

From Mobile Workers to Fellow Citizens and Back Again? The Future Status of EU Citizens in the UK.

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*Growing concerns and hostility towards continuing large-scale flows of immigrants following the two rounds of EU enlargement and high levels of net migration played a major part in the Brexit referendum result for the UK to leave the EU. So too had welfare chauvinism, or the belief that welfare benefits should be restricted to citizens, come to the fore in negative attitudes to EU immigration, reflecting a rejection of EU migrants as fellow citizens. As the article shows, proposals as of summer 2017 for the status of current EU citizens in the UK indicates a desire by the UK government to incorporate current EU citizens within the far more restrictive British immigration rules, thereby curtailing some of their basic free movement rights, especially in relation to future family members. Leaked proposals for future EU citizens post Brexit are to bring them within a single overall immigration system covering EU and non-EU migrants and applying differential rights of residence to skilled and less skilled, thereby stratifying EU migrants according to educational level and labour market sector. This would represent a return to the status of mobile workers with conditional rights of residence and social entitlements similar to those faced by non-EU migrants.*

**Keywords:** EU citizens, welfare, Brexit, immigration policy, family members.

## **Introduction**

At the beginning of this century, the UK began to reconstruct its migration governance system, addressing its position within an increasingly globalised world and an expanding European regional system. On the one hand, managed migration policies were adopted as part of the acceptance of a highly competitive and global labour market, within which the modernisation of the UK required an expansion of migration (Kofman, 2008). Globalisation was equated with increasingly mobile individuals who would remain only for a few years. However, the Home Office (2002) stated at that time that increasing levels of migration would only be accepted if the populace felt this was being controlled and economically beneficial and that migrants had a sense of belonging and identity towards the host country. The ideal model was one in which the global labour market would source the best and the brightest to fill skill shortages in the UK – particularly in health and IT - but alongside severe restrictions for the less skilled sectors. On the other hand, the growing integration of the UK into the regional level encouraged the abolition of less skilled international routes, which were expected to be filled by workers from the new Eastern European member countries following the EU enlargement in 2004. What the Home Office thought it was getting were mobile workers replacing groups from outside the EU, rather than fellow citizens with equal treatment in employment and access to social entitlements and who would seek to make their home in the UK.

Over 10 years later, the large-scale mobility and settlement of EU citizens, especially from Eastern Europe, played a major part in the 'Brexit' referendum debate. In an attempt to reduce the supposed pull factor of welfare and to counter the growing appeal of the anti-immigration anti-EU United Kingdom Independence Party (UKIP), from November 2013 the Coalition Government introduced a series of measures targeting job seekers and their families. These preceded the attempt to renegotiate aspects of free movement and associated welfare rights in the so called UK 'new settlement' with the EU (European Council, 2016) which was agreed mere months before the referendum on 23 June 2016 in which 52 per cent of the voters chose to leave the European Union.

In this article we suggest the current deeply negative attitudes towards EU migration need to be placed within broader, persistent concerns about high levels of immigration. As EU migrants became de-facto fellow citizens in the UK, many British people did not accept their right to settle and partake of the welfare system on equal terms (Ford and Heath, 2014). At the same time, we should

look at this within a context where scepticism towards the EU had been long in existence and significantly growing in the years before the referendum. The accusation of benefit tourism was commonly disseminated, in particular by the tabloid press and especially at the time of the lifting of restrictions on Bulgarians and Romanians on 1<sup>st</sup> January 2014 (Balch and Balabanova, 2016). Although the idea that EU migrants were attracted by welfare above all was not shared by everyone, this view reflects a rejection of EU citizens as members and equal citizens of British society. Though a number of polls following the referendum have indicated that the public supports guaranteeing the rights of EU citizens currently living in the UK (McGuinness, 2017), it is not clear how this would fit in with post-Brexit immigration policies. As we seek to show in this article, aligning EU and non-EU migrants - as has been proposed for a possible post-Brexit immigration system (Gardner and Cooper, 2017; Hopkins and Travis, 2017) - would impose many of the restrictions of entry for workers and family members, their conditions of employment, the access to social entitlements and eventual settlement which are now experienced by non-EU migrants. Like them, EU citizens would once again become commoditised mobile workers in the UK<sup>1</sup>. Given the heterogeneity (Johnston *et al.*, 2015; D'Angelo and Kofman, 2017) of the EU population in the UK (in terms of nationality, gender, education, income, sector of employment, duration of residence), it is likely that similar forms of stratification will apply to them as with non-EU migrants within a single migratory system.

