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Published in:
Journal of European Social Policy

DOI:
10.1177/0958928718767300

Publication date:
2019

Free movement of People and Cross-Border Welfare in the European Union: Dynamic Rules, Limited Outcomes

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Forthcoming in Journal of European Social Policy (2018)

ABSTRACT

For decades, the European legislators and the Court of Justice have extended the rights to free movement and cross-border welfare in the European Union (EU). Strong assumptions on the impact of these rules have been posed, by some held to lead to welfare migration and thus to be a fundamental challenge to the welfare state. However, studies of how these rules are implemented and what become the de-facto outcomes hereof remain scarce. We address this research gap, by examining domestic responses to and outcomes of dynamic EU rules. Based on a unique set of administrative data, we do so for all EU citizens residing in the universalistic, tax-financed welfare state of Denmark between 2002-2013. We find that domestic responses have been restrictive and outcomes limited.

Key words: European Union, free movement of people, welfare state, welfare migration, domestic responses, outcomes

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Introduction

The legislation of the European Union (EU) grants EU citizens a right to move and reside freely within the Union and a right to access welfare across borders. These rules and rights have long been contested and their impact on the welfare state discussed (Kvist 2004; Hemerijck 2013; Blauberger and Schmidt 2014; Ferrera 2005, 2017; Anderson 2015; Conant 2002; Verschueren 2012, 2015). Recently the political salience of these rules and rights stood out most clearly in the British debate on EU membership. EU citizens on the British labour market – and their rights to welfare benefits– resulted in a heated, polarised debate and the UK voted Leave (Reenen 2016; Geddes and Hadj-Abdou 2016). Also in the scholarly literature, the relationship between free movement of people and the welfare state is critically discussed. Research on welfare migration suggests the welfare state to be highly challenged by free movement as migrants from lower income countries will be attracted by richer and more generous welfare states (Giulietti and Wahba 2012). A hypothesis of welfare magnetism has been formulated, according to which migrants will cluster in states with high benefits (Borjas 1999), thus making more inclusive welfare states vulnerable in a Union where people can move freely.

The public debate and research on EU free movement of people contribute to the fostering of an image of the welfare state undergoing rather fundamental change. However, conclusions are reached without much examinination of subsequent domestic responses to and outcomes of EU rules. In this paper, we address this research gap in order to account for the dynamic scope and impact of EU rules when implemented on the ground (Versluis 2007). We first analyse the dynamic development of EU rules and rights, gradually extending the rights of EU citizens to welfare benefits in other Member States traditionally reserved for own citizens or long term residents. In particular, the CJEU has been a key player, first pushing for EU citizens' more immediate access to the welfare systems of a hosting Member State on basis of Union citizenship as established in the Treaty but, however, later turning to more restrictive rulings on basis of secondary legislation (Caporaso and Tarrow 2009; Dougan 2013). We then turn to analysing the impact at the national level of these dynamic rules and rights. We take Denmark as our welfare state case. As detailed in the section on case selection below, Denmark constitutes a crucial case for examining such impact. Within Denmark, we analyse domestic responses and outcomes of EU rules and rights for four welfare benefits of which three are non-contributory: study grants, child benefits and social assistance and one is contributory: unemployment benefits. We examine responses and outcomes

for a long time span, i.e. between 2002 to the the end of 2013. This 12 years' time span covers a period of essential structural change in European integration. During these years, the EU experienced its grand enlargements, which implied a considerable increase in socio-economic differences across the Union. Moreover, the period covers important changes in legal and political integration as it includes the post-2008 financial and economic crises. Furthermore, after the enlargements Member States could choose to restrict free movement for a period of up to seven years. The Danish transitional period ended May 2009 and the time span thus includes the post-transitional period. Finally, whereas political integration had conditioned the right to equal treatment for study grants and social assistance on five years' residence in the host Member State, legal integration made it possible to access these benefits more immediately. Thus the changes occurring in this period increases the likelihood of welfare migration, in particular to a welfare state as Denmark. To examine the welfare migration assumption, we question: *Are EU citizens increasingly and more immidiatedly granted Danish welfare benefits during years of structural change, and why or why not?*

The article is structured as follows. Below, we present Denmark as our case selected and the data for our analysis. We then present the theoretical assumptions on welfare migration and dynamic EU rules as challenges to the welfare state. However, we add scholarly views on why domestic responses should be taken into account in order to understand and explain the impact of dynamic rules and rights. Subsequently, we analyse the domestic responses to EU rules in the welfare state of Denmark. We then examine the outcomes of EU rules, measured as EU citizens' de facto use of the four welfare benefits in Denmark between 2002-2013. Finally, we conclude on the findings and explanations for why EU rules did not impact as public and scholarly assumptions have otherwise posed.

Case selection and data

We examine responses and outcomes to EU rules in the Danish welfare state. The Danish welfare state is often presented as distinct. First, the Danish welfare state has traditionally been characterised as universalist, promoting equality of status among its citizens. Social policies are not targeted at low income groups, as in the residual welfare state but go to the middleclass as to the poor. Second, social rights are granted on the basis of residence (Cornelissen 1997, 32). A person is entitled to welfare because s/he has legal residence, and not as a result of social contributions or

citizenship. Third, benefits have traditionally been tax-financed and not based on contributions. Social security is not dependent on labour market participation, as in the insurance-based welfare state (Korpi and Palme 1998). However, tax payment is not a direct requirement to receive a specific social benefit. Due to these characteristics, the Danish welfare state has been regarded as more unfit for the rationales of EU cross-border welfare, in particular because residents can access welfare without necessarily contributing to its financing.

We research outcomes for four main welfare benefits: study grants, child benefits, social assistance and unemployment benefits. EU political and legal integration makes it possible that these benefits, traditionally reserved to national citizens or long term residents, become more immediately accessible for EU citizens. All benefits should be attractive according to a welfare migration argument as they are relatively generous. Furthermore, three of the benefits are tax-financed and non-contributory. A Danish *study grant* is approximately 800 euro per month (2017 level). This is a universal benefit granted to all students regardless of their parents' income. Additionally, students can take loans. Families with children between 0-18 years old in Denmark are entitled to *child care allowance.* The benefit is universal and again granted independently of income. The amount paid depends on the age of the child. On average it amounts to approximately 160 euro per month per child (2017 level). A Danish *social assistance* benefit is approximately 1450 euro per month (2017 level). Social assistance is a tax-financed minimum subsistence benefit granted to the unemployed who does not qualify for the higher contribution-dependent unemployment benefits and does not have means of his/her own. The Danish unemployment benefit is insurance-based. Entitlement to unemployment benefits depends on membership of and contributions to an unemployment insurance fund for at least one year. The amount paid can be up to a maximum of 90% of the member's previous work income, but no more than a maximum rate of approximately 2300 euro per month (2017 level).

