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# The social security rights of older international migrants in the European Union

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**Title: The social security rights of older international migrants in the European Union.**

**Abstract**

Europe is now home to a significant and diverse population of older international migrants. Social and demographic changes have forced the issue of social security in old age onto the European social policy agenda in the last decade. In spite of an increased interest in the financial wellbeing of older people, many retired international migrants who are legally resident in the European Union face structured disadvantages. It is argued that four linked factors are of particular importance in shaping the pension rights and levels of financial provision available to individual older migrants; migration history, socio-legal status, past relationship to the paid labour market and location within a particular EU Member State. Building on a typology of older migrants originally outlined by Warnes et al (2004) the paper outlines the ways in which policy at both the European Union and Member State levels serves to diminish rather than enhance the social security rights of certain older international migrants.

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## **Introduction**

The issues of ageing and increasing international migration have both become central concerns of the European Union (EU) and individual Member States. Social and demographic changes across Europe have produced a rapidly ageing population which, in turn, has led to calls for the renegotiation of existing pension provisions in Member States. At the same time increased migration into and across the European Union has also raised fears in host nations about the costs of supporting significant populations of international migrants as they enter old age. However, the effects of international migratory movements on national social security systems and the level (and range) of provisions made available to individual older migrants are often in danger of being oversimplified. The older migratory populations resident within the European Union and the national pension systems that provide for their wellbeing display a significant degree of diversity. Unpacking this diversity, the factors that underpin it and its effects on individual social security entitlements forms the main focus of this paper.

It is argued that four interlinked factors are of importance in determining the financial welfare rights available to older migrants in the EU: first, migration history; second, socio-legal status; third past relationship with the paid labour market (PLM) and finally location within a particular Member State. Part one of the paper considers recent relevant policy developments at the EU level, in particular the interaction between economic and social policy and the emergent policy instrument the 'Open Method of Coordination'. The second part of the paper outlines both the size and heterogeneous nature of the population of older migrants resident in the EU. Building

on the approach of Warnes (2003) a typology of five different groups of older migrants is offered and the importance of migration history discussed. The paper then moves on (part three) to discuss the significance of socio-legal status. It is noted that 'Citizenship of the Union' and EU law is stratified on two levels. Certain older migrant EU citizens, who relocate within the EU post retirement, are denied full social rights which are reserved for migrant EU workers. Third Country Nationals (TCNs) who originate from beyond the borders of the EU and migrate, and then retire within the EU, are excluded from any rights that derive from EU citizenship. They are instead reliant on the welfare regimes of individual Member States for any social security rights. Part four explores the differential ability of various groups of older migrants to accumulate and exploit different types of pensions and retirement income. This ability is seen to be largely dependent upon migrants' past relationships with the paid labour market. The variable importance of location within a particular Member State, dependent largely but not exclusively, on the previously noted divide between EU citizens and TCNs is discussed in part five.

### **The Open Method of Coordination and a 'Social Europe' for senior citizens?**

Significant demographic changes in European society have made it necessary for the EU to consider the social security of Europe's senior citizens more closely. Falling birth rates and a simultaneous increase in life expectancy indicate that significant increases in the number of people aged 65+ and 80+ will occur in the next thirty years (EPC/SPC Report, 2003: 13). Although these changes affect each Member State in different ways, and to different degrees, fears that a decreasing number of paid workers will not be able to meet the rising costs of pensions, and social security

required by an ageing population have dominated debate and influenced policy at both national and EU level (see CEC, 1995, 1999a, 2001a; Eurostat, 1999; Hantrais, 2000; OECD, 2000; EPC, 2001).

At the European level, much of the pension ‘problem’ has been understood within the neo-liberal discourse of Economic and Monetary Union (EMU). As argued by the Cologne European Council (June 1999) reform of national pension and health care systems was necessary “...in order to be able to cope with the financial burden on welfare spending of the ageing population and the need to influence future labour supply” (Presidency Conclusions, Cologne European Council, 3/4 June 1999). Yet despite the increasingly Europeanised nature of the debate on old age protection, the EU is still a long way off from developing a fully ‘communitised’ pension policy. In effect, whilst Member States still retain ultimate control of their pension systems, national policies are increasingly shaped and scrutinised by EU institutions and fellow Member States.

