Analytical Note on social and tax advantages and benefits under EU law

Access to social benefits and advantages for EU migrant workers, members of their families and other categories of migrating EU citizens

October 2013

EUROPEAN REPORT

Dr. Aleksandra Czekaj-Dancewicz

A.
Introduction

The aim of this Analytical Note is to provide information on the access to social and tax benefits and advantages as defined in Art. 7 para. 2 of the Regulation 492/2011 on freedom of movement for workers within the Union, the restrictions applied in Member States in granting those benefits and the personal scope of the right.

B.

The legal framework

Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States lays down minimum conditions under which Union citizens and members of their families shall execute their rights to move and reside in the territory of Member States. However, the Directive 2004/38 also covers the issue of social benefits in a twofold way. First of all the right to social benefits may be treated as a condition to have the right to legal residence at the territory of the host Member State. Secondly, according to the Directive 2004/38 only those applicants having a right to reside may be entitled to equal treatment as regards access to particular social benefits.

Regulation 492/2011 aims to secure and guarantee for migrant workers, including frontier workers, equal treatment with national workers as regards access to social benefits. In this context, Regulation 492/2011 aims at facilitating the principle of equal treatment as enshrined in the primary law (i.e. Art. 45 of the TFEU). The concept of "social advantages" as defined in Art. 7(2) of Regulation 492/2011 is interpreted by the CJEU very broadly, as it covers not only all benefits connected with contracts of employment, but also all other advantages which are open to citizens of the host Member States and consequently are also open for workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory.

However, it shall be emphasized that according to the case law of CJEU, access to social benefits in the host Member States shall not be unconditional for all migrating

EU citizens and members of their families. Therefore consequently, as regards workers and member of their families, who may as a rule, prove to have a genuine link with the employment market of the host Member State, they are entitled to unconditional access to social benefits in this State. But as regards other groups of migrants, depending on the nature of certain benefits, it is possible to require from them to have a certain degree of integration in the host Member State in order to entitled to certain benefits.

In the light of abovementioned, unlike Article 7(2) of Regulation 492/2011 which opens for EU migrant workers the right to the same tax and social advantages as nationals of the host Member State, without any exceptions, Directive 2004/38 although provides a general right for all Union citizens residing in the territory of host Member State for equal treatment within the scope of the Treaty, it at the same time gives a right for Member States to limit the right to social assistance under certain conditions.

According to Article 24 of Directive 2004/38 subject to specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right is also extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.
However, by way of derogation from paragraph 2 the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to **persons other than workers, self-employed persons, persons who retain such status and members of their families.**

In the light of the above it appears that for social and tax advantages workers and members of their families remain subject to the scope of Article 7(2) of Regulation 492/2011.

Unlike Regulation 492/2011 which refers to the notion “social and tax advantages”, Directive 2004/38 refers to the notion “social assistance”. Social assistance shall be understood for the purposes of this provision as benefits granted at the discretion of a public body to individuals on their needs basis. In the Court case Brey of 19 September 2013, the CJEU defined the concept of social assistance within the meaning of Directive 2004/38 as covering all assistance introduced by the public authorities, whether at national, regional or local level, that can be claimed by an individual who does not have resources sufficient to meet his own basic needs and the needs of his family and who, by reason of that fact, may become a burden on the public finances of the host Member State during his period of residence which could have consequences for the overall level of assistance which may be granted by that State.

However, the limitation contained in Art. 24 (2) Directive 2004/38 is not restricted solely to access to social assistance, but also to different kinds of support for

students (not being workers at the same time) which may be qualified as social advantage within the meaning of Regulation 492/2011.

It shall be emphasized that beyond the scope of this note are issues concerned with social security benefits which are subjected to EU coordination schemes based on Regulation 883/2004 on the coordination of social security systems.

C.

