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No welfare magnets – free movement and cross-border welfare in Germany and Denmark compared

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ABSTRACT

A ‘dually open’ free movement system has evolved in the European Union (EU), granting EU citizens the right to free movement within the Union as well as cross-border welfare rights. Some scholarly literature and public debates have characterized the system as corrosive to the nationally organized welfare state, which will become a ‘magnet’ for the European poor. This paper examines how the German and Danish welfare states have responded to the ‘dual open’ system and its outcomes in terms of EU citizens’ take-up rate of non-contributory benefits between 2007 and 2015. We show that the domestic responses were mostly restrictive and that outcomes remained rather stable. Our findings do not support the welfare magnet thesis but instead identify a tendency to a bifurcated social protection system for EU citizens in Germany.

KEYWORDS

Bifurcated Social Protection; European Union; Free Movement of People; Welfare Magnet Thesis; Welfare State

Introduction

Over the last decades, European Union (EU) legislation and case law from the European Court of Justice (ECJ) have created a free movement regime in which EU citizens not only enjoy the right to freely move and reside within the Union's territory but also have, subject to certain limitations, access to the welfare system of their host member state.¹

The formation of such a 'dually open' free movement system has evoked considerable concerns in EU member states about welfare-motivated migration, portraying the welfare state as vulnerable to people on the move (Ruhs 2015; Hassel, Steen Knudsen, and Wagner 2016; Martinsen and Pons Rotger 2017; Blauburger et. al. 2018). In particular, the grand EU enlargements of 2004 and 2007 as well as expansive EU law have been regarded as increasing the likelihood of European welfare migration. The addition of ten eastern European member states led to an unprecedented increase in the socio-economic heterogeneity of the community. Theories of welfare magnetism assume that such heterogeneity would motivate a West-facing movement and, in particular, render more generous, non-contributory welfare states attractive residential choices.

However, despite fears and theoretically supported concerns, studies of national responses to and outcomes of EU rules and litigation are lacking. In the following, we attempt to fill this research gap by examining how Germany and Denmark responded to the dually open free movement system in the EU and the outcomes thereof. The German and the Danish cases have been chosen because they represent different welfare state types and thus differ in the extent to which they presumably constitute 'welfare attractions'. A 'welfare magnet' effect does not challenge all EU member states to the same extent. Rather, the level of generosity of welfare benefits (less vs. more generous) and the dominant mode of financing the welfare state (non-contributory vs. contributory) matter regarding which state is more attractive. The

theoretical assumption of welfare magnetism states that immigrants' location choices are influenced by the dispersion in states' welfare benefits (Borjas 1999). As further detailed below, the Danish tax-financed, universalistic welfare state constitutes a more likely case that confirms the welfare magnet thesis than the insurance-based German welfare state.

With respect to other key parameters that are likely to matter for responses and outcomes, the two countries differ as starkly as they do in welfare terms. Denmark and Germany have quite different legal systems and cultures. Compared to other EU member states, German legal culture is highly legalistic, often using litigation to clarify rules and solve disputes (Conant 2002; Warden 2009). Germany has specialized social courts at the local, regional and federal levels, whereas Denmark has no social courts (Martinsen 2005). Instead, Denmark has an administrative, quasi-judicial social board of appeal (*ankestyrelsen*). In relation to EU law, German courts have been among the most frequent referrers of preliminary references to the ECJ in general, particularly regarding social law, whereas Danish courts have engaged the supranational court much less frequently (Martinsen 2005; Wind et. al 2009). This difference has partly been explained by different democratic traditions. The German constitutional democracy relies on a much stronger role of judicial review than the majoritarian democracy in Denmark, where the chief doctrine of parliamentary sovereignty leaves less room for activist courts (Wind et. al. 2009). In terms of the labour market, Germany has undergone a 'dualization' between insiders and outsiders over the last decades, implying increased 'bifurcation' between the core workforce and those employed in the low wage sectors with a growing number of workers with atypical and irregular jobs (Thelen 2014). In contrast to Denmark, Germany has become 'a destination country for low wage work' (Hassel, Steen Knudsen, and Wagner 2016, 1218). The income of the 'working-poor' is supplemented by in-work benefits. In this regard the income package in Germany is rather similar to the UK, combining low wages with benefit top-ups (Vandenbroucke 2016). In contrast, the Danish

labour market model has kept wages relatively high, and welfare schemes do not provide income support to low-paid work.

Below, we present the theoretical assumptions underlying welfare magnetism. We then present the socio-economic heterogeneity in EU-27, focusing on the welfare state types of Germany and Denmark. The analysis proceeds by first examining the judicial, administrative and political responses to the ‘dually open’ free movement system in the two countries from 2004 to the present, focusing on child benefits, guaranteed minimum benefits and study grants and then comparing national data on EU citizens’ actual consumption of these benefits between 2007 and 2015.² The final section concludes.

On Welfare Magnetism

In the European Union, free movement of persons and their right to cross-border welfare are argued to constitute a particular challenge to the sustainability of the welfare state. The rights of EU citizens to move, reside, take work and become members of national welfare communities clash with the traditional boundaries of the welfare state, which was developed to protect the interests and the welfare of a nation’s *own* citizens. In the political and public debate, the relationship between EU migration and the welfare state has taken centre stage. The normative justification and fiscal sustainability of the EU’s cross-border welfare rights have undergone increasing politicisation in various member states, with ‘social’ or ‘welfare tourism’ becoming a common narrative (Blauberger et. al. 2018).