We examine different types of domestic responses: judicial, political and administrative. Judicial responses cover domestic legal proceedings interpreting the specific EU rules and rights as they take place when national court rulings or quasi judicial proceedings consider EU law in relation to domestic policies and law. Political and administrative responses concern the domestic ex post interpretations of specific EU rules and rights. Domestic responses to EU rules may take two forms: *receptive*, i.e., applying EU rules, or *defensive*, i.e., aiming to protect the status quo of national

institutions. For the analysis of domestic responses, different data have been collected. Judicial responses are analysed by means of national court cases and quasi-judicial administrative decisions from January 2002 to June 2017. Political and administrative responses are examined by means of qualitative interviews with key respondents as well as examination of official and unofficial documents. A total of 15 interviews has been carried out in the period from September 2015 to June 2017 with altogether 9 respondents from the State Department, the Danish Immigration Service, Danish Agency for Institutions and Educational Grants, Ministry of Employment, The Danish Agency for Labour Market and Recruitment and municipal offices administrating social assistance in four different Danish municipalities varying upon population size, geography and political leadership. Our empirics on domestic responses thus go as much forward in time as possible and thus allow for updated insights on how EU rules are received on the ground.

Outcomes are investigated through the development of EU citizens' actual consumption of the four benefits. For this part of the analysis, we have compiled Danish register data which is a unique source of administrative data as much forward in time as data availability has allowed us, i.e. from January 2002 to the end of 2013. Our dataset includes repeated cross sections of the total population of EU citizens residing in Denmark on December 31st of each year between 2002 and 2013. We then examine the consumption of social benefits in the current year. We construct a dataset for each year by merging a host of administrative registers with the total population of EU citizens residing in Denmark. These administrative data contain information on each individual's total annual consumption of social benefits. Danish register data are highly reliable sources of individual information directly reported from the tax agency and local authorities to Statistics Denmark. However, gaining access to the full population is seldom granted and has, to our knowledge, never been compiled for Denmark or other countries. Thus, this unique dataset enables us to examine the evolution of EU citizens' consumption of the selected benefits over a long period of time. We use population and migration administrative register information to measure the length of residence in Denmark that the EU citizen had up to the 31st of December of each year. By taking the length of residence into account, we examine the more immediate access to these benefits, i.e. the extent to which the benefits are granted after a short residence, which is defined as up to one year or depend on a certain degree on social integration, i.e., a longer period of residence.

Welfare migration, dynamic rules and domestic responses

Theoretically, the welfare migration hypothesis states that migrants are more likely to move to countries with generous welfare systems (Giulietti and Wahba 2012). Examining immigrants' residential choices on their arrival in the US, Borjas argued to have identified a 'welfare magnet' mechanism, where immigrants move to states with more attractive welfare schemes (Borjas 1999). The hypothesis thus perceives the migrant as rationally motivated by welfare, choosing one state over another in order to maximize benefits (Peterson and Rom 1989; Schram, Nitz, and Krueger 1998). The 'welfare magnetism' scenario also assumes that if welfare-motivated behaviour unfolds, states have limited capacity to respond to and control for the negative outcomes hereof. In particular, there are constitutional limits to political actions, as for example when US states adopted residence requirements upon social assistance and the US Supreme Court in 1999 in the case *Saenz v Row* found that such welfare residence restrictions infringed the constitutional right to travel (Allard and Danziger 2000, 351). In the EU literature, a similar assumption states that the CJEU profoundly limits the EU Member States to correct and control for welfare migration, which is likely to have negative consequences for the welfare state .

However, one critique of the welfare migration scenario is that it ignores domestic immigration policies and thus that immigrants too are restricted in their choices (Giuletti and Wahba 2012). In addition, we argue that theoretical and public assumptions on welfare migration insufficiently consider the capacities of welfare states to respond to and correct for welfare-induced behavior – through domestic political, but also administrative and judicial responses.

At first glance, EU rules on free movement and cross-border welfare should allow for welfare-motivated behavior. All workers, self-employed as well as EU citizens who can provide for themselves and their family members have a right to move and reside across the Union. In addition, they become eligible for welfare benefits in a hosting state under certain conditions. Regulation 883/2004 details the rules establishing the right of European citizens to cross-border welfare, including which benefits can be exported to other Member States. Regulation 492/2011 establishes that migrant workers and national citizens have equal rights to the social advantages of the hosting Member State in which they work. Finally, Residence Directive 2004/38 defines the link between the right to reside and access to welfare benefits for the European migrant and states that after five years of residence, an EU citizen has the right to equal access to welfare. Before five years of

residence, s/he may have a right to social assistance but not to study grants, unless s/he has status as worker, is self-employed or is the family member of a worker (see article 24 (2) of Residence Directive 2004/38). However, EU citizens must not be an unreasonable burden to the social assistance system of a hosting Member State (see article 7 (1) (b) of the directive).

The CJEU has played an important role in extending EU citizens' rights to equal treatment in a host Member State. With the *Sala* case in 1998 (C-85/96), the Court established a judicial vision of Union citizenship as a fundamental status of Member State nationals (Dougan 2013, 133). The vision was further developed and extended in the *Grzelczyk* and *Baumbast* (C-413/99) cases, among others. These cases granted Union citizens the right of residence and equal treatment, as well as access to the welfare schemes of the hosting Member State despite being economically inactive. The Court stated that if a certain link has been established between the citizen and a host Member State, such a link could justify the right to equal treatment, i.e. before five years of residence. Thus jurisprudence allowed for a more immediate access to the welfare benefits of a hosting Member State.

In addition, the Court has also developed an inclusive concept of who is a worker according to EU law. In the case of *Kempf* (C-139/85), the CJEU established that working 12 hours per week would suffice, and in the case of *Megner* and *Scheffel* (C-444/93), it ruled that 10 hours of work per week did not exclude a person from being regarded as a worker. In *Ninni-Orasche* (C-413/01), the CJEU stated that a fixed-term contract for ten weeks was sufficient to be a worker under EU law. According to Regulation 492/2011, workers have right to all social advantages in a hosting Member States. Those who are workers therefore also have rights to non-contributory benefits such as social assistance and study-grant. In the preliminary reference from the Danish Board of Appeal in 2013, *LN vs Styrelsen* (C-46/12),[1] the CJEU laid down that a student who is also a worker according to EU law has a right to Danish study grant. Thus those EU citizens acquiring worker status remain more equal than others.