The case law of the Court

The Court has held that social advantages means all the advantages which, whether or not linked to a contract, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community[1]. This has been held to cover, for example, public transport fare reductions for large families,[2] child raising allowances,[3] funeral payments,[4] minimum subsistence payments,[5] study grants.[6]

The CJEU case law is very consequent in safeguarding the broadest possible meaning of the Article 7(2) of Regulation 492/2011 (and former 1612/68). The case C-592/09 Commission ca. the Netherlands of 14 June 2012 may serve as an example. This case additionally illustrates the difference in scope of application of Regulation 492/2011 and Directive 2004/38. The CJEU decided that funding for higher educational studies pursued outside the territory of the Member State where a migrant worker performs economic activity constitutes social advantage within the meaning of Art. 7(2) of Regulation 1612/68 (now 492/2011). According to the Court, Article 7(2) of Regulation 1612/68 requires that, where a Member State gives its national workers the opportunity of pursuing education or training provided in another Member State, it must extend that opportunity to EU workers established within its territory. The Court emphasized that the students in question could be required by the host Member State to demonstrate a certain degree of integration into the society of that State in order to receive a maintenance grant, only when they fall outside the scope of the provisions of EU law relating to freedom of movement for workers, in particular Regulation No 1612/68. The reason is that there is a distinction between migrant workers and the members of their families, on the one hand, and EU citizens who apply for assistance without being economically active, on the other hand on basis of Directive 2004/38 and Regulation 1612/68. Article 24(2) of Directive 2004/38 does not apply to workers, self-employed persons, persons who retain such status

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1 Case C-85/96, Martinez Sala.

2 Case 32/75, Cristini v SNCF ECR [1975] 1085.

3 Martinez Sala (see footnote 1 above).

4 Case C-237/94, O'Flynn [1996] I-2617.

5 Case 75/63, Hoekstra & Case 22/84, Scrivner.

6 Case 235/87, Matteucci, Case C-3/90, M. J. E. Bernini v Minister van Onderwijs en Wetenschappen and more recently in case Commission v. Netherlands case C-542/09.

and members of their families, who may not, on basis of Art. 7 (2) Regulation 1612/68 be limited in granting of maintenance aid, consisting in student grants or student loans.

The reason for such a distinction is that migrant workers and frontier workers, generally participate in the employment market of a Member State which establishes, in principle, a sufficient link of integration with the society of that Member State. Therefore consequently they shall make full use of the principle of equal treatment, as compared with national workers, as regards social advantages.

In this case the Court reiterates that social advantages shall be understood as referring not only to all employment and working conditions, but also to all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory.

According to the Court, the link of integration arises from the fact that such applicants pay taxes in the host Member State by virtue of their employment, so the migrant worker in this way contributes to the financing of the social policies of that State and should profit from them under the same conditions as national workers.

The concept of social advantage is very broad and covers financial benefits and non-financial advantages which are not traditionally perceived as social advantages. The Court has decided, for example, that the right to require that legal proceedings take place in a specific language [7] and the possibility for a migrant worker to obtain permission for his unmarried partner to reside with him[8] must be regarded as falling within the concept of social advantage under Article 7(2) of Regulation 492/2011.

The concept of tax advantage is not so broadly covered by the CJEU as concept of social advantages. There is also no definition of this notion. Majority of cases cover situation of national rules which create different situation between residents and non-residents The aim of tax advantages is to provide migrant workers with all benefits such as tax deduction or tax relief. Although direct taxation falls under competences of Member State, but they shall exercise them in conformity with EU law with a possibility to make accepted differentiation on basis on the need to preserve the cohesion of the tax system.

D.

The tax issues

Although direct taxation remains essentially a national competence there is a settled case law of the Court that Member States may not introduce legislation discriminating directly or indirectly on the basis of nationality.

In this context national tax rules deterring a national of a Member State from exercising his right to free movement may constitute an obstacle to that freedom[9].

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7 Case C-137/84.