The core assumption of ‘welfare magnetism’ is that the generosity of welfare programmes affects the residential choices of migrants. ‘Welfare magnetism’ became a key topic in the late 1990s in the US social science literature. Federal welfare reforms around that time provided US states with more autonomy in establishing the eligibility requirements of welfare

provisions and initially resulted in more heterogeneous reactions by state governments to immigrants' welfare rights (Kaushal 2005). The reforms gave rise to various studies examining the welfare-induced behaviour of both national migration between US states (Peterson and Rom 2010; Kaushal 2005) and immigrants' inter-state residential choices when arriving in the US (Borjas 1999). The welfare magnet hypothesis posits that states with more generous welfare policies attract immigrants with a high preference for welfare benefits (Borjas 1999).

Applying the welfare magnet hypothesis to the EU, the assumption is that welfare-motivated migration results in mobility from the newer and poorer member states in Eastern Europe to the older and richer member states in Western Europe that have more generous welfare states (Kvist 2004; De Giorgi and Pellizzari 2009). The level of social protection and the extent of social services as well as modes of financing welfare should affect migrants' residential choices and thus make some welfare states particularly challenged. Some papers point to social market economies, particularly the tax-financed welfare state (Ruhs 2015), as more challenged by EU free movement principles than liberal market economies (Scharpf 2010; Höpner and Schäfer 2012).

'Welfare magnetism' also suggests states' limited capacity to respond to and control welfare-motivated migration, since courts may draw constitutional limits to the discriminatory practices adopted by states. The European integration literature emphasizes that member states have lost their ability to respond to and control unintended access to welfare benefits. Free movement principles are constitutive parts of the internal market and take primacy over national law and policy. For decades, European legislators and the ECJ have extended the rights to free movement and cross-border welfare in the EU. In particular, judicial decision-

making has been noted as corrosive to national welfare autonomy, reducing the range of policy options available.

However, research on compliance with and implementation of EU law and policy notes that member states are not simple adopters of EU law and policy but rather that domestic responses affect the further processing of EU obligations (Conant 2002; Dimitrova and Steunenbergh 2016; Heindlmaier and Blauberger 2017). Member states may engage in strategic responses to EU law (Kvist 2004) and thus create a parallel or alternative range of policy options. Such alternative policy options may be identifiable when studying the judicial, administrative and political responses to EU social integration in which domestic actors engage. For our analytical purposes, judicial responses involve the ways in which national courts make use of ECJ decisions and EU law in national legal proceedings. Political responses concern the strategic or ideological actions in which national politicians engage when adopting national laws, decrees or instructions that apply EU law. Finally, administrative responses represent the ways in which civil servants implement EU rules.

Socio-Economic Heterogeneity in the European Union Compared

With the dually open free movement system in the European Union, a Union citizen is granted a freer residential choice based on his or her individual decision. However, individual decisions are shaped to a great extent by regional socio-economic differences in both the home and hosting member states (Bruzelius, Reinprecht, and Seeleib-Kaiser 2017). As Table 1 demonstrates, these differences are vast among EU member states.

[Table 1 here]

The first column lists the gross domestic product (GDP) per capita in 2015 according to the purchasing power standard (PPS) for the EU-27 member states as a percentage of the EU-27 average (EU-27 = 100) to capture differences in economic power and prosperity. The second and third columns of Table 1 demonstrate that there are also stark differences in the extent to which national wealth is used for social protection and how this protection is organized and financed. Whereas in 2015 the old, north-western member states spent on average approximately 27 percent of their annual GDP on social protection, the welfare expenditures of the Eastern member states were on average one-third lower (mean of 17.6 percent). In addition, whereas Denmark's more generous welfare state (social protection as 31.1 percent of GDP) was largely tax-financed, with only 18 percent of social protection financed by contributions, almost 80 percent of Estonia's much smaller welfare expenditures were financed by contributions.

This socio-economic heterogeneity within the EU demonstrates that if welfare-induced migration occurs within the EU, it will largely be a movement from East to West, namely, from new to old member states. However, if welfare magnetism occurs as theoretically predicted, the welfare institutional differences between Germany and Denmark would also matter to the residential choices of EU migrants.

Two Welfare States Compared: Germany and Denmark

Although the north-western member states would be the main target of 'welfare migration', they would also, given their differences in organizing and financing social protection, be affected to different degrees. The German welfare state belongs to the social insurance, 'conservative' welfare state regime (Esping-Andersen 1990) and is therefore presumably less vulnerable to welfare-motivated migration since entitlement to most welfare benefits requires prior contribution. Such a system should be relatively unattractive to welfare-motivated

migration since both access to and the size of benefits crucially depend on prior work performance. In contrast, the Danish welfare state belongs to the tax-financed, Nordic or ‘social democratic’ model (Ibid.). In this type of welfare state, there is no direct link between contributions and entitlements for most benefits. Tax-financed welfare benefits are available without having previously paid social security contributions and are typically granted on the basis of legal residence.

Moving beyond the typological distinction of welfare states and into the actual institutional schemes, insurance-based welfare states also operate non-contributory, residence-based and means-tested benefits to protect those who are outside of the labour market and, therefore, have no access to contribution-based benefits. In Germany, the most important schemes in this regard are (1) minimum income benefits for persons whose income falls below the ‘socio-cultural subsistence level’. These benefits are available for a) unemployed persons capable of working (*Arbeitslosengeld (ALG) II*); b) employed persons with non-sufficient income (ALG II as in-work benefit, i.e., a form of income support); and c) persons incapable of working, with reduced earnings capacity or of old age (*Sozialhilfe*). Additional schemes are (2) child allowances for persons with children (*Kindergeld*) and (3) financial support for students (*Bafög*). *Kindergeld* is a universal benefit, whereas financial support for students is a means-tested benefit for students with low-income parents or insufficient personal means.

