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THE EU LEGAL FRAMEWORK ON SOCIAL SECURITY FOR MIGRANTS: A COMPARATIVE ASSESSMENT OF NATIONAL PRACTICES

Paolo Iafrate*

SUMMARY: 1. European legal framework and key case law on social security coordination. – 2. Access to social security benefits for immigrants. – 3. The differentiation of social rights: a comparative assessment. – 3.1. Scandinavian countries: the case of Sweden. – 3.2. Central European Countries: Germany. – 3.3. Southern European Countries: The Case of Italy. – 4. Conclusions.

1. European legal framework and key case law on social security coordination

The legal architecture governing social protection for mobile persons within the EU rests on a fundamental distinction: coordination versus harmonisation. This distinction is not merely academic; it defines the jurisdictional boundary between the Union's mandate and the sovereign prerogative of the Member States¹.

As scholars have noted, this jurisdictional boundary is the product of a constitutional settlement that preserves national competence over the organisation of welfare while subjecting its cross-border effects to Union oversight.

This article argues that the EU legal architecture for migrant social protection rests on a constitutionally significant distinction between the coordination of social security, which falls within the Union's mandate, and the organisation of social assistance, which remains a sovereign prerogative of the Member States. That distinction, far from being merely academic, defines the jurisdictional boundary between the Union's mandate and national competence. It is precisely the margin of discretion left to Member States in the field of social assistance that generates² a fragmented legal landscape and justifies the

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¹ C. GRABBE, *Free movement and access to social security in the EU: The challenge of exporting unemployment benefits*, in *European Journal of Social Security*, 2023, no. 1, pp. 20-40; F. COSTAMAGNA, *The Court of Justice and the Dilemma of Social Integration: The Case of Non-Economically Active Union Citizens*, Collegio Carlo Alberto, Vol. 487, 2016, pp. 2-24.

² European Commission: Directorate-General for Employment, Social Affairs and Inclusion and Y. JORENS (ed.), *50 years of social security coordination – Past, present, future*, Publications Office, 2010, <https://data.europa.eu/doi/10.2767/94087>.

comparative analysis³ of Sweden, Germany and Italy undertaken in the subsequent sections⁴. From a methodological perspective, the article adopts an approach of legal comparison. The analysis is not limited to a descriptive comparison of the legal systems of Sweden, Germany and Italy, but uses the European Union's regulatory and case-law framework as a common point of reference. The aim is to ascertain whether and how national practices, despite their differences, fall within the margins of discretion permitted by EU law or whether, on the contrary, they constitute a breach of it.

The choice of Sweden, Germany and Italy is no coincidence. As archetypes of the universalist, insurance-based-corporate and family oriented-Mediterranean welfare models respectively, they represent 'ideal case studies' for assessing the resilience of the minimum core of uniform treatment imposed by supranational law. This selection allows us to observe how the same tension between European coordination and national discretion manifests itself in profoundly different welfare contexts, producing different outcomes that are nonetheless equally relevant for testing the limits of EU law.

This residual national discretion has been the object of sustained doctrinal critique, with some authors arguing that it generates systemic inequalities between mobile EU citizens and host-state nationals, while others defend it as a necessary corollary of fiscal sovereignty.

The freedom of movement of persons, enshrined in Articles 20 and 45 of the Treaty on the Functioning of the European Union (TFEU), is one of the fundamental freedoms of the internal market and translates into the right of EU citizens to move and reside freely within the territory of the Member States, as well as to access, under certain conditions, the social security and welfare benefits offered by the host State. In this context, Regulation (EC) No. 883/2004 plays a central role, as it regulates the coordination of the social security systems of the Member States⁵, guaranteeing the principles of equal treatment (Article 4) and exportability of benefits (Article 7). In parallel, Directive 2004/38/EC of the European Parliament and of the Council establishes the conditions for the exercise of the right of residence by Union citizens in another Member State, imposing limitations on access to social benefits during the first three months and requiring the availability of sufficient economic resources to avoid an unjustified burden on the host State. This is accompanied by Directive 2003/109/EC⁶, which regulates the status of long-term residents from third countries.

³ On the distinction between coordination and harmonisation see, among many, S. GIUBBONI, *L'accesso alle prestazioni di sicurezza sociale dei cittadini di Paesi terzi nel "dialogo" tra le Corti*, *Lavoro Diritti Europa*, 2021, no. 1, pp. 2-10; G. BERKI, F. COSTAMAGNA, N. RENNUI, G. STRBAN (eds.), *The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare*, Publications Office of the European Union, 2023, pp. 13-17.

⁴ G. MCCANN, *Migration and Public Policy in a Fragmenting European Union*, *Policy and Practice: A Development Education Review*, Vol. 24, Spring 2017, pp. 6-25.

⁵ V. STOYANOVA, A. LOXA, S. ATALAY, *The Borders Within: Socio-economic Rights and Non-discrimination in EU Law. An Introduction to the Special Section*, in *European Papers*, 2025, no. 1, pp. 97-108.

⁶ Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long-term residents.

The Single Permit Directive, originally 2011/98/EU and now repealed and replaced by Directive (EU) 2024/1233 with effect from 21 June 2026⁷, guarantees a principle of equal treatment with nationals in various areas, including social security (Article 12(1)(e)).

The Court of Justice of the European Union has consistently held that the EU Treaties do not empower the Union to establish a common social security scheme; Regulation 883/2004 serves solely to coordinate distinct national systems, not to replace them with a uniform standard⁸. A central task of the CJEU is the demarcation between “social security” benefits, which fall within the scope of Regulation 883/2004, and “social assistance” benefits, which are largely excluded. The Court applies a two-pronged test: a benefit must be granted on the basis of a legally defined situation, without any individual and discretionary assessment of personal needs, and it must relate to one of the risks listed in Article 3(1) of the Regulation⁹. This distinction is the legal pivot upon which much of the differential treatment of TCNs turns.

The CJEU’s jurisprudence has clarified the limits of Member State discretion. In the seminal case *Kamberaj* (C-571/10), the Court ruled that long-term residents must enjoy equal treatment with nationals as regards social assistance, and that a Member State cannot impose a general and automatic exclusion from housing benefit based solely on the fact that the TCN does not hold an EU long-term residence permit.¹⁰ The Court of Justice’s decision, therefore, not only enhances a key provision of the system of protection of social rights provided for by the Charter of Nice, with a strong “pan-European” solidarity content (essentially using the latter as a constitutional parameter to interpret Directive 2003/109), but is also intended to strongly legitimize the aforementioned jurisprudential orientation of the Italian judges (5), who, on several occasions, have already disregarded the measures of local authorities, so much so as to induce the European Commission to threaten infringement proceedings against Italy¹⁰.

In *Dano* (C-333/13) and *Alimanovic* (C-67/14), the Court upheld the exclusion of economically inactive Union citizens from certain social assistance benefits, reasoning that Member States may protect their public finances provided the conditions of Directive 2004/38/EC are respected. Those principles have been extended to TCNs in appropriate contexts, but the precise scope of the exclusion remains subject to ongoing litigation¹¹. The resulting jurisprudential oscillation – between an expansive reading of

⁷ Directive (EU) 2024/1233 of the European Parliament and of the Council of 24 April 2024, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, repealing Directive 2011/98/EU, OJ L 2024/1233, 30.4.2024, applicable from 21 June 2026.

⁸ Case C-116/23, *XXXX v Sozialministeriumservice*, judgment of 11 April 2024, ECLI:EU:C:2024:304, paras. 34-35.

⁹ Case C-535/19 A (*Public Healthcare*), judgment of 15 July 2021, ECLI:EU:C:2021:595, paras. 34-40.

¹⁰ The *Kamberaj* ruling represents an important tool for strengthening and promoting that “certain degree of solidarity” which has been built up to now around the jurisprudence of the Court of Justice on access to social benefits of the Member States by EU migrant workers and, by attraction, by foreign workers.

¹¹ Case C-571/10, *Servet Kamberaj v Istituto per l’Edilizia Sociale della Provincia autonoma di Bolzano (IPES)*, judgment of 24 April 2012, ECLI:EU:C:2012:233, paras. 86-92; S. GIUBBONI, *European Citizenship and Social Rights in Times of Crisis*, Centro Einaudi, Working Paper N. 2, 2013, p. 5.