8 Case C-59/85.

9 Case C-385/00.

Where national law allows tax advantages, for example tax deductions in relation to contributions for an occupational pension and private sickness and invalidity insurance, it is discriminatory not to allow equivalent deductions in relation to contributions paid in a migrant worker's Member State[10] of origin. As the example, Court case C-80/94 Wielockx v. Inspecteur der Directe Belastingen shall be referred. According to the Court, although direct taxation falls within the competence of the Member States, the latter must none the less exercise that competence consistently with EU law and therefore avoid any overt or covert discrimination by reason of nationality. In this case the applicant – Mr Wielockx, Belgian national resident in Belgium, who as a result of economic activity in the Netherlands received his entire income in this latter country and who was consequently liable to pay tax there, asked the tax revenue inspector for the possibility to deduct from his taxable income in the Netherlands a contribution paid to pension reserve. However, he was refused for such a possibility.

The CJEU took the position that if a non-resident taxpayer is not given the same tax treatment as regards deductions from his taxable income as a resident, his personal situation will be taken into account neither by the tax authorities of the State where he works because: (a) he is not resident there (b) nor by the State of residence because he receives no income there. Consequently his overall tax burden will be greater and he will be at a disadvantage compared to a resident. Such a differentiation shall not be explained by the necessity to protect fiscal cohesion of the given Member State.

As a result, a rule laid down by a Member State which allows its residents to deduct from their taxable income business profits which they allocate to form a pension reserve but denies that benefit to Community nationals liable to pay tax who, although resident in another Member State, receive all or almost all of their income in the first State, cannot be justified by the fact that the periodic pension payments subsequently drawn out of the pension reserve by the non-resident taxpayer are not taxed in the first State but in the State of residence with which the first State has concluded a double-taxation convention even if, under the tax system in force in the first State, a strict correspondence between the deductibility of the amounts added to the pension reserve and the liability to tax of the amounts drawn out of it cannot be achieved by generalizing the benefit. Such regulation such be treated as infringing the right to equal treatment for EU workers as established in EU law.

E.

The specific case of frontier workers

Frontier workers often face specific problems, because of residence conditions, in particular as regards social advantages, as the Commission has noted on a number of occasions. According to EU law, the frontier worker shall be understood a a person working in the immediate proximity of a border. The justification of residence clauses for social advantages is that they aim to help the integration of the migrant worker and his family in the host Member State. As frontier workers do not live in the State of employment, Member States have argued that they should not benefit from the same social advantages as "normal" migrant workers. These arguments have been

[10] Case C-204/90, Bachmann and Case C-80/94, Wielockx and Case C-130/00 Danner, judgment.

rejected by the Court, which held that no residence requirement could be applied to the child of a frontier worker, who was entitled to tuition under the same conditions as applicable to children of nationals of the State of employment[11]. It is also in line with the preamble of Regulation 492/2011, which clearly states that freedom of movement of workers which constitute a fundamental right must be enjoyed without any discrimination not only by permanent workers but also by seasonal and frontier workers.

The ability of frontier workers to rely on the right of equal treatment can also apply to questions of income tax. For example, a frontier worker employed in one Member State but living with his family in another State cannot be required to pay more tax than a person living and working in the State of employment, where that worker's main family income comes from the State of employment[12]. In addition, rules which make it more beneficial to be taxed as a couple than as a single person must apply to frontier workers in the same way as for couples in a similar situation in the Member State of employment and may not be conditional upon both spouses being resident in the State of employment.[13]

I. Specific issues concerning problems on national level:

1. Concept of "social advantages" under Article 7(2) Regulation 492/2011 and "social assistance" under Article 24(2) Directive 2004/38 in legislations of Member States and relationship between the two concepts.

In all Member States there is no definition of social advantages under Article 7(2) Regulation 492/2001 in national legal orders. However, according to rapporteurs, such a situation at least theoretically shall not lead to any legal problems as regards practical application of this provision. The definition of social advantages shall be interpreted by the meaning given by the Court of Justice of the European Union. As the Regulation 492/2011 is directly applicable in each Member State, this provision is consequently directly applicable at national levels.