Turning to Denmark, we find the highest share of non-contributory benefits and the second-highest social protection expenditure as a percentage of GDP among EU member states, surpassed only by France. The main Danish welfare benefits are tax-financed and provide universal coverage. Denmark operates similar non-contributory schemes as Germany; child benefits (*børne- og ungedelse*), social assistance (*kontanthjælp*) and study grants (*Statens Uddannelsesstøtte*). However, important differences should be noted. Denmark has no in-

work benefits, and there are no public benefit supplements for low-paid jobs. It should also be noted that the Danish study grant is universally given to all students enrolled in higher education. The study grant is independent of parental income. A student can obtain additional state-granted loans and additionally work a limited amount of hours.

Table 2 compares the ‘generosity’ level, i.e., the monthly allowances of the three non-contributory benefits. We observe in particular that the Danish minimum income benefits are notably higher than the German benefits and that the Danish study grants are somewhat higher than the German means-tested financial support for students, whereas child benefits are slightly more generous in Germany than in Denmark.

[Table 2 here]

With respect to the welfare magnet theory, these institutional differences influence immigrants’ residential choices (Borjas 1999). Empirically, the welfare-magnetic assumption would be supported 1) if we found a higher take-up rate of residing EU citizens of the examined benefits in Denmark than in Germany and 2) if we found an increase over time in the take-up rate of residing EU citizens of the examined benefits within the two countries. The *take-up rate* denotes the proportion of residing EU citizens receiving a specific benefit in a given year.

National Responses to EU Law

In this section, we compare how Germany and Denmark responded to the EU’s dually open free movement system in judicial, political and administrative terms with respect to the extended access of EU citizens to non-contributory benefits.

German Responses

Although Germany's tax-financed benefit schemes have always been subject to a residence principle alone (i.e., every person residing legally in Germany is, irrespective of his or her nationality, eligible for these benefits), there were always important exceptions to this general rule for EU nationals (and other foreigners) that were explicitly introduced to prevent welfare-motivated migration. More specifically, this meant that EU citizens who had a right to reside but never worked in Germany (jobseekers and economically non-active persons, such as pensioners or students) were not able to access minimum income benefits. Additionally, students with EU nationality were eligible for study grants only if they had a permanent residence right. The only non-contributory benefit EU nationals could claim was the child allowance since this required no more than a German address or a German tax ID number. Therefore, when, in the mid-2000s the combination of EU enlargement and expansive EU law increased the perceived likelihood of a European 'welfare migration' scenario, Germany already had measures in place to 'demagnetize' its tax-financed welfare schemes.

However, German courts regarded some of these measures as unlawful and therefore allowed for EU nationals' access to non-contributory benefits. For example, German social courts doubted that the exclusion of EU jobseekers from ALG II was consistent with European law. In 2007, the social court of Nuremberg asked the ECJ for legal guidance on this issue via a preliminary ruling request. However, the ECJ's answer did not bring the desired clarity. In its *Vatsouras* decision (C-22/08), the Court ruled that member states are allowed to deny EU jobseekers social assistance but not benefits that aim to bring people into work. However, the decision regarding whether ALG II is of the former or the latter nature was explicitly left to the German authorities, and the restriction was thus upheld. However, the German social courts continued to dispute the exclusion rule, and ALG II has been increasingly granted.³ German courts again turned to the ECJ to finally settle the issue. However, surprisingly, the

ECJ explicitly confirmed the German legislation denying EU jobseekers ALG II in the *Dano* (C-333/13) and the *Alimanovic* (C-67/14) decisions. This was not the end of the story, however. In December 2015, the Bundessozialgericht, Germany's highest social court, accepted the ECJ decision but argued that German constitutional law requires that every person in need residing in Germany for more than six months has access to Sozialhilfe.⁴ The German legislator and the administrations did not agree and managed to override the activist German courts. Reacting to the Bundessozialgericht's decision to open social assistance for EU citizens, the competent social administration refused to implement this ruling. Interestingly, this refusal was backed by numerous lower social courts that openly dissented with their own high court, an unprecedented act in the history of German social jurisdiction.⁵ To end this dispute and the legal limbo emanating from it, a law was eventually passed in December 2016 restoring the original legal situation.⁶ Non-working EU citizens without a work record or permanent residence right are again excluded from social assistance (ALG II and Sozialhilfe).

Another instance of German courts pushing to open up non-contributory benefits for EU citizens occurred in 2010, when Germany's highest tax court questioned that the refusal by German authorities to pay child allowance to seasonal workers whose children did not live in Germany was in accordance with EU law and asked the ECJ for clarification. In its *Hudzinski* ruling (C-611/10), the ECJ agreed with the German court. In this case, the extension led to a significant increase of claims, causing additional costs of up to two billion euros until 2020 according to the Federal Ministry of Finance.⁷ The consequences of the *Hudzinski* ruling (in combination with a recent general debate about 'poverty migration') spurred calls to limit EU citizens' access to child benefits. However, little has occurred since then. Since 2015, EU citizens must have a tax ID for themselves and for their children to avoid double benefits, and the relevant authorities were initially instructed to grant child allowances to non-working EU

nationals on only a provisional basis. Further steps, especially an indexation of the child allowance for children of EU nationals living in a member state other than Germany, were discussed. Together with Denmark, Austria and Ireland, the German government now works to have child benefits indexed as part of the legislative reforms of Regulation 883/2004.⁸

On a final note, it should be mentioned that the legal situation regarding study grants has provoked almost no reactions at all owing to the ECJ's 2008 decision in *Förster* (C-158/07). In this case, the ECJ found that the exclusion of students from study grants during the first five years of their stay is consistent with EU law, thereby confirming the existing German rule. It was only recently that Germany had to adapt to EU law in this area. In 2013, the ECJ ruled in *LN* (C-46/12) that economically active EU students are eligible for study grants, thereby expanding the group of potential beneficiaries. The German legislator reacted immediately and adapted the existing rules accordingly.

