

#### 'Low skilled' workers

Lower-skilled TCNs are similarly restricted across the states in this study. This does not mean that TCN do not work in low waged jobs – family visa holders for example often have the right to work, and benefit eligibility in practice may require them to take up whatever work they can find. However, they are not subject to the same employment constraints as those entering as low waged workers.

Those who enter on visas attached to low skilled work are subject to severe restrictions, and are tied to an employer (UK, Ireland, the Netherlands). Whilst in Israel, low skilled migrant workers are allowed to change their employer this is subject to some restrictions and migrant workers must find a new employer within 90 days of leaving their previous position<sup>46</sup> (PIBA, 2013). Migrant workers who fail to adhere to the rules are subject to deportation (*Ibid.*) In Spain, Autonomous Communities have the power to set quotas for foreign workers in their region, and TCN workers can be restricted to the territory of that Autonomous Community or even to a particular province of the Community.

The key hierarchical principle governing entry to the states under consideration is the management of the mobility of 'the poor'. States are under no international obligations to admit labour migrants and 'low skilled' entry routes are heavily constrained. When they are admitted it is only as subordinated labour, and very much for temporary purposes. The asylum and family routes, available to the poor in theory, in practice are hedged about with limitations and are often extraordinarily restrictive and bureaucratic. The notable exception to this general principle is for those states with strong concepts of ethnic/diasporic membership where poor 'co-nationals' may still be welcomed. However, EU citizenship has tended to have the effect of making this more restrictive.

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<sup>45</sup> For further discussion see: <http://europeanlawblog.eu/?p=2301>

<sup>46</sup> Additionally, particular rules govern caregivers, who must give prior written notice. Construction workers employed in the construction industry may only change employers quarterly, on Jan. 1st, April 1st, July 1st and Oct. 1st of each year, after giving legal advance notice to their employers (PIBA, 2013)

### **3. NATURALISATION**

Laws and practices governing citizenship are typically divided into those that distinguish between ethnic and civic citizenship (e.g. Smith, 1986; Brubaker, 1990). When citizenship is ‘ethnic’, the group it grants membership of is imagined as based on common descent and is attained via *ius sanguinis*. When citizenship is ‘civic’, it is based more strongly on the ideal of the group as defined by a social contract and is more open to attainment via birth on a territory i.e. *ius soli*. More recently, Kymlicka has introduced the notion of ‘cultural citizenship’, which he claims is different from ethnic citizenship, where the group is defined as people who share a common culture and is open to anyone who adopts and endorses it (1995; 2000). Whether this is in fact distinguishable from ethnic and civic citizenship is disputed, but it is undoubtedly the case that across the European Union debates about citizenship are increasingly framed in terms of ‘culture’. However, this is less ‘shared’ and more ‘threatened’ and both national and European culture are sometimes presented as in need of protection from the culture of immigrants.

There are two methods of obtaining the citizenship of a liberal democratic state: through birth (on the territory or to a citizen) and through naturalisation. These are generally treated distinctly, but closer examination of our case studies uncovers categories of citizenship acquisition that might be analysed as falling between automatic right and naturalisation, which we have termed ‘preferential access’ to naturalisation. Certain groups may not be citizens by birth, but their path to citizenship is considerably eased as a response to histories of emigration, colonialism and war. Examining naturalisation law and practices in the six states under consideration suggests that rather than imposing the civic/ethnic/cultural typology it is more helpful to consider the priorities that have historically informed policy development. Such an approach reveals important differences in emphasis between states that are principally concerned about citizenship of perceived outsiders, and those that are concerned with the citizenship of their diaspora and descendants.

This section first considers hierarchies of eligibility for naturalisation with respect to ethnicity/diaspora, care and family, work, and wealth, and then the principles underpinning naturalisation processes.

#### **3.1 HIERARCHIES OF NATURALISATION**

Of the countries considered in this report, Ireland, Croatia, Spain and Israel have citizenship/ naturalisation policies strongly shaped by the overlapping phenomena of emigration and diaspora and some people either do not have to fulfil so many requirements or can attain it more quickly. Naturalisation and immigration policies and the convergence between them need to be understood within this context.

The present model of Croatian citizenship was established after the dissolution of the Socialist Federative Republic of Yugoslavia in 1991. The Law on Citizenship of 1991 has undergone considerable amendments, particularly with the 2011 Citizenship Law, but there continues to be an ethno-nationalist concept of the Croatian state<sup>47</sup>. The government aims to facilitate: a) the return of ‘Croatian’ emigrants; b) build ties with ‘Croatian’ people abroad; and c) exclude ‘non-Croats’ living on the territory from the new national community (Baričević & Hoffmann, 2014). Croatian ‘ethnic members’ who do not have a place of residence in the Republic of Croatia may gain citizenship through facilitated naturalization. These are (a) émigrés, their direct descendants up to the third generation and their spouses, and (b) persons (historically) belonging to the

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<sup>47</sup> At the time of the dissolution of Yugoslavia there were approximate 1 million ‘ethnic Croats’ living abroad and about 180,000 citizens of the former Yugoslav federation who were living in Croatia but did not have Croatian republican citizenship and were not ‘ethnically Croat’. A large part of these (long term) residents without ethnic origin were excluded from the citizenship of the new Croatian state due to ethno-nationalist conception of the community.

“Croatian people” abroad.<sup>48</sup> To gain Croatian citizenship, émigrés, their descendants and their spouses need only to demonstrate knowledge of the Croatian language Latin script, Croatian culture and social system (Law on Aliens, Art. 8.1.4.)<sup>49</sup> and demonstrate (via their behaviour) that they respect the Croatian legal order and customs (Art. 8.1.5.). Persons historically belonging to the “Croatian people abroad” need to fulfil the second of these requirements (i.e. Art. 8.1.5.). Their belonging to the Croatian people may be determined by their previous declaration of ethnic belonging in legal transactions, assertion of such membership in specific public documents, safeguarding of rights and promotion of interests of Croatian people as well as active participation in Croatian cultural, scientific or sporting associations abroad. Additionally, the Law on Relations of the Republic of Croatia with Croats outside of Croatia offers special status for its ethnic members who do not have formal Croatian citizenship.<sup>50</sup> This is in keeping with the ethno-nationalist state as it suggests formal citizenship serves as acknowledgment of some prior claim by virtue of nationality/ethnicity and that ‘Croatian-ness’ is possible without formal citizenship (Baričević & Hoffmann, 2014).

Irish citizenship has reflected its history of emigration and the division of Ireland between North and South. The emigration history has contributed to a ‘ius sanguinis’ approach. The Irish National and Citizenship Act 1956 allows that a person born outside of Ireland, has entitlement to Irish nationality if one of their parents is an Irish citizen long as the birth is registered as Irish on the Foreign Births Register. There is no generational limit and this citizenship can in turn be passed to the children of parents born abroad – again as long as they are registered as Irish. Thus entitlement to Irish nationality amongst the ‘Irish diaspora’ can continue from generation to generation, provided that the chain is not broken by a failure to register (Handoll, 2012: 10): “our nationality law should not be framed to exclude persons [...] who are of Irish stock” (Minister for Justice, Dáil Éireann Debates, vol. 154, 29 February 1956 cited Handoll, 2012). As well as generous ius sanguinis provisions, until 2004 Ireland had longstanding generous ius soli provisions. This needs to be analysed in the light of their application to those born in Northern Ireland, meaning those born there had access to Irish citizenship. This extension of Irish citizenship by ius soli to the entire island of Ireland was part of the Free State, later Republic’s claim on the entire island (see article 2 of the 1937 constitution). Although neither Britain nor Ulster Unionists acknowledged it, it seems to have been the claim of the Free State, then Republic that all persons born on the island before that date (and later their children) were Irish citizens, even if many (unionists) did not want to take up such citizenship (Finlay, 2014).

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<sup>48</sup> Such as ethnic Croats who are the citizens of Bosnia and Herzegovina and who never lived in Croatia. Instead, they form one of the constitutive nations of Bosnia and Herzegovina. The same procedure also applies to members of the Croatian minority living in other states of Europe.

<sup>49</sup> As demanded by the ordinance on methods of evaluation of language proficiency and other requirements (Ordinance on Methods of Examination of Knowledge of the Croatian Language and Latin Script, Croatian Culture and Social System in the Procedures for Acquisition of the Croatian Citizenship 2012, Art. 4–5), these applicants may prove the proficiency under rather eased terms: simply by filling in the citizenship application form. The same right is given to applicants who had long-term residency on the day of adoption of the Citizenship Law and to refugees (with over ten years of refugee status in Croatia) (Ordinance on Methods ..., Art. 3).

<sup>50</sup> The Law (Art. 1) reserves the right to protect three groups of persons, in the given order: members of the "sovereign and constitutive Croatian people in Bosnia and Herzegovina", members of the Croatian minority in European states, and Croatian émigrés and their descendants in Europe and overseas. The Law (Art. 2) establishes that it deals with three legal categories of members: Croats with Croatian nationality, persons with the "status of Croat without Croatian Citizenship" and Croats without Croatian citizenship and without the status of Croat without Croatian citizenship. Under the Law (Art. 41), persons holding the status of Croat without Croatian citizenship are entitled to all of the rights in the areas of education, employment, public calls and stipends, health insurance and other, and should not be treated as aliens in the realization in these rights. For Croats without this status and without citizenship, the state is obliged to enable facilitated procedures for them to obtain residence, work permits and business permits, as well as other benefits (Art. 42) (Baričević & Hoffmann, 2014).

In Israel the 1950 Law of Return gives the right to citizenship on arrival to every Jew who comes to Israel, with no conditions of length of residency or language proficiency. This is not only a statutory right “but a ‘natural’ right of every Jew in the world that precedes and constitutes the state.” (Joppke and Rosenhek, 2002, cited in Gal & Halevy 2014). Since 1970 this right has been extended to include the child and grandchild of a Jew and their spouses. This cannot be equated straightforwardly with ethnic nationhood and is rather closer to Kymlicka’s (1995; 2000) notion of ‘cultural citizenship’ as it does not apply to persons who were born Jewish but who then have voluntarily changed their religion, and it does apply to those who have converted to Judaism. Additionally, the law permits an easier process of naturalization (and even grants automatic citizenship) to people who served in the Israeli army (permanent residents and not only citizens are required to serve in the army). Palestinian Arabs in Israel are Israeli citizens by status and hold an Israeli passport. The Nationality Law regulates the citizenship of Palestinians in Israel. Historically, those who remained in Israel from the establishment of the state in 1948 until the enactment of the Nationality Law of 1952, became Israeli citizens by residence or by return. The 1980 amendment of the law expanded the possibilities to acquire citizenship by residence (Ministry of Foreign Affairs)<sup>51</sup>. However, the ability of Palestinians from the West Bank and Gaza to obtain citizenship is limited by the Citizenship Law, preventing family reunification in some cases.

Arabs living in East Jerusalem and the Golan Heights, areas which were occupied by Israel during the 1967 war and later annexed, hold permanent residency status. As permanent residents they are entitled to social benefits and health insurance. Permanent residents have the right to vote in local elections, but not in elections to Knesset (Parliament). Furthermore, they have the right to apply for citizenship.<sup>52</sup>

Spain’s citizenship law has been shaped by a history of colonialism, emigration and civil war. In October 2000 a report presented to the Social Policy and Employment Commission on the situation of expatriates, immigrants and refugees recommended both the facilitation of nationality acquisition by expatriate descendants and the improvement of access to citizenship by migrants living in Spain. This latter was rejected, but the former recommendation was accepted and descendants of Spanish citizens had their access facilitated. The 2006 Law on the Statute of Spanish Citizenship Abroad facilitated the rights of Spanish émigrés, and the opportunities to ‘return’ to Spain for émigrés and their descendants by two generations on the basis of *ius sanguinis*. This was further eased by the 2007 Law of Historical Memory which granted citizenship by origin to the children and grandchildren of those exiled after the Franco regime with a limited time window of three years between 2008 and 2011. Additionally, Spain recently approved a bill to grant naturalisation to descendants of Jews expelled in the 15<sup>th</sup> and 16<sup>th</sup> centuries under dramatically facilitated procedures. At present, Sephardic Jews must have lived in Spain for two years before they can apply for citizenship. Under the proposed regulations, Spain would naturalize any applicant, Jewish or not, who meets one of four criteria: proven links to Sephardic culture; certification testifying to Sephardic heritage from a recognized Spanish-Jewish community; other rabbinical certification of Sephardic ancestry; or knowledge of Ladino, the Judeo-Spanish language. Thus without any residency requirements. Sephardic Jews would also be able to retain their present citizenship.

While citizenship is generally imagined as a unitary status, the different routes to citizenship can in some cases give rise to formally differentiated citizenship. Spain distinguishes between *nacionalidad originaria*, (nationality by origin) and *nacionalidad derivative* (derivative nationality). Those born of a Spanish mother or father can become nationals ‘by origin’ regardless of whether they are born in Spain or abroad (Marin et al. 2012). Similarly, Croatia distinguishes between ‘facilitated’ and ‘regular’ naturalisation. Facilitated naturalisation is open to those born in the Republic of Croatia and who have legal permanent residence, spouses of Croatian citizens (see below), Croatian emigrants, their descendants up to the third generation and their spouses, as

<sup>51</sup> <http://mfa.gov.il/MFA/AboutIsrael/State/Pages/Acquisition%20of%20Israeli%20Nationality.aspx>

<sup>52</sup> [http://www.btselem.org/jerusalem/legal\\_status](http://www.btselem.org/jerusalem/legal_status)

well as ethnic members who have (historically) lived in other states. ‘Regular’ naturalisation requires migrants to meet certain conditions including evidencing the continuity of residence in Croatia, proficiency in language and scripture and renouncing their former citizenship<sup>53</sup>. This process invites significant discretion and there is evidence that the authorities have prevented a great number of persons from getting citizenship based on subjective interpretations of the conditions<sup>54</sup>. The majority of residents excluded from citizenship were the citizens of Bosnia and Herzegovina and Serbia (those without Croatian ethnicity) (Baričević & Hoffmann, 2014).

For both Spain and Croatia, most of those with the status of nationality by origin or facilitated naturalisation maintain Spanish or Croatian citizenship on acquiring certain other citizenships, whereas those with derivative nationality/regular naturalisation do not. Similarly in Israel, Jews who immigrate under Law of Return are not required to renounce their former citizenship to become Israeli citizens, whereas other (non-Jewish) immigrants who acquire Israeli citizenship by naturalization are so required, although exceptions may be made at the discretion of the Minister of the Interior<sup>55</sup>. As well as enabling dual citizenship, those who acquire nationality by a form of naturalisation that is associated with ius sanguinis, may be protected from having their citizenship stripped from them<sup>56</sup>.