However, at the same time, the expansive judicial interpretations have not been codified into secondary legislation by the EU legislature. Regulation 492/2011 does not confirm that in line with the jurisprudence of the Court, 10-12 hours a week for at least 10 weeks are sufficient to be considered a worker under EU law. In the absence of legislative codification, the status of 'worker'

under EU law remains, however, under-specified (Martinsen 2015). This allows for considerable variation in national implementation, where Member States "have exercised, and stretched, their considerable discretion on undefined terms" (O'Brien, Spaventa, and De Corninck 2016, 11). Comparing the domestic implementation of who is deemed a worker under EU law, a recent report notes that:

"on the one hand the case law of the Court of Justice of the European Union (CJEU) is wavering; on the other hand, national authorities are giving a very restrictive interpretation of the guidance long established by the CJEU on who should be defined as a worker" (O'Brien, Spaventa, and De Corninck 2016, 14).

Moreover, legal integration has not stayed on an even keel. From 2008 onwards, the Court appears to have embarked on a more restrictive course regarding the rights to social benefits of the economically inactive EU citizens. It has turned away from granting rights on basis of the Treaty's provision on European citizenship and started to pay more attention to the words of the EU legislature, as stated in its secondary legislation. In the *Förster* (C-158/07) case, the Court examined the more restrictive formulations of the secondary law, as contained in Residence Directive 2004/38, derogating from the general right to equal treatment of Union citizens (Dougan 2013: 140). The more restrictive judicial approach has become even more notable in the recent case-law of *Dano* (C-333/13), *Alimanovic* (C-67/14), *García-Nieto* (C-299/14) as well as the *Commission vs UK* (C-308/14). More recent jurisprudence suggests that the Court increasingly pays attention to the more strict formulation of EU secondary law rather than the constitutional status of European citizenship as formulated in the Treaty (for such interplay between the CJEU and the EU legislatures, see Verschueren 2012, 2015; Dougan 2013; Hatzopoulos and Hervey 2013; Martinsen 2015).

This is the background against which Member States take over when applying EU rules and rights onto the national level. Neither the EU legislature nor the judiciary have specified how to do so, and Member States are left with certain discretion on how to apply these rather open and sometimes under-specified concepts. Domestic responses thus embark on a new round of filling the gaps of somewhat unclear rules and rights. Implementation and judicial impact litterature suggests three types of domestic responses as relevant in order to understand and explain the impact of dynamics rules and rights; judicial, political and administrative responses.

Judicial responses concern the ways in which national courts make use of CJEU decisions and EU law in national legal proceedings and the extent to which they make preliminary references to the CJEU to clarify points of national and EU law. A key assumption is that national courts have been increasingly socialised into accepting CJEU decisions and will integrate these into domestic jurisprudence (Caporaso and Tarrow 2009, 615; Alter 2001). However, other scholars note that national courts are often reluctant to act as decentral enforcers of EU law (Slepcevic 2009; Börzel 2006; Davies 2012; Conant 2002; Wind 2009). Thus, the extent to which national courts act as decentral enforcers of EU law should be subject to empirical testing.

Political responses concern the ways in which national politicians react to changes in EU rules. When political or judicial changes occur at the supranational level, national politicians have certain room of manoeuvre when deciding how to implement these rules. EU rules often leave room for discretion in terms of how to comply (Steunenberg and Toshkov 2009; Versluis 2007; Conant 2002; Dimitrova and Steunenberg 2016). How politicians react within this manoeuvrable space and the extent to which they adhere to EU law is a conditioning factor on outcomes (Steunenberg and Toshkov 2009; Conant 2002). Consequently, domestic politics is a factor that should be considered when studying the implementation of EU rules.

Finally, *administrative responses* concern the ways in which civil servants process EU rules, as adopted in national laws, decrees, instructions or domestic court cases, onto the target group. The target group in our case are EU citizens applying for social benefits. Implementation research reveals that civil servants' behaviour, capacity and attention are crucial to policy outputs and outcomes, as they make 'important discretionary decisions' about the implementation of a policy for the target group (Winter 2012, 260). When processing EU rules all the way to concrete welfare outcomes, the behaviour and decisions of the local administration and the street-level bureaucrat also come into play (Lipsky 1980; Winter 2012; Dimitrova and Steunenberg 2016). The dispositions of local and street-level bureaucrats may also be influenced by judicial and political responses. The adherence of national courts to EU law becomes important in this regard (Conant 2002). If an issue is assigned high political salience, administrative actors are found to pay more attention (Winter 2012; Versluis 2007). Furthermore, the clarity of rules and rights may become important for their implementation and outcomes. Finally, supervision, clearly communicated goals and expectations may diminish divergence in between political objectives and implementation.

Thus, insights from the literature on EU implementation and judical impact form an additional critique to the welfare migration hypothesis, suggesting that domestic responses may condition the outcomes of EU rules. Domestic responses may take different directions, underpinning or hindering the effective implementation of EU law. We now turn to the ways in which Danish actors responded to the dynamic rules of EU cross border welfare, in order to account for the outcomes which will be examined in the subsequent section.

Domestic Reponses

To cover the domestic *judicial responses*, we searched in national legal databases for national court cases concerning EU citizens and the benefits analysed in our study. Secondly, we searched for principle administrative rulings on this issue. Principle administrative rulings are quasi-judicial proceedings decided by the Danish Board of Appeal. These administrative rulings are deemed to be of more principled character and thus guide caseworkers in their future decisions (National Board of Appeal 2014). Therefore, they play a crucial role in defining future administrative practice. By including these quasi-judicial proceedings in our analysis, we could identify whether a former administrative decision was reversed by the appeal system, ultimately granting the benefit.