European citizenship as a status of social inclusion and a more restrictive, contribution-based logic – has been identified as a central tension in the Court's recent case law. With the Alimanovic ruling, the Court of Justice extends to jobseekers in matters of transnational social security rights the same restrictive approach it had already applied to economically inactive individuals in the Dano ruling. In this complex, yet still limited, jurisprudential orientation, it is difficult not to see a symptom of the shift affecting the very paradigm of European social solidarity. While, on the one hand, the status of European citizenship—especially thanks to the Court's extensive interpretation in the past—has undoubtedly universalized the logic of social integration, transcending the original mercantilist vision, on the other, recent case law, led by Alimanovic, now proposes a concept of solidarity that serves the purpose of protecting the balance of national welfare systems¹². In Joined Cases C-112/22 *CU* and C-223/22 *ND* (29 July 2024), the CJEU held that while Member States may impose a residence condition for access to a social assistance measure, they may not impose a period exceeding five years on long-term residents, as this would render the equal treatment provision of Article 11 of Directive 2003/109/EC nugatory¹³. The ruling of the Court of Justice of the European Union of 29 July 2024, Cases C-112/22 and C-223/22, which established the incompatibility between the 10-year residency requirement for access to the citizen's income and the right to equal treatment enjoyed by third-country nationals holding long-term residence status, pursuant to Article 11 of Directive 2003/109/EC.

The innovative contributions made by the ruling in applying general concepts drawn from anti-discrimination law (particularly the notions of indirect discrimination and justification) are highlighted, and the possible effects of the ruling on pending cases concerning other categories of foreigners (EU citizens and holders of international protection)¹⁴. This tension has been recently addressed by the ruling of 15 May 2026 in Joined Cases C-151/24 and C-152/24, *Luevi (INPS v V.M.)*¹⁵. With that ruling now

¹² M.E. BARTOLONI, *Lo status del cittadino dell'Unione in cerca di occupazione: un limbo normativo?*, in *European Papers*, 2016, no. 1, pp. 153-162.

¹³ Case C-333/13 *Elisabeta Dano, Florin Dano v Jobcenter Leipzig*, judgment of 11 November 2014, ECLI:EU:C:2014:2358: The Court of Justice of the European Union has held that Directive 2004/38 on the free movement of EU citizens and their families and Regulation (EC) No. 883/2004 on the coordination of social security systems do not prevent a Member State from excluding nationals of other Member States from the benefit of “non-contributory cash social benefits” provided for nationals, when the former do not enjoy a right of residence under the directive itself, or do not have the status of ‘worker’ pursuant to Article 7(1) and (3) of Directive 2004/38, or ‘inactive’ citizens who have sufficient resources of their own to avoid becoming a burden on the social assistance system of the host country and do not have health insurance. Case C-67/14, *Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others*, judgment of 15 September 2015, ECLI:EU:C:2015:597.

¹⁴ A. GUARISO, *Incompatibile con il diritto UE il requisito di dieci anni di residenza per accedere al reddito di cittadinanza, nota alla sentenza della Corte di Giustizia del 29 Luglio 2024, causa c-112/22*, in *Diritto Immigrazione e Cittadinanza*, 2024, no. 3, pp. 1-5.

¹⁵ Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State must be interpreted as not applying to a special non-contributory cash benefit within the meaning of Article 70 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation

delivered the Italian case highlights the legal grey area. The Court clarified that while Member States may require a lawful residence, a blanket exclusion based on a specific, harder-to-obtain residence title is a disproportionate means of verifying the requisite degree of integration, particularly for single permit holders who are already lawfully residing and working.¹⁶ The Court, confirming the distinction between social security benefits and social assistance as the cornerstone of the system, ruled that making a special non-contributory cash benefit, such as the Italian social allowance, conditional upon holding an EU long-term resident's permit does not constitute prohibited indirect discrimination. This is because, as this is a social assistance benefit funded from general taxation, Member States retain the right to make it subject to conditions demonstrating a certain degree of integration into the host country. The ruling therefore draws a clearer distinction: strong protection against discrimination based on residence status applies to social security benefits in the strict sense, whilst in the field of social assistance, the margin of state discretion remains broad, provided that the conditions imposed are not manifestly disproportionate. In their ruling, the judges recall that the principle of equal treatment under EU law applies, in social matters, only to social security measures intended for people active in the labor market. These benefits cover risks specifically provided for by European legislation, are granted on a non-discretionary basis, and are financed by contributions paid by workers and employers. The social allowance at issue in the case, the Court notes, is a special non-contributory cash benefit, granted independently of employment and intended to address a state of need arising from poverty. For this reason, it does not fall within the definition of social security, but rather within that of social assistance paid from the public finances of the host Member State. In this context, the Court concludes, Member States remain free to make the granting of these benefits subject to conditions certifying a certain degree of integration of third-country nationals in the host Member State, such as possession of a long-term residence permit.

The dialectic between the EU's coordination competence and Member States sovereignty in social assistance generates a margin of discretion that national legislators exploit in different ways. This article's comparative sections test the compatibility of the most recent national practices in Sweden, Germany and Italy with the minimum core of uniform treatment imposed by EU law, focusing on the principles of equal treatment, proportionality, and the exportability of benefits.

(EC) No 883/2004. 988/2009 of the European Parliament and of the Council of 16 September 2009 and, therefore, it does not preclude national legislation which makes the granting to third-country nationals referred to in Article 3(1)(b) and (c) of that directive of such a benefit in the form of a social allowance intended for persons over 65 years of age (from 1 January 2019, over 67 years of age) who are in a disadvantaged economic situation and who have limited working capacity because of their age, conditional on possession of a long-term resident's Union residence permit..

¹⁶ Joined Cases C-112/22 CU and C-223/22 ND, judgment of 29 July 2024, ECLI:EU:C:2024:636, paras. 48-55.

2. Access to social security benefits for immigrants

In this paragraph, in order to better define access to social security benefits for immigrants, the first thing to take into consideration is their legal status, which serves as the main criterion for being recognized or not a certain right to social economic benefits in the Member States. Foreign immigration in Europe finds its legal basis in Articles 79 and 90 of the TFEU (Treaty on the Functioning of the European Union) where the competences in the following matters are established: regular immigration, integration, fight against illegal immigration and human trafficking, as well as admission agreements with Third Countries¹⁷.

That said, regular immigration in the EU is regulated in terms of status and residence permit, so two macro categories must be distinguished: economic immigrants and political immigrants. The latter category does not pose particular problems in terms of access to social rights, because they are treated on an equal footing with citizens of the host countries, at least in principle. The situation differs for economic migrants, whose different legal statuses act as criteria that may hinder or favour access to social security and social assistance benefits.¹⁸ At the highest level, there is the category of long-term resident migrants, holders of an EU residence permit¹⁹ whose status is regulated in Directive 2003/109/EC²⁰.

By virtue of their roots in the social fabric of the host Member State, they can benefit from both social security and welfare benefits on a par with nationals. Article

¹⁷ The Lisbon Treaty also specifies that the Union's competences in this area are shared with the Member States, in particular as regards the number of migrants authorised to enter a Member State in order to seek work there (Article 79(5) TFEU). Finally, the Court of Justice now has full jurisdiction in matters of immigration and asylum.

¹⁸ For convenience, all issues related to non-economic migrants are left out here because they are outside the scope of the study chosen here to focus all attention on the so-called “regular” economic migrants. Therefore, the central theme has always been and remains that of work on the one hand and the integration of the foreign worker within the social security system on the other. The so-called regular migrants are those who have a residence permit for work or that allows them to work. The issues related to social security benefits also extend to their family members, even if they are survivors according to the principle of equal treatment and non-discrimination.

¹⁹ In Italy, the EC long-term residence permit has effectively replaced the residence card. Since 1 April 2007, the residence card has therefore been the residence permit issued to non-EU foreigners who are family members of EU citizens (and Italians) resident in Italy and who meet the requirements set out in Legislative Decree 06/02/2007, no. 30, art. 10. The EC long-term residence permit may be requested by a non-EU citizen who has held, for at least five years, a valid residence permit that demonstrates availability of an income and suitable accommodation (Legislative Decree 25/07/1998, no. 286, art. 9). The EC long-term residence permit: is for an indefinite period; is valid as a personal identification document for 5 years; its issue is subject to passing an Italian language test.