The first section of this article outlines the growth and dynamic of the EU population in the UK in the past 20 years and its current heterogeneity. Next, we trace the growing hostility towards migrants, particularly since the financial crisis and austerity imposed since 2008, and the shift towards anti-immigrant attitudes on the basis of protection of the community and welfare chauvinism. Subsequently we examine the proposals made to reduce immigration and limit access to welfare for certain categories of EU migrants before the referendum. The final section presents the post-referendum debates about the status of EU citizens and discusses the possible implications of post-Brexit scenarios for a heterogeneous EU population in terms of the rights to entry and permanent residence for themselves and their families and their access to social entitlements. It should be noted that the pronouncements on the desired final relationship with the EU have been constantly changing during the year following the referendum. At the time of writing, one of the three main issues of

contention, that is the future status of EU citizens currently living in the UK as well as of the British in the EU-27, has not been clarified.

### **Growth and dynamic of EU population**

As discussed elsewhere (D'Angelo and Kofman, 2017), the post-WWII migration system to the UK had traditionally relied on flows from its former colonies, particularly the Caribbean, South Asia and Ireland. Arrivals from the rest of Europe had been much lower than in other mass immigration countries – such as Germany, France or Belgium – with one of the few exceptions represented by the Italian workers who settled in industrial towns north of London during the 1950s and 1960s (D'Angelo, 2007). Over the following two decades, migration from Europe mainly comprised small numbers of highly skilled professionals and those coming for short work experiences or to study. It is only from the 1990s that this component started to grow significantly: between the 1991 and 2001 censuses, the number of French-born residents increased by 80 per cent, those from Spain by 41 per cent, those from the Netherlands by 35 per cent and those from Italy by 17 per cent. Whilst the large majority of immigration remained extra-European, Britain – and London in particular – grew in popularity as a migratory destination for many Europeans, particularly professionals from France, Italy and Spain (Morgan, 2004).

It was however the enlargement of the European Union in 2004 that really reshaped migration patterns. Prior to that, a study commissioned by the Home Office (BBC, 2003; Dustmann *et al.*, 2003) had estimated a small addition of between 5,000 and 13,000 annually, based on the assumption that other countries, and in particular Germany, would also open up. From the British perspective, this was seen as a means of reorienting migratory supply for low skilled labour away from traditional sources such as Bangladesh and Pakistan, whilst non-EU migrants were restricted to skilled labour markets which would be managed through a Point Based System, implemented in 2008. In the end, however, the UK turned out to be one of the very few countries – together with Ireland and Sweden – which immediately opened up to the accession states without imposing transitional restrictions.

From May 2004 to September 2008, 932,000 workers from Eastern Europe, mainly Poland, registered on the specially set-up Workers Registration Scheme (WRS) - although it is estimated that

20-45 per cent of those who should have registered did not. In addition, various categories of migrants, for example self-employed workers, were not required to register (Pollard *et al.*, 2008). The much higher than expected inflow created the idea that it was impossible to forecast accurately future flows; this was used subsequently in the heated debates about how many Bulgarians and Romanians would enter after the end of the transition period in 2014 (Migration Observatory, 2014). Initially the flows from the eight accession countries (A8) were presented as comprising mainly young people without dependants in the UK and therefore with relatively few implications for the use of mainstream services in education and health, including maternity services. Nonetheless by 2007 those migrating with dependants had risen to 9.5 per cent from 5.2 per cent in 2005, while many others brought dependants in after finding employment and a place to live (Ryan *et al.*, 2008). This would have substantial implications for the settlement of Eastern Europeans throughout different regions in the UK. In this respect, it is important to highlight that, unlike some other new migrant populations, A8 migrants have tended to settle in rural areas, small towns and medium sized cities, which had no or little previous experience of immigration (D'Angelo and Kofman, 2017). Meanwhile, by 2008 the number of A8 workers registering with the WRS had significantly declined due to improvements in the economies of their countries of origin, the declining value of the pound, and the opening up of other EU countries to A8 migrants as from 2006 (D'Angelo and Kofman, 2017). It was also estimated that about half of the arrivals between 2004 and 2007 had returned to their countries of origin (Pollard *et al.*, 2008). Nonetheless, when Bulgaria and Romania also joined the EU, the access to the labour market for workers from those countries was restricted, since the A8 were seen as already having filled labour shortages and concerns were increasingly raised about the impact they had on public services and wages.

In parallel to this, the number of migrants from Southern Europe started to increase sharply in the 2010s. According to the Census, in 2011 there were over 7.5 million foreign-born (i.e. non-UK) residents in the whole of England and Wales. Of these, about 2 million were EU-born and in particular about 580,000 were from Poland, 135,000 from Italy, 78,000 from Romania and 79,000 from Spain, with an increase since 2001 of respectively 897 per cent, 32 per cent, 1,000 per cent and 54 per cent (authors' analysis of ONS data). Unlike other European countries, the UK does not have a

system of compulsory registration of residents, however a good estimate of yearly flows of economic migrants is given by the official data on National Insurance Number (NINo) registrations. Looking at the data for the 2002-2013 period reveals a dramatic increase of registrations from Southern Europe. Particularly, the number of registrations of Spanish and Italian citizens, which in the early 2000s were both around 10,000, rose respectively to over 50,000 and over 40,000 in 2013 (D'Angelo and Kofman, 2017). Overall, NINo registrations from Southern Europe (including also Portugal and Greece) ended up representing about one fifth of all overseas registrations in 2012-2013, compared to less than 10 per cent in the previous decade.

