



Care on the Move:  
The Forgotten Angle  
*The gender care gap and  
Intra-EU mobility*

Dr Nina Miller  
University of Glasgow  
February 2023

## About the research

16 million EU citizens live or work in an EU Member State other than their country of citizenship. Half of women who are economically inactive whilst living in another Member State are not working because of caring responsibilities.

**This research places the free movement rules in the context of the gender care gap. It asks how women's free movement rights are affected when she has caring responsibilities.**

The EU has demonstrated commitment and leadership in taking measures intended to respond to the gender care gap. However, these measures are largely restricted to rights in the workplace and to the field of EU Social Policy.

Caring needs and caring relationships occur throughout the life-course and they exist and are perhaps more challenging in the context of mobility where seeking formal and informal support can be more complex. This research demonstrates that EU citizenship and the free movement rules neglect the reality of care in the context of intra-EU mobility and that this has a detrimental impact on women's ability to access residence rights and protections.

## Research methods

The research combines legal analysis of the rules including the Citizens' Rights Directive 2004/38, the Workers Regulation 492/2011 and the case law of the Court of Justice of the EU (CJEU) as well as interviews with seven civil society organisations based in Brussels, London and Glasgow in 2016 and 2019. The analysis draws on the lived experience of women who are exercising their free movement rights and who have caring responsibilities.





## Policy implications

The gender care gap refers to the unequal allocation of unpaid care work between women and men, with many women taking long or short periods off work to look after family. The gender care gap contributes to the gender, employment and pension gaps.

The impact of the gender care gap on women's ability to work means it is more difficult for women to qualify for rights and protections under EU free movement law.

This is an urgent problem for millions of EU citizen families, both those with caring responsibilities and those being cared for, including children.

The diminished quality of women's rights means that Union citizen women are having to patch together rights in order to reside lawfully and women in the most vulnerable situations, including for example those facing domestic abuse, find themselves legally isolated, without residence rights, denied subsistence benefits for themselves and their children and risk detention or removal.

## Key findings

The findings point to problems embedded into the legal rules which mean that when one's circumstances involve caring responsibilities or a combination of unpaid care and economic activity, the quality of EU law rights and protections diminish. For women exercising free movement rights with their children or other dependents, this means that they are at an increased risk of legal and physical insecurity, poverty, and destitution due to the difficulty in accessing and maintaining EU law rights.

### How are women's rights affected when she has caring responsibilities?

- The reality for women with full time caring responsibilities is precarious. Enjoying free movement rights is largely based on the notion of "work". The CJEU does not regard "care" to be "work" and therefore women with full time caring responsibilities do not qualify for autonomous legal rights of residence and equal treatment when in the host country under the Citizen's Rights Directive 2004/38.
- Breaks in paid work due to caring responsibilities are not regarded as periods of lawful residence for the purposes of accruing permanent residence. And any periods of lawful residence before the break are discounted, making it disproportionately difficult for women to accrue permanent residence.
- Combining paid work and unpaid care work is difficult and women are exposed to gaps in the rules. There are rules that protect one's residence during the maternity leave period and it is possible to get some rights when one is the primary carer of an EU citizen's child once the child is in education. But for periods where it is necessary to care for pre-school children there are no rights or protections for those who are not working due to these caring responsibilities.

About EU citizen women with full time caring responsibilities, interviewees said,

***"People are being made homeless, they are destitute, they don't have enough money for heating, it affects the children's education, it affects their well-being."***

And, regarding caring for pre-school children interviewees said,

*“We’ve got women falling in these gaps. They don’t have rights, even if they previously did work themselves”.*



## Do “family member” rights support women when they have caring responsibilities?

Family members’ rights (in the Citizens’ Rights Directive) are often regarded as an “important” means of providing residence status for women who are not in employment in the host state due to meeting family care needs. However, these rights are derivative rights; afforded to family members because of their relationship with a Union citizen and this creates a *dynamic of dependence*. The problem with the dynamic of dependence is visible where there is a relationship breakdown. Interviewees said,

*“It is highlighted in domestic violence cases. Where somebody has been financially dependent on a spouse, and, when they are escaping that situation, when they try and access housing and benefits, they are often turned down because of the problem of proving that they derive rights through the person they have been a family member of, from the abuser ...*

*We’ve had to take very urgent action, because we end up with people who are being made destitute. Their children have been without adequate housing, clothing, food, have had to rely on foodbanks.”*



## Does the Court's "primary carer" case law support women when they have caring responsibilities?

The court has established rights for primary carers through jurisprudence on EU citizenship and the Workers Regulation. The category of primary carer has not been defined in the legislation. It is also a derivative right. Therefore, primary carers are subject to the same dynamic of dependence as family members. However, primary carer's residence is more precarious. The case law is complex, requires clarification and the rights are more limited. Interviewees said that the rights for primary carers are so limited that, they encountered primary carers who were unable to fully and effectively support themselves and their children. Where some women feel forced into risky informal childcare situations or illegal and exploitative work.

## Next steps

Currently, there is very little understanding amongst policy actors of how the free movement rights are gendered and how they impact those, primarily women, who have caring responsibilities when they are living in another Member State. There is an urgent need to close this knowledge gap. This is an opportunity for civil society, to collaborate, to increase the collection of gender disaggregated data on intra-EU mobility and to represent the lived experiences of EU citizenship and caring on the move.

## Further information

Citizens' Rights Directive 2004/38/EC

Workers Regulation 492/2011

Some relevant case law:

Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)

Case C-507/12 Jessy Saint Prix v Secretary of State for Work and Pensions

Case C- 333/13 Elisabeta Dano and Florin Dano v Jobcenter Leipzig

<https://www.eurightshub.york.ac.uk/>

Yong, A. (2022). A Gendered EU Settlement Scheme: Intersectional Oppression of Immigrant Women in a Post-Brexit Britain. *Social & Legal Studies*

(PDF) 11 Towards a right to care in EU Law: Issues of legitimacy, gender and citizenship |

Anna-Maria Konsta - Academia.edu

This work was supported by the ESRC under Grant [ # 1 number ES/W006618/1 and [ # 2 number ES/J500136/1].