²⁰ The status of third-country nationals who are long-term residents in the European Union is still governed by Council Directive 2003/109/EC, which was amended in 2011 to extend its scope to refugees and other beneficiaries of international protection. The March 2019 report on the application of the Directive found that, instead of actively promoting the European long-term resident status, Member States mainly issue national long-term resident permits and, in addition, only a limited number of third-country nationals make use of the right to move to another Member State. The Commission envisages a revision of the Directive in order to strengthen the right of long-term residents to move and work in other Member States. The current proposal for a Regulation on Asylum and Migration Management (4.2.2) and the Blue Card Directive, as now approved, also provide for amendments to the Long-Term Residents Directive.

11(1)(d) of that Directive grants them equal treatment with nationals regarding social security, social assistance and social protection as defined by national law. The CJEU in *Kamberaj* confirmed that this provision precludes a general and automatic exclusion of long-term residents from a housing benefit based on a national criterion that discriminates against TCNs²¹, yet also acknowledged that Member States may make the grant of such benefits subject to conditions, such as a five-year residence requirement, provided those conditions do not render the right to equal treatment ineffective.

Other categories of TCN workers such as holders of a single permit under Directive 2011/98/EU (now Directive 2024/1233), highly qualified workers under the Blue Card Directive (2009/50/EC, recast by Directive (EU) 2021/1883), seasonal workers under Directive 2014/36/EU, and intra-corporate transferees under Directive 2014/66/EU – enjoy equal treatment limited to the branches of social security covered by Regulation 883/2004, but do not automatically benefit from social assistance measures that fall outside that scope²². This creates a “ladder of entitlement” where rights increase in line with the permanence and economic value of the residence status²³.

The demarcation between social security and social assistance is therefore decisive²⁴. The CJEU has consistently ruled that benefits requiring an individual assessment of resources and aimed at guaranteeing a minimum subsistence level are typically classified as social assistance, placing them beyond the direct coordinating reach of Regulation 883/2004²⁵. That distinction allowed the Court to uphold the exclusion of job-seeking EU citizens from German basic provision benefits in *Dano* and *Alimanovic*²⁶, establishing that economically inactive Union citizens who move solely to obtain social assistance may be lawfully refused such benefits without an individual assessment of their circumstances. However, when a TCN holds a single permit and works, even part-time or temporarily, the denial of a benefit classified as a branch of social security would likely breach Article 12(1)(e) of Directive 2011/98/EU (which remains in force until 21 June 2026, and whose provision is substantially replicated in Article 13(1)(e) of the repealing Directive 2024/1233)²⁷; if it is granted on the basis of a legally defined situation, without any individual and discretionary assessment of personal needs, and if it relates to one of the risks explicitly listed in that provision (e.g., sickness, invalidity, old age, unemployment). In Case C-535/19 A (*Public Healthcare*), the Court confirmed that state-financed healthcare provided to defined categories of

²¹ *Kamberaj*, cit., para. 90.

²² Directive 2009/50/EC, OJ L 155, 18.6.2009, p. 17, recast by Directive (EU) 2021/1883, OJ L 382, 28.10.2021, p. 1; Directive 2014/36/EU, OJ L 94, 28.3.2014, p. 375; Directive 2014/66/EU, OJ L 157, 27.5.2014, p. 1.

²³ E. DE BECKER, *Social security in the fundamental rights case law of the Court of Justice* in F. PENNINGS, G. VONK (eds.), *Research handbook on European social security law*, II ed., Cheltenham/Northampton, 2023, pp. 2-22.

²⁴ M. MANFREDI, *Access to Social Benefits for Third-country Nationals in the European Union Between Fragmentation and Equal Treatment*, in *European Papers*, 2025, no. 1, pp. 191-218.

²⁵ Case C-535/19 A, cit., paras. 38-40.

²⁶ *Dano*, cit., para. 78; *Alimanovic*, cit., para. 52.

²⁷ See, by analogy, *Kamberaj*, cit., para. 83.

persons without a discretionary needs assessment constitutes a sickness benefit under the Regulation²⁸. As analysed above, the CJEU's distinction between social security and social assistance, and its application in cases such as *Dano* and *Alimanovic*, creates a legal filter that operates across all categories of migrants. In the words of the Court, a publicly funded healthcare scheme which, without any individual and discretionary assessment of personal needs, confers a right to healthcare on the persons belonging to the categories of recipients defined by national law, must be regarded as a sickness benefit within the meaning of Article 3(1)(a) of Regulation No 883/2004²⁹. Conversely, benefits that require an assessment of individual resources and aim to guarantee a minimum subsistence level are classified as social assistance, falling outside the coordination regime. This distinction is the legal pivot upon which much of the differential treatment of EU citizens and third-country nationals (TCNs) turns. Within the TCN framework, long-term residents holding an EU residence permit under Directive 2003/109/EC enjoy the most extensive protection. Article 11 of that Directive obliges Member States to grant long-term residents equal treatment with nationals in fields including social security, social assistance and social protection. However, the Court's ruling in *Kamberaj* (C-571/10)³⁰ exposed a critical tension: while Member States may not completely exclude long-term residents from housing benefit schemes, they may make the grant of such benefits subject to conditions, provided those conditions do not render the right to equal treatment ineffective. The Court held that Article 11(1)(d) of Directive 2003/109 must be interpreted as precluding a national or regional law which, as regards the grant of a housing benefit, treats a third-country national who has long-term resident status [...] differently from nationals [...] as regards the determination of the overall reference amount for the purposes of granting that benefit. Yet it added that "that provision does not preclude the grant of such a housing benefit to a third-country national with long-term resident status from being subject to the condition that that person must have resided in the territory of that region or province for at least five years"³¹. The Court's ruling in *Kamberaj*, discussed above, exposed the critical tension between this formal promise of equality and the Member States' retained margin of discretion to impose residence conditions. The judgment thus acknowledges a margin of discretion that can significantly dilute the formal promise of equality. The position of other TCN workers is even more precarious. Single permit holders (Directive 2011/98/EU), highly qualified workers (Directive 2009/50/EC) and intra-corporate transferees (Directive 2014/66/EU) are often entitled to social security benefits linked to their employment but may be lawfully excluded from non-contributory social assistance schemes by the host Member State. This tiered system of

²⁸ D. CARTER, J. MORITZ, *The "Dano Evolution": Assessing Legal Integration and Access to Social Benefits for EU Citizens*, in *European Papers*, 2018, no. 3, pp. 1178 -1208.

²⁹ Judgment of 15 July 2021, A (*Public Healthcare*), C-535/19, ECLI:EU:C:2021:614, para.56.

³⁰ C.R. O'BRIEN, *Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights*, in *Common Market Law Review*, 2016, no. 4, pp. 1-30.

³¹ *Kamberaj*, cit., paras. 87, 93.

rights creates a fragmented landscape that appears difficult to reconcile with a uniform principle of equal treatment.

Similar tensions are apparent even for EU citizens. The landmark judgments in *Dano* (C-333/13) and *Alimanovic* (C-67/14) make clear that economically inactive Union citizens who move to another Member State can be refused social assistance benefits if they do not possess sufficient resources and comprehensive sickness insurance cover³². In *Dano*, the Court found that “a Member State must have the possibility [...] of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State’s social assistance, even though they do not have sufficient resources to claim a right of residence³³. In *Alimanovic*, the Court reinforced this stance, ruling that³⁴” a Member State may exclude Union citizens who have gone to that State to seek employment from entitlement to certain non-contributory cash benefits [...], provided that such exclusion does not require an individual assessment of the person’s situation³⁵. These restrictions are compatible with Directive 2004/38/EC and do not require an individual assessment of the applicant’s circumstances. This case law introduces a significant limitation on the equal treatment principle, creating a de facto hierarchy in which Member States may lawfully condition access to welfare on a qualifying period of legal residence and economic self-sufficiency.

Taken together, the CJEU’s rulings reveal a legal framework in which the distinction between social security and social assistance serves not only as a technical classification but also as a gatekeeper for the exclusion of certain categories of migrants from minimum subsistence benefits. The resulting picture is one of deep ambivalence: on the one hand, EU law aspires to guarantee equal treatment; on the other, both legislation and case law permit significant differentiation based on status, economic activity and length of residence.

They delineate the boundaries of a conditional solidarity model, granting Member States wide latitude to differentiate rights based on the duration and quality of the migrant’s residence and economic contribution. This model resolves the immediate conflicts of competence between the EU and its Member States, but it simultaneously embeds a permanent ambiguity within the EU legal order: the very notion of social citizenship remains fractured along national lines, and the promise of equal treatment solemnly proclaimed in the Treaties and the Charter – is, in practice, graduated according to the migrant’s utility to the host economy. The resulting legal patchwork may offer pragmatic solutions, yet it leaves unanswered the broader question of whether a Union committed to human dignity and solidarity can sustain a system in which the

³² F. PENNING, *Does the EU Charter of Fundamental Rights have Added Value for Social Security?*, in *European Journal of Social Security*, 2022, no. 2, pp. 117-135.