Overall, a rather restrictive reaction pattern has emerged in Germany. Although German courts attempted to further open non-contributory benefits for EU citizens, they were successful only to a limited extent due to the prevailing closure efforts of the German legislator and administrators. Thus, the underlying logic of reciprocity still generally prevails: EU nationals residing in Germany have access to tax-financed benefits only if they have somehow contributed to their funding by being workers or are integrated in Germany to a considerable degree by having lived in Germany for more than five years.

Danish Responses

Since the early 1970s negotiations on Danish membership in the European Community (EC), free movement for workers has been perceived as a fundamental challenge to the Danish welfare state. Entering a community of insurance-based welfare states, Denmark stood out as

an outlier with its universalism and tax-financed welfare benefits. As an EC member, the fear was that Denmark would attract migrant workers seeking to exploit the Danish social system (Rasmussen 2004, 304). Before Denmark became a member of the EC in 1973, welfare benefits were subject to Danish nationality and guarded by a principle of territoriality. For example, the Danish public pension was granted to all Danish citizens who had resided at least one year in Denmark. With EC membership, Denmark managed to negotiate a special Danish rule according to which pensioners must have resided 40 years in Denmark to be granted a full public pension (Rasmussen 2004, 300-313).

As in Germany, the grand enlargement and expansive EU law were regarded as increasing the likelihood of European welfare migration. Benefits such as family benefits, social assistance and study grants were perceived as particularly problematic due to their non-contributory and relatively generous nature. The Danish responses, however, differ starkly from the German ones in judicial terms. EU citizens' entitlements to these non-contributory benefits have not been addressed in Danish court cases, but social policy disputes have been addressed by the administrative, quasi-judicial social board of appeal. The appeal board has the competence to refer preliminary questions to the ECJ but very seldom does so. Concerning EU citizens' right to Danish welfare benefits, this has only occurred once, in 2013 in a case on Danish study grant, *LN (C-46/12)*.

There are remarkably few principled administrative rulings on EU citizens' entitlement to Danish welfare. We found only 26 principled administrative rulings regarding EU citizens' entitlement to the three non-contributory benefits between 2003 and 2016. None of these rulings addressed family benefits, seven were concerned with social assistance and 19 with study grants. Of these rulings, only six granted the requested benefit. Four rulings concerned

social assistance,⁹ and only two rulings granted study grants.¹⁰ The other rulings provided specifications on when to reject non-contributory benefits to EU nationals.

Turning specifically to Danish responses regarding social assistance, job-seeking Union citizens who have not acquired worker status according to EU law are not entitled to Danish social assistance. In contrast to Germany, this administrative practice has not been challenged by Danish courts or in quasi-judicial proceedings. Therefore, the central Danish dispute concerned whether one is a worker. Worker status is dependent upon an individual assessment but normally requires at least 10-12 hours of work a week for a minimum of 10 weeks.¹¹ In the political debate, the fact that EU citizens can assess the non-contributory social assistance scheme after only 10 weeks of work has been widely criticized. Fear of ‘welfare tourism’ has been broadly articulated in this regard.¹² At the same time, a more restrictive administrative practice with respect to EU citizens’ entitlement to social assistance is identifiable. EU citizens’ entitlement to social assistance is decided by Danish municipalities. To be eligible for social assistance, one must be a legal resident with no other means to support oneself. The State Administration (*Statsforvaltningen*) ultimately determines a person’s right to residence. Administrative control of the right to reside and of the worker status of EU citizens has been tightened by formal instructions on at least two occasions. In 2009, the Ministry of Justice amended and specified the instructions to the State Administration regarding when an EU citizen’s status as a worker terminates. In 2014, the government adopted new control measures on EU citizens’ entitlement to social assistance, among other benefits. New guidelines were sent to the municipalities, which, among other measures, instructed the local caseworkers to intensify their control of worker status and work with the State Administration to decide on the scope of the right to residence when an EU citizen applies for social assistance. As a result, the administrative practice in the municipalities appears to have

become more restrictive. More municipalities now refuse applications for social assistance, and few EU citizens appeal such decisions.¹³

Additionally, welfare-motivated migration has been much debated in relation to Danish child benefits. In 2010, the Danish Peoples Party (DPP) demanded, in exchange for support of the government's budget proposal, that restrictions on EU citizens' right to family benefits be adopted. The government initiated a reform process, mandating the executive to find a compromise between EU obligations and domestic politics. After testing different solutions and types of residence clauses, the Danish Parliament adopted a two-year residence clause for EU citizens to be eligible for full Danish family benefits taking effect from January 1, 2012. However, in July 2012, a German worker in Denmark complained about his unequal right to Danish child benefits. In the meantime, the Social-Democratic-led government had taken office in Denmark. The Commission sent an opening letter to the government. The Danish government decided to comply, and on June 18, 2013, the Ministry of Taxation announced that the residence clause would be waived for EU citizens. The legislative attempt to restrict access to Danish child benefits had been unsuccessful, and, as noted above, the Danish government instead aims for the indexation of child benefits.

