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The Brexit campaign played on rising discontent with the 'migration question', which lumps together intra-EU mobility with immigration from outside Europe. Formally, it only concerned the free movement of workers in the EU, even though the 'internationalisation' of the British economy goes much further than its 'Europeanisation' (Boyer, this volume). However, national resentment has a pedigree here as well.

After the French 'No' to the Treaty establishing a Constitution for Europe in May 2005, the British vote in June 2016 was the second popular referendum in an EU Member State, in which the 'Polish plumber' played a major role (Arnold, 2005; Spigelman, 2013). In the course of the EU's Eastern enlargement, this figure has become an archetype for cheap labour migration from the new Member States. The change of time, place, and context matters. In the French campaign, massive labour migration from the East was still but a spectre that did not materialise in the end. Meanwhile, policy studies in the UK sought to demonstrate that the effective inflow of migrant workers from other Member States came at a cost to the domestic welfare system (Booth et al, 2014; Keen and Turner, 2016; Sumption and Altorjai, 2016). Leaving the question of economically non-actives aside, analysis focused on the case of low-paid workers from other Member States, who have a significant share in the domestic labour market (Warhurst, this volume). As EU citizens, these workers are entitled to in-work social benefits (in the form of refundable tax credits) in the same way as British nationals.

Obviously, the aim of these policy studies was not to assess the overall macro-economic effects of labour migration on the UK but to refute the scholarly claim that migrant workers tend to pay more into a national welfare system than they take out. Not surprisingly, the arguments and findings highlighted in the reports gained broad coverage in the Brexit campaign (e.g., Prynne, 2014; Doyle, 2014). If PM Cameron's aim was to mobilise domestic voters in order to extract concessions from the EU regarding the status of mobile Union citizens in the UK, the electorate's response was overshooting: getting rid of them. A recent initiative to 'blacklist' foreign workers demonstrates that PM May's government is generally prepared to heed this wish (Ruddick and Mason, 2016; Syal, 2016).

Before the Brexit referendum, the European Council responded to the UK's renegotiation agenda

by making concessions that cut into the core of the free movement of persons, such as a 'safeguard mechanism' restricting newcomers' access to non-contributory in-work benefits for up to four years (European Council Conclusions, 19 February 2016, EUCO 1/16; Peers 2016). After the British 'Leave' vote, the legislative template for truncating the social rights of migrant workers is not off the table. Instead, the stakes have only risen for other Member States as well, whose constituencies are aroused with similar anti-migration sentiments. One can assume that some Heads of States and Governments not only acquiesced to, but eventually sympathised with, the UK's requests. A closing of ranks could already be observed in matters of 'benefits tourism' a few years ago, when Germany, Austria, and the Netherlands joined the UK to lobby for a stricter interpretation of secondary EU law specifying the conditions of free movement (Letter by the Ministers of the Interior Mikl-Leitner, Friedrich, Teeven and May to the President of the European Council for Justice and Home Affairs Shatter, April 2013). It is thus likely that the reform proposals attached to the Brexit threat will be revived in future negotiations.

At the same time, the Court of Justice of the EU (CJEU) seems to have prepared the ground for a reassessment of the social rights of workers along the lines of economically non-active Union citizens, who have to fulfil certain requirements before they qualify for non-contributory social benefits (O'Leary, 2008; Currie, 2009; Dougan, 2013). Even though legal reasoning may, in principle, ward off politics, the migration debate has left its mark here as well. The unusually terse prose of recent case law suggests that CJEU judges, who represent different national contexts and serve for limited renewable terms, do carefully weigh the "potential implications of judicial choices at a time when eurosceptical political parties are on rise across the continent, not only in the UK" (Thym, 2015, p. 253). Hence, a paradigm shift seems pending, which only gained urgency in the wake of Brexit. What all this demonstrates is the contested nature of the transformation of solidarity that European citizenship law implies (Barnard, 2005; de Witte, 2015). In practice, the price of European solidarity seems to be that national social rights are being curbed as well.

From a socio-economic perspective, Brexit can be understood as a point of culmination in the 'recommodification' of Union citizenship, which previously underwent a process of 'decommodification'. Classically speaking, commodification means the subjection of labour and wage-setting to market forces, whereas decommodification means the reduction of the market dependence of workers – and also non-workers – by way of social rights. In the following, this

terminology is adapted to the 'Europeanisation' of social rights underpinning the free movement of persons (cf. Caporaso and Tarrow, 2009; Höpner and Schäfer, 2010).