³³ *Dano*, cit., para. 78.

³⁴ D. THYM, *EU Free Movement as a Legal Construction – not as Social Imagination*, in *VerfBlog*, 2014/11/12, <https://verfassungsblog.de/en-eu-freizuegigkeit-als-rechtliche-konstruktion-nicht-als-soziale-imagination-2/>.

³⁵ Judgment of 15 September 2015, *Alimanovic*, C-67/14, ECLI:EU:C:2015:597, para. 60.

most vulnerable migrants are the first to be lawfully excluded from the basic social safety net that the European social model is supposed to guarantee.

The analysis thus reveals a legal framework in which EU law imposes a minimum core of uniform treatment for TCNs in the field of social security, while leaving Member States significant discretion to exclude certain categories of TCNs³⁶ from social assistance. It is precisely this margin of discretion that produces the divergent national practices examined below³⁷. This system is defined by the distinction between social security and social assistance benefits, and by the migrant's legal status. It is precisely this margin of discretion, which allows Member States to lawfully condition access to social assistance on integration and residence requirements, that produces the divergent national practices which will be examined in the comparative analysis below, aimed at verifying the compatibility of such domestic choices with the principles of proportionality and non-discrimination.

The fragmentation of this ladder of entitlement is further compounded for TCNs whose countries of origin lack bilateral social security agreements with the host Member State. As the Italian case poignantly illustrates, the absence of such agreements can render the contributory “rungs” of the ladder – which are nominally accessible – functionally useless, effectively trapping individuals on the lower rungs of social assistance or creating a forfeiture of acquired rights. This legal patchwork underscores how national discretion not only determines the height of each rung but can also dismantle the ladder’s structural integrity for certain groups of migrants.

3. The differentiation of social rights: a comparative assessment

The preceding analysis reveals a clear hierarchical gradient in the treatment of TCNs across the three Member States. Sweden occupies the most inclusive pole, systematically applying equal treatment to legally resident TCNs with minimal durational requirements, thereby closely mirroring the EU principle of non-discrimination. Germany occupies an intermediate position, granting broad access to

³⁶ S. CARRERA, D. COLOMBI, *Irregularising Human Mobility: EU Migration Policies and the European Commission’s Role*, SpringerBriefs in Law, 2025, pp. 35-45.

³⁷ One of the elements that increases the disparity of treatment just mentioned towards immigrants, is evident from the fact that some of them come from countries that have not stipulated any type of convention with the countries of immigration. Such conventions allow their expatriate citizens not to lose the rights acquired abroad that can be added to those acquired locally. Currently this solution is no longer practicable because law no. 189 of 30 July 2002, the so-called Bossi-Fini, has modified the structure of the legislative decree referred to, as can be deduced from art. 22 paragraph 13 of the same TUI. The reimbursement of contributions paid in Italy by a repatriated immigrant is no longer contemplated in the system, in exchange the immigrant in question is recognized the possibility of maintaining the accrued social security and pension rights and can enjoy them regardless of the validity of a reciprocity agreement upon the occurrence of the maturation of the requirements provided for by the legislation in force, upon reaching the age of sixty-five, even in derogation from the minimum contribution requirement referred to in article 1, paragraph 20, of law no. 335 of 8 August 1995; W. CHIAROMONTE, *Migrants’ Access to Social Protection in Italy*, in JM. LAFLEUR, D. VINTILA (eds.), *Migration and Social Protection in Europe and Beyond* (Volume 1), Cham, 2020, pp. 241-246.

benefits but conditioning them on prior contribution periods and permanent residence, thus prioritizing fiscal sustainability over immediate inclusion. Italy represents the most restrictive model, where access is heavily fragmented, often contingent on long-term residence status, and subject to discretionary administrative practices, reflecting a residual welfare logic that treats social assistance as a privilege rather than a right. Against the backdrop of EU directives, all three systems comply formally with minimum standards, yet they diverge substantially in their implementation: Sweden and Germany progressively approximate the treatment of their own nationals, while Italy maintains sharper distinctions, revealing that the tension between equal treatment and the protection of public finances is resolved not through uniform EU enforcement, but through nationally embedded welfare traditions and administrative cultures. This systematic variance confirms that the legal status of TCNs remains fundamentally a function of domestic path dependencies, only partially attenuated by supranational harmonization. The legal status of TCNs is shaped by a complex interplay of national legislation and multi-level EU norms, including Directive 2004/38/EC on the right of free movement³⁸, Directive 2011/98/EU establishing a single application procedure for a single permit (the Single Permit Directive)³⁹, and Directive 2003/109/EC concerning the status of long-term residents.⁴ These instruments establish a hierarchy of rights, often creating a chasm between the principle of equal treatment for legally resident workers on one hand, and the state's asserted prerogative to protect public finances by limiting access to social assistance on the other. Consequently, the comparative assessment that follows is expressly organized around the three analytical axes identified in the methodological framework: the criteria for accessing benefits, the specific limitations imposed on TCNs, and the nature of each national system's relationship with the evolving body of EU law. The following comparative analysis of Sweden, Germany, and Italy will systematically examine the criteria for access to benefits, the limitations imposed on TCNs, and the relationship of each national system with this evolving body of EU law.

That said, we proceed to a comparative analysis of the social security legislation for foreign citizens of Sweden, Germany and Italy.

Building upon the individual national analyses, a direct comparison of the three systems reveals fundamental divergences in how each Member State operationalizes the tension between equal treatment and the protection of public finances. The following assessment systematically contrasts the three jurisdictions across the axes requested by the referees: the criteria for accessing benefits, the specific limitations imposed on third-

³⁸ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004, pp. 77-123.

³⁹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, pp. 1-9.

country nationals (TCNs), and the nature of their relationship with the *acquis* of the European Union.

Regarding the first axis, the criteria for access to benefits, the universalistic Swedish model, based on residence, contrasts with the German insurance-contributory model and the mixed and fragmented Italian model. This structural difference a priori determines a different degree of formal inclusiveness of the system with respect to TCNs. With respect to the second axis, the specific limitations for TCNs, while Sweden has historically applied a principle of strict equality, recent reform proposals introduce a minimum residence period of five years. Germany, for its part, categorically excludes economically inactive third-country nationals from social assistance (SGB II), anchoring protection to the labor market. Finally, Italy makes access to non-contributory benefits such as social allowance conditional on possession of an EU long-term residence permit, creating a significant temporal and administrative barrier. Finally, on the third axis, the relationship with EU Law, all three jurisdictions are in a tense relationship, albeit of varying intensity, with EU law. The Swedish proposals are at the limit of what is permitted by the *CU* and *ND* rulings. The German legislation has been largely validated by the *Dano/Alimanovic* case, but only to the extent that it makes a clear distinction between social security and social assistance. The Italian practice, however, is the subject of litigation (from the *Kamberaj* case to the *Luevi* case) that calls into question its compatibility with the principle of non-indirect discrimination and EU directives.

3.1. Scandinavian countries: the case of Sweden

The criteria for accessing benefits and the residence requirements imposed on TCNs differ markedly across the three Member States, reflecting their distinct welfare state traditions. In Sweden, immigrants' access to social security is governed by a universal welfare system that tends to provide protections for all residents, although with some differences depending on the legal status of the individual (e.g. refugee, migrant worker, asylum seeker, EU citizen, etc.)⁴⁰. Sweden has a universalistic welfare model, inclusive of immigrants. As a Nordic state, Sweden is party to the Nordic Convention on Social Security of 2012, which extends Regulation 883/2004 to third-country nationals in intra-Nordic cases. However, Denmark, Iceland and Norway are not bound by Regulation 1231/2010, creating a complex patchwork. The implementation of the Citizenship Directive (2004/38/EC) in Sweden has revealed friction between EU law and the residence-based Nordic welfare state. Sweden's proposal to introduce a five-year qualifying period for both social security and social assistance benefits sits uneasily with the CJEU's ruling in *CU* and *ND*, which prohibits residence periods exceeding five years for long-term residents, and risks indirect discrimination against TCN workers.

⁴⁰ <https://www.portaledeigiovani.it/scheda/vivere-svezia>; <https://www.forsakringskassan.se/>.