The preliminary question from the Danish appeal board in *LN* was the first of its kind in which the quasi-judicial authority decided to ask the ECJ for clarification on EU citizens' right to Danish welfare. The ECJ responded that EU workers are entitled to the Danish study grant. There were numerous political and public reactions, and a large influx of EU students was feared.¹⁴ The Danish government responded by declaring that it would comply with the ruling.¹⁵ EU students enrolled in higher Danish education would now qualify for study grants if they were workers. However, some restrictive measures have been taken. The Danish government adopted a broad parliamentary agreement¹⁶ according to which national control

of EU students' status as workers was tightened. Among other 'safeguard' mechanisms, the agreement ordered the Ministry of Higher Education to oversee the development and report back to the parliament. The responsible agency introduced an automatic search every three months among all EU citizens receiving study grants to determine whether the number of hours they worked or their salary had decreased. In such a case, their cases will be considered for individual assessment.¹⁷ Enhanced control has resulted in more than 1600 cases in which EU citizens had to return their study grants.¹⁸

In summary, as in Germany, Danish responses have been restrictive. Danish courts have not been involved in pushing the rights of EU citizens to non-contributory benefits. In contrast, quasi-judicial proceedings have adopted a rather restrictive approach with respect to a large majority of the principled administrative rulings. Danish legislative and administrative responses demonstrate that EU law prevents certain options, such as residence clauses conditioning EU citizens' entitlement to child benefits or denying EU workers enrolled in higher education study grants. However, while meanwhile some policy options are limited, scope for action is explored elsewhere. Tightened administrative control becomes the alternative response to fence off Danish welfare.

Outcomes

Our examination of outcomes began in 2007 and lasted until 2015. In 2007, the second eastern extension of the EU occurred with Romania and Bulgaria becoming Union members. As part of the accession agreement to the first eastern enlargement in 2004, member states were allowed to restrict free movement for a transitional period, first for two years and later for as much as seven years. The German transitional agreement was in effect for the full seven years until May 2011, whereas the Danish agreement was in effect for five years (i.e., until May 2009). The accession agreement regarding the 2007 enlargement adding Romania and

Bulgaria to the Union also allowed for transitional periods of up to seven years. Denmark had restrictions until May 2009. Germany continued some restrictions until December 31, 2013, albeit rather limited ones at the end of the seven-year period. Our studied period thus includes the period after the grand enlargements of 2004 and 2007 as well as the end of the transitional agreements to the free movement of persons in both Germany and Denmark.

Comparing the stock and change of EU citizens residing in the old member states (i.e., EU-15), we observe that all member states experienced a significant increase in the numbers of residing EU citizens during those years.

[Table 3 here]

For Germany and Denmark, it is clear that the right to free movement of EU citizens has had a considerable impact. By January 1, 2015, 3,475,500 EU citizens resided in Germany and 173,200 resided in Denmark. From 2007 to 2015, the absolute numbers of EU citizens in Germany increased by more than 1 million, an increase of 41 percent. In Denmark, the increase in absolute numbers was 92,000, an even more notable relative increase of 113 percent.

In other words, Germany and Denmark have indeed been attractive locations of residence and work for EU citizens from other member states. We will now turn to the welfare outcomes of these developments in Germany and Denmark.

Outcomes Germany

Table 4 and Figure 1 below depict the absolute and relative numbers of all EU citizens of the respective year living in Germany and receiving minimum income benefits (Arbeitslosengeld

II or Sozialhilfe), child allowance (Kindergeld) and study grants (BAföG). Since ALG II is not only available for non-working persons but also for those who are economically active (such as in-work benefits), the numbers for ALG II have been disaggregated into these subgroups. The data for these calculations were obtained from Germany's Federal Statistical Office and Federal Employment Office¹⁹ and provide the absolute numbers of EU recipients of the different benefit types at the end of each year of the time period covered. It is important to note that for the German data, it is impossible to calculate how many months a benefit was granted during a year. An EU citizen may have received the benefit for the entire year or only for one month and count among the absolute numbers of recipients. For both Germany and Denmark, Eurostat data were used to calculate the fraction of EU citizens receiving the respective benefits (see Table 3 above).

Table 4 demonstrates that the increase of EU citizens residing in Germany is accompanied by a considerable increase in the absolute numbers regarding the use of non-contributory benefits. This seems to confirm that Germany is indeed experiencing a 'welfare migration' scenario. However, if these absolute numbers are considered in relation to the number of EU nationals residing in Germany, a different picture emerges. As the relative numbers in Table 4 and Figure 1 demonstrate, we see that the fraction of EU citizens in Germany receiving child allowances or study grants remained quite stable over the time period investigated. We still see, however, a notable increase in the take-up rate of minimum income benefits. However, it is important to note that ALG II is granted not only to non-workers but also to workers in need. The largest increase occurs in ALG II granted as an in-work benefit. The number of EU citizens receiving this benefit increased from approximately 50,000 in 2007 to almost 125,000 in 2015, an increase of more than 150 percent in absolute terms and almost 80 percent in relative terms. In comparison, the fraction of non-working EU citizens receiving ALG II or Sozialhilfe grew more modestly to 27 percent and 37.2 percent, respectively, in relative terms.

Comparing EU citizens' take-up rate of minimum income benefits with their take-up rate of the much more attractive unemployment insurance benefit brings this further into perspective. In 2007, the absolute number of EU citizens receiving the regular unemployment insurance benefit was 41,440 (1.7% of the EU population in Germany). In 2015, 52,966 EU citizens received unemployment insurance benefits (1.5% of the EU population). Thus, in contrast to the more residual form of minimum income benefits, we here see a relative decrease of 9.3 percent over time. This finding suggests that the dualized German labour market leads to a bifurcation of EU citizens' social protection. EU workers with atypical or irregular jobs experience a growing welfare dependency on more residual income benefits while largely being excluded from the benefits of the welfare state core.