Thus EU citizens contributed to the continuing and very high levels of immigration, despite the promise by the Conservative-Liberal Democratic government (2010-2015) to cut immigration to less than ten thousands net per annum, a level that had not occurred since the 1990s. Unlike non-EEA immigration, intra-European migration to the UK could not be controlled, due to Article 21 of the Treaty on the Functioning of the European Union and Directive 2004/38 of the European Parliament and Council which stipulates under what conditions workers and their family may gain residence and access welfare in another EU Member State. Nonetheless it should be noted that in recent years even non-EEA migration on its own had consistently remained above 100,000, despite the various attempts to reduce it (ONS 2016a).

Unlike the Eastern Europeans, for EU-nationals from Western and Southern European countries Greater London and the South East of England remained the main pole of attraction, a pattern that became even more pronounced in most recent years (D'Angelo and Kofman, 2017). Migrants for these countries were also characterised by high levels of educational qualifications. As shown in LFS data for the 2002-2013 period, Western European males were much more likely to hold a degree or equivalent (35.2 per cent) than British nationals (20.6 per cent) and were also about five times more likely to be in managerial or professional jobs (Johnston *et al.*, 2015). The data are similar amongst women (37.4 per cent against 20.9 per cent). The picture is quite different for migrants from Eastern Europe: on the one hand, their likelihood of having a degree is either lower (amongst males) or equal (amongst females) than for the British; on the other, they are considerably more likely to suffer from deskilling and be paid less than those from Western Europe (ONS, 2016b).

On the basis of this analysis it is possible to divide the EU-national population living in the UK in the mid-2010s into three broad groups: firstly the 'Old European Migration', largely made up of highly skilled professionals from western EU; secondly the 'post-2004 Eastern-European migration', with workers concentrated in the skilled trades and industries; thirdly the 'Post-economic crisis', largely Southern European migration, highly qualified young people fleeing countries such as Italy and Spain, characterised by rigid labour markets with poor career prospects. There are of course differences within and overlaps between these categories, however, we argue this typology is particularly useful to understand the diversified effects of any post-Brexit scenario.

### **Growing Euroscepticism and hostility towards immigration**

Levels of support for Europe in the UK have generally been much lower than in other European countries. The annual British Social Attitudes survey reported that in 2016 the EU was more unpopular in Britain than it has been at any time since 1985. 63 per cent of Britons were Eurosceptic. Over a third of those surveyed wanted to leave the EU outright, although a larger number was prepared to stay, but with reduced power for the EU. Only 15 per cent of British citizens in the survey identified themselves as European (Curtice, 2016). This has remained relatively consistent since 1996, when the survey first began asking this question. Of those who identified themselves as European, 7 per cent wanted to leave the EU, while many remained critical of the institutions with 43 per cent of this group saying they wanted EU powers reduced. Support for a British exit from the EU has grown primarily in the sector of the population which does not regard itself as European, and currently stands at 40 per cent.

Immigration had once again climbed up the list of key issues of concern as from the second Labour government and the liberalisation of immigration policy, and thus well before EU enlargement (Ford *et al.*, 2015). Hostility was significant even in 1995, when 63 per cent of those surveyed for the British Social Attitudes survey wanted immigration cut at least a little and 39 per cent wanted it reduced a lot. At the same time attitudes have grown more polarised, especially between the educated and those with few qualifications as well as between generations (Ford and Heath, 2014), which would come to also be reflected in the vote of a divided Britain in the Brexit referendum (Curtice,

2017). While respondents tend to recognise the beneficial impact of economic migration, they have also become more selective as to whom they would admit, being more positive about skilled migrants and students. Increasing numbers have wished migrants to speak English, be committed to the British way of life and to possess needed skills. It has been argued (Ford and Lymperpoulou, 2017) that whilst attitudes on average have not changed a great deal between 2002 and 2014, opponents to immigration have become more organised and focused.

Under Nigel Farage, who became its leader in 2006, UKIP focused on an anti-immigrant rhetoric, increasingly supported by a hostile, especially tabloid, press. From 2013, UKIP made substantial gains electorally, initially in local elections. In 2014, it obtained the highest percentage of the vote (27 per cent) and the largest number of seats (24) in the European Parliament, the first time for over a century in which neither of the main parties had won the largest percentage of the vote in a major election. UKIP also won two bye-elections triggered by the defection of Conservative candidates. In January 2013, the growing electoral success of UKIP and internal divisions within the Conservative Party led the then Prime Minister David Cameron to promise that, in the eventuality of an overall majority following the 2015 national elections (an outcome at the time considered unlikely), he would renegotiate the terms of membership with the EU followed by an 'in or out' referendum.