Croatia, Ireland, Israel and Spain have the naturalisation of *immigrants* (understood as those subject to immigration controls) as a growing but, at least until recently, a secondary concern. In contrast, in Netherlands and the UK policies are more concerned with those imagined as ‘Other’ to the nation, rather than the incorporation through naturalisation of those who are imagined as a part of the nation. In both states post-colonial migration was constructed as a problem and attempts were made to curb it. The case of repatriates from East-Indies to the Netherlands in the 1950s constitutes a good example. While those in possession of Dutch citizenship (including those from mixed marriages, with a Dutch father) could always enter the country, the government applied (unsuccessfully) the policy of ‘discouragement’ to limit the number of ‘Oriental Dutch’ who ‘failed to meet certain linguistic, cultural and class standards’ (van Walsum 2008:97) who were encouraged to become ‘fully Indonesian’ instead. The position of Non-Dutch subjects of the Kingdom (i.e. Moluccan soldiers loyal to the Dutch Crown) in the Netherlands was ambiguous and uncertain - “in yet not of the nation” (van Walsum 2008:115). The Dutch policy towards post-colonial migrants has to be interpreted in the context of the Dutch perception of the Netherlands as an emigration rather than immigration country. The Netherlands was considered to be ‘overpopulated’ and the government actively promoted emigration, e.g. to Canada and Australia. In fact, up until 1983 the government denied there were any immigrants in the country: the immigrants from the ex-colonies were referred to as ‘repatrients’ rather than immigrants (van Amersfoort & Niekerk 2006 in Lepianka, 2014).

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<sup>53</sup> Regular naturalization requires a person to: (1) be minimally 18 years old; (2) renounce any other citizenship; (3) have had residence in Croatia for minimally five years; (4) demonstrate proficiency in the Croatian language and Latin script, and (5) have demonstrated respect for the Croatian legal system and traditions; and (5) recognize Croatian culture.

<sup>54</sup> See for example UNHCR (1997) *Citizenship and Prevention of Statelessness Linked to Disintegration of the SFRY*: <http://www.unhcr.org/46e660582.pdf>

<sup>55</sup> <http://mfa.gov.il/MFA/AboutIsrael/State/Pages/Acquisition%20of%20Israeli%20Nationality.aspx>

<sup>56</sup> though in the UK it may also be stripped from those who are nationals by birth.

### **3.2 CARE AND FAMILY**

With the exception of Israel, historically citizenship (or subjecthood in the UK and Spain) in the UK, Ireland, Spain and seemingly Croatia<sup>57</sup> was the privilege of male, able bodied property owners and women were subordinated but indispensable. They and their bodies were critical to the creating and imagining of nations and communities. Nations need mothers and wives in stable and ordered families. Thus women's subordination and differential inclusion was assumed and codified in nationality laws.

How do family relations intersect with naturalisation provisions? This is an instance where the relation between citizenship by naturalisation and citizenship by birth is clearly critical. The naturalisation of spouses/partners can have consequences for the citizenship of children in 'mixed' marriages. In the UK after 1870 a woman who married an 'alien' automatically lost her British nationality, and if she married a British man who renounced his nationality, she had no option to retain hers. Husbands on the other hand bestowed their British nationality on their wives. While citizenship has been formally extended to non-property owners and to women, the relation between citizenship and gender relations, and relatedly, between citizenship, care and family continues to be contested. In the Netherlands, until 1964 Dutch women would automatically lose their Dutch citizenship upon marrying a foreigner, and whilst from 1965 on they did not lose their citizenship they were unable to automatically pass their Dutch nationality to their children until 1985. Their foreign husbands (and children) were subject to the ordinary migration requirements, including sufficient income (until 1975) in order to enter the Netherlands and had to reside in the country for at least 5 years to become eligible for naturalisation. In contrast, until 1964 the foreign wives of Dutch men received Dutch citizenship automatically, and between 1964 and 1985 they could request it immediately upon marriage (no waiting period or income requirements). It was not until 1985 that the spouses of both Dutch men and women, became equal in their eligibility for naturalisation (after three years of residence in the Netherlands) (Bonjour2009; also van Walsum 2008 & 2009 in Lepianka, 2014). In Ireland until 1986 non-national husbands of Irish citizens had to apply for naturalisation (Handoll, 2012). In Spain, although in theory, and through the application of *ius sanguinis*, women could pass on their nationality to their descendants, this was only the case when they were single mothers as nationality came from the father<sup>58</sup>. Since Croatia's independence in 1991, citizenship by descent can be acquired if both parents are Croatian, irrespective of where the child is born (Ragazzi et al. 2013).

All states have reduced residency requirements for naturalisation when it comes to the spouses of citizens, in the Netherlands and the UK this also extends to civil partners. Spain has the shortest requirement and spouses (but notably NOT civil partners) have to be resident for 1 year before applying, Croatia has the longest requirement of 5 years and has the same residence requirements as for those applying for ordinary naturalisation. Israel has a very open policy to the non-Jewish spouses, children and grandchildren of Jews migrating to Israel who acquire citizenship upon arrival in Israel through the Law of Return.

As mentioned in the previous section on entry, temporal requirements can vary, with more restrictions on those who are not married. In Israel for example the spouse of an Israeli citizen is entitled to Israeli citizenship after four and half years of residence. In contrast for unmarried couples – including same-sex couples- the non-Israeli partner is not eligible to apply for naturalisation without first spending seven and a half years as a temporary resident, followed by three years as a permanent resident. Palestinian spouses of Israeli citizens are not eligible for citizenship.

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<sup>57</sup> In the Croatian Law on citizenship from 1950 the father's citizenship granted the child Croatian citizenship (Ragazzi et al. 2013:4).

<sup>58</sup> In Spain, the most common reason for refusal for non-legal fulfilment is polygamy (Marin et al. 2012: 27).

Rights to naturalisation on the basis of family life are seemingly about the line of descent (blood) rather than the labour of care that is conducted within the private household. This is particularly clearly illustrated in the case of Israel where the majority of labour migrants are working as caregivers, partially funded by public funds (Gal & Halevy, 2014). This enables many dependent elderly people in Israel across all income levels to stay at their own home cared for by a live in migrant worker who are providing the long term labour of care in the home. However, these workers are not entitled to permanent residence or citizens on the basis of this care provision (*Ibid.*). This is less marked in other states, where migrant domestic labour is undocumented or does not account for such a high proportion of visas, yet the principle is the same. The labour of care whether provided to the elderly, disabled, or children, whether provided through the public or private system, and however long and devotedly it is shared, is not sufficient to gain access to citizenship (See Anderson and Shutes (eds.), 2014).

The acquisition of citizenship through blood and family ties does not operate from children to parents. While parents can pass on citizenship to their children, children cannot pass the right to naturalize to their parents (though they can pass the right not to be deported post *Zambrano*<sup>59</sup>). In Ireland in 2003 the rights of Irish citizen children were made dependent on the status of their parents when the Supreme Court decreed that the constitutional right of the Irish child to the care and parentage of their parent was not absolute and unqualified in the case of non-national parents<sup>60</sup>.

### ***3.2.1 CHILDREN, CITIZENSHIP AND NATURALISATION***

Children have an ambivalent relation to citizenship. There are citizens' rights that are explicitly not granted to children, the right to vote for example, or the independent right to family life at a national level (though as EU citizens the position is rather more complex). In some states, citizen children with foreign parents may be tolerated by rather than protected by their state of citizenship (Sawyer, 2006). In all EU countries, children must be under the age of 18 to be able to apply for citizenship on the basis of their parent/s' status. We here cover some of the routes to naturalisation for minors. This is a complex area and in the EU considered to be at the discretion of the state rather than a right so the below is not exhaustive but rather serves to illustrate some of the complexities and principles underlying the naturalisation of children.

#### ***Children born within state territory:***

There are different routes for children to naturalise. However, the possibility for children born to non-citizen parents to take the citizenship of their own state of birth is increasingly restricted. Concerns over 'birth tourism' have led to reductions in *ius soli* policies in the five EU countries under consideration. Ireland was the only EU country to have a simple *ius soli* entitlement to citizenship and until 01 January 2005, all children born in Ireland were entitled to citizenship. However, since the Irish Nationality and Citizenship Act 2004 parents of children born in Ireland must prove that the children have a **genuine** link to Ireland in order to be eligible to apply for citizenship and must have five years reckonable residency in Ireland after the birth of the child (i.e. the child must be at least five years old when applying for naturalisation)<sup>61</sup>. Children born in Ireland to foreign-national parents have an entitlement to citizenship only if: their parent(s) are British citizens, or their parent(s) have been granted refugee status.

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<sup>59</sup>In the judgement of *Zambrano v ONEm* Case C-34/09 the European Court of Justice held that the TCN parents of a child who is a national of a Member State must be granted the right to work and the right of residence in that Member State in order to protect the child's rights as an EU citizen to stay in Europe

<sup>60</sup>Lobe and Osayande v Minister for Justice, Equality and Law Reform 2003 [2003] 1 IR 1

<sup>61</sup><http://www.inis.gov.ie/en/INIS/Pages/Citizenship%20Application%20Forms>

In the UK, the 1981 Nationality and Immigration Act introduced a partial ius sanguinis system. Prior to its implementation in 1983 anyone born in the UK was automatically British. Currently, children born in the UK (ius soli) automatically acquire citizenship only if they are born to a person with no restrictions on the period of their residence in the UK or a UK citizen. Children born in the UK who have lived continuously in the UK to the age of 10 are also entitled to apply for citizenship. Children born without entitlement to another citizenship (stateless) may also naturalise if present in the UK for five years.

As a result of the interaction between European rights of free movement of labour and British citizenship rules, children of EEA nationals are subject to different rules depending on when they were born. Under the provision of citizenship legislation, children born in the UK to a 'settled' parent will be born British citizens. Thus there was a need to establish whether a parent exercising European rights of free movement was 'settled' within the meaning of the citizenship legislation. Until 2002, a child born in the UK to an EEA national parent was entitled to British citizenship as the parent was regarded as sufficiently settled to pass British citizenship automatically to their child. Although, as Sawyer and Wray (2012) note this may have had more to do with less rigorous checks on whether a UK-born child was entitled to British citizenship as this was also before the implications of the loss of the ius soli rule were wholly appreciated and enforced. In 2006, the position was changed: regulations now provide that from 30 April 2006 the child's parent needs to have been resident in the United Kingdom exercising EC Treaty rights for more than five years or have indefinite leave to remain in order for the child to be entitled to British citizenship (Sawyer & Wray, 2012:18).

Children aged ten and over are subject to meeting good character requirements in the UK. There is no definition of 'Good Character' in law. The consideration of whether the applicant is of 'Good Character' is based on the applicant's criminal record and other relevant information. Additionally, for parents with a child/children who has a conviction or an anti social behaviour order (ASBO)<sup>62</sup> it is held that this may indicate that the parent has been complicit in their activities or particularly negligent and thus is not of Good Character.

Interestingly, although gender inequality was removed from both UK and the Netherlands in terms of the citizenship rights of women marrying a foreign partner, in relation to children of unmarried parents' entitlement to citizenship from a UK/ Dutch national father some inequality remains. Thus, in the UK, children born illegitimately<sup>63</sup> (to unmarried parents) before 1 July 2006 could only derive British citizenship through their mothers. They could not benefit from their father's British citizenship unless their parents married and the birth was legitimated. Children born illegitimately to a British citizen father on or after 1 July 2006 may derive citizenship from him and will be a British citizen from birth automatically provided there is satisfactory evidence of paternity. In the UK, from 6 April 2009 the definition of a "father" for nationality purposes was extended to include female second parents.

Gendered differences in the naturalization of children are also apparent in the Netherlands. Naturalization requirements for children are different depending on whether it is the mother or the father who is Dutch, and if it is the father, the age of the child may make a difference as well. It was not until 1985 that Dutch citizenship regulations provided for acquisition of Dutch citizenship through Dutch mothers. In practice, this has resulted in the birth of stateless children, in cases where the child has not acquired the citizenship of the mother. Threats to expel stateless babies drew the attention of the media and resulted in several court cases and the law was altered (*Ibid.*). A bill introduced in December 2008, providing for an option right for children born before 1985 of Dutch mothers and non-Dutch fathers became law in 2010 (van Oers et al. 2013). Since 1 March

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<sup>62</sup> <https://www.gov.uk/asbo>

<sup>63</sup> This is the wording used in government guidance (p.12):

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/318564/Guide\\_MN1 - June 2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318564/Guide_MN1 - June 2014.pdf)

2009, a child of an unmarried foreign mother and a Dutch father will only acquire Dutch nationality if the father acknowledges the child before its birth or before it reaches the age of seven. This acknowledgement may take place at a municipality in the Netherlands or in a foreign country.

If the child is acknowledged by a Dutch father after its seventh birthday, the child will only become a Dutch citizen if the father can prove his paternity by providing a DNA test report within one year after acknowledgment. If the father cannot provide DNA proof, the child can become Dutch by means of the option procedure<sup>64</sup>. For a child to be eligible for option, the father has to prove he has cared for and brought up the child for an uninterrupted period of at least three years. Option procedures also apply to children who are under joint guardianship of a person who is a Dutch national, providing this person has cared for and brought up the child for a period of at least three years and the child has been legally living in the Netherlands since then. If a child is adopted abroad it becomes a Dutch citizen if at least one of the adoptive parents is a Dutch national and if the adoption followed the Dutch adoption procedures. In contrast, a child born to a Dutch mother gets Dutch nationality automatically regardless of the place of birth and/or the marital state of the mother. Some argue this is not in compliance with the Genovese case of the European Court of Human Rights, because it discriminates on the basis of gender (De Groot 2012 in van Oers et al. 2013:41).

In Spain, children born Spanish territory to a foreign national father or mother, at least one of whom was originally Spanish are entitled to citizenship by option. Acquisition by option only requires the applicant to express his or her will. It applies to people who have a special link to Spain. Children born in Spain to foreign national parent/s can naturalize as Spanish by virtue of one year residency in Spanish territory.

In Israel, defamilization policies predominantly characterize the approach towards migrant guest workers owing to Israel's ethno-nationalistic state identity and migrant workers are generally prevented from having children on Israeli soil, or deported with their children if they do. However, in June 2005 the government decided to grant a one-time offer of permanent residency and later citizenship to a particular group of children of labour migrants: those aged ten and over who were born in Israel, speak Hebrew, and are currently studying or have completed their studies in Israel. The status of the children grants their parents and younger siblings a yearly renewable status as temporary residents, entitling them full social rights. Furthermore, once enlisted in the Israeli army (a requirement of all 18 year olds), these children and their siblings will become Israeli citizens and their parents will be granted permanent residency (Elias & Kemp, 2010, in Gal & Halevy, 2014).

#### Children born outside state territory:

Foreigners living in the Netherlands, or its constituent countries of Aruba, Curaçao or Sint Maarten who apply for naturalization can simultaneously apply for the naturalization of their children. A child under the age of 16 must be living in the Netherlands with a valid permanent residence permit or a residence permit for a non-temporary purpose immediately prior to the application, for children between 16 and 17 years of age the period of uninterrupted residence must be at least three years. The child must agree to the naturalisation.