However, the EU’s input in shaping the pension debate across Member States is provided through a multitude of channels and remains highly fragmented. The launch of the so-called Lisbon process in March 2000, aimed to make the European Union “...the most competitive and dynamic knowledge-based economy in the world” (Presidency Conclusions, Lisbon European Council, 23/24 March 2000). This singular commitment to competitiveness has underpinned much of the subsequent debate about social security in old age at the European level. In order to pursue this ambitious objective a new instrument for orchestrating and co-ordinating reform across the Member States was introduced: the Open Method Co-ordination (OMC).

The launch of the OMC marked a radical departure from the classic 'Community Method' which was centred around the production of EU legislation which was legally binding for the Member States. The OMC approach is essentially an intergovernmental forum of consultation. The purpose of the exercise is not full-scale harmonisation or the production of 'hard law'. Instead the OMC aims at spreading best practice across Member States and assisting the emergence of national policies on the basis of agreed EU goals (Presidency Conclusions, Lisbon European Council, 23/24 March 2000). In December 2001 the OMC was extended to include both immigration and pensions policy.

The overall effects of this change on older migrants in the EU is difficult to assess. The OMC is not a single or centrally co-ordinated process. Actors, co-ordinating mechanisms and objectives vary considerably across different policy sectors. At present, the fate of older migrants in the EU is affected by, at least, five OMC initiatives. Naturally the OMC on pensions forms the main platform of debate on old age protection. Yet this debate cannot be seen in isolation from the broader macro economic environment and the EU's employment strategy, both of which are subjected to their own particular processes of OMC. Similarly measures to combat social exclusion and/or co-ordinate immigration policies across the EU have a profound impact on the how older migrants (both EU and third-country nationals) live and retire in the European Union.

In institutional terms the actors involved in the OMC are also different. Responsibility for the OMC on pensions is shared between the Economic Policy Committee (EPC)

and the Social Protection Committee (SPC), with the former exercising more control over the financial implications of ageing and the latter concentrating on the objective of pension adequacy and coverage. Despite the fact that the SPC sprang from the EPC in 2000 the relationship between the two has not been easy and has often been dominated by disagreements over policy substance and areas of competence. On the other hand, the OMC on immigration remains, in institutional terms, rather isolated from other policy sectors linked to the Lisbon process.

The institutional fragmentation of the OMC processes has been widely regarded as a source of confusion that has often blurred policy direction and prioritisation. The myriad of targets across different OMCs are often excessively repetitive and, in some cases, even contradictory to one another. Plans to harmonise old age protection across the EU have been particularly hard hit by such confusion. In their latest joint report on pensions, for example, the Economic Policy Committee and Social Policy Committee recommended measures for the discouragement of early retirement and argued for the need of greater involvement of private and occupational schemes on pension provision (EPC/SPC, 2003). Yet, such recommendations do not fully square with stated objectives in other policy fields. If, for example, more people are to remain in work for longer, what will this mean for those who are trying to enter the labour market? Is greater labour mobility across the EU (one of the main objectives of the European Employment Strategy), compatible with predominantly 'national' healthcare and pension systems? How do plans to restrict the entry of foreign economic migrants into the EU fit with the aim of widening the contribution base of social security systems? More generally, how can the EU's objectives of combating

social exclusion and improving protection at old age be reconciled with its self-imposed constraints on fiscal policy?

Over the last decade the introduction of the single European currency and ever-growing levels of economic interdependence between the EU's Member States have pushed debate about social security in old age upwards and have placed these issues firmly onto the EU's agenda. Yet such Europeanisation has been both cautious and conditional. The launch of the OMC has clearly exposed national pension and social protection systems to unprecedented level of EU scrutiny. Now, more than ever, levels of protection and social spending can be reliably analysed and compared across different EU Member States. The introduction of the OMC has also initiated a process of policy learning and peer review that is difficult for national governments to ignore. Yet, the OMC remains a predominantly voluntary arrangement that produces no legal obligations for Member States. The targets and objectives across the different policy sectors in which it operates are not always clearly defined or prioritised. In the absence of strong guidance by the Commission the process has often lacked co-ordination and leadership.