The impact of EU migrants – as a whole and in their different components - on the UK economy has been at the centre of political debates and tabloid speculations for a long time, but the lack of evidence-based analysis has been striking. A report by the Department for Business, Innovation and Skills (DBIS, 2014:41) devoted very little space to the issue, stating that 'to date, there is still little evidence of any statistically significant labour market displacement caused by EU migrants. This could mean that EU migration has no statistically significant displacement impacts, or that data issues have prevented any impacts from being observed'. A subsequent report (DBIS, 2015) on 'The impact of migrant workers on UK businesses' fails to analyse EU migrants as a separate component. Regarding the fiscal effect of EU migration to the UK, a well known study by Dustmann and Frattini (2014) claimed that, over the 1995-2011 period, immigrants from the European Economic Area (EEA) have made a positive fiscal contribution, even during periods when the UK was running budget deficits.



Strikingly, even during the negotiation for the 'new settlement' with the EU, David Cameron's government was not able to produce evidence of the alleged burdening effect of EU migration on the labour market, the economy or the welfare system. Indeed, later in 2017, former minister Vince Cable claimed the government had commissioned and received a number of studies showing the idea that migration suppressed wages was misplaced and that, overall, EU migration was beneficial to the EU economy and labour market (The Guardian, 2017).

Thus, although there has been considerable discussion about the impact of large-scale EU immigration on jobs for British workers and the pressure on wages, especially at the bottom (Alfano *et al.*, 2016), it is interesting to see how it was welfare chauvinism, characterised 'as the extent to which people believe that welfare benefits should be restricted to citizens' which came to the fore in the negative attitudes towards immigration<sup>2</sup>. Bader (2005) outlines five inter-linking components of such communitarian thinking: duty to the national community (special obligations or prioritisation of citizens); cultural protectionism (maintaining a national identity); liberal constitutionalism (emphasizing membership/citizenship and the democratic process); domestic social justice (welfare chauvinism, economic nationalism); and the need to maintain public order and security.

In an analysis of tabloid and broadsheet newspaper articles around two periods before the entry of Bulgaria and Romania into the EU and the subsequent end of the transitional period, Balch and Balabanova (2015) argue that welfare chauvinism was increasingly deployed in articles concerned with protecting domestic social justice between 2006 and 2013. In particular, whilst public services - such as education, health and housing - were seen as needing protection from migrant access and claims in 2006, by 2013 the issue of immigrants making claims on welfare benefits had become more prominent despite the lack of evidence. The government's own evidence did not substantiate a disproportionate number claiming benefits among those without work, for example only 1 per cent of EU migrants were jobseekers claiming housing benefits (DWP, 2014c, cited in O'Brien, 2016).

By 2015, an IPSOS-MORI poll found that freedom of movement had become the most contentious issue for the UK public. 60 per cent of respondents thought it should be restricted due to pressure on public services and that migrants were largely coming to claim benefits. Only 16 per cent

felt freedom of movement should be kept as it was or without controls (Nardelli, 2015). Among those with the most negative views towards immigration, as recorded in the British Social Attitudes, 55 per cent believed that the main reason for migrants coming to the UK was to claim benefits, a figure which dropped to 7 per cent for those most positive about immigration (Ford and Heath, 2014).

These sentiments were also enunciated by Conservative politicians, such as Theresa May who, as Home Office Secretary, stated in her speech at the Tory Party conference in May 2015:

*when immigration is too high, when the pace of change is too fast, it's impossible to build a cohesive society. It's difficult for schools and hospitals and core infrastructure like housing and transport to cope* (cited in Alfano *et al.*, 2016)

Furthermore, there was no real opposition to the idea of the UK as a welfare magnet. Nick Clegg, the then Deputy Prime Minister and Leader of the Liberal Democrats, supported David Cameron's proposals in 2014 to restrict access to welfare for Job Seekers from 6 months to 3 months. Labour's Shadow Work and Pensions Secretary, Rachel Reeves, also stated that the UK's social security system was not designed for the current level of immigration and suggested that EU migrants should pay 2 years of contribution before they could access non-contributory benefits<sup>3</sup>.