In general also, the concept of social assistance according to meaning of Article 24(2) Directive 2004/38 is generally not defined at national levels. However, the general idea that have been by all rapporteurs is that social assistance within the meaning of Directive 2004/38 shall cover all benefits for applicants being in need, so facing the risk of poverty, illness, homelessness. Therefore Art. 24 (2) Directive 2004/38 is understood in all Member States as granting them a right to deny granting support for those migrating citizens (other than workers) who decide to move to host Member State without having sufficient financial resources. As regards the concept of social advantages this concept is rather found in each Member State in several legal acts on case by case basis, by listing certain benefits that may be qualified as social

11 Case C-337/97, Meeusen

12 Case C-279/93, Schumacker ECR [1995] I-225

13 Case C-87/99, Zurstrassen ECR [2000] I-03337

advantages within the meaning of Regulation 492/2011. No exhaustive definition is provided in neither Member State.

Many rapporteurs highlight that as the non-discrimination rule is directly applicable in each Member State it shall be also applicable to the concept of social advantages. Therefore the rule shall be that whenever a certain benefit is granted for a national of a relevant Member State, it shall also be granted to EU citizens provided they fulfil the criteria to be granted a particular benefit.

In *Sweden* there is a division (not found in other Member States) between social benefits based on status of worker and based on residence criteria. All of them are listed in the Social security code. In *the Netherlands,* although there is a direct reference to the notion of "social advantages" in the General Equal Treatment Act, it is not defined at the same time. According to specific provision of the Act, (…) *it is unlawful to discriminate on the ground of race in the field of social protection, including social security and access to social advantages.*

According to *Danish rapporteur* as there are no fixed boundaries for the concept of social advantages as defined by CJEU, one should be very careful in assuming that a specific social measure does not constitute a social advantage in the meaning of Regulation 492/2011. Consequently, unlike in majority of Member States, the notion "social advantages" shall be understood very broadly as to cover all social benefits, also social assistance and social security benefits. Similar situation occurs in *Latvia* where the concept of "social advantages" embrace all benefits under social security system, including social services and tax advantages. In *Slovenia* also the notion of social advantages is wider than notion of "social assistance"

On the other hand, in *Czech Republic* there are few social advantages that can be qualified as social advantages according to Regulation 492/2011. In *Belgium* some benefits legally qualified as social assistance (in the form of so called "social integration") may also simultaneously fall into category of social advantages as defined in Article 7(2) of Regulation 492/2011, and the applicant in such situations shall demonstrate his willingness to work.

In *Austria* the notion of social assistance within the meaning of Directive 2004/38 is broader than according to national provisions. In order to prevent social tourism, Austrian legislator has just introduced specific rules preventing economically inactive EU citizens to move to Austria just to claim rights for certain social benefits, mainly so called complementary supplement (*Ausgleichzulage*). The Austrian compensatory supplement, a grant for pensioners whose pension do not exceed certain amount per month, is considered to be a social insurance benefit and not social assistance according to national provisions. That is due to the fact that entitlement to compensatory supplement is conditional upon the proof of a minimum of pension insurance periods (15 years). Furthermore compensatory supplement does not require exhaustion of own resources. In contrast, "social assistance" under Austrian law defines all benefits which are provided by local entities or single states (not by the federal state) and which are aimed to face the risk of poverty. Therefore the entitlement to social assistance is generally not linked to the proof of insurance periods or paid contributions. In addition, „social assistance" under national law is characterized by the principles of individuality and subsidiarity. That means that entitlement to social assistance is conditional upon the fact that the applicant is not able to meet his/her basic needs by utilizing his own financial or physical resources

which implies a proof of his/her resources on an individual basis. However, according the CJEU definition of „social assistance" in the meaning of Directive 2004/38, Austrian compensatory supplement may be regarded as 'social assistance system' of the Member State concerned due to the fact that it is a benefit, which is intended to ensure a minimum means of subsistence for its recipient where his pension is insufficient and which is funded in full by the public authorities, without any contribution being made by insured persons. Consequently this benefit which under national law does not meet the requirements for social assistance has been qualified as social assistance within the meaning of Directive 2004/38.

In *Romania* there is a general clause that gives a right to enjoy equal treatment for all European citizens (not only workers) and members of their families who exercise the right of residence, only subject to provisions of EU treaties and measures taken in their application. Similar situation takes place in *Czech Republic.*

Rapporteurs highlight that there is no national case law or pending administrative procedures covering problems with definition of social advantages and social assistance. Additionally, lack of definitions of social assistance and social advantages does not pose any problems in practice.