Against this background it is still premature to talk of an emergence of a social Europe for senior citizens. Whilst much of the pension reform discourse is increasingly being constructed at the EU level, the principle of subsidiarity continues to restrict the EU's ability to intervene directly in the welfare systems of Member States. The continued diversity of welfare states across Europe remains, therefore, of obvious importance to older migrants. The social security benefits available to senior citizens vary considerably depending upon the host state in which they are located (Ackers and Dwyer, 2002, 2004). The impact of this diversity across the EU becomes



clearer given the legal basis of citizenship entitlement under the free movement provisions and the implications of the non-discrimination principle. Put simply, location has a major influence on access to social welfare. Formal equality in the context of EU law rests on the principle of non-discrimination. Article 39 refers simply to the abolition of discrimination between European citizens on grounds of *nationality*. EU law does not provide a guaranteed minimum standard of welfare provision for older migrants but merely grants some (depending on their socio-legal status), the right to the same benefits and services as would be enjoyed by a national of that Member State (see Ackers and Dwyer, 2002, 2004 for further discussion). The extent and implications of this diversity for older migrants resident in the EU are explored in more detail in subsequent parts of this paper.

### **Older international migrants in the EU: a significant and diverse population**

Reliable statistics on the numbers of older migrants in the EU are hard to access. However, as table one indicates older non national migrants are resident across the EU and there are significant populations in several nations, most notably Belgium, Germany, France and the United Kingdom. The available figures show that there are at least 2,634,900 older non nationals aged 55 plus resident in EU Member States with approximately 30 percent of this group (that is, 798,200) aged 65 plus.

Insert table 1

As Warnes et al (2004) note, within this general population a distinction can be made between people who have migrated in their younger years and ‘aged in place’ and those who make migrate following retirement from work in their country of origin.

When considering the social security available to retired older migrants who are resident in the EU, this simple differentiation matters. Migration history (including when and why a person relocated, their country of origin, place of destination and length of residence), is one of several factors that are important in shaping the level of financial wellbeing enjoyed by older migrants.

### *The importance of migration history*

The ‘mosaic’ of past types of migratory movements of peoples into, and across, Europe in the past fifty years have resulted in a diverse legacy of older migrant populations in every Member State (Muss, 2001). In the 1950s–1970s certain Member States who were previously colonial powers (e.g. UK, France, the Netherlands, Portugal) experienced an influx of migrants from around the globe as part of their imperial legacies. The recruitment of ‘temporary’ workers from southern and eastern Europe and north Africa to meet certain labour shortages also remained significant until the mid 1970s. Some of those who originally were part of these migratory movements may have returned to their homeland but many who remained are either retired, or are fast approaching retirement from paid work. More recently increases in forced and clandestine migration (Knapp and Kremla, 2002) and the steady growth of international relocation by EU citizens within Europe following retirement (see e.g. King, Warnes and Williams, 1998, 2000; Ackers and Dwyer 2002) have added further complexity to the situation. This heterogeneity within a generic population of older migrants raises important questions about the access, availability and levels of social security enjoyed by different groups. Rights to social security are highly variable and dependant upon the label under which the older migrant initially entered the country

(for example, seasonal worker, seconded worker, asylum seeker, refugee (Morris, 2001; Vonk, 2002).

In an attempt to answer certain questions concerning the level of support available to divergent groups of older migrants in the EU, Warnes et al (2004) make a distinction between four broad groups; European Union international labour migrants (EULM), older non-European international labour migrants (NELM), family orientated international retirement migrants (FIRM) and amenity-seeking international retirement migrant (AIRM). In addition, a fifth group needs to be identified: older forced migrants (OFM) i.e. refugees and asylum seekers. We have also added (i) nationality and (ii) mobility and status in relation to the PLM as important categories to Warnes' (2004) original classification (see table 2 below).

Insert table 2

Table two illustrates how the differing migration histories of these five groups impact upon social security needs and entitlement in later life. It is acknowledged that individual migrants' personal biographies will mean that a good deal of diversity within each of the five

+specified categories remains. However, the five ideal types illustrate the differing levels of need for collective financial support that exist for older migrants, with broadly similar migration histories, relative to older citizens in the host state. The social security rights of such migrants are further complicated by the fact that many rights to pensions and social assistance in old age are dependant upon a complex tiering of entitlement linked to a migrant's socio-legal status in EU law.