It is therefore not surprising that access to welfare became the cornerstone of the New Settlement agreed by David Cameron with the European Council (18-19 February 2016); an agreement which would have automatically come into force if the UK had voted to remain in the EU. A key part of this was the so-called Emergency Break which would have allowed the UK government to impose a waiting period of up to 4 years rather than 3 months before EU migrants could access non-contributory in work benefits<sup>4</sup>, such as Jobseekers Allowance, child benefits and child tax credits. Furthermore child benefits would be paid to children living abroad at a rate reflecting the standard of living in each country of origin for new migrants and from 2020 for all migrants. Yet even before requesting changes from the European Union, a number of highly restrictive measures had already been brought in since November 2013: introduction of a three month prior residence rule for Jobseeker's Allowance, extended also to Child Benefit and Child Tax Credit; the scrapping of

Housing Benefit for all EU jobseekers; the introduction of a six month cut-off for Jobseeker's Allowance, then reduced to a three month cut-off, coupled with a 'compelling evidence of genuine prospects of work' test; and the introduction of a 'minimum earnings threshold to have work classified as work', the latter with considerable potential to discriminate against women (O'Brien, 2016). What Cameron did not raise with Angela Merkel on her London visit in January 2015, but which he had previously spoken about in an immigration speech in December 2014, was the idea of forcing EU migrants to hold a job offer in order to work in the UK. This would have completely undermined the concept of free movement and necessitated a Treaty change but would have been more effective in putting a brake on new EU migrants to the UK.

### **The status of EU nationals after the referendum**

Immigration played a major role in the referendum held on 23 June 2016. It formed a central element of the Leave campaign led by Nigel Farage, Michael Gove and Boris Johnson with exhortations to 'take back control' and scare stories about the potential entry of Turkey into the EU and influx of refugees crossing the Mediterranean and eventually reaching the UK.

However, during the campaign itself there was little discussion about the status and rights of EU citizens resident in the UK (for other campaign silences see Guerrina and Masselot in this issue). It was only after the vote to leave that the UK government stated that the future status of EU residents should be negotiated with the EU-27 in such a way as to seek, at the same time, the protection of British citizens living in other EU countries, hopefully in a separate negotiation ahead of the triggering of Article 50. In the end they were unprepared to give a unilateral commitment to protecting EU citizen rights and insisted this would be achieved early on during the Brexit negotiations (Ryan, 2017: 201).

Whilst both the UK and the EU see a resolution of the status of EU citizens as a priority, there are many issues where they are far apart. The EU wishes to create a protected status for prior residents distinct from domestic immigration regulations, where their rights continue to be regulated by EU law. However, the British government is more concerned about incorporating those resident before Brexit into the British immigration system (HM Government, 2017a)<sup>5</sup>, i.e. by granting qualifying individuals

with a 'settled status' in UK law (indefinite leave to remain pursuant to the Immigration Act 1971). Those without the necessary five year period required for a settled status would be allowed to remain on a temporary permit to enable them to acquire the five years; whilst children born of settled EU citizens would automatically acquire the right to British citizenship. In her speech in Florence on 22 September 2017, Prime Minister Theresa May stated 'I want to incorporate the agreement fully into UK law and make sure British courts can refer directly to it'; this strengthened earlier proposals which would have allowed MPs to alter EU citizens' rights. However, she also acknowledged the role of the ECJ in settling disputes.

According to the 'settled status' approach, EU citizens with settled status would continue to enjoy equality of treatment in relation to employment and welfare benefits, and be able to transfer entitlements such as uprated pensions. However they are also likely to be subject to significant reductions concerning their family migration rights and particularly their ability to bring family members to the UK. In fact, as far as family migration is concerned, the British regulations constitute one of the harshest in the EU (Kilkey, 2017; Kofman, 2017) such that, the current status of British nationals is considerably less favourable than that enjoyed by EU citizens<sup>6</sup>. The key differences are summarised below:

1. Sponsorship of spouses/partners. British citizens must prove they are earning a minimum income of £18,600 per annum continuously for a period of at least 6 months. In 2015, three years after implementation, 41 per cent of the adult working population could not meet the income threshold with higher percentages amongst some groups: women, the young, ethnic minorities and those living in the UK's regions outside of London (Sumption and Vargas-Silva, 2016: 10)<sup>7</sup>. Following a lengthy legal challenge, the Supreme Court (MM Case) deemed the rules lawful in February 2017 but argued that the government must make more provision for children and apply the rules more flexibly (Wray, 2017). Spouses and partners under 65 years must also pass an English language test. EU citizens, on the other hand, do not have to pass any income tests to bring in family members nor pass a language test nor is there any differentiation between EU and non-EU family members.

2. Sponsorship of children. For British citizens only children under the age of 18 years and unmarried can be sponsored. Under EU law, all descendants may be sponsored provided they are under 21 years of age or dependent upon the sponsor and/or their partner.
3. Adult dependent relatives. In the British system this is even more restrictive than for spouses and children, and the parent or grandparent can only be brought in if they require 'long-term personal care to perform everyday tasks and there is no one else able to undertake such care. In this case, income earned by the sponsor makes no difference to the outcome. Under the EU Citizen's Rights Directive (2004/38/EC), there is no care requirement stipulated while other members of their household are required to be facilitated.
4. The cost of applications is extremely high with the cost of application for a spouse, partner or child being £1,464 and for an adult dependent relative £3,250.

