

RESIDENCE, EMPLOYMENT AND SOCIAL RIGHTS OF MOBILE PERSONS



RESIDENCE, EMPLOYMENT  
AND SOCIAL RIGHTS OF  
MOBILE PERSONS

On How EU Law Defines  
Where They Belong

*Edited by*  
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Defines Where They Belong

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## PREFACE

Where do I belong? A question all mobile persons are bound to ask themselves at one time or another. When crossing borders individuals establish links with States, which can be the basis for legal claims against these States. This book discusses the issue of these links and, more specifically, the question of how EU law defines the link needed to obtain the right to reside in a Member State and the right to social and employment protection in that State.

The EU legal framework of internal market rules, citizenship rights and immigration rules has developed very different answers to the question of where a mobile person belongs. Indeed, it uses a number of criteria on the basis of which it is determined with which Member State a person has a sufficient link to create rights.

As regards the right of residence, Directive 2004/38 establishes this right for Union citizens and the members of their family on the basis of criteria such as the exercise of an economic activity, the duration of their residence, the burden on the social assistance system, or the threat to public order. In external EU migration law the link between the migrant and the Member State also plays a role in obtaining and retaining a right of residence, links like being economically active, being a family member, having sufficient resources or fulfilling integration requirements. They can be found in instruments such as the Family Reunification Directive 2003/86 and the Long-Term Residence Directive 2003/109.

As for the social rights of mobile Union citizens, the rules of conflict of the social security coordination in Regulation 883/2004 prescribe criteria like the place of work and the place of residence to determine to which legislation the mobile person is subject. The rules of conflict applying to labour law (Rome I Regulation 593/2008, Posting of Workers Directive 96/71) also contain criteria to determine with which Member State a cross-border worker has a sufficient link to make its employment protection applicable, criteria such as the country where the work is habitually carried out or the place of business through which the employee was engaged.

Furthermore, in cases which do not concern the application of secondary Union law, the Court of Justice also uses criteria to determine whether the link between a person and a Member State is sufficient to justify the claim of a right to reside or to social benefits. These criteria are: having a sufficient link with the labour market of the host Member State, the duration of the residence or stay in

the host Member State, payment of taxes, education of children, enrolment in higher education or having fulfilled one on these criteria in the past.

So, EU law gives a multitude of answers to the question which link is necessary and sufficient to create an individual's right *vis-à-vis* a State. The definition of this link, the criteria used and the legal consequences differ according to the legal framework the individual finds himself/herself in and the legal instrument he/she invokes.

These issues were discussed at an expert seminar organised on 7–8 May 2015 at the University of Antwerp. Scholars from different legal disciplines were invited to critically analyse, discuss and compare the multitude of criteria used in EU legislation and case-law to determine whether there is a sufficient link between a person and a Member State with a view to making legal claims. The discussions concentrated on the right to reside in a Member State as well as on the social and employment rights a mobile person could claim in that State.

The papers presented at this seminar as well as the comments by some of the respondents to these papers are compiled in this book. It starts with an introductory chapter which summarises the findings in the various chapters. It ends with a more recent comment on 'the settlement for the United Kingdom within the European Union' agreed by the European Council on 18–19 February 2016 with a view to the referendum on UK membership of the EU.

The seminar as well as the publication of this volume were only possible with the help of a number of persons. First I would like to thank Nele Voorspoels for the perfect organisation of the seminar, including the organisation of travel and lodging arrangements for the participants. I also acknowledge the invaluable language checks of the draft chapters by Erika Peeters and Rebecca Pound as well as the editing work of the staff of Intersentia. And finally I am greatly indebted to the meticulous and time consuming work of streamlining the references in the chapters done by Bartłomiej Bednarowicz, PhD researcher at the Faculty of Law of the University of Antwerp.

Herwig Verschueren  
May 2016

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## LIST OF ABBREVIATIONS

AG	Advocate General
CJ	Court of Justice of the European Union
CML Rev	Common Market Law Review
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
EJML	European Journal of Migration and Law
EL Rev	European Law Review
ELJ	European Law Journal
EU	European Union
EUCO	European Council
EUConst	European Constitutional Law Review
MJ	Maastricht Journal of European and Comparative Law
OJ	Official Journal of the European Union
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union



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