Children in Ireland can also naturalise by virtue of an 'Irish Association', defined as when a child (a) is related by blood, affinity or adoption to a person who is an Irish citizen or entitled to be an Irish citizen, or (b) was related by blood, affinity or adoption to a person who is deceased and who, at the time of his or her death, was an Irish

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<sup>64</sup> The option procedure is a simplified procedure for acquiring Dutch nationality. Only those who belong to a special group defined by statute are eligible: for example, a person with a Dutch mother born before 1985. The procedure takes about three months. <https://ind.nl/EN/individuals/residence-wizard/dutch-citizenship/option>

citizen or entitled to be an Irish citizen”<sup>65</sup>. Additionally, children born outside of Ireland can apply for naturalisation if: he/she has at least one parent as a naturalised Irish citizen; and, he/she is under the age of 18 and is three years legally resident in the state (after his/her birth). A minor whose parents are not naturalised/citizens cannot be naturalised, with the exception (at the discretion of the minister) of minors of Irish descent or association. In practice, this means that a parent of a minor cannot begin the naturalisation process for their children until his/her own application has been successfully completed. Children who are non-citizens are obliged to register with *An Garda Síochána* (National Police force) at the age of 16 and to obtain a national identity card, unlike their citizen peers. Advocacy groups have argued that this raises challenges for integration of migrant children, setting them apart as ‘different’<sup>66</sup>.

Spanish acquisition of citizenship is differentiated by children who are Spaniards at birth: those born of a Spanish father or mother; those born in Spain of foreign parents if at least one of them has also been born in Spain; children born in Spain to foreign national parents who are stateless, or cannot transfer their nationality to the children; children born in Spain of ‘unspecified parenthood’ (meaning that their parents are unknown), including children whose first known place of existence is in Spanish territory.

Spanish citizenship can be obtained by option including: children who are or have been subject to parental authority of Spaniards, i.e., one of the parents acquires the Spanish nationality after the birth of the child but while the child is a minor. Additionally, in Spain, certain children can also acquire citizenship by virtue of one year residence: youth who have been legally subject to the guardianship, custody or care of a Spanish citizen or institution for two consecutive years; and children who have a foreign national father, mother, grandfather or grandmother who were originally Spanish.

In Croatia, the Law on Croatian Citizenship (Art. 13) stipulates that a child can be naturalised into Croatian citizenship if both of his/her parents are also naturalised Croatian citizens or, alternatively, if only one of the parents becomes a naturalised Croatian citizen and either: a) the child claims residence in Croatia, or b) the other parent does not have a citizenship or is of unknown citizenship. In other words, at least one naturalised parent is sufficient grounds to naturalise the child if the child is a Croatian resident or the other parent claims no citizenship, thereby making a case for the child's ties with Croatian citizenship.

In Israel, the issue of naturalization of children is mostly relevant when an Israeli citizen is married or in partnership with a non-Israeli citizen. A person who is married to an Israeli citizen and is not entitled for citizenship under the Law of Return, can obtain an Israeli citizenship through a gradual process, which lasts approximately 5 years. This process may be shorter if a person holds permanent residency when applying. The application also includes the children of the applicant, while the children of both parents will be automatically registered as Israeli citizens. Until 2011, when the Supreme Court ruled on the matter, paternity tests in such cases were a common practice. The Supreme Court decision directs the Ministry of Interior to acknowledge parenthood upon parents' statement instead.<sup>67</sup>

In the UK, unless they are British by descent (i.e. one parent is a British citizen not by descent), children born abroad can naturalise as part of a “family application” when their parents apply for citizenship. Children in this

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<sup>65</sup> Section 10 of the Irish Nationality and Citizenship Act 2004, available at <http://www.irishstatutebook.ie/pdf/2004/en.act.2004.0038.pdf>

<sup>66</sup> Immigrant Council of Ireland, “Immigration and children and young people: Briefing Paper,” November 2010, available at [http://www.immigrantcouncil.ie/images/stories/pdfs/Children\\_briefing\\_paper041110.pdf](http://www.immigrantcouncil.ie/images/stories/pdfs/Children_briefing_paper041110.pdf), p. 3

<sup>67</sup> See: <http://www.gov.il/FirstGov/TopNav/Situations/SPopulationsGuides/IPNationality/IPWaysForNationality/> and The Association for Civil Rights in Israel: <http://www.acri.org.il/he/13260>

category will usually be registered only if both the parents are granted or already hold British citizenship, or if one parent holds British citizenship and the other is settled in the UK.

### **3.3 WORK**

Those who have the legal status of citizenship are increasingly constructed as ‘worker citizens’ and the centrality of work as contribution to the community is emphasised. It is interesting to note that the requirement to be a *worker* is not a feature of naturalisation policies, though it might fall within broader designations of ‘being of good character’. Rather the requirement is to be self-sufficient. This is apparent in all EU countries in the study. In Ireland for example, there is no statutory requirement to demonstrate employment, but applicants are required to submit proof of economic resources and set out details of any social welfare payments they have received in the preceding three years and why they obtained the payment and people have been refused citizenship for accessing unemployment benefits after a long history of employment (Becker and Cosgrave, 2013).

In Croatia, an applicant for naturalisation is required to be a permanent resident, and applicants for permanent residence must be able to demonstrate that they have sufficient economic resources as laid out in the law on calculation and amount of sufficient means of foreigners in the Republic of Croatia (Baričević & Hoffmann, 2014). Similarly, in The Netherlands, applying for social assistance (or other non-insurance based benefits) may result in problems with renewing residence permits and/or refusal to be granted permanent residence rights (Klaver and Ode 2009 in Lepišanka, 2014), which is a pre-requisite for naturalisation. In Spain applicants for renewal of residence permits must provide proof of availability of economic resources and income-related benefits can contribute to the overall assessment of income required to renew a residence permit, which then affects applications for naturalisation. However, if this is their only income, it could affect the renewal process to renew their residence, thereby jeopardising their immigration status (Price and Spencer, 2014). In the UK, whilst self-sufficiency is not a required condition for naturalisation, and indeed unemployment is in itself not a condition for determining lack of ‘good character’<sup>68</sup> the requirement is manifested in other ways, for example immigration rules requiring minimum income thresholds for family migration mean this is necessary for permanent residence, and thus by effect to naturalise.

Work and welfare benefits also shape access to naturalisation indirectly through a combination of immigration controls and the temporal requirements of eligibility. For all states the temporal requirements for those acquiring citizenship via naturalisation are critical, (though as previously discussed they are waived for those with a right to citizenship by birth/religion). The standard temporal requirements vary from ten years residency (Spain) to three years residency (Israel). The Spanish requirement is substantially longer than the five years of most other EU states but it is also characterised by its number of exceptions. Most significant is the fast track for immigrants from Latin American countries, who are required only to have two years residency and who accounted for 84% of naturalisations in 2010. Effectively there is a two tier system between former colonies (principally Latin America and the Philippines) and other states, and the contrast with Morocco, a country with whom Spain has had considerable and long standing cultural ties, is particularly striking. Other states also have exceptions to the residence requirement, particularly for those who are married to nationals (see above). Current length of residency may not exhaust temporal requirements: in Israel and Croatia for example the applicant must have the right to permanent residence (i.e. it is not naturalisation that grants the right to permanent residence).

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<sup>68</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270533/ch18annexd.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270533/ch18annexd.pdf)

In the EU, for those subject to immigration controls (i.e. not EU nationals who are moving within the EU) the possibility of fulfilling these kinds of requirements is very much determined by the specific immigration rules attached to entry and residence visas. As we have seen in the previous section, these typically are far more restrictive if they are issued for ‘low skilled’ workers) and are usually non-renewable or not permitted to lead to permanent residence or renewable only for a specified number of years that fall short of the requirement for naturalisation. The use of this mechanism is explicit in the UK. Restrictions on settlement were tightened from four to five years in 2006, but there was still anxiety that it is ‘too easy at the moment to move from temporary residence to permanent settlement’<sup>69</sup>. In 2011 a consultation was launched having as one of its themes ‘allowing only the brightest and the best to stay permanently’, and the upshot was a general removal of settlement rights, and the turning of the majority of non-family migrants into temporary migrants. Furthermore, certain visas may not count towards residence, so in Ireland, the UK, Spain and The Netherlands, legal residence as a student visa holder or as an asylum seeker, for example, does not count towards the number of years required for naturalisation<sup>70</sup>. In Croatia, however, years spent as an asylum seeker do count towards permanent residence and thus naturalisation. Indeed a combination of the temporariness of visas issued for low waged work, ineligibility of certain types of residence to count towards residence requirements, means that for those who enter as workers those who are ‘highly skilled’ will find it far easier to fulfil the residency requirements of naturalisation than those who are ‘low skilled’. Importantly however this dirty work is done by immigration rather than citizenship.

Both the requirements for ‘skill’ and for minimum income make it more difficult for women to access the kinds of employment/ investment visas that enable them to accrue the length of stay necessary for citizenship. For example, in the UK, a major side effect of the structure of the points based system is that it appears to be admitting far more men than women. In Tier 1, two thirds of applicants are male, a figure rising to 78 per cent in Tier 2 (where applicants require a job offer) (Murray, 2011). Likewise, in Ireland, many of the professions that are excluded from the work visa programme are predominantly female and women are more likely to earn a wage that is too low to qualify them either for a work visa or a green card (Finlay, 2014). In the Netherlands, in 2011, among the migrants who came to the Netherlands to work (work as a migration motive): 63% were male and 37% female. The gender difference in those entering as family members is 40% men and 60% women. Potentially, then by entering as family members, women might be (more) dependent on their partners (and the financial means of their partners) in accruing the length of stay necessary for citizenship (Lepianka, 2014). There can also be requirements to demonstrate sufficient means for subsistence (Spain) in order to be naturalised. While it affects to be ‘gender blind’ citizenship continues to be inflected by gender.

### **3.4 WEALTH AND INCOME**

Access to citizenship is shaped directly and indirectly by wealth and income. Infamously the Malta, Cypriot and Portuguese governments offer ‘citizenship by investment’: Maltese law offered EU citizenship to those who were willing to pay € 650,000. Affluent foreign investors were offered citizenship in Cyprus as “compensation” for their Cypriot bank account deposit losses. Portugal introduced a “golden residence permit” in 2012 with a hefty price tag of a capital transfer investment of € 1 million, a real estate property purchase at a value of € 500,000, or the creation of local jobs (Shachar & Baubock, 2014). There has been some concern at these kinds of programmes which give access to EU citizenship as well as national citizenship. In response, on 16 January 2014 the European Parliament adopted a (non-binding) resolution which noted that the rights conferred by EU

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<sup>69</sup> Home secretary Theresa May in her first major immigration speech on 5<sup>th</sup> November 2010. <https://www.gov.uk/government/speeches/immigration-home-secretary-s-speech-of-5-november-2010>

<sup>70</sup> Gaps in legal status caused by administrative delay also do not count as legal residence in Ireland

citizenship are ‘based on human dignity and should not be bought or sold at any price’<sup>71</sup> and was supported by a very broad majority asking the Commission for “guidelines for access to EU citizenship via national schemes.” As a result of this opposition, Malta has since tightened the requirements for citizenship and added a ‘genuine link’ to Malta requirement as well as some limited residence requirements. These sorts of arrangements are not new, ‘Investment by naturalisation’ had previously been offered by the Irish government, with a 1989 discretionary scheme to fast track naturalisation for those who had made a ‘substantial investment’ requiring residence of two rather than five years. This was formalised in 1994 but was increasingly controversial and abolished in 1998. However, a new investor programme was initiated in 2012 for those investing between 500,000 (in a public project) and 2 million who could thereby access a five year residence permit and fulfil the temporal requirements for citizenship.

Reduced temporal requirements for settlement mean easier access to naturalisation but may be more publicly palatable than what can be seen as the commodification of citizenship. In the UK, some categories of ‘high-value migrants’ benefit from an accelerated settlement if they have continuous residence, which then leads to citizenship. Residence requirements for investors are reduced from the usual five years on the basis of the level of their investment so: two years for an investment of £10m; three years for an investment of £5m. The Points Based System (PBS) is commonly aimed at highly skilled migrants and offers the possibility of citizenship, the UK’s Tier 1 is an example of this, whereas the link for lower skilled workers and settlement is, as previously discussed, being specifically curtailed. Essentially, these are ‘talent for citizenship’ programmes (Shachar, 2006). In the Netherlands, a similar trend is visible. From 2013, TCNs in possession of at least € 1,250,000 for investment in the Dutch economy (*bedrijfsleven*) can benefit from a simplified procedure to obtain an entry visa and a residence permit for one year and then, upon successful verification, for another four years, which can lead to citizenship

An analysis of temporal residency requirements to access naturalisation underlines some of the hierarchical practices at work in the six states examined here, both in relation to both the concept of family relationships as defined by the state (i.e. the privileging of marriage over *de facto* relationships) and the ideals of citizenship. Differences in length of residence are emblematic of who is envisaged as belonging to the state, and those who must instead ‘prove’ their association through a ‘genuine’ link to the state evidenced via length of residency. One need only compare the right of Jewish migrants to obtain Israeli citizenship immediately on arrival in Israel to the ten year residence requirement placed on TCN migrants to Spain, and the exception of migrants from Latin America from this rule, as they are seen as having greater ties to the Spanish national community. Ways in which non-citizens can become citizens, or acquire citizenship are not simply legal details and technicalities but indicate and shape the foundations of how membership is imagined (Cole, 2010; Honig, 2003). Thus the ways in which individuals become citizens, and who is able to become a citizen, in the six states under question reveal the ideals of citizenship, membership and statehood those states, and how the nation/state community is imagined. By unpacking the requirements placed on those who want to naturalise the delineations of the community of value become apparent, for the migrant is expected to be a Good Citizen and comply with the idealised citizen. The following section explores naturalisation processes in more detail.

### **3.5 THE NATURALISATION PROCESS**

There is a striking difference between those for whom naturalisation is a ‘prize’, and those for whom it is an entitlement. In the UK and Netherlands in particular, naturalisation processes are becoming increasingly restrictive (and expensive), with the onus on the would-be applicant to demonstrate their deservingness. In the UK Prime Minister Cameron recently claimed that UK citizenship is ‘a privilege, not a right’, while in

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<sup>71</sup> European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)).

Netherlands Dutch nationality has come to be seen as a trophy, the ‘first prize and proof of loyalty to the Dutch state’ (OECD, 2011) that is granted only upon the successful completion of integration understood as (labour market) participation and awareness of Dutch norms and values. Likewise, Irish citizenship has also been come to be seen as a ‘privilege’ and an ‘honour’ for those who show ‘loyalty’ and ‘fidelity’ to the state and are ‘not a burden’<sup>72</sup> on it (Becker & Cosgrave, 2013). In contrast, for certain groups in/associated with Israel, Croatia, Ireland and Spain, citizenship can be an entitlement, with minimum requirements. Indeed, in contrast to the UK, the Spanish Justice Minister is recently quoted as stating that “Spanish nationality is a right, not a privilege”, in relation to the decision to grant citizenship to Sephardic Jews<sup>73</sup>.