If, as suggested, the status of EU nationals already settled in the UK is going to be aligned to that of British nationals, this will represent a significant reduction of existing rights; thus, unsurprisingly, this represents a major sticking point in the post-referendum negotiations (McKinney, 2017).

Another highly contentious issue is the treatment of EU-nationals who move into the UK after Brexit. The objective of incorporating them into a general post-EU immigration policy, together with non-EU citizens, appeared quite clearly in a leaked Home Office paper in September 2017 (Hopkins and Travis, 2017). Here, once the UK dispenses with free movement rights in its implementation stage (2<sup>nd</sup> phase), the government envisages new EU citizens as obtaining differential permits based on whether they are working in highly skilled sectors (3-5 years) or for other sectors only up to 2 years. It is not clear whether sectoral schemes for less skilled work, with employment being tied to specific employers, will be revived; this would be likely to lead to greater vulnerability and exploitation among EU migrants (Bridie, 2017). Furthermore, an income threshold would be imposed for those seeking to reside as self sufficient and residence status would not be granted for job seekers, a measure the UK has long wanted to implement. Additionally, it is not yet clear when the cut-off date would be for the new regulations to come into force and to separate 'settled' EU citizens from 'post-

Brexit' EU migrants. It may be 29 March 2017 (i.e. the date at which Article 50 was triggered), the end of the two year period when Brexit comes into effect, or the end of the transitional period which was mentioned by Theresa May in her Florence speech.

Both family migration regulations and labour schemes would have a very different impact for different categories of EU migrants, depending on their annual income and sectors of employment. A recent report by the ONS (2016) shows these differences quite strikingly. 'Old European Migrants' from the original 14 member countries tend to earn relatively high median hourly wages: £12.59 compared to the average of £11.30 for the EU8 nationals (citizens of the countries which joined the EU in 2004, including Poland) and only £8.83 for the EU2 (citizens of Romania and Bulgaria). This reflects occupational profiles which, as we have seen earlier on, are also significantly different. According to the same ONS report, whilst EU14 are likely to work in skilled occupations, such as management, finance, education and health, EU8 nationals are most likely to work in lower-skilled occupations: approximately half (51 per cent) of EU8 nationals who worked in the UK were employed in the process, plant and machine operatives or elementary occupations. As for A2 nationals, almost one-third (estimated 31 per cent) worked in elementary occupations.

Thus, post Brexit, new migrants from the EU14 are, for example, less likely to be affected by minimum income regulations to bring in spouses and children and more likely to undertake skilled jobs enabling them to remain in the UK for 5 years. In other words, the new regime is likely to affect disproportionately Eastern Europeans. Nonetheless, as discussed before, there are also significant differences within groups and these will also play a major role; particularly, some of the Southern European migrants although qualified, are not necessarily able to immediately access jobs which align with their qualifications. In the past, many tended to use low-skilled sectors such as retail or hospitality as a stepping stone towards better employment (D'Angelo and Kofman, 2017), but these routes are not necessarily going to be easily available in Brexit Britain. More generally, the draconian legislation concerning adult dependent relatives will deter older EU citizens who may wish to live with close family members in the UK or for family members to provide care and support for them, especially if they have children.

## **Conclusion**

Whilst the desire to control immigration was a major issue in the referendum, the complexity of the rights of resident EU citizens was barely discussed. The need to ensure that a cliff edge situation is avoided and that key sectors do not collapse post Brexit seems to have prevailed in the rights being accorded to existing EU citizens in the period until the UK leaves and to some extent during the transitional period. Were the current negotiations to end up with no deal by March 2019, this situation may change.

The aim of the current government is to abolish free movement rights and to bring migration from the EU under new UK rules governing temporary and permanent migration. For existing EU citizens, the most likely scenario at the time of writing is that they will maintain the right to reside, work and access welfare, but they would have to comply with British regulations regarding family reunification. New EU citizens post Brexit would be subject to similar conditionalities as non-EU citizens such that their qualifications and income would determine their ability to settle in the UK. This will particularly affect migrants from EU8 and EU2 countries but, more generally, will contribute to making the UK a much less attractive destination and limit the opportunities also for younger, highly educated, EU citizens, who often initially work in less skilled sectors when they migrate.

Barring some dramatic change in the negotiation, the aim pursued by the British government is to treat EU nationals not as fellow European citizens anymore, but, once again, as mobile workers, hence more or less returning the British model of immigration to the pre-2004 situation, if not before.

## **Notes**

1 There are more than 3.5 million EEA and Swiss nationals and third country national (TCN) family members living in the UK under EU law. As of 2016, 64% had been living in the UK for more than 5 years.