## **‘Citizenship of the Union’, socio-legal status and the tiering of entitlement**

In terms of the varied socio-legal statuses of older retired migrants it is necessary to make an initial distinction between those who are EU citizens who relocate within the Union and Third Country Nationals (TCNs) who migrate in to the EU from nations external to its borders (Menz, 2002). EU citizenship and the social rights that derive from it are limited to all those who hold national citizenship of a Member State. TCN elders who are legally resident in the EU, post retirement, are currently solely reliant on the rules and regulations of the national social security systems of the Member State in which they are located (Muus, 2001; Dell’Olio, 2002). For each of the broad groups identified in table two, nationality, therefore, remains a influential ‘conditioning factor’ in respect of social security rights in retirement. Whilst it is important to note this basic (nationality based), differentiation between EU citizens and TCNs, European Union law further discriminates against many older migrants citizens who enjoy the status of EU citizen simply because they choose to move to another Member State following retirement from the paid labour market (PLM).

A host of commentators have noted that ‘Citizenship of the Union’<sup>1</sup> (i.e. EU citizenship) is a highly stratified status built around an exclusive ideal of the citizen as a paid worker, or more precisely, a paid worker who is a national of an EU Member State (Dwyer, 2001; Reich, 2001; Ackers and Dwyer, 2002, 2004; Kleinman, 2002; Warnes, 2002). Consequently, the full rights to free movement and residence (and, importantly, any resultant associated rights to social security), that EU citizenship implies are essentially reserved for migrant EU workers. As workers, therefore,

EULMs feel the full benefit of EU social citizenship by being able to access the same rights to welfare as nationals of the Member State in which they live and work. If subsequently they chose to retire in the host state, they will continue to enjoy the same rights due to their former status as mobile EU workers. This endemic preoccupation with paid work within the legal and financial framework of the EU (Levitas, 1998) has profound implications for the social security rights of many in the previously identified groups of family-orientated (FIRMs) and amenity seeking international retirement migrants (AIRM) who move post retirement.<sup>2</sup> For these groups of older EU migrants rights to relocate and reside in another Member State, and any attendant rights to social security, are often contingent on a number of conditions set out in EU legislation (see Dwyer 2000; Ackers and Dwyer 2002, 2004 for more detailed discussions). Article 18 EC states,

*1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States subject to the limitations and conditions laid down in this Treaty and by the **measures adopted to give it effect** (bold as in text),*

The reality is that the rights of older EU migrants who move after their activity in the PLM has ceased are conditioned by the secondary legislative measures in EU law noted above (i.e. Regulations and Directives). These serve to severely limit any right to residence and social security benefits should the need arise.

In contrast to EULMs<sup>3</sup> who have worked and then retired in a host Member State, the rights of FIRMs/AIRMs who are EU citizens who choose to relocate within the EU following retirement (and who have never worked in the host state), are highly contingent and are based on Directive 90/364 (OJ 1990, L180/28), concerned with

workers who have ceased their occupational activity. As economically inactive persons their right to reside is limited by two important conditions,

*...[that they] are covered by sickness insurance...[and]....have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence. (90/364 Article 1{1})*

Resources are deemed to be sufficient if they are above the level of resources at which the host state grants the right of social assistance benefits to its own nationals. In effect these EU citizens are denied the right to claim the means tested benefits which are an essential element of many poorer elders social security arrangements. For any who subsequently, after a period of retirement elsewhere, wish to relocate back to their country of origin (and access rights to social assistance) the situation may be further complicated by individual Member State's habitual residence requirements (Dwyer, 2000; Warnes, 2002).

In summary, when looking at the welfare rights of older migrants within the EU, 'Citizenship of the Union' serves to exclude certain older migrants from social security on two levels. First, the formal rights to welfare of those from beyond the borders of the EU (i.e. NELMs, OFMs and other legally resident TCNs) are not considered to be the concern EU social policy. Second, a tiering of entitlement derived from a disadvantageous socio-legal status continues to limit the social security rights of many FIRMs and AIRMs who meet the nationality requirement but who relocate once retired.