Judicial considerations of EU law in Danish courts proved to be none for the benefits examined within the studied period. We found no court cases on EU citizens' access to the selected benefits. This can partly be explained by the fact that Denmark does not have social courts (Martinsen 2005). Social policy cases are instead handled within the administrative recourse system. From January 2002 until June 2017, we identified a total of 26 relevant principle rulings on the subject matter. None of these concerned child benefits or unemployment benefits. Seven of the principle rulings were on social assistance, whereas the bulk – nineteen rulings – concerned study grants. Of the seven principle rulings on social assistance, four granted the benefit (decisions no. 27-07, 180-09, 190-11, 38-12). The principle rulings on study grants reflect a more restrictive judicial response. They were all made after the CJEU ruling in *LN vs Styrelsen* from February 2013, and their relatively high number – nineteen – reflects the assessed need to define the new administrative practice (*interview*, civil servant, May 2016). Only two of these granted the benefit (decisions no. 10426, 10423), and the rest provided specifications defining when to reject study grants to EU nationals (decisions no. 9504, 9313*, 9928, 9544*, 9429*, 10425, 9851, 9850, 9484*, 9340*, 9295,

10424, 9849*, 9847*, 9391, 9390*, 9295).[2] Taking the large majority of *refusing* rulings together helps to form a clear interpretation of the concept of worker (*interview*, civil servant, May 2016). The prime factor in defining a worker based on these cases is the number of hours worked per week (*interview*, civil servant, May 2016 and Danish Agency for Higher Education 2016). Approximately 10-12 hours constitutes the threshold. However, other factors are considered too, including hourly wage, earnings, the duration of employment, etc.

Turning to *political* and *administrative responses*, we see that these have become more restrictive over time. When negotiating the budget act in Autumn 2010, the Danish People's Party (DPP) demanded that in order to support the budget proposal of the then liberal-conservative government, restrictions on EU citizens' right to *child benefits* should be adopted. The issue became high politics and the government initiated a reform process, where a two-year residence clause for EU citizens to be entitled to full Danish family benefits was adopted with effect from 1 January 2012. This de facto discrimination did, however, not continue for long. In July 2012, a German worker in Denmark complained about his unequal right to Danish child benefits to the European Commission and the issue was examined as an EU pilot case. The Danish government decided to comply and from June 2013, the Ministry of Taxation announced that the residence clause would be waivered for EU citizens. The discriminatory practice thus lasted less than two years. The legislative attempt to restrict access to Danish child benefits had been unsuccessful and the Danish government now instead works for an EU legislative change of EU Regulation 883/2004 with indexation of child benefits as the main priority (*Interview*, civil servant, May 2016).

In terms of *unemployment benefits*, a key issue in Danish politics has been that EU rules allows an EU citizen to aggregate insurance periods from other Member States and thus be entitled to Danish unemployment benefits more immediately without fulfilling the Danish criteria of having paid contributions to a Danish fund for at least one year. To hinder immediate access, Danish law requires that EU citizens have worked for at least three months in Denmark before being able to use the EU principle of aggregation. Finland has similar rules, but only requiring four weeks of work in Finland before the principle of aggregation applies. However, the EU Commission initiated an infringement procedure against Finland and former social affairs commissioner Laszlo Andor indicated that the Danish conditions were next on the list of inquiry (Politiken, 'Dagpenge kan blive det næste EU slagsmål', 1. Marts 2014). Denmark expressed its political concerns loudly to the Commission and apparently these have been heard. The Finnish case has not been taken forward by

the Commission and in the Commission's proposal for reforming regulation 883/2004, it is specified that a three months work requirement, before the principle of aggregation applies, is in line with EU law (see COM (2016) 815). This demonstrates that the Commission at times takes political concerns into account and changes position accordingly.

Administrative responses in the Danish municipalities ultimately decide on EU citizens' entitlement to *social assistance*. To be eligible to social assistance, one must be a legal resident with no other means to support oneself. Social assistance is subject to activation measures. If in doubt, the municipalities can request the State Administration to determine a person's right to reside on the basis of having applied for or received social assistance. The State Administration thus decides on whether the EU citizen is an 'unreasonable burden' to the social assistance system (*interview*, September 2015). While the municipalities have found EU rules to be unclear for years, greater clarity on the eligibility of EU citizens has gradually been established for social assistance and whether one's social assistance affects one's right to reside (*interview*, March 2017). The State Administration as well as the quasi-judicial decisions of the National Board of Appeal will inform municipalities how to administer rather open and unclear EU rules. The administrative practice in the municipalities appears to have become more restrictive (*interviews*, March 2017). According to the State Administration, more municipalities now refuse applications for social assistance, and few EU citizens appeal such decisions (*interview*, September 2015). That the need for social assistance may negatively affect the applicant's right to reside has also become increasingly clear (*interview*, ibid). The local case-worker has access to data and information on an EU citizen's worker status, estate and on family members' personal situation. In this way, the caseworker can exert considerable administrative control on the worker status of an applicant. A more coherent but also restrictive administrative practice has developed over the years in which the entitlement to social assistance and how it conditions the right to reside depends on both the worker and residence status of EU citizens.

The expanded access to the Danish *study grants* triggered by the CJEU ruling *LN vs Styrelsen* in February 2013 was subsequently limited by enhanced control mechanisms (*interview*, May 2016). The ruling first triggered a political reaction that again resulted in an administrative response. The Danish government declared that Denmark would comply with this new ruling and established a broad political agreement (Agency for the Danish students' Grants and Loans Scheme 2013).

According to the agreement, the costs of complying with the ruling could not exceed 390 million DKK (app. 52 million euro), the equivalent of granting approximately 5500 EU citizens study grant on basis of their status as a worker. If the effects of compliance exceeded this amount, the parties were obliged to adopt 'safeguards'.[3] The agreement also ordered the Ministry of Higher Education and Science to follow the development and report back to the parties. Finally, it was agreed that more control over the worker status of students should be exercised. Thus, the responsible agency introduced an automatic search every three months among all EU citizens receiving study grants to determine whether either the number of hours they worked or their salary has decreased. If so, their cases were to be assessed individually (*interview*, May 2016).

These enhanced control mechanisms have resulted in over 1600 cases in which EU citizens have been asked to repay their study grants (Ministry for Higher Education and Science, May 2016). At the same time, the number of EU citizens receiving study grants as a result of the CJEU case has risen from 1345 students in 2013 to 4484 students in 2015. The costs of the study grants paid to EU workers amounts to 319 million DKK, which is still below the 390 million DKK mark that was established as the ceiling in the agreement of 2013 (Ibid.). In fact, 319 million DKK accounts for a rather modest 1.5% of the total Danish study grant costs of 21.5 billion DKK.