2 Exclusion from welfare as a deterrence strategy had already been applied to asylum seekers in the mid-1990s and several years later the rule No Recourse to Public Funds implemented under

Section 115 Immigration and Asylum Act 1999 applied to all who are 'subject to immigration control'.

3 Member States in the EU are free to decide who is entitled to be insured, which benefits are granted and under what conditions and how benefits are calculated.

4 Under pressure from Eastern European countries, access to benefits was to be tapered in the 4 years.

5 The paper 'Safeguarding the position of EU citizens in the UK and UK nationals in the EU' was the official position tabled in June 2017, but it is not clear what status this would hold in the event of a no deal being reached by 29 March 2019.

6 Unless British citizens are exercising their EU freedom of movements rights they are subject to British immigration regulations. An European Court of Justice ruling on 14 November 2017 (LounesC-165/16) found that EU citizens who have acquired British citizenship continue to be able to benefit from the more generous family reunification rules under TFEU Article 2(1) concerning the mobility of EU citizens.

7 The minimum wage as of October 2017 was £7.05 per hour which for someone working full time would come to £282 per week or £13,663, well below the required minimum income.

## References

- Alfano, M., Dustmann, C. and Frattini, T. (2016) 'Immigration and the UK: reflections after Brexit', in F. Fasani (ed.), *Refugees and Economic Migrants: Facts, Policies and Challenges*, CEPR Press.
- Bader, V. (2005) 'The ethics of immigration', *Constellations* 12, 3, 331–61.
- Balch, A. and Balabanova, E. (2016) 'Ethics, politics and migration: public debates on the free movement of Romanians and Bulgarians in the UK, 2006–2013', *Politics*, 36, 1,
- BBC (2003) 'UK immigration could rise by 10%', 5 June, [http://news.bbc.co.uk/1/hi/uk\\_politics/2967318.stm](http://news.bbc.co.uk/1/hi/uk_politics/2967318.stm) [accessed 09.10.2017].
- BBC (2016) 'EU referendum: row over Turkey's membership bid escalates', 24 May, <http://www.bbc.co.uk/news/uk-politics-eu-referendum-36353013> [accessed 09.10.2017].



- Bridie F. (2017) *Lost in Transition, Brexit and Labour Exploitation*, Focus on Labour Exploitation (FLEX) and the Labour Exploitation Advisory Group (LEAG).
- Curtice, J. (2016) 'How deeply does Britain's Euroscepticism run?', in E. Clery, J. Curtice and Phillips (eds.), *British Social Attitudes: The 32<sup>nd</sup> Report*, London Natcen.
- Curtice, J. (2017) 'The vote to leave the EU. Litmus test or lightning rod?', *British Social Attitudes*, 34.
- D'Angelo, A. (2007), *Britalians: le migrazioni italiane in Gran Bretagna*, in Fondazione Migrantes, *Rapporto Italiani nel Mondo 2007*, Roma: IDOS.
- D'Angelo, A. and Kofman, E. (2017) 'UK: large-scale European migration and the challenge to EU free movement', in J. M. Lafleur and M. Stanek (eds.), *Old Routes, New Migrants: Lessons from the South-North Migration of EU Citizens in Times of Crisis*, 175-92.
- Department for Business, Innovations and Skills (DBIS) (2015) *Migrant Workers: Impacts on UK Businesses*, Ref: BIS/15/153, <https://www.gov.uk/government/news/migrant-workers-bring-improvements-to-british-business-performance-and-productivity-says-new-study> [accessed 09.10.2017].
- Department for Business, Innovations and Skills (DBIS) (2014) *Impacts of Migration on UK Native Employment: An Analytical Review of the Evidence*, Occasional Paper 109, <https://www.gov.uk/government/publications/impacts-of-migration-on-uk-native-employment-an-analytical-review-of-the-evidence> [accessed 09.10.2017].
- Drinkwater, S., Eade, J. and Garapich, M. (2006) *EU Enlargement and the Labour Market Outcomes of Immigrants in the UK*, IZA Working Paper.
- Dustmann, C., Casanova, M., Fertig, M., Preston, I. and Schmidt, C. (2003) *The Impact of EU Enlargement on Migration Flows*, Home Office Online Report 25/3.
- Dustmann, C. and Frattini, T. (2014) 'The Fiscal Effects of Immigration to the UK', *The Economic Journal*, 124, F593–643.
- European Council (2016) *Decision on New Settlement for the UK*, Annex 1, section E, para 2.
- Ford, R. and Heath, A. (2014) 'Immigration: nation divided?', in A. Park, C. Bryson and J. Curtice (eds.), *British Social Attitudes: The 31<sup>st</sup> Report*, London: Natcen Social Research.