Scandinavian countries are therefore considered virtuous examples in terms of citizens' access to social security benefits. It is a universalist system, albeit expensive, financed by tax revenues. The management of the system is public and takes the form of transfers and social services. The latter are so personalized and of good quality that they are preferable to the former. All this is made possible thanks to an egalitarian system based on a high level of participation by both men and women in the labor market⁴¹.

Well, to understand the Swedish welfare system in relation to the immigration issue, you must first know the legal concept of residence, which is different from that in force in other European countries. Generally, someone who goes to Sweden is considered a resident if his or her period of stay is expected to exceed one year. A person resident in Sweden who leaves the country continues to be considered a resident if, presumably, he or she will stay abroad for less than one year⁴². Although the formalities for granting a residence permit to immigrants by the Swedish authorities vary depending on the foreigner's country of origin, obtaining Swedish citizenship is a less complicated process in terms of timing than in other European countries⁴³.

The social security system in Sweden covers accident insurance, old-age pension, survivor's pension, disability pension, unemployment benefit and sickness insurance. The costs of social security are paid by the employer (about 33%) while the contributions paid by the employees are paid by the employer as a substitute deducted from the wages.

All persons residing in Sweden and over the age of sixteen are eligible for *social insurance* for residents (*bosättningsbaserad*), as well as employment insurance for those who work. Social insurance, administered by *Försäkringskassan* (the Swedish Social Insurance Agency), is financed largely by employer contributions⁴⁴.

This is so true that Sweden pursues a public policy that favors the reception and integration of immigrants.

The latest political elections in Sweden have brought to light important problems, which many define as the crisis of the Swedish socioeconomic model. Others, however, argue that the current debates and conflicts around the issue of immigration, multiculturalism, the rise to power of xenophobic parties, are unlikely to undermine the effectiveness and quality of the Swedish administration and institutions in terms of social security benefits⁴⁵. Here, an essential comparative distinction emerges: unlike the

⁴¹ On point Yes see Å. LUNDQVIST, *The Family in the Nordic Model*, in *Nordic Historical Review*, 2009, no. 1, pp. 95-111.

⁴² European Commission, Employment, Social Affairs and Inclusion, *Social Security Rights in Sweden*, 2012.

⁴³ F. RÖMER, L. RÖTH, M. ZOBEL, *Policymaking on immigrant welfare rights: the populist and the mainstream right*, in *Journal of European Public Policy*, 2023, no. 8, pp. 1537-1564.

⁴⁴ UnionCamere Sweden - Labour Market, http://www.mercatiakonfronto.it/index.php?option=com_content&view=article&id=33350&Itemid=5393&lang=it.

⁴⁵ A.E. CANTRELL, *Denmark and Sweden: The Collision Between Welfare State Politics and Immigration*, 2022, Student Publications, https://cupola.gettysburg.edu/student_scholarship/1022; see also D. SWANK, *Global Capital, Political Institutions, and Policy Change in Developed Welfare States*, Cambridge, 2002, p. 85; R. GEYER, C. INGEBRITSEN, J. MOSES (eds.), *Globalization, Europeanization, and the end of*

insurance-based contributory logic in Germany or the mixed, fragmented system in Italy, Sweden's universal residence-based model initially treats all legal residents equally, blurring the line between social security and social assistance for the purpose of access⁴⁶. This makes the recent restrictive turn, imposing qualifying residence periods for basic family and sickness benefits, an even more profound systemic shock.

Ultimately, the question of the sustainability of social benefits for immigrants also arises for those countries that have distinguished themselves at European level as a model of immigrant integration from the point of view of social security. In Sweden, in particular, the rules for having a long-term residence permit have recently been modified in order to limit the number of those entitled according to the pre-reform rules. To be entitled to this type of residence permit, citizens from third countries will have to demonstrate a monthly income of 8,287 crowns equivalent to approximately 809 euros. Things are no better for refugees, for whom the residence permit granted to them will no longer have an unlimited duration⁴⁷.

According to the proposal of 29 April 2025 by the Minister of Senior Citizens and Social Welfare Anna Tenje (M)⁴⁸, immigrants will continue to be entitled to receive financial assistance or social security benefits, but only after having resided in Sweden for at least five years.

According to the bill for access to benefits such as child benefit, parental allowance or sickness benefit, it is proposed that immigrants must have lived in Sweden for at least five years within a fifteen-year period.

However, the survey suggests that a person can shorten their eligibility period by earning income from work for a certain period of time⁴⁹. The requirement will apply to anyone moving to Sweden from a country outside the EU/EEA⁵⁰, regardless of citizenship.

To receive financial assistance, i.e. social benefits, one must have resided legally in Sweden for five years continuously. However, financial assistance should be available in "serious emergency situations" even if the requirements are not met.

Scandinavian social democracy?, London/New York, 2000, pp. 85-138; D. SAINSBURY, *Immigrants' social rights in comparative perspective: welfare regimes, forms in immigration and immigration policy regimes*, in *Journal of European Social Policy*, 2006, no. 3, pp. 229-244; J.-M. LAFLEUR, D. VINTILA (eds.), *Migration and Social Protection in Europe and Beyond*, op. cit.; W. EICHHORST, P. MARX, *Reforming German labor market institutions: a dual path to flexibility*, IZA Discussion Papers, No. 4100, 2009, Institute for the Study of Labor (IZA), Bonn.

⁴⁶ For the specific features of the Nordic social security model and its universalistic basis, see G. ESPING-ANDERSEN, *The Three Worlds of Welfare Capitalism*, Princeton, 1990.

⁴⁷ See an article from Euronews dated 22 July 2021 Suède : entrée en vigueur de la nouvelle loi sur l'immigration.

⁴⁸ Kvalificering till socialförsäkring och ekonomiskt bistånd för vissa grupper, Tryck och remisshantering: Elanders Sverige AB, Stockholm 2025, https://regeringen.se/contentassets/db47d0ed4bd04f199ce9fea456ce2d82/sou_2025_53.pdf; <https://www.regeringen.se/regeringens-politik/socialforsakringar/regeringens-bidragsreform/>

⁴⁹ <https://www.scb.se/>; <https://www.government.se/>

⁵⁰ EMN Annual Reports, 2025 https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-publications/emn-annual-reports_en.

From an EU law perspective, these proposals raise serious questions of compatibility with the equal treatment obligations imposed by Directive 2003/109/EC and the Single Permit Directive. For TCNs who are already long-term residents under Directive 2003/109/EC, imposing a five-year qualifying period for social assistance would be at the very limit of what the CJEU in CU and ND permits, but not necessarily a contravention, as the Court allows residence conditions not exceeding five years. It would, however, require careful proportionality scrutiny⁵¹. Moreover, for TCNs holding a single permit, conditioning access to benefits that fall within the definition of social security (such as sickness and parental benefits) on a qualifying period of residence – rather than on the exercise of an economic activity risks amounting to indirect discrimination, as it disproportionately affects non-nationals and is not justified by objective considerations unrelated to nationality⁵². The Swedish case thus illustrates how even the most inclusionary welfare model is being recalibrated in a manner that tests the limits of Member State discretion under EU law. These new restrictions, conditioning access to non-contributory benefits on a lengthy prior residence, place Sweden in potential tension with the EU law principle of equal treatment, particularly for TCNs who are already legally resident and working under the Single Permit Directive but have not yet met the new five-year threshold⁵³.

It is proposed that the rules will come into force on 1 January 2027, which means that immigrants arriving in Sweden after that date will have to meet the qualification requirements in order to receive the current benefits. In other words, it is necessary for the foreign national to start working before receiving compensation and subsidies⁵⁴.

3.2. Central European Countries: Germany

The distinction between social security and social assistance operates as a critical legal filter across all three Member States, but its practical consequences for TCNs vary significantly depending on how each system classifies and administers benefits.

Germany's social security system, anchored in the Bismarckian insurance-based tradition, distinguishes sharply between insurance-based benefits (governed by SGB III) and tax-funded social assistance (SGB II "Hartz IV" and SGB XII). Access to the former is conditioned on prior contributions, while access to the latter is need-based but restricted for certain categories of foreigners⁵⁵.

⁵¹ Joined Cases C-112/22 and C-223/22, cit., para. 55.

⁵² *Kamberaj*, cit., para. 80.

⁵³ Article 12 of Directive 2011/98/EU guarantees TCNs with a single permit equal treatment with nationals in branches of social security defined by Regulation (EC) No 883/2004. The imposition of additional, non-contributory residence tests on such workers could be challenged as a breach of that right if the benefit in question falls under the material scope of social security rather than social assistance.