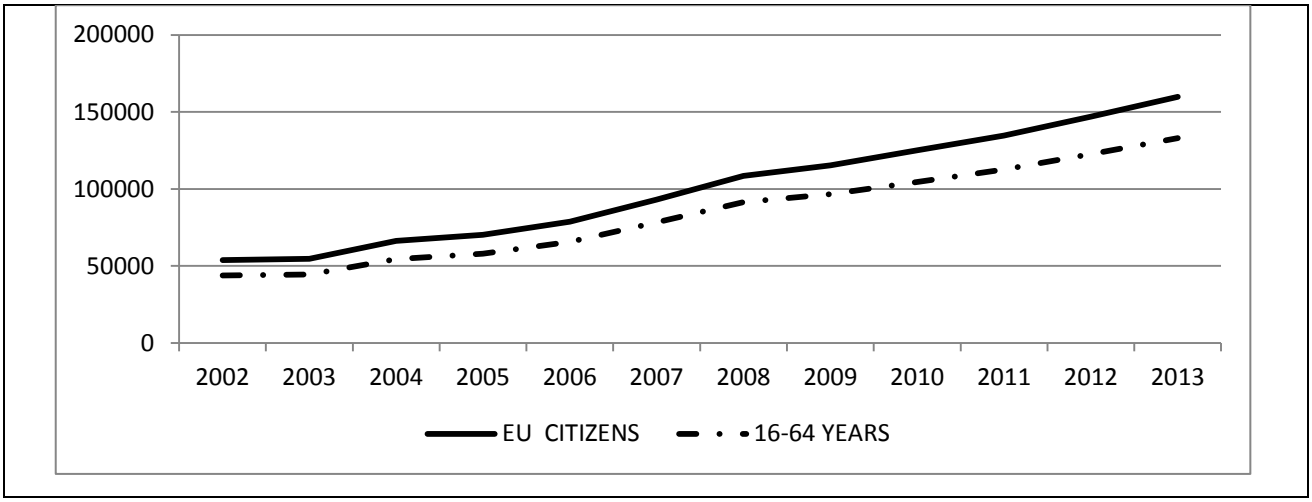
In sum, the domestic reponses in Denmark to EU rules and the CJEU's interpretations hereof have generally been restrictive. No domestic court case has pushed for EU citizens' access to Danish welfare and principle administrative rulings have followed a restrictive course of interpretation. Domestic politics pushed for legislative changes that would limit EU citizens' immediate entitlement to Danish child benefits. This attempt was, however, not successful. More successful was the maintenance of the Danish work clause before the principle of aggregation applies for unemployment benefits. Furthermore, administrative responses have become more restrictive over time, exerting more control for EU citizens' entitlement to welfare benefits, by again controlling for the status as worker for the EU citizen as well as his/her right to reside.

Outcomes

We now turn to examining how outcomes have developed alongside the extension of cross-border welfare rights. Between 2002 and 2013, the number of EU citizens residing in Denmark rose significantly from 53,782 to 159,857 people.[4] By the end of 2013, the five main states of origin for

EU citizens in Denmark were Poland, Romania, Sweden, Germany and the UK. Only EU citizens between 16-64 years old will be eligible for the four welfare benefits examined and below we measure the proportion of eligible EU citizens granted a benefit, i.e. as a relativ measure among the 16-64 years old. In 2002, 43,898 EU citizens between 16-64 years old resided in Denmark. In 2013, 133,052 16-64 years old EU citizens resided in Denmark. Figure 1 reports graphically the EU population in Denmark in total and the 16-64 years old eligible group between 2002-2013. In the 12 years time span we see a considerable increase in residing EU citizens in Denmark, mainly explained by EU enlargement leading to more residents from the new member states (Martinsen and Pons Rotger 2017).

Figure 1: EU citizens residing in Denmark in total and as 16-64 years old 2002-2013



However, despite the significant increase of EU citizens in Denmark, as well as the extended rights to free movement and cross-border welfare, we find no corresponding increase in the proportion of eligible EU citizens receiving the four welfare benefits.

Figure 2 below depicts the proportion of eligible EU citizens, i.e. EU citizens between 16-64 years old, receiving one of the four welfare benefits. Table 1 presents the absolute numbers for welfare recepients in 2002 and 2013. It should be noted that for study grants, child benefits and unemployment benefits, the benefit counts as granted disregarding for how many months it has been received, i.e. the compilation gives equal weigth to a benefit granted just once during that year as to a benefit granted for the full year. For social assistance, the compilation is EU citizens receiving the benefits as their main source of income at least 26 weeks a year.

For *study grants*, we see that the proportion of EU citizens receiving this benefit decreased between 2003 and 2008 and then gradually increased within the period examined. In 2013, when the CJEU issued its ruling, the increase is more considerable than in previous years. We see that the percentage of EU citizens receiving the benefit hardly increased between 2002 and 2013. In 2002 6.43 percent of the eligible received study grant against 6.56 percent at the end of 2013. For all the other benefits we see that the share of eligible EU citizens receiving the benefit dropped between 2002 and 2013. For *child benefits*, the proportion of EU recipients is much higher than for the other benefits, being granted to both persons in and out-of-work. The percentages among 16-64 receiving the benefits decreases considerably between 2002 and 2013. In 2002, 24.8 percent of eligible EU citizens received child benefits in Denmark against 17.75 percent in 2013. The proportion of EU citizens with child benefits drops despite the failed political attempt to restrict access to the benefit. This finding indicates that a smaller proportion of EU citizens residing in Denmark in 2013 have dependent children than in 2002. For *social assistance*, we see that the percentage of EU citizens receiving benefits was twice as high in 2002 as in 2013. This percentage decreased significantly prior to 2008, followed by a modest increase. In 2002, 6.61 percent of EU citizens in Denmark between 16 and 64 years old received social assistance at least 26 weeks a year. At the end of 2013, only 3.18 percent of eligible EU citizens did so. Finally for *unemployment benefits*, we also see a decrease in the relative granting of the benefits to EU citizens. 5.34 percent of the eligible EU citizens received the benefit in 2002 against 4.64 percent in 2013. We see that the proportion of EU citizens granted this benefit during the 12 years time period undergoes more change than for the other benefits. We see the same significant decrease prior to 2008 as with social assistance followed by an increase after 2008. This finding suggests that for both social assistance and unemployment benefits, the economic crisis impacts on the proportion of EU citizens in need of support.