As part of the naturalisation process, all states except Croatia require applicants to make an oath of allegiance to the state, referred to as a ‘declaration of solidarity’ in the Netherlands, in which they pledge their loyalty and fidelity to the state and its laws and customs. In the UK, the Netherlands and Ireland – all of whom have formalised naturalisation ceremonies, this is voiced in front of a state figure during the citizenship ceremony as an obligatory part of the naturalisation process. In Spain the promise of fidelity to the Spanish King and to the Spanish Constitution is made during the application process by signing a document stating to do as promised. Non-Jewish migrants are required to declare loyalty to the State of Israel. In Croatia, there is no oath of allegiance, but respect for Croatian laws and customs must be evident in the applicant’s behaviour. As this is a somewhat vague provision, it is thus open to discretionary application. Usually, the Ministry uses this provision to perform internal checks of the applicant (with the Tax Authority, the courts, other Ministries, but also the secret services) (Sajfert, 2013).

The Netherlands and the UK impose the most stringent, formalized requirements on applicants wishing to naturalize in the form of citizenship tests, examining language and knowledge of customs and traditions. The stated aim is the need to improve the integration of migrants in society for the purposes of social cohesion and equality. Evidence from the UK suggests that the language test presents more of a hurdle for those from poor and less developed nations<sup>74</sup> (Ryan, 2008 in Wray, 2013: 2) although the introduction of the test does not seem to have affected applications, which have increased significantly. As the test may be taken as many times as necessary, it is possible that almost everyone eventually qualifies (Wray, 2013: 2).

The 2011 Amendments of the Croatian Citizenship Act aimed to strengthen the role and importance of knowledge of Croatian language and culture in the naturalisation process and migrants wishing to naturalise must now pass language and culture tests, or otherwise provide valid evidence of language proficiency such as a certificate from an educational institution in the Croatian language from abroad or a certificate of knowledge of Croatian language at B1 level. Knowledge of Croatian culture and society is now tested through a questionnaire completed during the application process, in front of the respective civil servant. Permanent residence is a requirement for citizenship and passing a language and knowledge of culture test is a mandatory requirement for TCNs and their family members in order to obtain permanent residence; the condition is waived for EU citizens and their family. Once TCNs have passed the language test for permanent residence, this

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<sup>72</sup> Although it should be noted those with some form of refugee status are exempt from self-sufficiency requirements.

<sup>73</sup> Justice Minister, Alberto Ruiz-Gallardon, in a speech last month in Madrid to a visiting delegation of the Conference of Presidents of Major American Jewish Organizations cited in JTA newspaper 10/03/2014 <http://www.jta.org/2014/03/10/news-opinion/world/move-to-repatriate-spanish-jews-prompts-frenzy-but-excitement-may-be-premature>

<sup>74</sup> Countries whose nationals performed well include Argentina (93.5%), Australia (98%), Belarus (90.1%), Canada (96.9%), Greece (93.2%), New Zealand (98.3%), South Africa (93.9%) and the USA (97.7%). Countries with low pass rates included Afghanistan (47.8%), Albania (56.3%), Angola (54%), Bangladesh (44%), Iraq (47.5%) and Thailand (51.8%). The issue does not appear to be solely linguistic; the pass rate for Jamaicans, for example, was 66.9%, much lower than in other English speaking countries such as USA or Australia (Wray, 2013:2).

counts towards naturalisation but they are still required to take the additional Croatian culture and society test, which requires passing a 15-question exam for naturalisation.

In Ireland at present there is no language or citizenship assessment as part of the Irish citizenship requirements. However, the Minister for Justice and Equality announced in January 2012 that work is underway on the development of an English language/civics test for naturalisation applicants.

In Spain, there is no formal language or integration test, both are instead assessed by interview with the Judge of the Civil Registry – who also assesses for proof of “good civil conduct and enough integration in Spanish society” thus leaving ample scope for discretionary judgement (Martín-Pérez & Moreno Fuentes, 2013:5). ‘Sufficient social integration’ into Spanish society, is not clearly defined in law. However, applicants are required to declare whether they know Spanish or any other official language in Spain, and any other circumstance showing adaptation to Spanish culture and life style (studies, social service in the community, etc.). The provision also refers to the need to show sufficient means of subsistence in Spain. Ultimately, it is the judge in charge of the Civil Registry who interviews the applicant and decides whether this requirement has been adequately fulfilled (Marin et al. 2012: 22).

States have also begun to incorporate a ceremonial aspect to the naturalisation process as part of formalising the process. Ceremonies have been taking place in the Netherlands since 2006, where all local governments are required to organise naturalisation ceremonies for newly naturalised Dutch citizens. They are required to organise at least one ceremony each year, on December 15, which has been designated as National Naturalisation Day by the government (Böcker & van Oers, 2013). In the UK, citizenship ceremonies have been an obligatory part of the naturalisation process since 2004 and Ireland introduced citizenship ceremonies in 2011. The format of the ceremonies is similar in each of these countries, and consists of the oath of allegiance/declaration of solidarity, a speech by the mayor or a municipal official, some form of reception, and receipt of a welcome pack or small gifts. The national anthem may also be sung.

The costs associated with naturalisation have been steadily rising and must be borne by applicants themselves. In the Netherlands, from January 2014 new immigrants will be required to pay for their integration courses and tests themselves (Böcker & van Oers, 2013). The cost of naturalisation for an adult in the Netherlands is currently €821 plus costs for tests, in the UK it is slightly higher at £906 (covering the application procedure and citizenship ceremony) plus £50 for the Life in the UK test. In Ireland, the fee for naturalisation was raised to €950 in 2008, which as Handoll (2012) notes, seems to function as a barrier to naturalisation. Indeed, the high application fee and the additional fee payable on approval of an application for naturalisation may act as a deterrent for certain applicants. At present, in Croatia the cost of the language test is around €130. The elderly (over 60 years of age) are exempt from the language test requirement. There is then an application fee to be paid to the Ministry of Interior if the application is successful, which amounts to around €200 (Sajfert, 2013). Whilst in Spain there is currently no fee for naturalisation, the government is planning to introduce a €75 fee from 2015<sup>75</sup>. In Israel, while spouses and civil partners of Israeli citizens are not required to pass a language proficiency exam, others applying for citizenship are obliged to do so. This includes, for example, the residents of East Jerusalem who hold permanent residence and wish to obtain citizenship instead. The majority of residents going through a naturalization process are spouses or civil partners of Israeli citizens. A permanent resident requesting citizenship will have to pay a modest fee of approximately €40. However, spouses/civil partners of Israeli residents are expected to go through a gradual process, obtaining varied types of legal statuses for up to 4.5 years. Fees are paid for each permit throughout the gradual process, and thus these fees need to also be considered (approximately €40 per request).

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<sup>75</sup> See *El País* article 06/06/2014: [http://politica.elpais.com/politica/2014/06/06/actualidad/1402080386\\_769987.html](http://politica.elpais.com/politica/2014/06/06/actualidad/1402080386_769987.html)

The ‘good character’ requirement is an obligatory part of the naturalisation process in all EU states, and is implemented in a discretionary manner in all. For example, in Croatia there is evidence that applications for citizenship through naturalization are often refused due to an applicant’s alleged criminal record (which may or may not exist) (Sajfert, 2013). In the UK, the good character requirement is the most common reason for refusal (Wray 2013). Guidance to decision-makers sets out the sorts of matters to be considered and, any criminal conviction, apart from a single minor offence (e.g. minor speeding), is a bar to naturalisation at least until it is spent and probably for longer if it was not disclosed in the application. Immigration ‘fraud’ and other indications of bad character, even if not resulting in conviction, may also be grounds for refusal (*Ibid*). In Ireland, the Minister’s ‘absolute discretion’ means that the Department of Justice and Equality does not have to give reasons for refusing an application for citizenship. In an important case, *Mallak v Minister for Justice, Equality and Law Reform [2012] IESC 59*, Ireland’s Supreme Court ruled that cases in which reasons were not given for refusal should be ‘unusual’. It concluded that the Minister’s ‘absolute discretion’ did not mean that the Minister did not need to have a reason for refusing citizenship and that the Minister needed to give reasons for the non-disclosure of the reasons for refusal. Importantly for this study, the Court’s reasoning was based on a number of legal sources: ‘Several converging legal sources strongly suggested an emerging common view that persons affected by administrative decisions have a right to know the reasons on which they are based including Section 18 of the Freedom of Information Act 1997, Article 296 of the Treaty on the Functioning of the European Union (TFEU) and Article 41 of the EU Charter of Fundamental Rights, which provides that every person shall benefit from the right to good administration including the obligation of the administration to give reasons for its decisions, as well as relevant jurisprudence’<sup>76</sup>. The need for such a lawsuit—and the limited result—indicates the high degree of arbitrariness and lack of transparency that characterises the naturalisation process in Ireland (Finlay, 2014).

All states encompass a discourse that underscores the need for migrants to adapt to the principles of liberal democracy, and have a better knowledge of the values and customs of their host state. In both the Netherlands and the UK, and more recently Ireland, a clear shift towards the stronger conditionality of naturalization, on the one hand, and increased commitment of the migrant, on the other, can be seen. Citizenship began to be seen as a reason of pride and naturalization as a reward that should not be handed out “too easily”. The discourse in the Netherlands began to shift from the ‘unequal legal position’ of migrants that could be rectified by naturalization to ‘cultural incompatibility’ and infamously the naturalization process included watching a film depicting female nudity and gay men kissing. Naturalization became to be seen as the completion of the integration process, a trophy accessible only for those immigrants able to demonstrate their ‘Dutchness’/‘Irishness’ or ‘Britishness’ through formalized procedures. Thus in the Netherlands, the influence of integration ideologies and policies became more restrictive and naturalisation came to be seen as something that has to be ‘deserved’ (Böcker & van Oers, 2013).

Naturalisation processes thus exclude those not seen as deserving or desirable for the state, who fail to fit the normative order. Citizenship is no longer an entitlement but something that must be ‘earned’ by an appropriate demonstration of belonging to the values embodied by the nation state. As van Walsum (2011) argues, efficiency, individual self-reliance and market rationality have become the new touchstones of national identity and purpose and thus more individualistic and less republican or communitarian notions of citizenship are now evident throughout Europe. Moves towards formalising citizenship are incumbent in the practices and processes underlying naturalisation, whereby citizenship has become identified with loyalty to the state in ways that were previously absent. However, these practices are notably absent in states with a strong ethno/religious nationalist identity.

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<sup>76</sup> [http://emn.ie/cat\\_search\\_detail.jsp?clog=6&itemID=2574&item\\_name](http://emn.ie/cat_search_detail.jsp?clog=6&itemID=2574&item_name)

#### **4. SOCIAL SECURITY**

The provision by the state of social security or income maintenance on the basis of unemployment or other income related needs includes social insurance (contribution based benefits), which may be earnings-related or flat-rate benefits; and social assistance (non-contribution based benefits). A mix of contribution-based and non-contribution based benefits are evident in different national contexts<sup>77</sup>. Social insurance/contribution-based systems confer rights to social security through waged work: on the basis of contributions paid through employment, workers are entitled to cash benefits during times of unemployment. Social assistance/non-contribution based benefits are provided on the basis of income and/or other needs (e.g. child benefit, income support, disability allowance). As examined below, the provision of social benefits by the state constructs not simply hierarchies of deservingness on the basis of formal citizenship (between citizens and non-citizens of a state), but among citizens – between workers/non-workers, market insiders and outsiders, the resident and non-resident.

Welfare states analysis has sought to identify the extent to which state welfare provisions shape levels of decommodification – the ability of individuals to meet their welfare needs independent of the market (Esping Andersen, 1990). Social rights, including the provision of benefits by the state to mitigate the risks of unemployment, enable individuals to access (at least a minimum) of resources without relying on the market. At the same time, welfare states shape levels of stratification - constructing as much as alleviating social divisions and inequalities among citizens. Social rights may be universal or selective, aimed at promoting greater equality or the maintenance of social divisions.

As feminist analyses have emphasised, welfare provisions entail not only divisions of class between citizens but gendered divisions of labour. The post-war welfare settlement of state guaranteed social rights was a settlement between male labour and capital (Lewis, 1992). Citizens/men were granted social rights by virtue of their productive role as waged workers; women were granted social rights by virtue of their status as mothers and wives as much as workers (Lewis, 1992). The history of welfare states was thus about supporting the development of capitalist economies, but it was also about the development of nations – of reinforcing women's reproductive role in the family in populating the nation (Williams, 1989) – and demarcating the lines of exclusion from 'within' and exclusion from 'without' (Lister, 2003), on the basis of class and gender, but also nationality, race/ethnicity and religion.

Citizenship and non-citizenship thus both denote forms of differential inclusion/exclusion with regard to the rights of citizens and non-citizens to welfare. With regard to the exclusions of gender, the development of welfare states was underpinned by a 'male breadwinner' model of the family/household – men being the primary workers and women the primary carers (Lewis, 1992). While the male breadwinner model continues to underpin social policies in various forms (Daly, 2011), there has been a shift across developed welfare states towards an 'adult worker' model (Lewis, 2002). With the promotion of women's labour market participation, alongside the pursuit of active labour market policies more generally, all adults, women and men, are increasingly treated 'the same': as citizen-workers. As has been well documented, however, despite relatively high rates of employment, women's labour market status is not equivalent to men's, especially with respect to women with dependent children (e.g. whose participation in employment is predominantly part-time in countries such as the Netherlands and the UK), and unpaid work/care is still predominantly carried out by women. The ability of women to achieve decommodification on a par with men as citizens is thus dependent

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<sup>77</sup> In addition to social insurance/contribution based and social assistance/non-contribution based benefits provided on the basis of unemployment or low income, cash benefits may be provided in the form of 'tax credits' to those who are in low-paid work (i.e. who are in work but whose income falls below a certain level).

on their ability to ‘commodify’, given that women’s non-participation in the labour market and the nature of their participation in paid work is fundamentally shaped by their reproductive labour (Lister, 2003).

The following sections discuss: first, the ways in which work and care structure forms of differential inclusion/exclusion with regard to entitlement to social benefits related to unemployment/income in the different countries for national citizens and EEA citizens; and second, the ways in which residence and nationhood structure entitlement for citizens and non-citizens.