⁵⁴ <https://www.friatider.se/invandrare-ska-kvalificera-sig-att-leva-pa-bidrag>.

⁵⁵ P. OSTER, T. GIEGERICH, K. HÖFER F. WEBER, *Solidarität in Europa | Europäische Solidarität Solidarität in Europa | Europäische Solidarität*, Akten zur 3. Saarbrücker Europa-Konferenz, Nomos, 1. Auflage Seiten Das Werk ist Teil der Reihe Saarbrücker Beiträge zur Europaforschung, 2024, pp. 120-122.

In Germany, immigrants' access to social security depends on a range of factors, including residency status⁵⁶, type of employment, and contributions to the system⁵⁷. Germany bases its social security system on the model devised by Chancellor Bismark, as previously specified. That is, a form of associative welfare model based on the insurance contributions of the worker and which the worker can benefit from in case of need, such as, for example, in the case of illness, injury or old age⁵⁸.

The German system, anchored in the distinction between insurance-based benefits (SGB III) and tax-funded social assistance (SGB II "Hartz IV"), provides a clear example of the CJEU's impact. The exclusion of certain categories of job-seeking EU citizens and TCNs from SGB II benefits has been upheld by the CJEU in a line of cases from *Dano* (C-333/13) to *Alimanovic* (C-67/14). The Court's reasoning rests on the distinction between social security and social assistance. Because SGB II benefits are classified as social assistance, Member States retain the power to exclude economically inactive individuals from them to protect public finances, provided the conditions of Directive 2004/38/EC are respected.

However, the legal analysis for TCNs with a Single Permit (under Directive 2011/98/EU) differs. If a TCN holds a single permit and works, even part-time or temporarily, the denial of a benefit that is classified as a branch of social security (e.g., an unemployment benefit linked to prior contributions) would likely breach Article 12(1)(e) of the Directive. The recent preliminary reference in Case C-151/24 *Luevi* (concerning the Italian *assegno sociale* but with broader implications) may further refine the limits on Member State discretion to exclude TCNs from non-contributory, residence-based benefits.

The so-called "welfare insurance" has been added to the aforementioned model, which should not be confused with "social assistance". The distinction between these two systems is that those entitled to the first are the same contributors who finance the insurance fund, while in the second system all citizens who are in a situation of social hardship can benefit from it⁵⁹.

⁵⁶ F. HECKMANN, *Welfare State Integration of Immigrants: the Case of Germany*. UC Berkeley: Institute of European Studies, 2012, p. 7, <https://escholarship.org/uc/item/3x11j4fm>.

⁵⁷ Dr. Ursula von der Leyen specifies on this point when she was still Federal Minister of Labor and Social Affairs of the German government. "The strength of our country is its social dimension. Our social security system, considered among the most effective in the world, is an important factor of the country system because it strengthens our economy and improves the participation opportunities of many citizens", <https://italien.diplo.de/blob/1739364/cfb1ada15d8500eed74d65fd6ecfea05/soziale-sicherung-data.pdf>.

⁵⁸ TH. TULCHINSKY *Bismarck and the Long Road to Universal Health Coverage. Case Studies in Public Health*. 2018, pp. 131-279.

⁵⁹ The German welfare system is based on the distinction between "Social Insurance" and "Social Assistance". The first concerns the provision of benefits based on insurance schemes financed by contributions paid by citizens. While basic social assistance is aimed at guaranteeing all citizens a minimum income, it is a form of intervention that is selective with respect to the conditions of need and residual with respect to the individual or family's ability to self-help. In fact, welfare benefits mainly cover the gaps that exist between the various social security schemes, <https://www.Osservatoriolavorodomestico.it/il-caso-della-germania#:~:text=Gli%20assegni%20familiari%20per%20i,dal%20quarto%20figlio%20in%20poi>.

The further element that characterizes the German system is the profound Protestant ethic with which it is endowed, which sees work as the measure of the citizen's morality and his right to social recognition and the disciplinary device of debt: in German *Schuld*, guilt or responsibility, also means, especially in the plural (*Schulden*), debt⁶⁰.

With respect to immigration, German welfare has gone through two phases. The first coincides with the opening of social benefits to immigrants, which continued at least until the 2008 crisis. The great reform of the labor market, the so-called *Hartz-Konzept plan* (Hartz Plan)⁶¹, wanted by the second government of Gerhard Schröder, whose project was carried forward under the guidance of Peter Hartz, his trusted advisor, contributed to this opening of the welfare state also to immigrants⁶².

The second moment is that of public distrust towards social benefits granted to non-Germans in general, a feeling that has further sharpened during the periods of economic crisis that followed the great financial crisis of 2008. The policy of suspicion and opposition to the so-called “welfare tourism” has also taken over in Germany and we are starting to see measures aimed at limiting access to German welfare by non-German citizens⁶³, in particular immigrants from third countries⁶⁴.

That said, while the German social security system remains firmly one of the most efficient in Europe, the criterion for immigrants to benefit from it is always that of living regularly and permanently in the country. So much so that immigrants who do not meet this requirement do not receive special attention from the *Länder* (German federal states), except for the *Land* of Berlin.

In relation to the situation of asylum seekers in Germany, the first thing to highlight is that they are affected by a ban on working in Germany. Indeed, during the waiting period, that is, from when entry from German territory is confirmed with the submission

⁶⁰ See N. CARELLA, *German welfare: how to preserve and valorize the differences between social classes*, in *Press Dinamo Press*, <https://www.dinamopress.it/news/welfare-tedesco-conservare-valorizzare-la-differenza-classi-sociali/>.

⁶¹ Hart package includes a more efficient organization for job placement with the large-scale establishment of decentralized Job Centers and temporary employment agencies to offer temporary work to the unemployed. The improvement of general employment conditions, through the simplification of temporary work following the elimination of legislative constraints with the agreement of the social partners and the simplification of so-called Mini-Jobs (part-time at reduced rates), also to reduce undeclared work, the financing of new forms of self-employment for the unemployed (microenterprises) and support for the employment of unemployed people over fifty. The transformation of the Federal Labour Office into a Federal Employment Agency with the streamlining of the organizational structure and the reduction of administrative activity. Work placement measures aimed at reducing long-term unemployment and the introduction of a unified system of economic assistance: the welfare-type unemployment benefit. See F. Salvatori, *The Hartz Reform employment policies in Germany*, Working paper n. 10 Ter/2005, Association for International and Comparative Studies on Labour Law and Industrial Relations.

⁶² M. NOWICKA, M. ENGLER, N. RATZMANN, *Implementing the Temporary Protection Directive in Germany: de jure liberal, de facto selective?*, in *Journal of Ethnic and Migration Studies*, 2025, no. 2, pp.408-426.

⁶³ P. MCGOVERN, *Inequalities in the (De-)Commodification of Labour: Immigration, the Nation State, and Labour Market Stratification*, in *Sociology Compass*, 2020, no. 6, pp. 485-498.

⁶⁴ Migration und Integration, https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Migration-Integration/_inhalt.html.

of the asylum application or the granting of *Duldung*⁶⁵, there is an absolute ban on work by the applicant.

At this stage of practice, applicants are divided into two categories: those who come from countries considered safe and are excluded from social benefits such as free German language lessons and are forced to live in one of the reception centers (often located outside the city) and those who are more likely to be recognized as refugees, who can benefit from more advantageous social benefits than the former.

Germany has an employment-centric model. The German social security system has been shaped by bilateral agreements with third countries, and the coordination of social security for migrant workers has a long history. Germany has also been the subject of CJEU preliminary references, such as Case C-477/17 (concerning the “25% rule” for determining which country’s social security applies to cross-border workers). Germany’s approach yields economic integration but may limit broader social inclusion.

Germany included the corresponding exclusions from benefits in Article 7 of the Second Social Code (SGB II) and Article 23 of the Twelfth Social Code (SGB XII). The European Court of Justice has confirmed this principle in several preliminary ruling proceedings and thus contributed to extensive clarifications at EU level regarding exceptions to the principle of equal treatment with regard to access to social benefits *Dano v. Jobcenter Leipzig* (C-333/13), *Jobcenter Neukölln v. Alimanovic* (C-67/14), *Jobcenter Recklinghausen v. Garcia-Nieto* (C-299/14), *Jobcenter Krefeld* (C-181/19)⁶⁶.

