

FEANTSA submission to the call for evidence on the EU Citizenship report 2023

FEANTSA is the European Federation of National Organisations Working with the Homeless. Our goal is an end to homelessness in Europe. FEANTSA works with over 130 members across 29 countries, including 22 EU Member States. Many of our member organisations are supporting a big number of mobile EU citizens who are pushed into destitution and homelessness. In line with this, FEANTSA welcomes the European Commission's call for evidence on the EU Citizenship Report of 2023 and, considering our extensive work with EU citizens in vulnerable situations, we hereby submit our contribution and recommendations.

As identified in our research, several factors that contribute to maintaining this destitution are related to **gaps and irregularities in the transposition and implementation of Directive 2004/38; FEANTSA strongly believes these factors must be recognised and addressed by European legislation and initiatives such as the EU Citizenship report 2023.** To this end, we underline in this contribution the main relevant political developments as well as case law on free movement and destitution to be taken into consideration in the upcoming report.

The ambiguity of concepts like “worker”, “comprehensive sickness insurance” and “burden to the social security system” paves the way for very restrictive interpretations at the national level, leading to difficulties in securing residence for vulnerable mobile EU citizens and, ultimately, in their ability to exit destitution. Problems are encountered throughout Europe from the very start of the residence process, like registering an address or obtaining a personal identification number, such as the requirement to proof at least one-year residence in Sweden to be given a *personnummer*.¹ The lack of legal certainty was mentioned as a challenge in the Citizenship report of 2020, which we hope to see addressed in the upcoming Communication with new guidelines on the Directive 2004/38.

Political developments since 2020

Regarding the political developments in the exercise of EU citizenship rights since the publication of the last Citizenship Report, we underline the following:

Firstly, throughout the majority of 2021, many COVID-related **border checks were still in place, creating differential treatment between mobile EU citizens with a residence permit** in the country they wanted to enter, and those without one. FEANTSA members in Norway and Denmark reported this provided an opportunity for rogue employers to exploit people in vulnerable situations, subjecting them to unsafe working conditions and inadequate housing. The residence requirement particularly affected those in more vulnerable situations, as they were more likely to have not secured their residence status, and/or been engaged in circular migration.

In addition, there was concern about the scope, necessity, proportionality, and potentially discriminatory character of border checks. Member States have not always been in compliance with

¹ For example, see the cases of Barcelona, Brussels, Münster (Germany) and Stockholm in FEANTSA (2021) [”Homelessness among mobile EU citizens: new data from four European cities”](#)

the existing case law by the EU Court of Justice expressing that, in the event of internal border closures under the Schengen Borders Code, these should not be equivalent to external borders.²

The right to freedom of movement was very limited during the pandemic, contributing to a series of measures for 'mobility control' of intra-EU migration that were already in place long before. **Exposing citizens to destitution has long been used for this purpose** in the absence of legal grounds for systematic residence checks of mobile EU citizens. For example, Swedish authorities "have attempted to discourage, regulate and otherwise manage the presence of mobile Roma EU-citizens by regulating their access to social rights, and their access and use of public space", which in practice means maintaining many citizens in precariousness only to deter them from staying in the country.³

Likewise, **regulations on the use of public space or bans on begging are other tools for 'mobility control'**, as enacted by the Danish Supreme Court in February 2022, when sentencing a Lithuanian citizen to 60 days of unconditional imprisonment for begging.⁴

During COVID-19, the economic and health situation worsened for many mobile EU citizens facing precariousness. Beyond the difficulty in crossing borders, **not having secured a residence status excluded many from precisely those rights that could help them with the pandemic** - namely public healthcare, social services, emergency accommodation, support for job seeking, or welfare benefits. Although restrictions for healthcare and emergency accommodation for people facing homelessness were in general lifted during the pandemic to protect societal public health, **the same obstacles and restrictions were put back in place afterwards**. This was the case in countries like Germany, Czechia, the UK, Netherlands, and Denmark, even when the opening of these rights during the pandemic had shown promising results in terms of improving the autonomy and living conditions of mobile EU citizens in destitution.⁵

In the Netherlands, **a first-ever national strategy for mobile EU citizens in homelessness was a missed opportunity** to provide them with basic rights. The strategy categorised people in need into three groups depending on their job history and social characteristics, and made access to the most basic support such as night emergency shelters conditional on their previous employment records and "chances" of obtaining a new job in the country.⁶ **It is worrying this plan is not in line with the EU Charter of Fundamental Rights, EU values as defined in article 2 TEU (e.g., human dignity, equality, non-discrimination) or rulings of the EU Court of Justice** like *C-709/20 CG v The Department for Communities in Northern Ireland*, on the obligation for a Member State to ensure dignified living conditions for mobile EU citizens and their children. Furthermore, the majority of this plan's budget is earmarked for reconnecting individuals to their countries of origin, to the detriment of upholding their rights as mobile EU citizens in need.