#### **4.1 WORK AND CARE**

In what has been described as a shift from a welfare to a ‘workfare’ state (Peck 2001), the provision of cash benefits by the state to citizens (of working age) who are not in paid work has been driven by the development of labour market activation policies, with a view to reducing levels of unemployment and economic inactivity. Access to social security on the basis of unemployment or other income-related needs has become increasingly conditional on undergoing activities towards (re-)entering employment; a trend that is visible across the countries in this study, particularly in the Netherlands and the UK. The entitlement of citizens to claim benefits is dependent on their compliance with the status of jobseeker – the individual claimant must be able to work, available for work and actively seeking work. These work-related conditions include the mandatory participation of benefits claimants in employment-related programmes and/or job search interviews, and potentially in unpaid work (on the basis of improving a jobseeker’s ‘employability’). Rights to welfare for citizens, it has been argued, have thus been replaced by conditional entitlements on the basis of individual responsibility to sell one’s labour through the market (Dwyer 2004), what Offe (1984) refers to as the ‘re-commodification’ of labour.

Welfare policies have, moreover, involved increasingly punitive measures towards citizens who do not comply with work-related conditions while claiming benefits. In the UK, there has in recent years been an increase in the use of sanctions, removing the benefits of a claimant for specific periods of time as a penalty for non-compliance with the conditions attached to job seeker status. In the Netherlands, failure to comply with the job search requirement (one job application per week) may likewise result in the reduction or withdrawal of benefits. At the same time, work-related conditions and the use of sanctions have increasingly been extended to groups of citizens who are not in paid work due to disabilities or caring responsibilities. For example, campaigns surrounding the treatment of disabled people as ‘jobseekers’ in the UK, and the associated withdrawal of their rights to welfare, are a prominent recent example of the ways in which citizens’ welfare entitlements have become increasingly subject to work-related conditions. There has thus been greater emphasis on and greater reach of work-related conditions attached to receiving welfare benefits with respect to the rights of citizens to social assistance. Individual responsibility to be ‘self-sufficient’ through paid work thus underpins policy developments across states towards the *dis*-entitlement of citizens to state welfare provisions.

Care has, historically, always been subordinate to paid work with regard to the principles underlying entitlements to social insurance/contribution-based benefits: those not in paid work and not ‘contributing’ through a wage being excluded, irrespective of the contributions they may be making through their reproductive labour. At the same time, care has affected women’s participation in the labour market and their status as jobseekers and as workers, which has similarly resulted in their lesser entitlement to contribution-based benefits. In the Netherlands, for example, the duration of entitlement to contribution-based unemployment benefit is greater for those with longer employment histories. An individual who has been employed for less than four years over a five year period is not entitled to an extension beyond three months of unemployment benefit. Those with a longer history of continuous employment (four or more years) are entitled to an additional month of benefit for every additional year worked.

Entitlement to non-contribution based social assistance has constituted a form of recognition of care related work and needs (e.g. carers allowance). However, this form of assistance has potentially served as much to reinforce the gendered division of unpaid care and paid work. Over recent years, in both the UK and the Netherlands, there has been a shift towards treating lone parents as worker citizens, reflected in the requirement that lone parents with children aged five and over engage in job-seeking activities (which may include work-related training), although their care related responsibilities may be taken into consideration with respect to the hours of paid work they are 'willing' to accept (Lewis, Knijn, Martin & Ostner, 2008). However, in the Netherlands, unlike the UK, the requirement to engage in job-seeking activities is waived for those who are providing informal care (at least 20 hours per week) to older and disabled individuals (although they are still required to comply with the condition that they are willing to take up a job offer). Similarly, periods of care (for children under five years and for older and disabled adults) are recognised in the employment history required as a basis for entitlements to unemployment benefit (although it is subordinate to paid work, counting for 50 per cent of employment history). In Ireland, the role of women in relation to unpaid care is still legally enshrined – a woman should not be forced to work outside the home to the neglect of their role within the family (Constitution of Ireland, articles 41-42, cited in Finlay 2014) – although this role has received limited support through the provision of care-related benefits. Care in Croatia is predominantly based in the informal sector, and is largely unrecognized as employment.

As noted previously, the status of care-related workers and care-related work in the immigration systems of different states points to the ways in which migrant women's position as workers (as much as non-workers) shapes their rights and entitlements. Indeed, in the case of domestic workers, they may be excluded from rights as workers by the construction of domestic work/workers as distinct from labour law (Anderson, 2014). Cross-nationally, there may be a shift (albeit shaped by different national histories) towards an adult worker model underpinning policy assumptions in relation to women as citizen workers. However, at the same time, immigration policies serve to enforce the dependence of non-citizen women on the male breadwinner/spouse in order to gain rights to reside. Just as welfare policies are underpinned by assumptions with regard to citizen women as 'workers' or the dependants of the 'male breadwinner', immigration policies position non-citizen women as caught between the market and the family.

#### **4.2 RESIDENCE**

Residence forms a condition of entitlement to non-contribution based unemployment and income-related benefits cross-nationally. However, what constitutes residence and its application to national citizens, EEA citizens and TCNs varies across countries. It also varies *within* countries with respect to divisions between central/local tiers of state governance. In Spain, under the federal system of autonomous communities, regional governments have welfare law-making powers, and laws and policies vary from one region to the next. Thus place and length of residence *within* Spain determines Spanish citizens' eligibility for benefits. A Spanish citizen has to have been resident for a set period of time within a region (e.g. six months in Galicia and two years in Asturias) before being eligible for benefits. In terms of residence, Spanish citizens are subject to the same requirements as everyone else and TCNs have the same entitlement to non-contribution based benefits related to income as Spanish citizens as long as they are lawfully resident. Registering with the local municipality is a precondition for accessing all statutory services. The division of responsibilities between the federal government (immigration policy and unemployment benefits) and the autonomous communities (provision of welfare) has created tensions with some regions allowing irregular migrants access to some forms

of financial assistance. Irregular TCNs are entitled to ‘basic social services’<sup>78</sup> (Price and Spencer, 2014), which are universal in Spain. However, this is not well defined and some forms of social assistance are funded by the autonomous communities, who design and implement their own eligibility criteria. For example, in the Basque country irregular migrants are entitled to social assistance – the *Renta Mínima de Inserción* (RMI). This is not the case in other regions, such as Madrid where RMI applicants must show that they have lived for at least one year in the autonomous community with lawful status in order to qualify. This applies to Spanish nationals in the same way as to foreign nationals (Price and Spencer, 2014).

All EU member states have some kind of ‘habitual residence test’ (HRT), designed to deter ‘benefit tourism’ and to determine whether resident EU nationals are entitled to non-contribution based social assistance. What constitutes the benchmark of habitual residence varies however between states. ‘Habitual residence’ is not defined under EU law and guidance is vague. What is clear however is that it is not definable, solely in terms of length of stay but rather ideas like ‘intention’ and ‘stability’ are also important<sup>79</sup>.

The UK has been at the forefront of tightening up on the HRT. In 2004, in addition to the need to demonstrate the intention to settle in the UK (habitual residence) a ‘Right to Reside component was introduced to the test<sup>80</sup>. The right to reside component effectively tests whether a person has the right to live in the UK. There is no statutory definition of the term “right to reside”. The right to reside in the UK for EEA nationals is governed by the Immigration (EEA) Regulations 2006, which transposed Directive 2004/38/EC. The following have the right to reside in the UK<sup>81</sup>: UK nationals; “qualified persons” (an EEA national who is in the UK and, by virtue of EU legislation, is: a jobseeker; a worker; self employed; self-sufficient; or a student); family members of “qualified persons” or EEA nationals with a permanent right of residence; persons who have acquired the right of permanent residence; and primary carers of a child who themselves has the right to reside. Habitual residence tests in the UK (and Ireland) make employment or self-employment a condition of habitual residence. Thus employment, as opposed to unemployment, becomes the condition of eligibility for social provision alongside residence

In Ireland the Habitual Residence Condition (HRC) is decided on five grounds: length and continuity of residence in Ireland or in any other particular country; length and purpose of any absence from Ireland; nature and pattern of employment; applicant's main centre of interest; future intention of applicant concerned as they appear from all the circumstances. In general, workers from the EEA are determined to be habitually resident while working and self-employed in Ireland, as are their potentially non-working spouses. Non-EEA nationals can be deemed habitually resident if they have been employed in Ireland for two years but this two year period is waived in some cases, especially for ‘returned Irish’ persons. In the case of asylum seekers, Social Welfare Appeals officers have decided that some individuals who have been waiting for a decision for a long period of time do meet the Habitual Residence Condition, although the Department of Social Welfare (now Department of Social Protection) has argued that the entire class of asylum seekers cannot meet the Condition. Thus, the notion of ‘habitual residence’ is highly arbitrary in its application in Ireland, granted to some who have recently arrived, while excluding individuals who have lived in Ireland for years and possibly their entire

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<sup>78</sup> Article 14 of Organic Law 4/2000 guarantees access to basic services and social benefits to all foreigners, regardless of their immigration status.

<sup>79</sup> [http://europa.eu/rapid/press-release\\_IP-14-13\\_en.htm](http://europa.eu/rapid/press-release_IP-14-13_en.htm)

<sup>80</sup> The European Commission has concluded that this test is discriminatory, contrary to EU law, and on 29 September 2011 issued a ‘reasoned opinion’ under EU infringement procedure. This is still an ongoing issue.

<sup>81</sup> This is not an exhaustive list. This is an extremely complex area, and case law is constantly evolving to clarify situations where an EEA national may be able to claim benefits in the UK.

lives in the case of asylum seeker children. This is because of the construction of the condition in terms of a nationalist and potentially ethnic understanding of what it is to have Ireland as your main centre of interest (Finlay 2014).

By contrast, in the Netherlands, in principle, all foreign nationals – EEA citizens and TCNs – who are legally resident and are workers (employed or self-employed)<sup>82</sup> have the same rights and obligations as Dutch worker citizens with respect to contribution-based and non-contribution based benefits. However, as discussed below, the exercising of those rights by TCNs by claiming benefits may negatively affect their rights to residency. EEA nationals with worker status (which is defined as employment of at least 16 hours work a week) are granted, in effect, a more privileged position as workers as they are able to claim non-contribution based social assistance without losing their residence rights. EEA workers can retain the status of worker for six months if they become unemployed. However, EEA citizens who do not have worker status (and permanent residence) may have their residence terminated if they claim non-contribution based benefits.

In Croatia, residence is the standard prerequisite of claiming virtually any welfare benefits, including unemployment compensation (contribution-based), child benefits and income assistance (means-tested). Provided migrants with temporary residence in Croatia meet the criteria (including being self-sufficient, knowledge of language and culture, not posing a threat to public safety etc.), they may upgrade their status to permanent residence after five continuous years of temporary residence. Permanent residence then enables recourse to social assistance (minimum income). Both EEA and TCNs need permanent residence in order to claim social assistance, but in relation to unemployment benefits EEA nationals are equated to Croatian citizens in their unemployment rights and access to employment services (Law on Employment Services and Rights during Unemployment). For the purposes of claiming rights, migrants must also have a residential address registered with the authorities, with implications for some underprivileged groups (homeless, Roma). Continuity of residence required for permanent residence is less restrictively defined for EEA nationals, who are entitled to more leeway in the time they are allowed to stay outside Croatia during the five-year period prior to permanent residence (e.g. up to 6 months annually, compared to 10 months total stay outside Croatia for TCNs).

Residence requirements have, conversely, led to the dis-entitlement of national citizens to welfare benefits in some cases. In the UK, the application of HRT with respect to benefits claims since January 2014 has led to cases of national citizens being excluded from entitlement to those benefits. For example, a British man who returned to the UK after a period of working in Belgium was found not to be habitually resident and therefore not entitled to welfare benefits<sup>83</sup>. Although changes to the HRT were initiated to prevent so-called EEA ‘benefit tourism’, advice agencies have so far reported these restrictions have been affecting more British than EEA citizens.<sup>84</sup> Following the Irish example of ‘returned Irish’ persons it will be interesting to see how this provision develops.

Conversely in Croatia, the constitutional article stating “the Republic of Croatia’s commitment to efforts in preserving and empowering the position and identity of Croats abroad through (...) health and welfare policies” (Art. 7) (p.19), allows the state to introduce special welfare policies for ethnic communities outside Croatia. So

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<sup>82</sup> Except those working for a foreign company (a company that is not registered in the Netherlands for tax purposes).

<sup>83</sup> For example: [http://www.theguardian.com/society/2014/may/21/britons-travelling-studying-abroad-forced-jobcentre-residency-test?CMP=twt\\_gu;](http://www.theguardian.com/society/2014/may/21/britons-travelling-studying-abroad-forced-jobcentre-residency-test?CMP=twt_gu;)

[http://www.yorkpress.co.uk/news/11011326.York\\_man\\_refused\\_benefits\\_due\\_to\\_new\\_immigration\\_rules/](http://www.yorkpress.co.uk/news/11011326.York_man_refused_benefits_due_to_new_immigration_rules/)

<sup>84</sup> See COMPAS Breakfast briefing presentation (11/04/14, p.15):

[http://www.compas.ox.ac.uk/fileadmin/files/Events/Breakfast\\_briefings/APRIL\\_BB\\_Presentation\\_.pdf](http://www.compas.ox.ac.uk/fileadmin/files/Events/Breakfast_briefings/APRIL_BB_Presentation_.pdf)

far, the state has used (and still does) this provision to grant support (including financial) for educational, health, cultural and other programmes and institutions/organizations for the large ethnic Croat community living in Bosnia and Herzegovina (Baričević & Hoffmann, 2014).<sup>85</sup> In Israel statutory changes were made to ensure access of Jewish immigrants to contribution-based unemployment benefits irrespective of their status as workers (employment history) or their length of residence (Gal and Halevy, 2014).

Length of residence is used as a barometer to determine association, or belonging to the state, or even the locality in the case of Spain, in order to construct deservingness of access to state welfare regimes and this differs depending on the immigration histories and focus of the state. As the examples of Israel and Croatia show, temporal residence requirements can be overridden by those who have ethno/religious ties whereby membership of the state is deemed inherent and as such access to social assistance is guaranteed or facilitated. This is also reflected in the case of Ireland and the special provisions for ‘returned Irish’ persons to enable them to meet the habitual residence test. Association in these instances is thus constructed on a nationalist, potentially ethnic basis. In Ireland and the UK as work becomes central to the right to reside, so it underpins the right to access social assistance. Whilst the Netherlands seemingly adopts a more equal approach, as recourse to unemployment benefits may negatively affect applications for permanent residence, again it seems work becomes a requirement for residence, belonging and the right to reside in a territory and access the welfare regime. Residence requirements can act as exclusion mechanism for those not seen as part of the community, and therefore not eligible for social assistance.

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<sup>85</sup> Due to unclear policies of residency, the ethnic Croats who are citizens of other states (most notably, those in Bosnia and Herzegovina) are also often accorded access to welfare rights in Croatia. Namely, Croatian state has long used to provide the formal status of Croatian residency to ethnic Croats in Bosnia and Herzegovina who factually have not been living in Croatia. This is usually explained as a strategy of the right wing to “buy” votes from large electoral body in Bosnia and Herzegovina (Kasapović in Ragazzi 2009; Stubbs and Zrinščak 2012 in Baričević & Hoffmann, 2014).