2. Is there a distinction between social assistance and social advantages in the light of rules of application, applicable requirements? Are there any judicial cases concerning this issue?

In majority of Member States there is no distinction between social assistance and social advantages as regards rules of application and applicable requirements. *Slovakian* rapporteur emphasized that as every type of social advantages and social assistance is regulated by different national provisions, consequently separate rules are applicable. The same situation occurs in *Slovenia, Lithuania, Bulgaria*, unlike in *Estonia* where the rules for application are the same.

In *Finland* there is a distinction between social assistance and social advantages. Social advantages shall be granted to residents and also to other categories of beneficiaries on different grounds than residence – for example for EU workers on the ground of employment relationship. In *Hungary*, these two concepts vary according to the unreasonable social burden rule. Social assistance may be granted until an applicant is not qualified as being unreasonable burden for social assistance system of the host Member State. Such a situation make occur when an applicant receives certain benefits (old age, nursing allowance or benefit for persons in active age for a period longer than 3 months). Additionally there is a residence requirement. As regards social advantages, no such requirements are applicable.

In *Sweden* the distinction between social assistance and social advantages is not appropriate according to the rapporteur, because the term "rights" or "advantages" shall be understood as the State obligation towards beneficiaries.

In *Germany* there is a problem with legal qualification of a financial support for job seekers either as social assistance or social advantages. According to Social Code social assistance shall not be granted to foreigners and their families whose right to reside in Germany is based only on the fact that they are looking for employment within Germany. Such restriction does not apply for nationals of contracting stated to

the European Agreement on Social Assistance Providing for Equal Treatment. Although the majority of Member States have signed the Agreement, but not all of them (for example Poland is not a party to the Agreement). Such a regulation remains questionable under EU rules on free movement of workers and equal treatment. However, as the provision remains unchanged, German courts try to analyse this provision very narrowly in order to effectively grant a wide access to social assistance for EU citizens (in the light of the pro European interpretation of national law principle). Therefore, as a rule, German jurisprudence defines this provision as entitling EU citizens to social benefits, if the residence right of applicants is not based solely on the reason to seek a job in Germany. If any other legal basis may be found, then the restricting provision of the Social Code shall not be applicable. Consequently, the probable incompatibility with EU law has been solved by European interpretation of national law.

In the *Netherlands* social advantages concept is wider than social assistance concept and it includes also access to study grants. The same situation is in *Latvia* and *Poland*.

Romanian rapporteur explained that making a division between social advantages and social assistance is in practice of minor importance due to the specificity of the Romanian labour market. Taking into account economic situation in Romania, this country is not a popular destination country for EU workers. Therefore the presence of EU workers is very low in this country and those who are present, occupy in general top or middle level management posts. Consequently, even in case of unemployment, they will not rely on Romanian social benefits system but either find different job or move to other Member State without the need to have a state support. The same situation occurs also in *Poland*.

Irish rapporteur stressed that in order to be eligible for social assistance, the applicant must fulfil "habitual residence condition". Five factors shall be taken into account (according to Swaddling v. Adjudication Officer case)[14], such as:

(a) length and continuity of residence in the State or in any other particular country;
(b) length and purpose of any absence from the State;
(c) nature and pattern of the person's employment;
(d) person's main center of interest; and
(e) future intentions of the person concerned as they appear from all the circumstances

In *Ireland* the habitual residence conditions applies, unless an EU /EEA migrant worker is working in Ireland or retains worker status.

[14] C-90/97.

3. Does your Member State make use of the possible derogation available on the basis of Article 24 (2) Directive 2004/38? Is this provision transposed into your national legal order?

Majority of Member States make use of possible derogation available on basis of Article 24 (2) Directive 2004/38. Only *Croatia, Finland, Hungary, Romania, Slovakia, Sweden and United Kingdom* do not apply this acceptable exception from the equal treatment rule.