Figure 2: Proportion of EU citizens receiving welfare benefits among 16-64 years old in DK 2002-2013

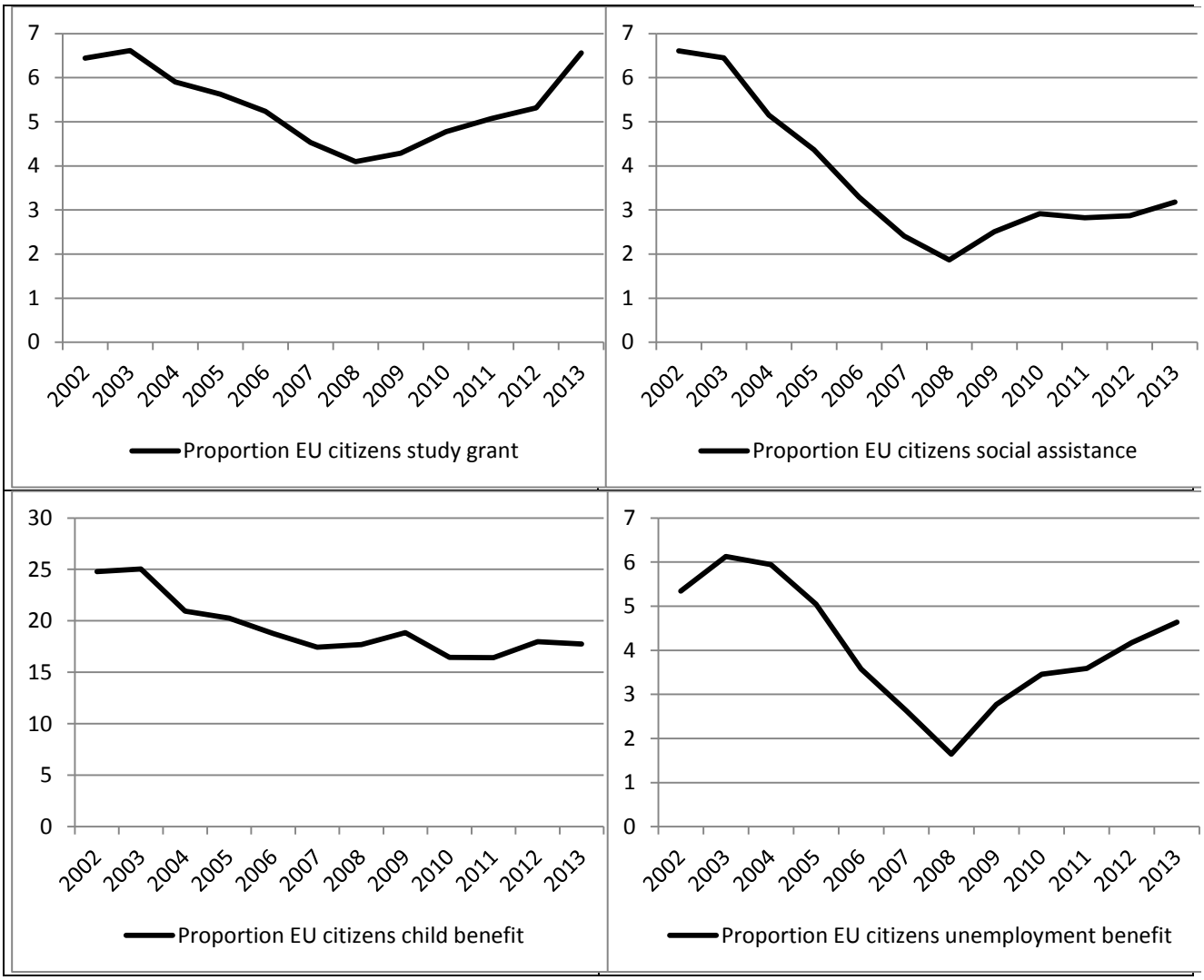


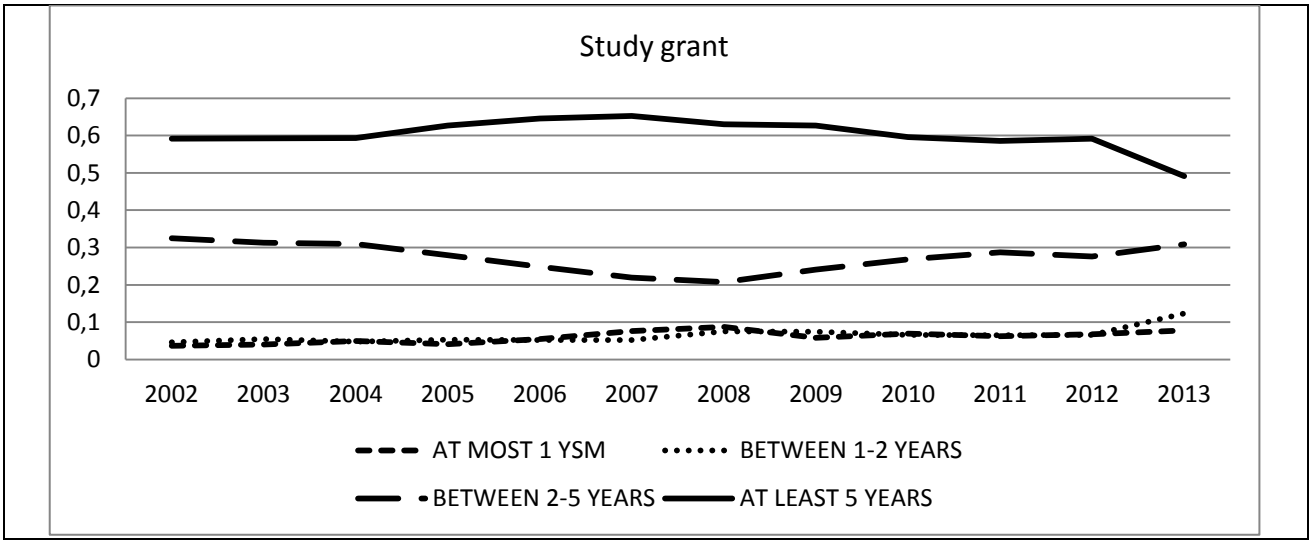
Table 1: EU recipients in DK in absolute numbers and as percentages of those eligible

Recipients		2002	% eligible	2013	% eligible
	Study grants	2,827	6,43	8,732	6.56
	Child benefits	10,887	24,8	23,613	17,75
	Social assistance	2,900	6.61	4,229	3.18
	Unemployment benefits	2,346	5,34	6,172	4,64