Refugees in Germany are issued with a work permit, but without automatic recognition of their foreign qualifications and work experience. The new ⁶⁷Foreign Skilled Workers Act applies only to those who come from abroad and not to those who are already present in Germany⁶⁸.

The new Foreign Skilled Workers Act (*Fachkräfteeinwanderungsgesetz*) applies only to those entering from abroad, not to those already present in Germany⁶⁹. With respect to social security, however, TCNs who hold a single permit and are employed benefit from the equal treatment clause of Article 12(1)(e) of Directive 2011/98/EU (now Article 13(1)(e) of Directive 2024/1233). The distinction between social security and social assistance thus operates in Germany as a legal filter: while TCNs may be

⁶⁵ This is a form of tolerance status or temporary suspension of expulsion enjoyed by some asylum seekers in Germany who have not obtained recognition of their refugee status. The latter are granted permission, also for humanitarian reasons, to remain in Germany temporarily for certain reasons that make repatriation impossible, provided that it can be carried out once the conditions allow it. See, Thüringer Beauftragte für Integration, Migration und Flüchtlinge, <https://bimf.thueringen.de/flucht/duldung>.

⁶⁶ <https://www.bmas.de/DE/Europa-und-die-Welt/Europa/Arbeiten-innerhalb-der-EU/Zugang-Sozialleistungen-und-Leistungsausnahmen/zugang-zu-sozialleistungen-und-leistungsausnahmen.html>.

⁶⁷ June 23, 2023, is an important date for immigration policy in Germany. The Bundestag voted in favor of a federal government bill on immigration, which was approved by the second chamber on July 7, 2023.

⁶⁸ <https://www.bundestag.de/resource/blob/945298/83e27e78a5b6edd3cbb681b035ed1e4a/WD-6-102-22-pdf-data.pdf> ; R. PIOCH, *Diskriminierung von Migranten und Migrantinnen im deutschen Sozialstaat*, in K.-S. REHBERG (Hrsg.), *Die Natur der Gesellschaft: Verhandlungen des 33. Kongresses der Deutschen Gesellschaft für Soziologie in Kassel 2006*. Teilbd. 1 u. 2 (S. 2037-2047), Frankfurt am Main: Campus Verl, <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-152209>.

⁶⁹ *Fachkräfteeinwanderungsgesetz* of 15 August 2019, BGBl. I, p. 1307, as amended.

excluded from SGB II benefits on the same grounds as economically inactive Union citizens, the denial of a contributory benefit would breach EU law. This configuration, validated in large part by the CJEU, represents a form of “earned entitlement” that conditions the level of social protection on labour market participation, while leaving the door open to restrictive national choices in the sphere of social assistance.

3.3. Southern European Countries: The Case of Italy

The principle of equal treatment constitutes the cornerstone of the EU’s legal framework for TCNs’ social rights, yet its implementation varies considerably across Sweden, Germany, and Italy, revealing the practical limits of supranational harmonization. In relation to Italy, while Scandinavian and Central European countries benefit from efficient welfare systems, this is largely attributable to their institutional organisation, resource allocation, and historically receptive approaches to immigration, which facilitate expansive and inclusive policies that also extend to resident immigrants. The situation differs markedly for Southern European Member States, which have recently transformed not only into countries of immigration but also into primary points of entry for migrants from the Global South. The Italian case illustrates two distinct points of tension with EU law.

The Italian practice of conditioning the *assegno sociale* a non-contributory, means-tested benefit—on possession of an EU long-term residence permit has been the subject of extensive litigation. The CJEU in Case C-151/24 *Luevi* (INPS v V.M.) was called upon to rule on whether such a condition, when applied to a TCN holding a single work permit and having a history of fiscal and contributory residence, constitutes indirect discrimination contrary to Directive 2011/98/EU or a disproportionate restriction on free movement. The referring national court asks whether such a condition, applied to a TCN holding a single work permit and with a history of fiscal and contributory residence, constitutes indirect discrimination contrary to Directive 2011/98/EU (now Directive 2024/1233)⁷⁰. A further critical issue, which exacerbates the fragmented nature of the Italian model, concerns third-country nationals who return to their home countries after having paid contributions without having accrued the right to a pension. Following the 2002 reform, contributions are no longer refundable, but entitle the contributor to an old-age pension upon reaching retirement age, notwithstanding the minimum contribution requirement. However, for third-country nationals from countries with which Italy has not concluded bilateral agreements on the aggregation of contributions (such as most sub-Saharan African states), contributions paid in Italy cannot be aggregated with those from their country of origin. This legal arrangement gives rise to a de facto expropriation of contributory value, which disproportionately affects TCNs compared with EU citizens. From a legal standpoint, this amounts to a

⁷⁰ *Luevi*, cit.; P. MELIN, *The external dimension of EU social security coordination: towards a common EU approach (copy for the purpose of the defense of the PhD)*. [Doctoral Thesis, Maastricht University], 2018, Wolf Legal Publishers (WLP). <https://doi.org/10.26481/dis.20180702pm>.

disproportionate restriction on the right to property, as protected under Article 17 of the EU Charter of Fundamental Rights, and on the free movement of workers, as it effectively nullifies the social security rights they have acquired through their contributions. It further constitutes an indirect barrier to the exercise of freedom of movement, in conflict with the principle of exportability of benefits set out in Article 7 of Regulation (EC) No 883/2004.

The CJEU's answer, delivered on 15 May 2026 clarified the limits of Member State discretion to exclude TCNs from non-contributory benefits that, while formally classified as social assistance, are functionally similar to social security because they protect against the risk of old age and are financed through general taxation. The Italian case highlights the legal grey area between social security and social assistance and the risk that Member States may exploit classification to circumvent the equal treatment obligations imposed by EU law⁷¹. Under the pre – 2022 regime, a repatriating TCN who had not reached the pension threshold could obtain the reimbursement of contributions paid. Following the 2002 reform, the contributions are no longer reimbursable; instead, the TCN retains the right to a pension upon reaching the age of 65 (now 67), even in derogation from the minimum contribution requirement, but only upon reaching that age and subject to the procedural obstacles that a repatriated individual inevitably faces. For TCNs from countries that have not concluded a bilateral social security totalisation agreement with Italy (e.g., most sub-Saharan African States, except Cape Verde and Tunisia), the contributions paid in Italy cannot be aggregated with those paid in the country of origin, and the practical possibility of ever receiving a pension is severely compromised⁷². This legal arrangement gives rise to a de facto expropriation of contributory value, which disproportionately affects TCNs compared with EU citizens. From a legal standpoint, this amounts to a disproportionate restriction on the right to property, as protected under Article 17 of the EU Charter of Fundamental Rights, and on the free movement of workers, as it effectively nullifies the social security rights they have acquired through their contributions. It further constitutes an indirect barrier to the exercise of freedom of movement, in conflict with the principle of exportability of benefits set out in Article 7 of Regulation (EC) No 883/2004.

This regulatory framework raises a serious issue of indirect discrimination. The loss of contributory value acts as a penalty for repatriation and a barrier to the exercise of free movement that the coordination regulations are designed to facilitate⁷³. The principle of exportability enshrined in Article 7 of Regulation 883/2004 prohibits the application of residence clauses to cash benefits; while it does not directly mandate

⁷¹ Legislative Decree No. 286 of 25 July 1998, Art. 22, para. 13, as amended by Law No. 189 of 30 July 2002.

⁷² E. GUILD, *The External Dimension of EU Social Security Coordination*, in *Common Market Law Review*, 2020, pp. 987-1012; S. GIUBBONI, *Free Movement of Persons and European Solidarity Revisited*, in *Perspectives on Federalism*, 2015, no. 3, pp. 14-18.

⁷³ E. MUIR, *EU Equality Law: The First Fundamental Rights Policy of the EU*, Oxford, 2018, p. 2 ff.; A. SCHRAUWEN, *Essential, invisible, discriminated and exchangeable: labour migrants in the EU*, in *Transnational Legal Theory*, 2024, no. 4, pp. 572-590.

totalisation with non-EU countries, the combined effect of the elimination of reimbursement and the absence of totalisation agreements produces a disparate impact on TCNs from countries with which no bilateral convention exists, compared to EU citizens or TCNs from countries with totalisation agreements, who can aggregate insurance periods and ultimately benefit from their acquired righthets⁷⁴. Furthermore, this is at odds with the principle of the portability of benefits laid down in Article 7 of Regulation (EC) No 883/2004. This situation, which amounts to a substantial ‘expropriation of contributions’, not only undermines the worker’s legitimate expectations but also affects the very essence of the right to property enshrined in Article 17 of the Charter of Fundamental Rights of the EU, constituting a disproportionate restriction that would require corrective action by the legislator, at both national and European level, through the promotion of totalisation agreements with the main countries of origin.