### **Old migrants and social security systems in the EU**

Making sense of the differing systems of social security that operate across Europe is a complex business. Bonoli's (2000, 1997) two dimensional classification of European welfare states along Bismarckian/Beveridgean lines provides one way forward. His argument is that in general terms the provision of social security benefits in old age across Europe can be seen as being governed by two basic principles. Receipt of benefits organised according to a 'Bismarkian' social insurance principle require an individual (usually paid workers) to consistently pay contributions into some form of collective pension scheme in order to be able to receive earnings related benefits on retirement from the paid labour market. In contrast benefits which are based on a 'Bevridgean' 'social assistance' principle are conditional on an individual's citizenship status and the demonstration of a level of need, usually through the application of a means test. Such benefits do not take into account an individual's past record of paid work and any linked requirement of financial contribution to collective arrangements.

Any attempts at a comparative analysis of the social security schemes available across the EU is often a frustrating task due to the differing and complex institutional and administrative arrangements that pertain in different nations (Denman, 2000). A useful way forward, particularly in a cross national context, is to differentiate between various tiers or pillars of pension provision and their relative importance in providing an adequate standard of living for older people (see figure 1). Each tier is a potential source of income to an older migrant within the EU, with the relative importance of differing elements subject to variation dependant upon, a individual's migration history, their socio-legal status, a migrant's past position(s) in relation to PLM and the social security systems of their past and present countries of residence.

### Insert Figure 1

Figure 1 provides a basic classification of the various components of income that older migrants may be able to draw upon. As Daykin (1998) makes clear the contrasting institutional arrangements that pertain in different locations are important. For example, the significance of second and third tier pensions in providing retirement income varies greatly across Europe and is usually of most importance in those countries where statutory provision is minimal. The quality and quantity of benefits available to different groups of older migrants from the various tiers in figure 1 varies considerably depending on a number of factors not least a migrants past relationship with the PLM.

#### *The importance of a migrant's past relationship with the paid labour market*

As Sales (2002) points out, many elders who migrate as labour migrants (i.e. EULMs and NELMs) and then grow old in a host EU Member State are able plug into 'Bismarckian' contributory pension schemes on a par with nationals of that Member State. In theory, therefore, the PLM offers certain older labour migrants, including many TCNs, the opportunity to overcome some of the disadvantages that may have accumulated due to their relatively poor legal status and/or migration history. In practice available evidence indicates that contributory pensions (particularly the occupational pensions in the second tier of figure 1 derived from activity in the PLM), will not deliver comfort in old age for many labour migrants, particularly NELMs.

Two factors are of particular importance here, the higher rates of unemployment among third country nationals (NELMs) resident in Europe, compared to EU



nationals, and their concentration in low skilled/unskilled sectors of the employment market (see figure 2) that deliver lower levels of pension. Across the EU the average unemployment rate of male TCNs is 15% whilst it is 6.5% for EU males. For women the figure is even higher (19%) with perhaps a lack of available informal, familial support/childcare and in some cases cultural barriers further inhibiting participation in paid work<sup>4</sup>. The statistics also suggest that many NELMs present in the EU have lower levels of educational attainment (Thorogood and Winquist, 2003). These disadvantages, combined with widespread ethnic discrimination and prejudice serve to concentrate many TCNs in low paid, low status work (Brockmann and Fisher, 2001).

Insert Fig 2.

The situation is neatly summarised by Muus who notes,

*A relatively smaller proportion of the potential labour force among non EU citizens takes part in the labour market... unemployment rates among the [resident] non-EU citizens are generally far above the unemployment rates of nationals or of EU nationals from other Member States. Unemployment rates are not only high among the un- and low skilled 'guest workers of the past, but also among the more recently arrived, and often better skilled forced migrants of the 1990s (2001 :44 and 47).*

Older forced migrants are perhaps the group most disadvantaged by the link between the PLM and adequate levels of social security in old age. Accurate figures on the number of older asylum seekers and refugees in Europe are limited but Knapp and Kremla (2002) estimate that approximately one fifth of refugees are aged 50 plus. They state that in 2000/1 an average of 2.67% of recorded asylum claims in Europe came from individuals over 50. OFMs are unlikely to find a job and even if they do

they are unlikely to secure a sufficient number of years employment to access contributory pension entitlements. The quotation from Muss (2001) cited above also suggests that younger, and more highly qualified, forced migrants face barriers hinder their equal integration into the labour market.