The *Hungarian* rapporteur highlights that Hungarian social protection system only requires for the beneficiary to have a registered address in the country to be granted social protection benefits. As from 2008 there is no necessity to be economically active in order to be eligible for social advantages. EU citizens and members of their families (including family members of Hungarian nationals) are entitled to claim social advantages. However, it shall be questionable if the general obligation to have a residence together with registered address in Hungary as a prerequisite to be entitled to social advantages is in conformity with EU law, since social advantages depend upon being able to prove one's lawful residence. It is in contradiction with Court's settled case law, according to which the registration certificate is only of declaratory nature.

In *Sweden,* social entitlements (in the meaning of social benefits) can be granted as from the very beginning of applicant's stay, as the only condition is the period of planned and not factual stay in Sweden. For full access to social benefits in a local municipality beyond a basic level, a person is required to register as resident, which means that the planned stay should be at least for 12 months. Access to full social benefits is open for those migrants who plan to stay for at least one year. As regards job seekers rights, they are excluded from specific grants only when they do not have a real chance to get a job, but there has been no legal cases concerning the matter.

In *Luxembourg,* as regards one kind of social assistance – "cost of living allowance" the same rule applies as in *Sweden* – if the planned period of stay in this country exceeds 3 months, an applicant is eligible for such a benefit even during first three months of stay. In other cases, access to social benefits is excluded for job seekers and for applicants within first 3 months of stay.

In *Croatia* it is possible to have temporary right of social assistance even while staying up to 3 months if applicants do not have appropriate living conditions.

In *Italy* the derogation although exists, it has been transposed in more favourable terms than is permissible under Article 24 (2) of the Directive 2004/38. The reason is that sometimes specific Italian laws (such as labour law or social assistance law) grant to all EU citizens (irrespective of their status) a right to certain social benefits, even if they are job-seekers or they stay in Italy for a period shorter than 3 months. Due to division of competences, also regional authorities have powers to establish certain rules on granting social entitlements, since the Law on social assistance contains the provision according to which access to benefits to EU nationals and their families shall be granted under conditions established by regional legislations. However, regional authorities, unlike national one, have tendency to limit the right to social assistance by making it conditional upon nationality criteria or certain period of residency criteria. Such regulations are often challenged by the Constitutional Court,

but without having recourse to EU law, only on basis of the principle of equality as stated in Article 3 of Italian Constitution.

In *Greece,* there is almost exact wording contained in relevant Greek legislation as is in Article 24 (2) Directive 2004/38. Similar situation takes place in *Portugal* and in *Ireland.* In *the Netherlands* in general no social assistance is granted during first three months of stay and as regards job seekers – until they have not find employment. As regards other categories of migrants, those staying for more than three months but less than 5 years are entitled to social assistance on equal footing as nationals, however, policy grounds may lead to termination of their right to stay. Full equality only applies to those migrants who stay for a period longer than 5 years. The migrants can be expelled when they ask for social assistance and are seen as a reasonable burden to the social system. During the first two years of residence in the Netherlands, an appeal on social assistance or on social care in a hostel for more than 8 nights will cause an expulsion order. In year three the criteria for an expulsion decision are as follows: social assistance for more than 2 months or complementary social assistance for more than three month or social care for 16 nights or more. In year four: 4 or 6 months social assistance or social care for more than 32 nights and in year five: 6 or 9 months social assistance or social care for more than 64 nights.

As regards access to study grants, in *Poland and Denmark* those students who are not workers, self-employed or members of their families as well as those retaining the status of workers and self-employed shall have only right to reimbursement of enrolment fees and but not to study grants. In these two countries as public higher education is generally free so no enrolment fees for nationals are applicable, the same rule is applicable to EU students who are not economically active. Additionally in *Denmark* all students (irrespective of nationality) have a right to state educational support for study programmes abroad provided they have resided for 2 consecutive years within 10 years period in Denmark. However, following jurisprudence of CJEU, the Danish government on 12 September 2013 decided to introduced additional affiliation criteria (such as family members, school work and financial ties) which shall supplement this 2 years residence criteria in order to follow such judgments as Giersch (C-20/12), Prinz and Seeberger (C-523/11 and 585/11). In *Denmark,* if a student is able to prove that he works 10-12 hours a week, he is treated as a worker and hence is entitled to study grants.