Furthermore we examined the proportions of welfare beneficiaries among EU citizens disaggregated by the duration of their residence in Denmark on December 31st of the year of measurement. As shown in Figure 3, the largest portion of EU citizens receiving benefits are long-

term residents, i.e., individuals who have resided in Denmark for more than five years and therefore are entitled to equal treatment according to Directive 2004/38. This accounts for all four benefits. Assessed by years of residence, we see that de facto, a rather strong link is established between EU citizens and Denmark as a host state before a benefit is received. The more immediate access to benefits is not supported by our findings. For social assistance, child benefits and unemployment benefits, our findings demonstrate that throughout the 12 years time span, more than 60 percent of the EU citizens receiving one of the benefits have resided at least 5 years in Denmark, during which they have been subjected to tax payment and, in the case of unemployment benefit, subjected to contribution payment. For study grants, we see that apart from 2013 more than 50 percent of EU citizens receiving the benefit had resided in Denmark for at least 5 years. Hence, in accordance with Directive 2004/38, they enjoy equal treatment with the nationals of the hosting Member State. This finding on study grant thus supports the results on the other benefits: a rather strong link between recipient and host state is established before the benefit is received, albeit to slightly less degree.

Figure 3: Proportion of EU citizens receiving welfare benefits among 16-64 years old, by years since residence, 2002-2013



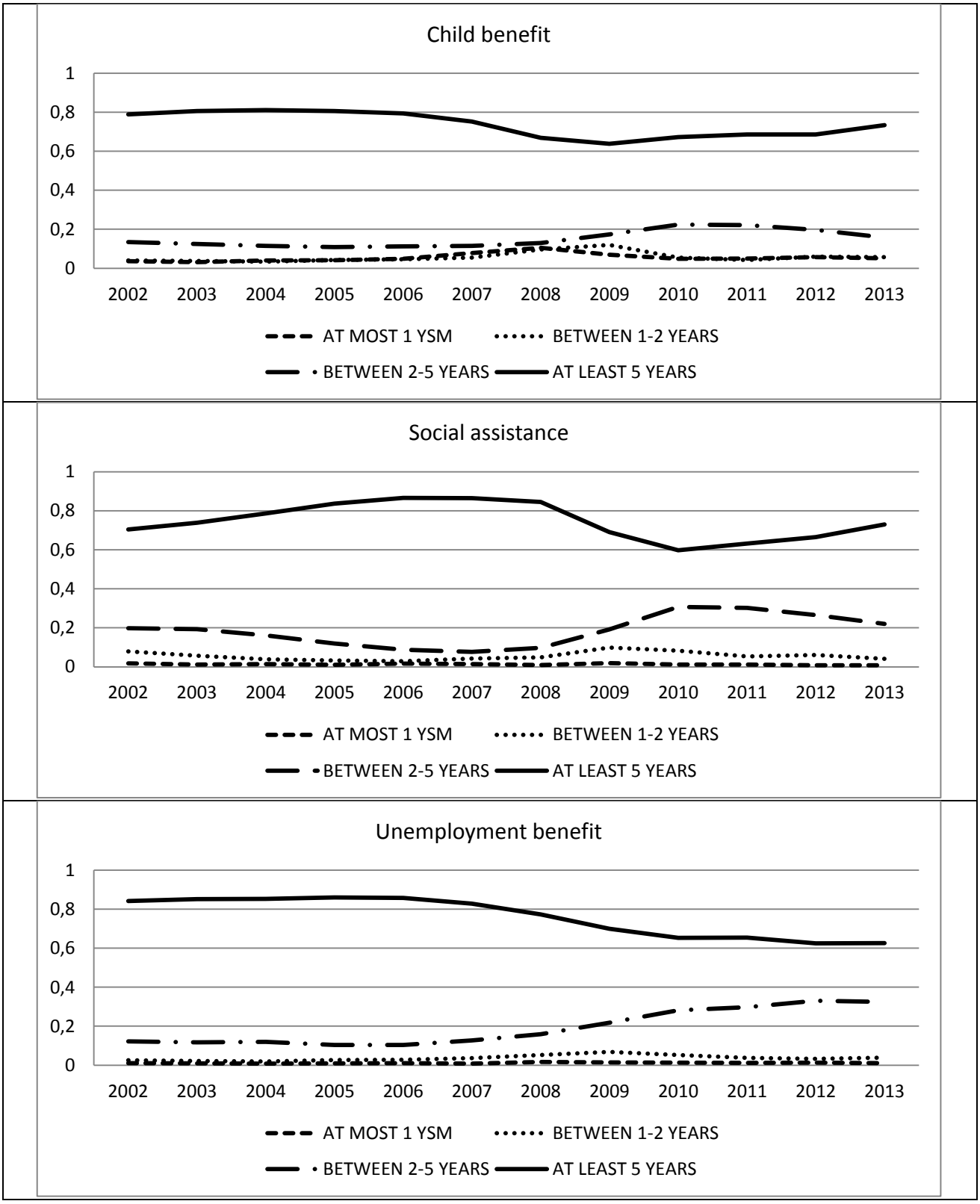

Child benefit
1
0,8
0,6
0,4
0,2
0
2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
AT MOST 1 YSM
BETWEEN 1-2 YEARS
BETWEEN 2-5 YEARS
AT LEAST 5 YEARS
Social assistance
1
0,8
0,6
0,4
0,2
0
2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
AT MOST 1 YSM
BETWEEN 1-2 YEARS
BETWEEN 2-5 YEARS
AT LEAST 5 YEARS
Unemployment benefit
1
0,8
0,6
0,4
0,2
0
2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
AT MOST 1 YSM
BETWEEN 1-2 YEARS
BETWEEN 2-5 YEARS
AT LEAST 5 YEARS

Table 2: EU citizens receiving welfare benefits in absolute numbers and as percentages, by years since residence

	Length of stay	2002	%	2013	%
Study grant	At most 1 year	104	3.69	675	7.74
	1-2 years	131	4.64	1,073	12.29
	2-5 years	920	32.52	2,690	30.81
	At least 5 years	1,672	59.14	4,294	49.16
	Total	**2,827**	**100**	**8732**	**100**
Child benefit	At most 1 year	395	3.6	1,210	5.1
	1-2 years	441	4.05	1,355	5.74
	2-5 years	1,461	13.42	3,721	15.76
	At least 5 years	8,590	78.9	17,327	73.38
	Total	**10,887**	**100**	**23,613**	**100**
Social assistance	At most 1 year	53	1.83	33	0.78
	1-2 years	229	7.9	177	4.19
	2-5 years	576	19.86	932	22.04
	At least 5 years	2,042	70.42	3,087	73.0
	Total	**2,900**	**100**	**4,229**	**100**
Unemployment benefit	At most 1 year	26	1.11	67	1.09
	1-2 years	60	2.56	242	3.92
	2-5 years	287	12.23	2,000	32.41
	At least 5 years	1,973	84.1	3,863	62.59
	Total	**2,346**	**100**	**6,172**	**100**

Table 2 above provides the absolute numbers and the percentage granted the four benefits according to duration of residence. We can hereby compare 2002 with 2013. The overall, general picture is that the large majority of EU citizens receiving one of the four benefits are long-term residents. In sum, our analysis on outcomes does not support the assumption on welfare migration. During the 12 years of notable change, EU citizens have not increasingly nor more immidiatedly been granted Danish welfare benefits.