The situation of amenity seeking international retirement migrants (AIRMs) and certain more affluent family orientated retirement migrants (FIRMs) differs greatly from that of older labour and forced migrants from beyond the borders of the EU. Their relatively privileged position within the PLM has often enabled them to accrue significant occupational welfare benefits. Typically these migrants are able to draw on a combination of second, third (and in some cases), fourth tier benefits which facilitate their post retirement migratory movements and enhance, initially at least, their levels of financial wellbeing whilst resident abroad.

There is no simple link between the length of an individual's working life and their relative prosperity in retirement. A migrant's location within a highly stratified paid labour market impacts on their ability to accumulate and access income from the various tiers of retirement income outlined in figure 1. As Titmuss (1958) noted patterns of advantage and disadvantage, that emerge from the social division of labour whilst individuals are active in the paid labour market, effect the social division of welfare and in time structure levels of social security in retirement (see also Irwin, 1999; Mann, 2001, Bardasi and Jenkins, 2002).

Many AIRMs are actively seeking to use the financial assets that they accumulated in employment to maximise their enjoyment of retirement abroad. In contrast, due to a

lack of integration into the paid labour market, many third country nationals who grow old in host EU states may have to rely on ‘first tier’ pensions including social assistance benefits that are generally paid at or around subsistence levels. However, the picture is not entirely rosy for amenity seeking retirement migrants, in later old age some fall into financial difficulties. Sole reliance on non contributory first tier pensions, means not only a limited income in retirement, but also can effectively deny certain older retired migrants (i.e. AIRMs, NELMs and FIRMs) not only social assistance benefits, but also ultimately the right to reside in a host state (see Dwyer 2000, 2001; Ackers and Dwyer, 2002).

In the past the pension systems of many EU Member States have been centred around a strong, publicly provided, state run occupational pension component. Currently only the pension systems of the UK, Denmark and the Netherlands have a well developed third tier of personal, private provisions (EPC 2000, Jorens and Schulte, 2001). However, Stevens, Gieseelink and Van Buggenhout (2002) argue that the strong tradition of public contributory schemes is now giving way and a new pensions order is emerging in continental Europe in which increasing numbers will be reliant on individualised occupational and private pensions (i.e. second and third tier) for an adequate level of social security in old age. Occupational welfare, including the provision of more generous company pensions, is assuming a greater importance. Older migrants will not be immune from this ongoing process of pension reform. It is likely to exacerbate the existing labour market generated inequalities in social security discussed in this section.

### **The importance of location within a particular Member State**

At a basic level it has been previously noted that the social security benefits available to all older migrants can vary considerably depending upon the host state in which they are located. This is due to differences in Member States' welfare systems and the operation of the principle of subsidiarity. In terms of the tangible effect that location within a particular Member State has, it is important once again to make a broad distinction between the older EU migrant citizens and older TCN migrants.

*Older EU migrants: transferable rights and the management of location?*

Regulation 1408/71 is important for the rights of EULMs in that it allows for the coordination of social security for mobile EU workers. In this very real sense such workers benefit from the ability to effectively transfer and aggregate their contributions to various first tier, state run, earning related pension schemes (Dell'Olio, 2002; Vonk, 2002). The operation of the Regulation is, however subject to a number of important limitations. First, although Article 10 of Regulation 1408/71 makes contributory benefits exportable (in that it removes the need for residence for continued receipt of benefits), social assistance type benefits are not exportable. Second, individual Member States are free to apply national rules that may disadvantage certain migrant workers provided that they do not discriminate on grounds of nationality. Third, differences in the principles that underpin various social security schemes and the ways in which they are administered and calculated in different Member States leads to confusion and many migrant workers do not fully understand their rights. Finally, many second tier occupational pension schemes are not yet co-ordinated and thus not transferable across the EU (Jorens and Schulte,

2001). Having noted the above limitations it must be stated EULMs are better off than their TCN counterparts (NELMs) who are not covered by regulation 1408/71.