In *Poland,* the right to study grants is excluded for economically inactive EU citizens and members of their families prior to acquisition by them the right of permanent residence. So no maintenance aid for studies, including vocational training, consisting of student grants or student loans is possible for this category of migrating citizens. Such a right have acquired only migrating workers, self-employed persons, persons who retain such status and members of their families, which is in line with Article 24 (2) Directive 2004/38. As regards social assistance, the general requirement of residence is applicable and as regards support for job-seekers, it is irrelevant, as Polish legislation does not provide for any financial support for job seekers (not having a status of unemployed).

In *Belgium* no social assistance is granted for those applicants staying for a period shorter than 3 months and no maintenance aid shall be granted prior acquisition of permanent residence right. Similarly in *Lithuania,* social assistance is not granted for those EU nationals and their family members during first 3 months of stay in this

country. In *Germany* job seekers are not entitled to be granted social assistance, but this provision is very often inapplicable by German courts.

In *Estonia* there is no direct derogation, but benefits acquired according to social security legislation are granted on basis of having temporary or permanent right to stay in Estonia (except for emergency social assistance which is open for those being in helpless situation due to the loss or lack of means of subsistence, which is only conditional upon having a right to legal stay in this country).

Similarly as in *Estonia*, also in *Latvia* there is no direct derogation and the Latvian rapporteur highlights that this derogation is not applicable consequently. As a rule social benefits are not available for EU citizens (even economically active) and members of their families if they do not have permanent residency permit. On the other hand, the right to study grants and student loans has only those EU citizens who have residency rights in Latvia (irrespective if they are economically active or not). No reference to members of their families is made, so consequently third country nationals of economically active EU citizens are excluded from the right to have study grants.

In *Bulgaria* EU citizens and members of their families shall be qualified as "persons for whom that is envisaged in an international treaty to which Bulgaria is a party" and they shall have a right to social assistance on the same footing as Bulgarian citizens.

In *Denmark,* job seekers are excluded from the right to be granted social assistance, except for the right to reimbursement of costs related to the return to their home country. In *Poland* it is not a case as job-seekers, irrespective of nationality, are not entitled to any form of financial assistance.

4. Do EU workers and their family members have the same access to social benefits and advantages as defined in Article 7(2) Regulation 492/2011 as national workers? Do family members have specific problems in accessing benefits and advantages? Does your national legislation specify criteria for the eligibility of EU workers and their family members when trying to access social benefits?

What kind of financial and non-financial social benefits and advantages as defined in Article 7(2) Regulation 492/2011 are applicable for EU citizens and members of their families?

Majority of rapporteurs declare that the principle of equality applies as regards access to social benefits and advantages (such situation is in *Portugal, Czech Republic, Estonia, Romania, Hungary, Italy, Finland, France, Austria, Spain, Germany, Malta, Croatia, Lithuania, Slovenia, Ireland)*.

However, in some Member States this principle is not applicable to EU citizens and members of their families in contradiction with EU law requirements. In *Latvia* it is administrative practice that is contrary to EU law.

In *Bulgaria* there is a problem with personal scope of the Law on Social Assistance which regulates access to social benefits. The reason for that is that the Law on Social Assistance might be interpreted as providing in law for an exception to the

equal treatment principle on the basis of nationality. With regard to its personal scope, it makes no explicit reference to EU nationals as its potential beneficiaries. According to the exhaustive list the right to social assistance is recognized to Bulgarian citizens, as well as to foreign nationals with *long-term* or *permanent* residence in Bulgaria, holders of refugee or subsidiary protection status, asylum or temporary protection, as well as to 'persons for whom that is envisaged in an international treaty to which Bulgaria is a party'. It is uncertain whether EU nationals would qualify even as 'foreigners with permanent residence' as according to the Law on Foreign Nationals in the Republic of Bulgaria a foreign national is a person who is not a Bulgarian citizen and not a citizen of an EU member state, an EEA state or Switzerland.