In the first decades of the integration process, following the ECSC Treaty (1951) and the EEC Treaty (1957), the focus was on the free movement of workers, who were to be granted equal treatment with the nationals of the respective host Member States. While this meant that migrant workers would generally benefit from "the same social and tax advantages as national workers" (Regulation No 1612/68, Art 7(2)), a core matter was the coordination of national social security schemes regarding common social risks affecting the earning capacity of workers, such as old age, sickness, unemployment, and invalidity (Regulation No 1408/71, Art 4(1)). Hence, one of the aims of the Europeanisation of social rights was to close possible 'insurance gaps' resulting from labour mobility. Being tied to worker status, as defined by EU law, and, in the case of contributory benefits, to employment history, the first generation of European social rights could be considered 'commodified' (Hartmann, 2015, p. 131). This changed in the second phase, leading up to and following the Maastricht Treaty (1992), which brought the social rights of economically non-active EU citizens to the fore. Instead of contributory in-work benefits, the emphasis now turned to non-contributory out-of-work benefits. While the privileged status of workers was still left untouched, European social rights became more 'decommodified' or "redistributive in nature" (Hartmann, 2015, p. 131).

The third phase reflects, or at least resonates with, a change of policies on the national level. In many Member States, non-contributory benefits have become linked with activation policies furthering the 'recommodification' of social rights (cf. Streeck, 2000; Hager, 2009). Recent developments on the European level seem to point to the same direction, laying emphasis on the "limitations and conditions" of the right to free movement for economically non-active EU citizens (Art 21(1) TFEU; cf. Shuibhne 2015). This includes reassessment of the requirements for the lawfulness of their residence, that is, whether they "have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State" (Directive 2004/38/EC, Art 7(1); Case C-308/14 *Com v UK*, EU:C:2016:436) and when does that burden become "unreasonable" (Directive 2004/38/EC, Recitals 10 and 16 of the Preamble, Art 14(1); Case C-140/12 *Brey*, EU:C:2013:565). In the first three months of residence,

Member States do not have to provide any social assistance (Directive 2004/38/EC, Art. 24(2)). Hence, whereas access to in-work benefits is immediate, access to out-of-work benefits is usually delayed.
However, the legal refinements concern not only the group of economically non-actives. Recent, yet already established case law of the CJEU also shows signs of a reorientation regarding the social rights of workers. In assessing the 'link of integration', which substantiates eligibility for social benefits in a host Member State, the line between workers (as well as job-seekers) and economically non-actives seems increasingly blurred, allowing the judgement of both groups by the same conditions (Cases C-212/05 *Hartmann* EU:C:2007:437, C-213/05 *Geven,* EU:C:2007:438; and C-287/05 *Hendrix,* EU:C:2007:494; C-138/02 *Collins*, EU:C:2004:172; C-22/08 and C-23/08 *Vatsouras*, EU:C:2009:344; C-359/13, *Martens*, EU:C:2015:118; C-220/12 *Thiele Meneses* EU:C:2013:683; C-20/12 *Giersch*, EU:C:2013:411; C-542/09 *Com v NL*, EU:C:2012:346; C-158/07 *Förster,* EU:C:2008:630). Compared to the beginnings of European citizenship law, therefore, attention has shifted from contributory in-work benefits, which are status-based, to non-contributory in-work benefits, which are usually means-tested.

Against this backdrop, Brexit only made obvious that the new emphasis on the conditions of free movement has also reached the core group of workers. In the negotiations, the EU leaders demonstrated their willingness to rewrite secondary law so that the UK could exclude new arrivals from in-work benefits for a period of up to four years. It is quite likely that other Member States will aim for a similar 'safeguard measure'. While such initiatives have to be agreed on the European level, national legislatures may already exploit the leeway granted by the CJEU to limit EU citizens' access to domestic welfare benefits. Along these lines, a recent draft law by the German government stipulates that job-seekers from other Member States would no longer gain access to social assistance after six months of residence, as the Federal Social Court had decided, but only after five years (CJEU Case C‑67/14 *Alimanovic* EU:C:2015:597; *Bundessozialgericht*, decision of 3 December 2015, B 4 AS 44/15 R; Connolly 2016).

The likely implications of Brexit can be summed up as follows: whereas the 'employability' of migrant workers is enough for them to enter the labour market of a host Member State, it may no longer suffice to join the national solidarity community. In order not to encourage 'welfare

migration', labour migration is ultimately discouraged as well. From an economic point of view, one could refer to this as throwing out the baby with the bathwater. From a more sociological point of view, it demonstrates that the Europeanisation of solidarity (here understood in its organised, legal form) is full of conflicts. What has been described as a transformation from national to European solidarity along the 'division of labour' in the internal market (Münch, 2008; Frerichs, forthcoming), eventually challenges the 'common sense' of domestic voters: that the limitations applied to migrant workers would have to apply to national workers as well. Brexit, as shorthand for 'reserving British workfare for the Brits' (cf. Booth et al, 2014; Chalmers and Booth, 2014), is obviously a backlash against the EU law principle of non-discrimination. At the same time, the turn from welfare to workfare, which was spearheaded by the UK, only confirms the transition 'from status to contract', which guides the recommodification of social rights both on the national and the European level.

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