Indeed, social security public policy, beyond its function of maintaining fiscal sustainability, may be considered an instrument to facilitate the voluntary return of elderly immigrants to their countries of origin assuming such a preference genuinely exists. On the one hand, this consideration recalls the principle of citizenship, used by various welfare systems to exclude those who are not citizens of the country providing economic benefits from the same systems. This paradigm conceptualises migration as a socioeconomic threat, wherein immigrants are frequently portrayed as illegitimate competitors in the labour market or as profiteers of the welfare benefits offered by the host-State welfare systems. The system of repatriation – both voluntary and forced of TCNs to their countries of origin remains inefficient, with the logical consequence that the population unable to find an outlet within a social system where upward mobility is increasingly constrained risks inflating the numbers of the already poor and disadvantaged. This dynamic may trigger a domino effect, exacerbating the already unsustainable situation of growing poverty among the middle class. What is already observable in Western societies resembles a factory producing new poor and marginalised populations, with all the attendant intergenerational consequences.

In this regard, the Court of Justice of the EU, case C-302/19: ruled that excessive residence conditions for access to the Citizenship Income may represent indirect discrimination. This decision aligns with the broader trend seen in the comparative analysis: across Sweden, Germany, and Italy, the criteria for access to benefits are being tightened through a combination of residence requirements and categorical exclusions, yet the legal vulnerability of these measures increases when they encroach upon the rights of TCNs who are already integrated into the labor market under EU law⁷⁵. In summary, a comparison of the three national models – Swedish, German and Italian – in

⁷⁴ On indirect discrimination, see C-83/14, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*, judgment of 16 July 2015, ECLI:EU:C:2015:480, paras. 69-72.

⁷⁵ Judgment of 2 April 2020, C-302/19, *INPS v WS*, ECLI:EU:C:2020:255. The Court held that a residence requirement of ten years for a social assistance benefit could constitute indirect discrimination against third-country nationals who are long-term residents.

the light of the three proposed methodological axes reveals a complex and significantly varied picture, albeit within the common margin of discretion granted by European Union law.

In terms of eligibility criteria, a clear divide immediately emerges: the Swedish system, based on universalist principles and linked to residence, appears to be the most inclusive, offering potentially immediate access to third-country nationals. At the opposite end of the spectrum lie the German and Italian models: the former, which is insurance-based and contribution-driven, and the latter, which is mixed and fragmented, make access conditional on requirements that, in practice, delay or exclude a substantial proportion of third-country nationals from social protection.

As for the actual restrictions on third-country nationals, different trajectories are evident, yet they converge towards increasing selectivity. Sweden, whilst operating on a universalist basis, is introducing minimum residence periods that risk coming into conflict with EU case law; Germany, by contrast, already has a well established system of exclusion for economically inactive third-country nationals, expressly validated by the Court of Justice. Finally, Italy adopts an even more restrictive stance, as demonstrated by the case of the social allowance being conditional upon a long-term residence permit: a practice whose legitimacy has been partially clarified, though not entirely legitimised, by the recent Luevi ruling, which confirmed the Member States' broad discretion in the field of social assistance.

From this perspective, the integration of immigrants through a generous welfare system, even for those who become elderly in exile without having contributed enough towards their pension, constitutes a valuable investment for the host society.

4. Conclusions

The comparative analysis of Sweden, Germany and Italy confirms the article's central thesis: the EU legal order imposes a minimum core of uniform treatment for legally resident TCNs in the field of social security, but leaves Member States significant discretion in the organisation of social assistance. However, that discretion is not unfettered; it is constrained by the principles of equal treatment, proportionality, and the exportability of benefits as interpreted by the CJEU⁷⁶.

In this way, the comparative analysis carried out, using the common benchmark of EU law, empirically confirms the initial thesis: the distinction between coordination and harmonisation is not a mere theoretical construct, but the legal mechanism that both enables and, at the same time, limits the regulatory fragmentation observed. The three national experiences reveal a common trend towards restricting TCNs' access to social

⁷⁶ F. PENNINGS, *European Social Security Law*, VII ed., Cambridge, 2023, pp. 45-72; P.S. TANDBERG, *The conflict rules of European social security coordination in a digital labour market – bridging lex loci laboris and remote work by disregarding marginal cross-border activities*, in *European Journal of Social Security*, 2025, no. 1, pp. 25-44.

protection, but the legal techniques employed and their compatibility with EU law differ significantly. Sweden's proposal to introduce a five-year qualifying period for both social security and social assistance benefits sits uneasily with the CJEU's ruling in *CU* and *ND*, which prohibits residence periods exceeding five years for long-term residents, and risks indirect discrimination against TCN workers. Germany's distinction between insurance-based benefits and social assistance, while largely validated by the CJEU in *Dano* and *Alimanovic*, creates a system of "earned entitlement" that excludes from social assistance those who have not established a sufficient link with the labour market, a model that, if applied rigorously to TCNs holding a single permit and working, would breach the equal treatment clause of the Single Permit Directive. Italy, for its part, tests the outer limits of Member State discretion by conditioning a non-contributory old-age benefit on a long-term residence permit and by effectively forfeiting the contributions of repatriated TCNs from countries without totalisation agreements, a practice that arguably amounts to indirect discrimination and a violation of the exportability principle.

The judicial dialogue between Luxembourg and national courts – with the *Luevi* case as the latest flashpoint – has further defined the boundaries of permissible national action, although several questions remain open. Ultimately, the realisation of genuinely universal social protection for TCNs requires not only vigilance by the Court of Justice but also a political commitment at EU level to close the gaps in the coordination framework, particularly by promoting the conclusion of totalisation agreements with key countries of origin. The integration of immigrants through a social protection system that respects acquired rights is not merely a legal obligation; it is an investment in social cohesion and a safeguard against the chronic marginalisation that undermines the foundations of the European project.

This persistent ambivalence reflects a deeper structural tension at the heart of European integration. The Court's jurisprudence oscillates between two competing imperatives: the transnational aspiration to remove obstacles to free movement and ensure solidarity among persons lawfully residing on Union territory, and the political reality that Member States remain fiercely protective of their national welfare budgets, insisting on a demonstrable link between the claimant and the host society before solidarity obligations crystallise. The judgments in *Kamberaj*, *Dano* and *Alimanovic*, far from being mere technical pronouncements on the scope of directives, function as a judicial architecture for managing this tension.

The realisation of truly universal social protection remains an ongoing project, one that requires continued commitment to the principles of equality, non-discrimination and human dignity⁷⁷.

⁷⁷ European Commission, Employment, Social Affairs & Inclusion: EU social security coordination, available at: <https://ec.europa.eu/social/main.jsp?catId=858&langId=en>; P. SCHOUKENS, *EU social security law: the hidden 'social' model*, 2016, [https://eiss.be/onewebmedia/oration_Schoukens.pdf%20\(final\).pdf](https://eiss.be/onewebmedia/oration_Schoukens.pdf%20(final).pdf).

ABSTRACT: This article examines the legal framework governing third-country nationals' (TCNs) access to social security and social assistance within the European Union. Moving beyond a descriptive comparison of national models, it establishes the EU acquis—specifically Regulations (EC) No 883/2004 and (EU) No 1231/2010, and Directives 2003/109/EC and Directive (EU) 2024/1233 (repealing Directive 2011/98/EU) as the primary benchmark for evaluating national legislative trends. The analysis distinguishes between the EU's competence to coordinate social security and Member States' retained competence to organize social assistance, a distinction rigorously policed by the Court of Justice of the European Union (CJEU) in cases such as *Dano*, *Alimanovic*, and the recent *CU* and *ND* rulings. The article argues that while EU law imposes a minimum core of uniform treatment regarding social security for legally resident TCNs, it permits significant margins of discretion regarding social assistance. This discretion is the independent variable that explains the divergent national practices examined in the comparative sections. Through a critical examination of recent legislative proposals in Sweden, the SGB II framework in Germany, and the *assegno sociale* litigation in Italy, this article tests the limits of that discretion against the principles of proportionality, the prohibition of indirect discrimination, and the exportability of benefits under Article 7 of Regulation 883/2004.

KEYWORDS: EU – Welfare – Germany – Italy – CJEU – Immigration.