## **5. INTERCONNECTIONS BETWEEN THESE HIERARCHIES OF DESERVINGNESS**

Policies on social security (for people of working age), immigration and naturalisation, and the hierarchies of deservingness within them, are inter-related in complex ways within different states, and within different states different contradictions between them are apparent. However, across these three policy areas, hierarchies of deservingness centre on the market and the ideal of the citizen worker. At the most general level many TCNs are excluded from benefits; in many instances not all formal citizens are ‘good enough’ to sponsor TCNs for naturalisation or for entry. Access to state territory granted on the basis of particular forms of productive labour often excludes paid and unpaid care labour even if that labour is rhetorically highly valued. The interconnections and tensions across these policy areas are as likely to demonstrate contradictions and collisions as synergies. Social security, immigration and citizenship policies shape forms of stratification that are cast not simply as labour market insiders/outsiders – and labour market insiders/outsiders are not necessarily citizens/non-citizens. Rather, within and across these policies, certain types of work and certain types of workers are constructed as more deserving than others with respect to rights to enter, attain permanent residency and citizenship, and access state benefits. Equally, certain types of ‘non-workers’ and ‘non-work’ are constructed as more deserving than others.

This section explores the connections and contradictions inherent in the three regimes analysed in this report. It highlights how migrants are increasingly reduced to their economic value, and mobility based around the contribution they are deemed to be able to make to states. Thus, increasingly the status of ‘worker-citizen’ is a necessary requirement to access all areas. The contradictions are particularly apparent in the contrast between requirements to access state territory and requirements to access welfare. Finally, the concluding section assesses the implications of the connections and contradictions for understandings of EU citizenship.

### **5.1 MOBILITY, CITIZENSHIP AND SOCIAL SECURITY**

These connections and contradictions are rendered explicit in the principles of eligibility underpinning access to social security for TCN and EU citizens. Rights to enter, reside and attain permanent residency privilege EEA and TCN workers who are ‘skilled’, high-earners, in continuous and thus relatively secure employment. While immigration policies may target workers in lower skilled and lower waged sectors of the labour market, the terms and conditions of their entry, and the criteria for attaining permanent residence, serve to construct highly restricted types of ‘non-citizen’ workers, excluded from both permanent residence and access to social security provisions. As discussed in Section One, entry regulations are concerned to control the mobility of the poor. Thus many TCNs who become permanent residents are unlikely to claim social security because they are relatively wealthy or in skilled jobs as a condition of their entry.

Those TCNs who are low waged or have little income typically find that they are not eligible to claim social assistance. So in effect, often those who are eligible to claim do not need to, and those who need to claim are not eligible. For TCNs claiming social assistance may negatively affect applications for permanent residence and citizenship. For example, in the Netherlands, temporary residents who apply for social assistance – which, in principle, they are entitled to – may find that their residence permit is revoked or not extended, and may be refused permanent residence (cf. Klaver and Ode 2009 in Lepianka, 2014). While this must comply with the principle of proportionality nonetheless, the threat of losing residence rights causes “temporary residents to refrain from appealing for benefits” (Klaver and Ode 2009 in Lepianka, 2014). Thus exercising rights to social assistance becomes a mechanism for the exclusion of TCNs from access to settlement and naturalisation.

In the case of intra-European mobility of EU citizens, entry controls cannot function to prevent the entry of the poor and effectively restricting access to welfare states has become bound up with attempts to limit mobility: if a person cannot find work then they will need to return to their state of citizenship if they want to access social assistance. In accordance with the ECJ a Member State is justified in requiring that a job-seeker has genuine

link to the labour market in the Member State in which s/he claims social assistance (Rossi dal Pozzo, 2013). This is in keeping with the long tension within states that citizens are expected to be mobile for the purposes of finding work, and settled for the purposes of claiming benefit, but this logic is now extended transnationally. Indeed it is encapsulated in EU citizenship itself which can largely<sup>86</sup> only be invoked when a person moves to another state, in contrast to national citizenship which can only be acquired by non-diasporic groups after a substantial period of *stable residence* in the state of naturalisation.

## 5.2 WORK: RIGHT OR DUTY?

For TCNs entering EU states work is a *right* that only certain categories of entrant can access, and for some groups, such as asylum seekers, immigration controls enforce their status as 'non-workers' by not granting access to the labour market. For other groups, such as work permit holders, immigration controls may place highly restrictive terms and conditions on their participation in the labour market and worker status may be insufficient to entitle them to access social assistance on the basis of unemployment or income-related needs. However, for EU citizens work is a *duty*. As referred to previously, under the free movement directive, rights of residence require the status of worker, job-seeker or self-employed, and if 'economically inactive' (and not a student) economic self-sufficiency is required.

The interactions of national and EU legislation and case law with regard to European citizenship have reinforced the model of the worker citizen but at the same time this reveals important tensions with respect to the social rights of national citizens, EEA citizens and TCNs alike. We have already discussed with reference to care and dependence, how not all labour counts as work. The challenge of what counts as work is, however, even broader. There is no autonomous definition of worker in EU law, rather its interpretation rests on EU case law and the definition has developed in a somewhat ad hoc and ill-defined manner<sup>87</sup>. Nonetheless, the ECJ has developed a much broader 'Community' definition of worker than that found in member states legislation (Rossi dal Pozzo, 2013). The ECJ holds that in the context of Article 45 TFEU, a worker is: "*a person who, for a certain period of time, performs real and genuine services for and under the direction of another person in return for which he receives remuneration, to the exclusion of activities to be so small scale as to be considered marginal and ancillary*" (*Ibid.* : 99). However, it is not a uniform concept, but depends on the sector in question. Thus to attain worker status, work has to be deemed to be "genuine and effective"<sup>88</sup> and not on such a small scale as to be "marginal and ancillary".

Some member states have tightened up considerably on the definition of 'worker' in an effort limit EU nationals' access to social assistance. In the UK, EU nationals have been found not eligible for social assistance on the basis that they do not have a 'right to reside' (see Section 3) but also because they were not previously 'workers'<sup>89</sup>. Among other grounds, a new Minimum Earnings Threshold of £150 a week (equivalent to working 24 hours a week at National Minimum Wage) has been introduced, as a measure of whether work is "genuine and effective". It is too early to say what the impact of this will be, but it could reasonably be anticipated that some of those EU nationals who have been in particularly precarious, low waged work are likely to find that, for

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<sup>86</sup> Zambrano e.g. an exception

<sup>87</sup> For a critique of the development of the concept of the migrant worker in terms of both attaining and retaining worker status see O'Brien (2009).

<sup>88</sup> O'Brien argues that 'the meaning of "genuine and effective" has been somewhat shrouded in ambiguity, with no suggestion it may vary between workers' (2009: 1128). As such, this indicates a distinctly able-bodied model of work (*Ibid.*: 1108).

the purposes of claiming social assistance, this does not count as ‘work’ at all. It is likely to become more difficult for this group to claim that they are genuine ‘job seekers’ according to the criteria of the Habitual Residence Test (necessary in order to be eligible to claim social assistance).

#### **Case study:**

##### **Intersections of exclusion, contradictions and tensions: welfare benefits and EU nationals in the UK**

The application of more restrictive criteria entails a greater range of questions, including asking applicants whether their language skills are sufficient to enable them to get a job and what efforts have been made to find work prior to coming to the UK. Increasingly in practice the individual must be seeking work of a kind that is available in the local area, and that the individual is able to do. This illustrates some interesting contradictions. Firstly, a national citizen who is applying for social assistance must be prepared to do any work, irrespective of whether it is “marginal and ancillary”, but an EEA national may have their right to reside withdrawn if they do not have a ‘genuine possibility’ of obtaining genuine and effective work. While a national citizen may be required to participate in unpaid work programmes as a condition of retaining their social assistance, an EEA citizen is faced with no right to reside or access to social assistance if their work is unpaid. Likewise, while an EEA national may be required to demonstrate that they have a ‘genuine possibility’ of obtaining work in a local area, nationals of the UK may be required to take up work that is outside of the area in which they reside (being required to be willing to take up work that involves a commute of up to 1.5 hours to a workplace).

These kinds of tensions are not restricted to the UK. In Ireland, for example, voluntary work has been actively discouraged and has been disregarded as meeting the criteria of what constitutes ‘work’ for the purposes of habitual residence and eligibility to claim social assistance. ‘Genuine employment’ vs. casual employment is used in Irish online materials but has not been effectively defined (this is of course true of European Law as well, and differs between countries and cases.) JobBridge is a scheme where the unemployed receive €50 per week on top of their Jobseeker’s allowance for working in full time employment. JobsPlus is a scheme that rewards employers for taking on the long term unemployed (including JobBridge workers, under certain conditions.) This has become a very popular set of schemes for employers and accusations of exploitation and the replacement of full time workers with JobBridge interns are frequent (Finlay, 2014). Similarly, of course, the unpaid work of care does not meet the criteria of ‘work’ under EU law.

This has resulted in increasing discretion as regards the entitlement to social assistance of EEA citizens, and also returning national citizens. Work has become a condition of residence for EEA citizens who exercise their rights to EU mobility and at the same time a condition of access to welfare – not only with regard to contribution-based benefits (as has historically been the case) but also non-contribution based benefits. The social rights of migrant workers are upheld in the European Social Charter (ESC), which contains a detailed set of rights including the right to work, the right to social security and the right to social assistance. However, the ESC offers protection only to nationals of contracting states who are also: lawfully resident and/ or working regularly. Importantly, it does not grant the right of entry. Thus, while it is on the one hand a human rights instrument that is supposed to define and protect social entitlements, on the other, the protection it offers is limited to nationals of contracting states (O’Cinneide, 2014). Thus its provisions are seriously limited (*ibid.*) and further it provides protection only for those who have superseded the barriers to entry via the hierarchical practices previously discussed. The application of worker status with respect to the social rights of EEA citizens in member states has thus been to exclude those who are ‘non-workers’ or workers who are not in continuous forms of employment from rights to social security on the basis of unemployment and income related needs. However, the responses of nation states to the freedom of movement of EEA citizens has been to sharpen the lines of what constitutes ‘work’ and a ‘worker’ with, conversely, implications for restrictions on the rights and entitlements of national citizens.

Entitlement to welfare for EEA citizens is thus constructed in terms of individual responsibility to work, but the criteria for achieving worker/job seeker status are increasingly restrictive and subject to discretion. Work-related conditions, which serve to restrict the welfare entitlements of national citizens, thus likewise serve as a means of states exercising control over the borders of state territory with respect to European citizenship. Indeed, under the terms of Directive 2004/38/EC an EEA national must have a 'genuine chance' of finding employment in order to maintain residence in another Member State after six months. This vague terminology suggests expulsion is an option only when an EEA national finds it objectively impossible to find employment (Rossi dal Pozzo, 2013:115).

In Ireland, while EEA nationals are considered habitually resident if they are working or self-employed, this condition is made more restrictive for non-EEA nationals who are required to have been employed in Ireland for a minimum of two years. Moreover, the responsibility of local deciding officers (responsible for assessing individual applications) in the implementation of the HRC allows for the waiving of this two year period for 'returned Irish' applicants, while in other cases the two-year period is regarded as insufficient due to periods spent in education and training or periods of unemployment. Thus, not simply work, but particular types of work and worker histories are imposed through the HRC – with the potential denial of habitual residence for those in non-permanent and less secure employment.

While naturalisation policies may not explicitly require the status of worker, the requirement to be 'self-sufficient' in effect requires labour market participation as a condition of naturalisation. Moreover, what counts as evidence of 'self-sufficiency' may be subject to different criteria in different countries. In the Netherlands, 'self-sufficiency' depends on the circumstances of those applying and ranges between 70% and 100% of the legal minimum wage. In the UK, applications for TCN family members to reside in the UK, under UK immigration policy, require the applicant to be earning above a threshold of £18,600. The requirement to demonstrate sufficient resources in effect may exclude those whose labour market participation is confined to lower waged and more precarious forms of work. Likewise, restrictions on access to social assistance – for example, the implications of claiming benefits (where TCNs are in principle entitled to do so) for the non-renewal or withdrawal of temporary residency status – intersect with length of residence requirements to enforce self-sufficiency through continuous employment as a condition of access to citizenship. At the same time, work-related conditions attached to citizens' entitlements to benefits serve as a means of excluding citizens from social rights.

The exclusion of gendered, low-waged and so-called 'low-skilled' occupations, such as care work, from the categories of work that are considered of economic value under the point based immigration system means that non-EEA women are at the 'bottom of the pile' in acquiring social rights as workers. It is not simply paid work but particular, gendered forms of paid work – work that is secure, continuous, skilled and high-waged – which confers social rights to citizens and non-citizens. Thus it is as much a question of the ways in which particular groups are excluded *on the basis of* their engagement in the labour market as it is a question of how welfare is accorded to citizens as workers.

### **5.3 MARRIAGE AND FAMILIES: CONTRADICTIONS AND CONNECTIONS**

Contradictions and connections are also manifest in policy tensions and requirements with respect to marriage. For example, the concept of 'sham marriage' is one that is difficult to apply other than with reference to immigration controls. It is difficult to imagine a situation where a registrar would refuse to proceed with a marriage because they believed that a couple did not really love each other, except in the case of immigration. Indeed, rather than sham marriages, for nationals the 'problem' is rather perceived as a problem of 'sham singles', people claiming benefits as lone parents or single people when they in fact have a partner. In the case

of sham singles, sexual relations and shared tasks for example can indicate a couple is in a relationship, even if they have no plans to be together for the future. This is certainly rarely sufficient when it comes to evidence for establishing a genuine marriage for immigration purposes.

As with the impact of HRT on returning nationals mentioned above, bureaucratic requirements aimed at one group of non-citizens can have serious implications for others. Ireland: Citizenship via *ius soli* was limited by the 2004 Act specifically because of ‘birth tourism’, and citizenship via naturalisation has become increasingly difficult. The period surrounding the 2004 Citizenship Referendum, in particular, saw the demonization of ‘birth tourists’ and led to increased discrimination and attacks on perceived migrants, especially people of African origin, including pregnant women. The identification of citizenship with ethnicity even dominates loyalty to the state in the normative principles involved, since individuals who acquire citizenship by descent do not have to swear loyalty to the state. Again, migrants who are not able to support themselves are normally denied access to citizenship, making full participation in Irish society dependent on being seen to be productive. This excludes migrant children of non-EEA citizen parents, even if those children have grown up in Ireland and it is the only context they know. The result is that Irish citizenship has become identified with ethnicity, Irish connections and loyalty to the state in ways that were previously absent. There are potentially benign aspects of this, like ritual citizenship ceremonies led by prominent politicians, but this positive official narrative is overshadowed by a rise in attacks on visible minorities, who are perceived—often falsely—not to be Irish citizens (Finlay, 2014).