- Ford, R. and Heath, A. (2017), 'Immigration. How attitudes in the UK compare with Europe', in E. Clery, J. Curtice and R. Harding (eds.), *British Social Attitudes: The 34<sup>th</sup> Report*, London: Natcen Social Research.
- Gardner, Z. and Cooper, L. (2017) *Brexit and Immigration: Prioritising the Rights of all Workers*, Another Europe is Possible.
- Guardian, The* (2017) 'Vince Cable urges PM to lift lid on EU immigration reports', 8 September, <https://www.theguardian.com/politics/2017/sep/08/vince-cable-urges-pm-to-lift-lid-on-eu-immigration-reports> [accessed 09.10.2017].
- HM Government (2017a) *The United Kingdom's Exit from the European Union: Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU*, 27 June.
- HM Government (2017b) *Technical Note: Citizens' Rights- Administrative Procedures in the UK*, 8 November.
- Home Office (2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, Cm 5387, London, Stationery Office.
- Home Office (2017) 'The border, immigration and citizenship system after the UK leaves the European Union', *The Guardian*, 6 September.
- Hopkins, N. and Travis, A. (2017) 'Leaked document reveals UK Brexit plans to deter EU migrants', *The Guardian*, 5 September, <https://www.theguardian.com/uk-news/2017/sep/05/leaked-document-reveals-uk-brexit-plan-to-deter-eu-immigrants> [accessed 09.10.2017].
- Johnston, R., Khattah, N. and Mankey, D. (2015) 'East versus West? Over-qualification and earnings among the UK's European migrants', *Journal of Ethnic and Migration Studies*, 41, 2, 196-218.
- Kennedy, S. (2017) *Child Benefit and Child Tax Credit for Children Resident in other EEA Countries*, House of Commons Library, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06561> [accessed 09.10.2017].
- Kilkey, M. (2017) 'Conditioning family-life at the intersection of migration and welfare: the implications for 'Brexit families'', *Social Policy and Society*, 46, 4, 797-814.
- Kofman, E. (2008) 'Managing migration and citizenship in Europe: towards an overarching

- framework', in C. Gabriel and H. Pellerin, H. (eds.), *Governing International Labour Migration. Current Issues, Challenges and Dilemmas*, Routledge, 13-26.
- Kofman, E. (2017) 'Brexit Families: implications for family life and transnational mobility', Seminar Sheffield University, 1 March.
- McGuinness, T. (2017) *Brexit: What Impact on Those Currently Exercising Free Movement Rights*, House of Common Library Briefing paper 7871, 19 January.
- McKinney, C. (2017) 'Citizens rights update after fourth round Brexit negotiations', *Free Movement Blog*, 27 September 2107.
- Migration Observatory (2014) *Migrants in the UK Labour Market. An overview*, Oxford: University of Oxford.
- Morgan, T. (2004) *The Spanish Migrant Community in the United Kingdom*, Cambridge: Anglia Ruskin Polytechnic University.
- Netto, G. and Craig, G. (2017) 'Introduction. Migration and differential labour market participation', *Social Policy and Society*, 16, 4, 607-11.
- O'Brien, C. (2015) 'The pillory, the precipice and the slippery slope: the profound effects of the UK's legal reform programme targeting EU migrants', *Journal of Social Welfare and Family Law* 37, 1, 111-36.
- O'Brien, C. (2016) 'Civis capitalist sum: class as the new guiding principle of EU free movement rights', *Common Market Law Review*, 53, 937-78.
- Office for National Statistics (2016a), Migration Statistics Quarterly Report:  
February 2016,  
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/february2016> [accessed 09.10.2017]
- Office of National Statistics (2016b) *International Immigration and the UK Labour Market, UK: 2016*,  
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/migrationandthelabourmarketuk/2016> [accessed 09.10.2017].

- Pollard, J., Latorre, M. and Sriskandarajah, D. (2008) *Floodgates or Turnstiles? Post-EU Enlargement Migration Flows to and from the UK*, London: Institute for Public Policy Research.
- Ryan, B. (2017) Negotiating the right to remain after Brexit', *Immigration, Asylum and Nationality Law*, 31, 3, 197-226.
- Ryan, L., Sales, R., Tilki, M. and Siara, B. (2008) 'Social networks, social support and social capital. The experiences of recent Polish migrants in London', *Sociology*, 42, 4, 672-90.
- Sumption, M. and Vargas-Silva, C. (2016) *The Minimum Income Requirement for Non-EEA Family Members in the UK*, Oxford: Migration Observatory.
- Wray, H. (2017) 'The *MM* Case and the Public Interest: How did the Government make its Case?', *Journal of Immigration, Asylum and Nationality Law*, 31, 3, 000-000.
- Yeo, C. (2017) 'Court of Justice finds EU citizens retain free movements rights after naturalisation in host state', *Free Movement Blog*, 14 November, <https://www.freemovement.org.uk/court-justice-finds-eu-citizens-retain-free-movement-rights-naturalisation-host-state/> [accessed 09.10.2017].