[Figure 1 here]

[Table 4 here]

In summary, the rising number of EU citizens living in Germany is partly accompanied by an increase in EU citizens' take-up rate of minimum income benefits. However, it is questionable to what extent this marks a welfare magnet effect. Since all minimum income benefit claims depend on worker status or long-term residency, the increase is unlikely to be caused by welfare-seeking migration but instead by the poor labour market integration of an increasing part of the EU citizens living in Germany. This suggestion is especially supported by the high increase in the take-up rate of ALG II as an in-work-benefit. EU citizens move to Germany to work, but if they take atypical or irregular jobs, there is a greater likelihood that they will earn incomes below the German subsistence level or a greater likelihood of temporary unemployment. Compared with EU citizens' low take-up rate of the more generous unemployment insurance benefits, this suggests a tendency towards a bifurcated social

protection system for EU citizens at the margins of the labour market with limited access to the core of the welfare state.

Outcomes Denmark

For the analysis of Denmark, Figure 2 and Table 5 below depict the absolute numbers and proportion of EU citizens residing in Denmark receiving family benefits, study grants and social assistance at least 26 weeks a year (not necessarily consecutively). The data were collected from the Danish register data, which is a unique source of administrative data that researchers can access upon application. Our dataset includes repeated cross-sections of the total population of EU citizens residing in Denmark on December 31 of each year during the examined time period.²⁰ We then examine the consumption of the three non-contributory benefits in the current year when granted at least 26 weeks. For family benefits, we were only able to compile information to 2014.

Figure 2 below shows that the percentage of EU citizens receiving family benefits was far higher than the percentage receiving study grants and social assistance. Family benefits are granted to workers as well as non-workers. Students can have additional income as workers, whereas for social assistance recipients, the benefit is the only source of income. This implies that those receiving family benefits and study grants are also potential taxpayers. Table 5 below presents the absolute and relative numbers of EU citizens receiving non-contributory benefits by January 1, 2007, compared to January 1, 2015, except for family benefits, for which we only have information up to January 1, 2014. The absolute numbers grew within the examined period for all three benefits. However, as shown above, the number of EU citizens residing in Denmark also increased considerably within the same period. Thus, when we examine the relative numbers, we see that the take-up rate decreased slightly for family benefits and social assistance but increased for study grants. To compare with the German

case, we should also note that in 2007, 2057 EU citizens in Denmark received the more generous contribution-based unemployment benefits (2.5% of the EU population in Denmark). In 2013²¹, the absolute number had increased to 6172 EU recipients (3.9% of the EU population). For study grants, the increase is most notable after 2013, which is mainly explained by the ECJ judgement *LN* of that year. In a report from May 2016, the Danish Ministry for Higher Education and Science evaluated the impact of the judgement, noting that the number of EU citizens receiving study grants as a result of the ECJ case rose from 1345 students in 2013 to 4484 students in 2015. In 2015, the costs of study grants paid to EU workers amounted to 319 million DKK. However, it is notable that 319 million DKK accounts for a rather modest 1.5 percent of the total Danish study grant costs of 21.5 billion DKK.

[Figure 2 here]

[Table 5 here]

In summary, despite the significant increase of EU citizens in Denmark as well as the extended rights to cross-border welfare, we find no general corresponding increase in EU citizens' take-up rate of non-contributory benefits. We also do not find the same tendency to a bifurcated social protection system as in Germany, but instead noted a higher number of EU citizens receiving unemployment insurance benefits than social assistance. This suggests that in the Danish case, EU citizens are more socially integrated into the core of the welfare state than in Germany.

Conclusion

Since 2004, the European Union's dually free movement system has undergone a period of dramatic changes with grand enlargements, increased socio-economic heterogeneity and the extension of EU rules and rights to a much broader population. These changes have caused grave political and public concerns regarding their welfare-state impacts, leading to theoretically supported fears that some member states will become welfare magnets to the European poor. The relatively generous and tax-financed welfare state of Denmark is a most likely case to confirm or refute the welfare magnet hypothesis.

In this paper, we compared how two different welfare states responded to the dually open free movement system in the EU and the outcomes thereof. In both member states, we found that extension of EU rules and rights were responded to rather restrictively. Today, non-working EU citizens with no work record or without permanent residence are largely excluded from minimum income benefits in both member states. In addition, both member states are, albeit to different degrees, have developed alternative options, by means of legislative actions or tightened administrative control, to further fence off their welfare systems. However, there have also been noteworthy differences in the domestic reactions of Germany and Denmark. The German judiciary has traditionally been much more active than its institutional counterpart in Denmark due to the higher degree of judicial specialization and a specific court branch that deals exclusively with social issues and has traditionally perceived itself as the defender of socially disadvantaged individuals against an omnipotent state (Tabbara 2009). However, the judicial venue for extending social rights to the non-economically active EU citizen has recently been pushed back by the German legislator and administrators and by lower social courts that have openly dissented with their own high court. An unprecedented situation in the history of German social jurisdiction has thus emerged in which domestic

courts, administrations and the legislator debate where to draw the boundaries of a Europeanised welfare state.

With regard to outcomes, our analysis does not support the welfare magnet hypothesis. Comparing the two countries, EU citizens' take up a higher rate of non-contributory welfare benefits in Germany than in Denmark. In addition, apart from ALG II in Germany we do not find an increase over time in the take-up rate of the examined benefits within the two countries. However, the comparison did find notable institutional differences.

The fraction of EU citizens receiving family benefits and social assistance decreased in Denmark, whereas the fraction of EU citizens receiving study grants increased. However, in 2015, the costs of paying study grants to EU citizens in Denmark amounted to only 1.5 percent of the total national costs. In Germany, we see a rather stable pattern in the fraction of EU citizens receiving family benefits and study grants. However, at the same time, we identify a notable increase in EU citizens' take-up rate of in-work-benefits, suggesting a particular challenge to welfare state schemes that support low-wage labour. At the same time, we see a tendency to bifurcation of EU citizens' social protection in Germany with notable few granted the more generous unemployment insurance benefits.