Table 2 and previous discussions have noted that the socio-legal status of amenity seeking retirement migrants (AIRMs) seriously compromises their rights to social assistance benefits when resident abroad. This legal disadvantage is counterbalanced by the fact that many of them are affluent and are able to call on relatively substantial assets and the ability to manage their finances to personal advantage. There is some evidence that past relocations from northern to southern Europe were, in part, motivated by the economic advantages of lower tax regimes and costs of living (Williams, King and Warnes, 1997; Dwyer 2000). Modern banking systems also allow for the easy transfer of money across national boundaries which further diminishes the importance of physical location to their financial wellbeing. Furthermore, FIRMs (with EU citizenship) who wish to relocate to join their children in a host EU state, as ascendant relatives, derive access to the full social security rights enjoyed by EU migrant workers, provided their son or daughter is in paid work.

#### *Older third country nationals and the significance of location*

The ways in which individual Member States perceive migration and how they construct a notion of national citizenship has a marked effect on the rights of migrants (Baucöck, 2002). This is especially true in respect of the social security rights of TCNs as they lack the (differentiated) rights that Citizenship of Union guarantees to EU citizens. The residence and social security rights of TCNs are solely dependent on the differing rules of each Member State (Dell'Olio, 2002). Location within a

particular Member State is, therefore, often vitally important to the wellbeing of older TCN migrants resident across the EU.

The importance of this point is illustrated by Kogan (2003) who discusses the position of ex-Yugoslav labour migrants in Austria and Sweden. Although Yugoslavs have significantly higher unemployment rates in both host countries, compared to nationals, she argues that migrants are more socially integrated and have better welfare rights in Sweden rather than in Austria. This is largely because Sweden has adopted a progressive approach to the increased number of forced migrants arriving to claim asylum in the 1990s. In contrast Austria does not see itself as a country of immigration, but rather is concerned to use temporary 'guestworkers' to plug national labour shortages. Consequently the Austrian state adopts a much more stringent approach in respect of the social security rights available to resident migrants. In many Member States, including Austria, NELMs are caught in a catch 22 situation whereby a person needs to be legally resident to get access to social assistance benefits but in turn the right to legal reside is dependent on a migrant having no recourse to public funds (Brockmann, 2002; Vonk, 2002).

A number of commentators have noted that bilateral agreements between different nation states can have an important impact in delivering social security rights to older NELMS who retire in the EU (Muus, 2001; Schuster and Solomos, 2002; Warnes, 2002). Where such reciprocal agreements exist (to guarantee equality of treatment between nationals of the agreed parties, allow for the aggregation of insurance periods and exportability of benefits), they are of substantial value to particular NELMs older

migrants, but they still often fall short of agreements made between European states (Vonk, 2002).

When such agreements are lacking, location in a particular state assumes an added importance and the openness of a host state's social security system becomes vital in determining the social security of TCNs in old age. However, in many Member States, the social security rights available to TCNs are currently being diminished rather than enhanced. In the Netherlands new legislation devalues the social security rights of NELMs not covered by bi-lateral agreements (Vonk, 2002). In the UK certain asylum seekers have been stripped of entitlement to welfare (Dwyer, 2004). Other states, notably Austria, Italy and Denmark, have recently elected governments "committed to restricting both new immigration and the rights of settled immigrants" (Baucöck, 2002 :5)<sup>5</sup>. When considering older migrant TCNs the use of stratified rights to social security remains an important element in an individual Member State's strategy for the management of migration (Morris, 2001). As such geographic location retains a particular significance for NELMs and OFMs (and any subsequent family joiners) who reside in Europe.

### **Conclusions: towards a 'Social Europe'?**

The population of older migrants resident within the EU is both significant in number and diverse in type. This paper has argued that the social security entitlements of older migrants in the EU are largely dependant on four interlocking factors; migration history, socio-legal status, an individual's previous relationship to the PLM and location within a particular Member State of the EU. The limited capacity of EU

citizenship to deliver substantive welfare rights to many older migrants resident within the EU has also been discussed. That said, the social rights conferred on EULMs (a privileged group relative to other less well placed migrants), offer tangible benefits to citizens who grow old in host EU states. The existence of such rights serve to counter assertions that EU citizenship is largely a symbolic rather than a substantial status (cf Weiler, 1998; Klienman 2002).