#### **5.4 CITIZENSHIP AND THE EU**

Attention to our national case studies reveals tensions and hierarchies within states’ laws and policies on citizenship and naturalisation. Most fundamentally there is a tension between citizenship as legal status and formal membership of the state, and citizenship as emblematic of belonging to the nation. Given the background shift from ethnicity to culture, this foregrounds the question of who counts as an ‘immigrant’? More particularly, how are those who are recognised as ‘sharing culture’ – often, but not only, explicitly and measurably manifest in religion and language – but who do not have formal citizenship accommodated in legal immigration/naturalisation/citizenship procedures. This tension is further complicated by EU citizenship.

Citizenship is a legal status that signifies that a person cannot be refused entry to the state of which they have citizenship. Citizens have access to the labour market, and, in the states we considered, access to certain types of social security. However, citizenship also strongly suggests national belonging. This is much more amorphous than legal status, and does not straightforwardly map on to formal status. So in the same way that, as noted above, some people who are legally ‘migrants’ are in practice acknowledged as part of the national community, equally, a person might have the legal status of citizen, but whether they belong to the national community may be contested. For example, in Europe Roma people may be formally citizens, but some may not regard them as part of the same nation, in Israel, some may have formal citizenship but this does not mean they belong to the *nation* of Israel.

Naturalisation requirements are important as they attempt symbolically to map formal legal status on to membership of the nation. Ways in which non-citizens can acquire citizenship then are not simply legal details but indicate and shape the foundations of how membership and the nation are imagined. Paradoxically this means that the requirements made of naturalising citizens are often considerably more than requirements of citizens more generally: people can be refused naturalisation on the basis of them not paying taxes, but they cannot have their citizenship stripped from them on this basis. However, it is worth noting that the possibility of citizenship stripping from naturalised dual nationals on the basis of e.g. criminality indicates differentiations within citizenship which are explicit in some states but not in others. One attempt to resolve this manifestation of the tension between membership of the state and membership of the nation is the requirement to

participate in rituals and ceremonies and in some cases, to explicitly declare one's loyalty to the nation. This kind of investment in symbolism however sits strangely with the facilitated access to settlement and citizenship that are the privilege of the wealthy and that indicates the instrumental value of citizenship that national governments are more generally keen to disavow.

The disjunction between state and nation is evidenced in the move away from *ius soli* towards *ius sanguinis*, as it becomes increasingly difficult for people who are born on state territory to obtain citizenship on a territory as a right. Being able to claim a large population may be seen as giving power to a nation, but as expensive to a state – as manifest in Ireland. The relation between state and nation is fraught, and while this may be more explicit in the recent histories of some states than others it is in all cases barely beneath the surface. It is manifest not only in immigration and citizenship policies but a range of other issues that tend to be thought of as only tangentially related, particularly the growth of regionalism and nationalism. EU citizenship adds an additional layer of complexity to this. The European Union is often seen as compromising national sovereignty and in some states such as the UK, the free movement of EU citizens is treated as a manifestation of this challenge. However, EU citizenship is also giving new value to national citizenship, as national citizens become EU citizens. The limitations to Croatian citizenship by descent for example were introduced because Croatian citizenship will, when transitional arrangements are lifted, also enable free movement within the EU. EU citizenship is imbued with considerably less symbolic value than national citizenship, but it does have considerable instrumental value. In some cases an EU citizens residing in a member state of which they are not a national can have better access to rights than an national of that state – most clearly the right to be joined by a Third Country National spouse. Moreover, TCNs who have a form of permanent residence in EU state A can have access to most of the rights of a national of that state, but when they travel to a different EU state B they 'become' a TCN rather than an EU citizen. This means that they do not have access to the rights that a citizen of A would have when travelling or residing in B. In both these cases EU citizenship gives an added (instrumental) value to national citizenship. Yet it is the EU that expresses concern about 'leaky' national citizenship, whether that be through generous recognition of diaspora, or effectively selling citizenship to the highest bidder.

The mapping of membership of the state on to membership of the nation is resulting in restrictions for *ius soli* (physical space) *and ius sanguinis* (across time)<sup>90</sup>. Neither of these restrictions can be related however to people's feelings of membership and belonging. Moreover there is some confusion it seems in citizenship agendas about the ultimate aim of citizenship policy. Is citizenship an end point, a reward for being 'integrated' in effect a personal benefit that enables an individual to claim a variety of rights? Or is it part of a process, a social good that facilitates cohesion? Is citizenship an end in itself or is it a means to a cohesive society? This is related to the question of the extent to which citizenship is a means of formalising nationhood, entailing acknowledging diaspora i.e. as expansive, as against citizenship as a means of obstructing settlement and rights to immigrants who do not properly belong. The answers yield very different policy implications. If citizenship is primarily a reward that gives access to resources, its restriction is part of what gives it value, while if it is primarily a social good, that suggests that there is a benefit in facilitating the broadest possible access. Increasingly measures that are prefaced as a means of facilitating cohesion are becoming a means of restricting access to citizenship.

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<sup>90</sup> Spain's Law of Historical Memory may be seen as an exception, but it was a limited time window of three years between 2008 and 2011.

## **6. CONCLUSION**

This report has examined the principles that underpin access to state territory (immigration policy); to citizenship (naturalisation policy); and to income-based social benefits (social security policy). By examining these principles with respect to the rights and obligations of national citizens, European (EEA) citizens, and non-European/non-national citizens (TCNs) in different EU and non-EU states (Croatia, Ireland, Israel, the Netherlands, Spain, the UK), the analysis highlights the ways in which processes of inclusion and exclusion of citizens and non-citizens are not limited to a dichotomy of citizenship/non-citizenship, EU/non-EU citizenship. Across these three axes of inclusion and exclusion (mobility, naturalisation and social security), divisions among as well as between national citizens, EU and non-EU/non-national citizens are evident. Hierarchies of deservingness and undeservingness, of belonging and non-belonging, are shaped by ideologies of the nation, work, family and welfare, underpinning the terms and conditions of access to state territory, to citizenship, to state social provisions, which are rooted in the varying historical contexts of the countries included in the analysis. At the same time, those hierarchies have been influenced by the interactions of national and European policies, through which new processes of inclusion and exclusion between and among European and non-European citizens have emerged.

Underpinning processes of in/exclusion across the three axes – entry to a state, becoming a citizen of that state, and accessing social benefits on the basis of income-related need – are, broadly, two key dynamics. The first of these concerns the ways in which national and European policies have converged around the marketisation of citizenship. Immigration policies with respect to the entry of non-EU citizens to a state and to the EU confer privileged access on the basis of the market status of the individual. The ‘investor’ and the ‘highly-skilled’ are granted privileged access, while those without capital whose labour is deemed less productive and/or competitive are excluded or granted highly restricted forms of inclusion, through temporary residence. Likewise, naturalisation policies, with respect to becoming a citizen of a state, confer privileged access for the wealthy and high-skilled, and increasingly restricted access for other groups of non-citizens, who are required to demonstrate their value and independence in relation to the market as a condition of citizenship. Evidence of market-based ‘self-sufficiency’ requires a minimum level of income/economic resources, indirectly excluding those who are not in paid work or are in low-paid and less secure work. For those deemed to have greater market value – the wealthy and high-skilled – naturalisation may be facilitated, for example, by length of residence requirements being lifted or reduced. The marketisation of citizenship has thus increasingly undermined citizenship as a right: citizenship can, in effect, be attained by non-citizens who have purchasing power (high-paid workers and those with unearned incomes) in contrast to those whose lack of purchasing power (low-paid workers, unpaid carers of children, older and disabled adults) is the basis for their exclusion.

Processes of in/exclusion with respect to access to the provisions of welfare states – to social benefits on the basis of income-related needs – have also been shaped by the marketisation of citizenship. Non-EU citizens may be excluded from access to social assistance in some states by virtue of their status as non-citizens, but they may also be differentially included by virtue of their market status. For example, non-EU citizens who are among the high-skilled workers granted privileged entry to a state and to naturalisation are, as a result, granted the associated entitlements to social provisions. Of course, limiting access to citizenship to those who are market ‘insiders’ in effect is a means of limiting access to social benefits: only those who are deemed independent/‘self-sufficient’ are included as citizens. But EU citizens may also be excluded from access to social assistance by virtue of their market status. European citizenship, while formally including the citizens of all EU member states, has involved the stratification of European citizens according to their position as workers. The right to reside in another member state and to access social assistance is dependent on the individual’s relationship to the labour market. As the analysis in Chapter Three highlights, low-paid workers and those engaged in the unpaid work of care (who are disproportionately women in both cases), are potentially excluded from rights to reside and to social assistance, irrespective of their formal status as EU citizens and irrespective of their income-related needs. Likewise, the entitlement of national citizens to social benefits has

been made increasingly subject to work-related conditions. The recent introduction of a new Law on Work – the highest-order employment regulation – passed on July 15<sup>th</sup> 2014 in Croatia has potentially facilitated further precarious forms of employment within the labour market, including facilitating temporary work, with implications both for EU and national citizens as regards their exclusion from social assistance *on the basis of* their inclusion in work<sup>91</sup>. Across these processes of in/exclusion of national, EU and non-EU citizens, income maintenance has been increasingly individualised, placing citizens and non-citizens as dependent on the market and/or the family. The gendered implications of the marketisation of citizenship are thus crucial to consider with respect to the exclusions that this model of European citizenship reinforces.

A second dynamic that the analysis in this report highlights concerns the ways in which citizenship is shaped by a ‘cultural’ as well as market-based logic. Croatia, Ireland, Israel and Spain have immigration and naturalisation policies that are strongly shaped by national histories of emigration and diaspora. The immigration and naturalisation policies of the Netherlands and the UK have likewise been shaped by their histories of colonialism, and while the logic of the ‘market’ may appear to dominate political debate on who is deserving/undeserving of inclusion in the nation, the logic of the market is itself heavily influenced by racialised ideas about who are the types of workers that national economies demand. Irrespective of market status, privileged access to a state and to citizenship may be conferred on certain groups by virtue of their ‘belongingness’ to the nation through ethnic, religious, colonial or diaspora ties. At the same time, naturalisation policies require individuals to demonstrate their cultural belongingness in other respects, including through language or cultural knowledge tests. Citizenship in this sense is not a right but a privilege that is granted only to non-citizens who can demonstrate that they conform to a particular normative order of the ‘nation’.

By bringing together the analysis of the in/exclusions of citizenship and non-citizenship, important connections can be made with regard to the status of national, EU and non-EU citizens. The construction of European citizenship on the basis of freedom of movement has potentially reinforced and extended a model of citizenship based on the independent, individual EU worker – or the family dependant of the EU worker. Underlying this model of citizenship are considerable inequalities between EU citizens with respect to their rights and entitlements. Dependence on the market positions those in low-paid work and those engaged in the unpaid work of caring for family members as ‘excluded from within’ (Lister, 2002) – excluded from rights to reside or to access social assistance. Thus, while transitional restrictions that were introduced following the accession of the new member states from 2004 onwards have largely been lifted, hierarchies of European citizenship clearly remain. The construction of European citizenship on the basis of freedom of movement also draws attention to the ways in which the boundaries of the nation and national welfare states are being re-drawn in ways that include and exclude certain groups through the logic of culture and integration – including, for example, on the basis of language. How the dynamics of the market and the nation intersect to construct hierarchies of in/exclusion, deserving and underserving, belonging and non-belonging requires attention to the connections as much as divisions between groups of citizens and non-citizens.

## **IMPACT**

This deliverable has the potential to generate impact with European Citizens and stakeholder groups including trades unions, those working with the unemployed, those claiming benefits, and migrants and asylum seekers.

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<sup>91</sup> The Law has a notable gendered dimension in terms of less job security protection for pregnant women, since their non-permanent employment contracts (the prevalent basis of women's employment in recent years) can now cease to be prolonged with ease, enabling them to be effectively laid off during pregnancy.

It suggests that there is potential for moving beyond an approach that regards migrants and national citizens as competitors for the privileges of membership, and that EU citizens residing in another member state can be important bridges for TCNs and nationals. It is important for EU citizens and national citizens to be conscious of ways that ‘worker’ is defined and implemented for the purposes of EU nationals’ relation to social security as this may have unforeseen consequences for national citizens.

There is a need for increased understanding of the premise of the worker-citizen model and what these means for social rights in EU member states. More particularly, the deliverable suggests that stakeholder and citizen groups need to consider the significance of moves to increasing conditionality of non-contribution based assistance, based upon work related as opposed to need and related processes of rationing access to welfare and what this means for EU citizenship and ability of EU citizens to exercise treaty rights. Thus the deliverable has the potential to serve as a starting point for grassroots discussion about the future of citizenship, the relation between work in the labour market and citizenship, and considering centralizing the role of care in our relations with each other. We suggest that a briefing sheet with this in mind could be produced from the deliverable and disseminated to relevant groups in the cities where partners are based.

For policymakers the deliverable can improve understanding of differentiated citizenship and barriers to exercising treaty rights for EU citizens. It indicates the relevance of the gendered nature of citizenship for policies which are increasingly premised upon work status. If the rights conferred by EU citizenship are to be ‘based on human dignity’ and not ‘bought or sold at any price’ considering the current entry/ citizenship regimes of countries in the report and increasing trend towards wealth and income as carriers of rights (i.e. citizenship by investment packages) there is a need to address this.

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## **APPENDIX 1: D10.1 TASK 1: OVERVIEW OF PRINCIPLES OF ELIGIBILITY**

The first deliverable (D10.1) is a report that examines the rights and obligations of citizens and non-citizens in relation to work, care and welfare across the selected countries (five EU Member States – Ireland, the Netherlands, Spain, the UK, and Croatia, being the most recent country to join the EU – and one non-EU country, Israel).

To prepare this deliverable, we are asking everyone to prepare a country report (see document D10.1 Explanatory note – Appendix 2). This will include the following:

1. An overview of the principles of eligibility that underpin access to a) welfare, b) state territory, c) citizenship (through naturalisation) in the respective nation state.
2. Further in-depth analysis of particular developments in national policies (welfare, immigration and citizenship) and the ‘ideas’ about citizenship (i.e. the normative status of citizenship) that debates about those policy reforms reveal.

With regard to the first of these tasks, below is a series of questions to address in preparing this overview. For each question, we have provided brief examples of points relevant to the UK. Please refer to the document D10.1 Explanatory note for further details on section 1 of the country reports.

### **1. What principles of eligibility underpin access to a) welfare, b) state territory and c) citizenship**

Principles of eligibility can be exemplified by conditions, but we don’t want simply a description of the criteria of eligibility. The focus here is on the ideas (about citizenship) that underpin those criteria. It may be helpful to start from the conditions and track back to the principle of eligibility, or vice versa (as below).