In conclusion, our findings cannot support the welfare magnet hypothesis. The Danish welfare state is currently the 'purest' type of the tax-financed, Nordic welfare state, a welfare haven to which one would want to migrate if the welfare magnet hypothesis were indeed true. However, this is not the case. Despite a dually open free movement system and a decade of paramount changes, there is no considerable increase in EU citizens' take-up rate of non-contributory benefits in Denmark, nor do we find such an increase in Germany. What we do see in Germany is that more EU citizens are in need of in-work benefits to supplement their

low-income jobs to maintain a sustainable living. Such low-wage sectors do not yet exist in Denmark (Hassel, Steen Knudsen, and Wagner 2016), nor do income support schemes. Rather than using welfare state types to explain the outcomes of EU rules, the interplay between labour markets and welfare schemes may better account for different outcomes. The dualization of the German labour market increases the number of workers whose income must be supplemented by welfare benefits to make a living (Thelen 2014; Vandenbroucke 2016). Thus, instead of welfare magnetism, our findings identified a tendency to a bifurcated social protection system for EU citizens in Germany, situated at the margin of the labour market and the welfare state.

Notes

¹ For the description of the main legislative acts and ECJ interpretations governing the dually open free movement system, see Schmidt, Blauburger and Martinsen as well as Davies, this volume.

² Different data were collected for our empirical analysis. Judicial responses are analysed by means of national court cases and quasi-judicial administrative decisions. Political and administrative responses are examined by means of qualitative interviews with key respondents as well as examination of official and unofficial documents. In total, we conducted 28 interviews with key actors in different parts of the social administration in the two countries. The analysis of outcomes draws on descriptive statistics from the German statistical offices as well as registered data collected for the Danish case and Eurostat. Further data information is provided in the analytical sections.

³ *Frankfurter Allgemeine Zeitung*, 19 February 2014, p. 9.

⁴ Bundessozialgericht, decisions of 3 December 2015, B 4 AS 59/13 R, B 4 AS 44/15 R and B 4 AS 43/15 R.

⁵ Interviews with several members of the German social administration, conducted in April and May 2016.

⁶ “Gesetz zur Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitsuchende und in der Sozialhilfe”, adopted on 16 December 2016.

⁷ *Frankfurter Allgemeine Zeitung*, 5 December 2015, p. 22.

⁸ Joint letter to Commissioner Marianne Thyssen, 27 July 2017.

⁹ Principled administrative rulings no. 27-07, 180-09, 190-11 & 38-12.

¹⁰ Principled administrative rulings no. 10426 & 10423.

¹¹ See the Danish State Administration's webpage information on 'Residence in Denmark for Union citizens and EEA nationals' on the webpage (accessed August 2017).

¹² See, for example, Berlingske, 23 September 2013, "Over 7000 EU borgere modtager dansk kontanthjælp"; Ritzau, 1 May 2016, "SF vil gøre det sværere for EU borgere at få dansk kontanthjælp".

¹³ Interviews with Danish State Administration and municipalities, September 2015.

¹⁴ See, for example, Jyllands-Posten, 16. April 2013, "SU-bombe kan give milliardhul i kassen"; Ritzau, 18 July 2013, "Venstre: EU-dom kan udhule det danske SU-system".

¹⁵ See Agency for the Danish students' Grants and Loans Scheme 2013. '*EU-dom og udlændinges ret til SU-Genoptagelse af sager*'.

¹⁶ See the agreement "Aftale om reform af SU-systemet og rammerne for studie gennemførelse", 18 April 2013.

¹⁷ Interview with Danish civil servant, May 2016.

¹⁸ Ministry for Higher Education and Science, May 2016.

¹⁹ These data are publicly available, either directly on the webpages of these institutions (<https://www.destatis.de> and <https://statistik.arbeitsagentur.de>) or on request.

²⁰ This implies that the end of each year corresponds to 1 January the following year, i.e., 31 December 2006 corresponds to 1 January 2007 and so forth.

²¹ Latest data available.

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Tables & Figures

Table 1: Socio-economic heterogeneity in the European Union (2015)

Member State	GDP per capita in PPS (EU-27 = 100)	Social protection expenditure (in % of GDP)	Social contributions (as % of total social protection receipts)
Belgium	118	29,1	60,3
Bulgaria	47	17,3	50,8
Czech Republic	87	18,6	71,6
Denmark	126	31,1	18,1
Germany	124	28	64,7
Estonia	75	16,2	79,4
Ireland	176	15,6	39,2
Greece	68	26,1	54,7
Spain	89	24,3	54,3
France	106	32	61,1
Italy	96	28,9	49,5
Cyprus	81	21,5	46,1
Latvia	64	14,6	58,1
Lithuania	74	14,8	72,8
Luxembourg	268	21,6	50,4
Hungary	68	19,9	63,6
Malta	92	17,3	39,8
Netherlands	128	28,4	62,3
Austria	127	29,4	62,5
Poland	68	18,7	62,7
Portugal	76	24,8	45,1
Romania	57	14,3	45,1
Slovenia	82	23,5	66,4
Slovakia	77	17,8	67,9
Finland	109	31,1	47,7
Sweden	123	28,7	47,2
United Kingdom	108	28,6	40,1

Source: All data are compiled from the Eurostat database (data files `pre_ppp_ind`, `une_rt_a`, `spr_exp_sum` and `spr_rec_sumt`). Data for Poland in columns 2 and 3 are from 2014 due to unavailability of data for 2015.