It is also important to underline the acute **precariousness faced by many people with Roma background when exercising their right to freedom of movement**. They are more likely to be the targets of police controls or unjustified document checks, to be discriminated against when accessing public services,

² European Parliament (2020). *BRIEFING EPRS Ideas Paper - Towards a more resilient EU: Free movement within the EU*. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652062/EPRS_BRI\(2020\)652062_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652062/EPRS_BRI(2020)652062_EN.pdf)

³ Persdotter, M. (2018). "Get them out of the country, in one way or another: On the Undoing of Geographies of Survival for Mobile Roma EU-citizens in Malmö, Sweden." In: *Society & Space: Forum*, no Dec 11.

⁴ FEANTSA (2022) "[FEANTSA strongly denounces the criminalisation of homeless people in Denmark](#)"

⁵ FEANTSA, "How did destitute mobile EU citizens experience the COVID-19 pandemic? Obstacles to accessing rights and dignified living conditions". Forthcoming.

⁶ FEANTSA (2022) "[A first time ever Government Plan of Action for mobile EU citizens in homelessness is adopted in the Netherlands but it falls short of expectations](#)"

or when looking for jobs or rental accommodation. Many are also pushed to live in segregated formal or informal camps with inadequate housing conditions, becoming in turn more visible in the media and more exposed to hate crime and hate speech.⁷ The experiences and challenges of **Roma people who are intra-EU migrants should also be considered in the new national strategies for Roma equality until 2030**, and more support measures should be adopted with a focus on Roma communities and the discrimination they face.

Finally, destitute mobile EU citizens continue facing difficulties in accessing bank accounts in the host countries, despite support measures being established under the Payment Accounts Directive 2014/92/EU. Research in this area shows that financial institutions fail to implement correctly the right to a basic bank account for mobile EU citizens, particularly in connection to the implementation of the Anti-Money Laundering Directive 2015/849/EU.⁸

Relevant case law on free movement and destitution

Lastly, this call for evidence also asks for information about relevant case law from the EU Court of Justice on freedom of movement. In FEANTSA we have observed the lack of compliance of many Member States with case law that is beneficial for mobile EU citizens facing vulnerability. A first example is on the definition of 'worker', with important rulings like *C-14/09 Hava Genc v Land Berlin*⁹, which established that for a person to receive a 'worker' status, the salary does not have to cover all living expenses and that it can be below the threshold for claiming social assistance in the country.

For the rights of EU jobseekers, the European Commission sent a reasoned opinion to Belgium¹⁰ for non-compliance last April with the ruling *C-710/19 G.M.A.*, of December 2020 (INFR(2022)4023). Indeed, Belgian authorities have since continued ignoring this ruling, as illustrated by the judgments of the 'Conseil du Contentieux des étrangers' [n° 270 728 of 31st March 2022](#), [n° 276 421 of 24th August 2022](#), and [n° 281 486 of 6th December 2022](#).

Other relevant case law by the EU Court of Justice includes *C-93/18 Bajratari v Secretary of State for the Home Department* on the condition of "sufficient resources" obtained from unofficial employment and the restrictive interpretation of the concept of 'public policy'. In the judgment *C-181/19 Jobcenter Krefeld – Widerspruchsstelle v JD*, the Court precludes national legislation that automatically and in any circumstance excludes mobile EU citizens and their minor children from welfare benefits that cover their subsistence costs, and special non-contributory cash benefits.

Another important ruling is *C-535/19 Augstākā tiesa (Senāts) – Latvia – A*, precluding legislation that excludes economically inactive mobile EU citizens from accessing public healthcare. Finally, case *C-709/20 CG v The Department for Communities in Northern Ireland* establishes that **authorities must ensure that, in the event of a refusal to grant social assistance, mobile EU citizens legally residing in their host Member State may nevertheless live with his or her children in dignified conditions.**

⁷ European Parliament (2022) "[European Parliament resolution of 5 October 2022 on the situation of Roma people living in settlements in the EU \(2022/2662\(RSP\)\)](#)"

⁸ For more information, see FEANTSA (2022) "[Financial inclusion of people experiencing homelessness in increasingly cashless societies](#)"

⁹ JUDGMENT OF THE COURT (Second Chamber), 4 February 2010, Case C-14/09 *Hava Genc v Land Berlin*

¹⁰ FEANTSA and EU Rights Clinic (2023) "[Press release: European Commission takes next step in infringement proceedings against Belgium on EU jobseekers' residence rights](#)"

This case law is a part of the EU *acquis* and, therefore, equally binding. We believe the European Commission shall enhance its efforts in monitoring how Member States comply with these rulings, in order to fully fulfil its role of 'guardian of the Treaties'.