Migration history, socio-legal status, the world of paid work and geographic location presently combine to deliver substantial rights to welfare that facilitate, for some, wellbeing in retirement. This is not the case for certain other less well placed groups. At present, a good deal of migration, citizenship and welfare policy (at both EU and MS levels), systematically disadvantages many older migrants who are legally resident in Europe. Vonk (2002) argues that if the EU is serious about ensuring an adequate standard of social protection throughout the life-course then it needs to be more robust in establishing substantive rights for all legally resident migrants. First, it should adopt and enforce minimum standards of social protection for asylum seekers. Second, TCNs who are allowed to work in EU Members States should have recourse to a set of minimum rights set out at EU level, guaranteed in respect of their contribution to the economies and social welfare systems of their host state(s). Migration of both TCNs into the EU, and the migration of EU citizens across national borders within the EU, are increasingly a feature of contemporary European life (CEC, 2003b). Given its commitment to free movement, and the need to encourage increased immigration in order to fill skill gaps in the paid labour market, bought about in part by an ageing population, the time is right for the EU to extend the social benefits of European prosperity (currently reserved only for retired migrant



community workers i.e. EULMs), to all older migrants who are legally resident within its borders.

The debate about social security in old age has been increasingly Europeanised with mechanisms such as the Open Method of Coordination subjecting national systems of social protection to scrutiny and peer pressure. That said, the EU is still along way from developing a coherent EU system of social security for retired people. The first section of this paper argued that EU input on the debate about financial wellbeing in old age is fragmented and derives from many different institutional actors, each with a particular, and often contradictory agenda. Whilst these development could be understood as the beginning of increased EU involvement in social security matters, a coherent and enforceable communitised policy remains a distant vision. In short, policy at the national level retains a crucial importance for the well-being of older migrant resident in EU. If the EU is truly concerned to combat social exclusion within its borders and develop a substantive notion of European social citizenship it needs to address seriously the social security rights of older migrants. At present they are often sacrificed for the benefit of the EU's economic priorities or in the interests of its Member States.

We recognise that improving the rights of older international migrants is not a high priority on the policy agendas of either the EU or many of its constituent Member States. The popular press across Europe increasingly portrays non EU migrants, as a potential threat to national security and/or a potential drain on finite welfare resources. As many European welfare states undergo the shift towards 'active/Third Way' welfare regimes a qualitative shift has occurred in the key principles that underpin

access to national collective welfare rights. Notions of need and entitlement have become secondary to issues of claim and contribution. The concept of a social right is increasingly giving way to the idea of 'conditional entitlement' (Dwyer, 2004). In a world where Member States are looking to do less for their own citizens we should not perhaps be too surprised if they choose to downplay or ignore the needs of those that are deemed to be 'outsiders'.

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<sup>1</sup> The notion of European Citizenship was established in Article 8 EC (now Article 17 EC) which states,

1. *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.*
2. *Citizens of the Union enjoy the rights conferred by this treaty and shall be subject to the duties imposed thereby.*

The content and extent of these EU citizenship rights are laid out in Articles 18-21 EC. They can be summarised as follows: the right to move and reside freely in the EU; the right to vote and to be a candidate in both municipal and European level elections; the right to claim diplomatic protection under the authority of another Member State, and the right to petition the European Parliament.

<sup>2</sup> We are referring here only to those migrants in both groups who hold the status of EU citizen. The rights of TCNs in relation to residence and social welfare in the EU are governed by the often highly restricted rules of individual Member States.

<sup>3</sup> Retired EU labour migrants are able to access the same rights to welfare as a national of their host Member State under Directive 68/360 (OJ Sp. Ed. 1968 No. L257/13).

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<sup>4</sup> Although this paper does not deal in depth with gender and how it structures social security in retirement it is accepted that it is an important factor. For example, table 2 differentiates between men and women's needs. For discussion on how the EU legal framework discriminates against women see Ackers (1998). See Ginn (2003) for a discussion of gender's impact on social security in old age.

<sup>5</sup> In an interesting parallel development the German government is looking to restrict the welfare entitlements of AIRMs living outside the EU. The days of 'Florida Rolf may well be numbered (see Harding, 2003).