Conclusion

The relationship between free movement of people and the welfare state is an increasingly salient issue in the EU. Strong assumptions on welfare migration have sounded both in the public and scholarly debate, according to which EU immigrants cluster in states with attractive welfare schemes and pose a fundamental challenge to the welfare state. Brexit has substantiated that the need to examine the nexus of EU migration and the welfare state is more than a theoretical call.

Currently, the empirical call is equally strong, as EU rules are contested, indeed also beyond Brexit (Geddes and Hadj-Abdou 2016; Reenen 2016).

In this paper, we asked the extent to which EU citizens have gained increasing and more immediate access to Danish welfare benefits, and if so why or why not. Our findings first of all did not find support for the welfare migration assumption, but instead demonstrated that EU citizens have not increasingly or more immidiatedly been granted Danish welfare benefits. Analysing the time span 2002-2013, we demonstrated that neither grand enlargements nor an expansive reading of EU citizenship has changed that pattern. In fact, the percentages of eligible EU citizens receiving child benefits, social assistance and unemployment benefits were lower by the end of 2013 than in 2002. For study grant, we instead found a modest increase. Furthermore, our findings on outcomes clearly demonstrate that the large majority of EU citizens receiving Danish welfare benefits are longterm residents. The idea that EU citizens have become more immediate – and according to the welfare migration scenario undeserving – recipients of welfare does not find empirical support. Instead, our findings strongly suggest that EU citizens have earned their way into the system, having resided for years in the host Member State and there been subjected to the payment of taxes and contributions. Elsewhere, we confirm the positive fiscal impact of EU citizens on the Danish welfare budget (Martinsen and Pons Rotger 2017).

Our findings suggest three main explanations why EU citizens have not gained increasing or more immediate access to welfare benefits. 1) EU citizens are not motivated by welfare as such. As findings elsewhere demonstrate, they are overrepresented in work-active age groups, suggesting that migration is foremost motivated by work (Martinsen and Pons Rotger 2017). 2) EU citizens apply less frequently for benefits. They tend to be weak claimants in a foreign system without sufficient information about their rights or sufficient knowledge about the appeal system. They may also fear that claiming their social benefit rights impact on their right to reside. 3) Domestic responses are restrictive and over time national control of entitlement to these benefits has been tightened.

Our analysis finds no support for the welfare magnet theory and its political discourse, which currently haunts Europe. The findings do not substantiate that a generous, tax-based welfare system should be decisive for the residential choice of an EU migrant. In addition, our analysis refuses the welfare magnetic assumption that if welfare motivated behaviour unfolds, state are incapable to respond to and control for the negative outcomes hereof. We showed that domestic responses to

dynamic supranational rules have to be taken into account. When rules and rights were extended at the EU level, a national process of filling out the details hereof followed. The discretionary scope and concepts left open at the Union level were narrowed down and clarified nationally. National courts have not acted as decentral enforcers of EU law. They have not been agents of social change and domestic judicial responses have not convincingly functioned as a leverage of European rights. Instead, the quasi-judicial administrative recourse system came to emphasise the limits of European law. Thus, over the last decade, it has become much clearer who qualifies for cross-border welfare – and who does not. Furthermore, our findings demonstrate that appealing one's case has little likelihood of success. Local administration and caseworkers do not have to fear national court cases changing their administrative decisions. There were none for the examined benefits, and the administrative recourse system approved restrictive eligibility principles. Local administration and caseworkers have discretion and can exert considerable administrative control when deciding on EU citizens' welfare rights. Both in judicial, political and administrative terms, national actors address rather open and unclear EU rules restrictively.

In sum, the leeway created by EU rules and developments in constructing cross-border welfare met its limit in domestic responses. Extended EU rules and rights are responded to by tighter national administrative control. We have identified some institutional changes, but those changes are deliberately designed to restrict the outcomes of EU law. Equal treatment is applied to long term residents. The assumption that EU citizens become more immediate beneficiaries is not supported by our findings. This is in line with EU secondary legislation, whereas the CJEU interpretations suggesting equal treatment before five years of residence have so far had limited outcomes.

Domestic responses generally proved to be restrictive, and when filling the gaps of unclear rules and litigation at the national level, welfare state's borders are established anew through administrative procedures of control and eligibility tests. At these new borders of the welfare state sits the caseworker who has become increasingly familiarised with assessing the rights of EU citizens. The right to have rights is not an easy test to pass. After the extension of EU rights, national institutional safeguards, extended conditionality and control follow. Additionally, we see that the benefit recipient has normally established a rather solid, social link to the hosting state. That social link has typically been established through years of working in the host state. The right to reside is still firmly tied to being a worker or being able to provide for oneself. Our findings do not support that the link between obligations and rights have withered away due to EU rules and

litigation. In practice, it is still upheld. In researching a period of unprecedented change, our study of domestic responses and outcomes points to the welfare state as rather robust to EU migration.

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[1] Case C-46/12, 21 February 2013, L. N. v Styrelsen for Videregående Uddannelser og Uddannelsesstøtte. Preliminary ruling made by Ankenævnet for Statens Uddannelsesstøtte - Denmark
[2] The asterisks indicate that the principle ruling does not concern the concept of worker as such but addresses related matters such as derivate rights as a family member of a Union worker.
[3] See the agreement, "Aftale om reform af SU-systemet og rammerne for studiegennemførelse" of 18 April 2013, p. 10.
[4] These numbers refer to the 100 percent population of EU citizens residing in Denmark on the December 31st of each year between 2002 and 2013. Residing citizens from the new member states are not included before EU membership of their country of origin.