- **Welfare (welfare benefits)**

*A willingness to work: condition – must be actively seeking paid employment*

- **State territory**

*The brightest and the best: condition – must earn a certain amount and have a certain education*

- **Citizenship (through naturalisation)**

*Respect for the law: condition – no criminal record*

#### **How are these principles gendered?**

### **2. What is the history of those principles? Have there been any shifts over the past 10 years? i.e. how have we arrived at the current political and policy landscape?**

e.g. Welfare

Under the Poor Law system in England, the principle of ‘less eligibility’ was introduced (that the conditions of the able-bodied recipient of poor relief should not be more attractive than those of the poorest workers). The development of the welfare state in the 20<sup>th</sup> century introduced (employee) contribution and income based entitlements to welfare benefits. The shift towards welfare-to-work policies since the mid 1990s brought about increasing conditionality in access to welfare benefits. Work-related conditionality (that is, the obligation to be actively seeking work to be eligible for unemployment benefits) has, more recently, increasingly been extended to groups who would previously been excluded from those conditions, including lone parents. Recent reforms to the welfare benefits system show parallels with the principle of ‘less eligibility’ of the Poor Law system: the total amount of benefits that a household can claim has been capped on the basis that the conditions of benefits claimants should not be more attractive than those of the ‘hard-working’ poor.

e.g Immigration

At the time of the British Empire all British subjects were theoretically free to move within the Empire. While White settler colonies wanted to have indentured Indian labour they were reluctant to host free Indian labour. Equally they did not want to stop emigration from the UK. They were not able to discriminate on the basis of skin colour or origin. Those who wished to move who were not indentured had to have a certain amount of money (not to require poor relief) and had to successfully pass a European language test – the language to be determined by the immigration officer.

The points based system was introduced in 2006 and now forms the basis of UK immigration controls. Migrant workers are divided into skilled and low skilled, with skill defined by income and education, but also in discussion with employers. The route for low skilled has been closed since its inception.

**3. How has EU citizenship modified these principles? How are these principles applied to EU citizens? What are the principles and conditions underlying EU citizens' access to welfare?**

e.g. Welfare

Access to welfare benefits for EU citizens is restricted on the basis of work (ie. limited to those who have been working), but also on the basis of length of residency. EU citizenship has thus modified divisions between paid workers and unpaid/non-paid citizens, as well as divisions on the basis of length of residency within a territory (nation state).

e.g. Immigration

The low skilled route for non-EU labour migration to the UK was closed because it was held that EU nationals could fill those jobs.

**4. What tensions and contradictions emerge when considering eligibility of access to these different areas of welfare/state territory/citizenship?**

**Are there any tensions between the national and the European, particularly with regard to access to welfare of EU citizens?**

Public support for limiting benefits to EU nationals have meant that some benefits may be restricted to 'locals' and considerable importance is placed on length of residence. However, this also impacts on people who move within British territory, for example UK citizens who move from one region to another may well not qualify as 'local residents' and find themselves ineligible for social housing.

New hostility to Roma is emerging, as Roma signify beggars, criminality and welfare benefit claimants. Romanians may be collectively imagined as Roma.

While it is difficult for EU nationals to be deported, there are programmes to assist in their 'voluntary return' if they are found to be homeless. There is a serious problem of homelessness among certain groups because of the difficulty in claiming benefits.

**5. What effects are restrictions on eligibility of access to welfare having on the ground (i.e. at the local level of policy implementation)?**

'No recourse to public funds' for non-EU nationals has meant that local authorities and other local-level services providers and organisations working with non-EU migrants have developed ways of applying particular legal frameworks to enable certain groups/individuals to receive public support (e.g. local authority statutory duties with respect to the welfare of children.)

For details on current research on this issue: <http://www.compas.ox.ac.uk/research/welfare/nrpf/>

6. What kind of society and social relations are imagined as desirable according to these principles of eligibility? What is the future that is imagined (national and European)? (Or is it an imagined past?)

## **APPENDIX 2: D10.1. EXPLANATORY NOTE**

Work Package 10, **Balancing citizenship of insiders and outsiders**, raises the question of insiders and outsiders of what i.e. *belonging* to what? It postulates that it is useful to distinguish between insiders and outsiders of European *nation states* ('migrants'), insiders and outsiders of *labour markets* ('welfare claimants') and insiders and outsiders of the EU ('third country nationals'). Work Package 10 will acknowledge both national specificity and the importance of the EU. It also proposes that we examine both formal and informal mechanisms of exclusion. In so doing, it hopes to identify not only stratifications within particular groups but also commonalities across them.

### **WP 10 Research questions**

- How are rights and obligations in relation to (paid and unpaid) work and welfare stratified among formal citizens and among non-citizens, as well as between citizens and non-citizens, in selected EU/non-EU nation states?
- What do inclusions/exclusions tell us about the social relations of work, care and welfare in different states?

To compare citizens' and non-citizens' rights and obligations in relation to (paid and unpaid) work and welfare we want **to develop a framework of deservingness/undeservingness and belonging/non-belonging as manifest in rights/obligations to work, and rights/obligations to welfare**.

Concepts of (un)deservingness and (non)belonging and relations to work and to welfare (or earlier alms and poor relief) are deeply rooted in European history and societies. They have been drawn on heavily in public debate, legislation and policy both historically and contemporaneously. Perhaps it is their deep rootedness that enables them to be presented in very oversimplified terms in political rhetoric and public debate, at the same time as their complexity and contradictions present difficult policy dilemmas. Responses to these dilemmas, and the shape of the dilemmas in the first place, is very much dependent on the histories of particular states. But for all the importance of these particularities, one might argue that what is shared is, firstly, the gendered and racialised nature of belonging and deservingness (a deserving *woman* has different characteristics from a deserving *man*), and secondly, the entanglement of belonging and deservingness.

Thus in order to answer the overarching research questions we have these sub-questions:

- What are the characteristics of the deserving citizen?
- How do they differ from those of the deserving migrant, and how are they the same?
- What is the relationship between deservingness/undeservingness and belonging/ non-belonging?
- What do these similarities and differences between and among citizens and non-citizens (the inclusions and exclusions of citizenship) tell us about the social relations of work, care and welfare in these particular countries?

### **Terminological considerations**

One of the challenges of the research questions posed is that 'citizenship' is both a legal and a normative status. Indeed this is precisely the issue that is raised by examining questions of deservingness. Thus while we must define terms, we must also be sensitive to their ambiguity and to unexpected exclusions.

Importantly, the migrant/citizen relation is in practice a far more complex set of relations than a straightforward binary, which means that there are groups that occupy a liminal space. Examples within the European Union would be EU nationals not residing in their state of citizenship (who are non-citizens of the state in which they reside, but with similar rights to citizens of that state), or Third Country nationals with permanent leave to remain (i.e. non-citizens who, in most jurisdictions, share many but not all citizens' rights). Furthermore, while citizenship is supposed to be a unitary status, in some states there is evidence of distinction between natural born citizens and naturalised citizens.

The normative nature of citizenship can be made explicit in naturalisation procedures (in which naturalising migrants have to prove that they are of 'good character' for example). However, it is also apparent for some who are natural born. Even those who have formal citizenship may be marginalised within the states of which

they are citizens, and in this sense are not ‘full citizens’, Roma people being a case in point. Indeed, being in receipt of welfare benefits, or in need of care, or providing care, may also limit access to full citizenship.

Moreover, as well as the distinction between migrant and citizen being blurred, the distinction between ‘work’ and ‘non-work’ is also in practice unclear (and importantly it varies between migrant and citizen). Care (which can be paid and unpaid work) is absolutely critical here.

### **Deliverable 10.1**

The first deliverable (D.10.1) is a report that examines the rights and obligations of citizens and non-citizens in relation to work, care and welfare across the selected countries (five EU Member States – Ireland, the Netherlands, Spain, the UK, and Croatia, being the most recent country to join the EU – and one non-EU country, Israel).

The deliverable will contribute to describing who is the (belonging) Insider, who is the (deserving) Good Citizen, beginning from the premise that employment is a critical element of both. More specifically it is aimed at answering the research questions

- What are the characteristics of the deserving citizen?
- How do they differ from those of the deserving migrant, and how are they the same?

Together with other deliverables it will contribute to answering the research question

- What is the relationship between deservingness/undeservingness and belonging/ non-belonging?

In order to prepare the D10.1. report, we propose that each participant contribute a country report that has three parts:

1. An overview of the *principles* of eligibility in the nation state that underpin formal access to:

#### **1.1. Welfare (work/care related benefits)**

The focus here is on access to cash benefits on the basis of unemployment or low income (e.g. unemployment benefit, tax credits for people in work but on low incomes). And also, access to cash benefits on the basis of care (e.g. child benefit, paid maternity leave, carers allowance).

#### **1.2. State territory for the purposes of work and care**

The focus here is on the entry of non-citizens to a nation state on the basis of work (as workers) and/or on the basis of family/care (as spouses, dependants). In the UK context, we would include a third country national’s entry as a worker through the points-based immigration system, entry as a spouse, entry as a domestic worker/au pair.

#### **1.3. Citizenship (through naturalisation)**

We are not expecting a detailed outline of eligibility criteria but an examination, through these criteria, of the principles that underpin inclusion/exclusion in these three areas. The analysis will also consider what the criteria tell us about the characteristics of the deserving/belonging in these three areas.

Please refer to document [D10.1 Task1](#) for further details on the questions to consider when preparing this overview.

2. An in-depth analysis of at least two developments in national policy (welfare, immigration and citizenship) and the ‘ideas’ about citizenship (i.e. the normative status of citizenship) that debates about those policy reforms reveal.

Attention to be paid to any gendered or racialised/ethnicised elements to these debates, and to contradictions that emerge both within the normative aspects of citizenship and between the normative and the legal.

3. Drawing on these analyses reflections on: What are the characteristics of the deserving citizen? And how do they differ from and resemble those of the deserving migrant?

#### Scope of the country reports:

We are interested in knowing how the Insider and the Outsider, the Good Citizen and the Failed Citizen are constructed through policy, law and public debates. This will require you to know about the law and the policies in the three areas (welfare, immigration, citizenship), and to be able to draw on specifics in your analysis, but the deliverable is concerned with mapping rights and obligations only insofar as they reveal what kind of ideas of belonging and of deservingness are being promoted.

When examining the criteria of deservingness and belonging in different states we will need to distinguish between rhetoric and policy. These are related, and both meet in politics, but they are not the same. It is often politically attractive to appeal to the normative aspects of citizenship but this can cause problems for the more formal treatment of citizenship. Similarly, while the failure of certain formal citizens to live up to 'national values' may be asserted for political capital, attempts to formally deny them certain rights may be fraught with legal challenges. Furthermore, in the latter case rhetorical claims about values may be clearly contradictory. For example, shifts in policies towards lone parents reveal tensions between their treatment as 'mothers' and their treatment as 'adult worker citizens' (Lewis).

For analytical purposes it is easier to separate formal and normative criteria, and to then note their overlaps and tensions.

To help you prepare this document we will now lay out how we are planning to deal with the UK country report.

#### 1. An overview of the *principles* of eligibility in the UK that underpin formal access to:

##### 1.1. Welfare (work/care related benefits)

We will examine Jobseekers' Allowance, Income Support, Child Benefit and Carers' Allowance. We will also examine Working Tax Credits and Child Tax Credits as these are forms of (means-tested) income or childcare related cash benefits for those in (low-paid) work. We will consider the eligibility of EU nationals and TCNs for these benefits.

Criteria for these benefits are often highly complex, particularly when it comes to immigration status. We do not want to map these criteria, but to give an overview and an analysis that examines what does this tell us about who is deserving and why?

In the UK context, we anticipate that eligibility is determined by demonstrated willingness to work, and by length of residency.

We will examine the UK government's attempts to limit the entry of EU nationals through limiting their eligibility to welfare benefits (given that they cannot prevent free movement – yet). But this will potentially have unintended effects on UK nationals too.

We think that findings are likely to include that while the worker-citizen model underpins the UK system, the treatment of EU nationals and TCNs indicates that working is not sufficient to allow access to citizenship. We hope that a closer analysis will reveal what *is*.

### 1.2. State territory for the purposes of work and care

We will examine Tiers 1-5 of the Points Based System, which regulates immigration of TCNs for the purposes of work. We will pay particular attention to the rules governing entry for au pairs and domestic workers (examples of paid care-related work).

We will also examine the rules governing entry for spouses and partners, i.e. to the principles that underpin immigration on the basis of family/care relations.

We will pay particular attention to how these interrelate and at times contradict each other. E.g. how TCN family members may find that looking after relatives' children counts as 'unpaid childcare' and they can be removed for illegal working. We will pay particular attention to what these exclusions tell us about the deserving migrant and their relation to work and care.

We will also examine how the principles of eligibility that underpin immigration systems (access to state territory) in relation to the family/household compare with the principles that underpin access to welfare in relation to the family/household (with regard to the findings of 1.1.). For the purposes of immigration (access to state territory), a relationship requires marital status and evidence of a couple planning to live together forever. By contrast, with regard to welfare, a person's welfare benefits can be withdrawn or reduced on the basis of cohabitation (irrespective of the duration of that relationship).

### 1.3. Citizenship (through naturalisation)

We will examine requirements for naturalisation, and what the vision of UK citizenship is as revealed through these requirements. We will pay particular attention to how this has changed, and how citizenship has become focussed on being (economically) 'active' and on duties rather than rights. We will pay attention to the criteria of 'good character', how this is interpreted and its relevance in refusals of naturalisation (over one third of all refusals are on this basis). We will also look at the barriers to naturalisation of low waged migrants as compared to 'high net worth individuals'.

## **2. Analysis of at least two policy developments**

Two developments we will probably examine will be:

- 2.1. The introduction of minimum earnings requirements for people who want to bring in their TCN spouse and children. This is currently set at £18,600 – significantly above the minimum wage – indeed 61% of UK women in work do not earn enough to be able to do this.
- 2.2. The cap on welfare benefits that a household is entitled to claim. This reform has been underpinned by rhetoric regarding the 'deserving/undeserving': capping benefits on the basis that it is unfair for those on benefits to be 'better off' than those in work.

We will discuss the debates and contradictions that emerge between the normative and the legal ideas of citizenship. To do this we will examine legislative debates, political campaigns, court cases and academic literature.

## **3. Reflections on deservingness and belonging**

It is difficult to say what we will write here as we will need to draw on the previous two sections but one area to reflect on might be how British citizenship is given value, and how this is related to the devaluing of EU citizenship in UK debate.

The differences in statuses of belonging is usefully highlighted by a recent UK court case, Vassallo (Qualifying residence; pre-UK accession) [2014] UKUT 313 (IAC), in which the UK sought to deport an Italian national, who had however spent most of his life in the UK, could not speak Italian and was to all

intents and purposes ‘British’, but never acquired British citizenship, on the basis of his criminal convictions. However, the court held that the low risk of reoffending assessment meant he could not be deported. Past convictions are not sufficient to justify deportation in European Union law<sup>92</sup>. It was this rather than his residency as an informal citizen which enabled him to stay in the UK.

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<sup>92</sup> For further details see:  
<http://www.freemovement.org.uk/difference-between-domestic-and-eu-law-on-deportation/#more-14691>