Table 2: Level of generosity of non-contributory benefits in Germany and Denmark (2017)

	Germany	Denmark
Minimum income benefits	€409 for persons living alone or for single parents. Coverage of 'appropriate' housing and heating costs. 'Appropriateness' decided by local authorities.	€1,498 for persons of 30 years or more without children; approximately €1,900 for persons with at least one child. Housing and other supplements possible, based on needs
Child benefits	1st child and 2nd child €192 per child. 3rd child: €198, 4th child: €223. No graduation by age.	Approximately €162 per child. Graduation by age.
Study grants	Maximum rate €735	Approximately €800

Source: MISSOC comparative tables database, SU.dk and Studentenwerke.de, accessed December 2017.

Table 3: Share of Foreign EU citizens in the EU-15 countries

	2007 (thousands)	% pop	2015 (thousands)	% pop	Change (thousands)	% change
Belgium	632,2	5,97	852,3	7,60	220,0	35
Denmark	81,2	1,49	173,2	3,06	92,0	113
Germany	2.467,2	2,99	3.475,5	4,28	1.008, 3	41
Ireland	351,9	8,10	368,6	7,96	16,7	5
Greece	157,7	1,41	198,7	1,83	41,0	26
Spain	1.634,6	3,65	1.948,4	4,19	313,8	19
France	1.299,0	2,04	1.487,4	2,23	188,3	14
Italy	606,2	1,03	1.491,9	2,45	885,7	146
Luxembourg	170,9	35,89	222,2	39,46	51,3	30
Netherlands	244,9	1,49	430,9	2,54	186,0	76
Austria	263,2	3,18	565,4	6,59	302,2	115
Portugal	95,6	0,90	100,4	0,96	4,9	5
Finland	42,5	0,80	90,2	1,64	47,7	112
Sweden	225,5	2,47	296,0	3,03	70,5	31
United Kingdom	1.456,9	2,39	2.988,3	4,60	1.531,4	105

Source: Data are compiled on the basis of the Eurostat's database with the source code 'migr_pop1ctz'. The numbers are the EU population in the respective countries as of January 1st of the noted year.

Table 4 Non-contributory recipients (EU) in DE in absolute numbers and as percentages of the EU population residing in DE

Recipients	2007	% EU population	2015	% EU population
Child allowance	332.752	13,49	510.107	14,68
Minimum income benefits				
<i>ALG II (non-working)</i>	172.655	7,00	308.901	8,89
<i>ALG II (in-work)</i>	49.524	2,01	124.533	3,58
<i>Sozialhilfe</i>	15.961	0,65	28.233*	0,81
Study grants	5.671	0,23	7.834	0,23

*for Sozialhilfe the ultimate year is 2014 due to unavailability of data for 2015.

Table 5: Non-contributory recipients in DK in absolute numbers and as percentages of the EU population residing in DK

Recipients	2007	% EU population	2015	% EU population
Family benefits	12339	15,19	23613*	14,76*
Study grants	3438	4,23	11290	6,52
Social assistance	2164	2,66	3354	1,94

* for family benefits the ultimate year is 2014 due to unavailability of data for 2015.

Figure 1 Proportion of EU citizens receiving non-contributory benefits among EU citizens residing in DE

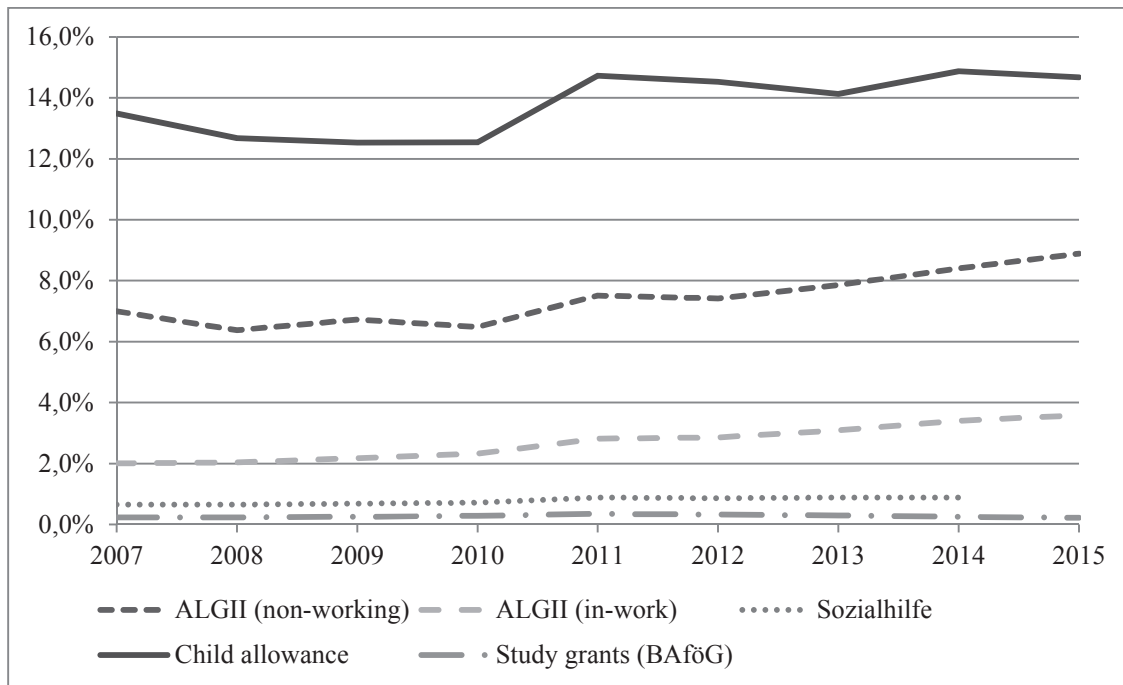


Figure 2: Proportion of EU citizens receiving non-contributory benefits in DK among EU citizens residing in DK