There is no exhaustive list of benefits that are qualified as falling under the scope of Regulation 492/2011in neither Member State, they are rather listed on a case-by-case basis.

Therefore many rapporteurs declare that there is no specific list of benefits devoted solely to EU workers and members of their families.

However, in many cases residence requirements are applicable, that may hinder the full access to certain benefits for workers, especially for frontier workers. As a rule, nationality is not a condition to be granted social advantages or social assistance. Such a situation occurs in *Poland, Netherlands, Luxembourg and Denmark, Slovakia, Italy.*

In *Denmark*, in practice, EU workers are reported to encounter difficulties in accessing certain benefits, including social assistance, public financed shelters and care homes and assistance to job seekers provided by the municipal job centers. Furthermore, some Danish legislation lays down residence/employment requirements which may be more difficult to meet for EU workers than for national workers. In the Danish report, several practical problems in accessing benefits/advantages encountered by EU citizens are thus listed.

In *Lithuania* social advantages are frequently linked to permanent residence requirement. In *Estonia* the right to social assistance and other social advantages is connected to right of stay (either temporary or permanent).

Some rapporteurs mention that in certain cases family members are excluded from the right to certain benefits (in *Greece, Hungary*).

In *Hungary* and *Italy* as social benefits may be established not only by national but also by regional authorities, the latter are often discriminatory for EU citizens, but it is difficult to monitor the issue.

In *Greece* access to special pension and free medical care for people older than 68 are granted only for Greek citizens and people with Greek origin, which shall be treated as discriminatory for EU citizens.

In *Latvia* there is a fragmentary regulation concerning access to social benefits for EU workers such as free medical treatment or right to study (the latter only concerns EU citizens and not members of their families). In general the right to social advantages have only workers who are either Latvian nationals or have permanent residency rights.

In *Estonia* having temporary or permanent right to stay is equal to have rights to social advantages, including social security benefits.

Belgium and the *Netherlands* face problems with equality as regards access to study grants.

In *Slovenia,* the equal treatment is fully applicable and there are no reported cases on infringements. Financial benefits are as follows: social assistance in cash and supplementary allowance. Non-financial social benefits covers: (a) first social aid, (b) personal help, (c) help to the family, (d) institutional care, (e) guidance, protection and employment under special conditions, (f) help to workers in enterprises, institutions and other employers.

In *Czech Republic* social benefits are as follows: (a) reduced public transportation fees, (b) reduced family entrance fees for cultural events, etc. They are open to all EU workers and members of their families who stay for a period longer than 3 months.

In *Sweden* there is also no problem as regards access to social benefits and advantages. Following benefits shall be mentioned that are also open for EU workers and members of their families: (a) family benefits (pregnancy allowance, parental leave at the first or sickness benefit level and temporary parents), (b) sickness or industrial injury (sickness benefit, rehabilitation, rehabilitation and compensation, contribution to operating equipment, income-related sickness compensation and income-related activity, Workers' Compensation allowance), (c) old-age benefits (earning-related pension), (d) benefits for widows (survivor pension, survivor benefits from workers' compensation and survivor benefits in the form of premium pension).

In *Hungary* certain social benefits are conditional upon having permanent address register such as: (benefits for disabled persons, (b) subsidies to housing for married couples and families with children or other persons in need, (c) family benefits. Other are conditional upon status of person (student, job-seeker, pensioner) and not on nationality – such situation concerns travel fare exemptions. Additionally EU citizens (but not family members) are entitled to reduced museum tickets. Those with permanent residence right have a right to student credit and other study grants

In *Estonia* following social benefits and advantages are granted to EU citizens and members of their families: (a) child allowance, (b) parental benefits (under condition that every beneficiary must reside for at least 6 months before applying for this benefit, including Estonian citizens), (c) state guaranteed pensions, (d) unemployment insurance benefits, (e) benefits and services for unemployed, (f) social assistance benefits in kind and in cash, (g) study benefits, (h) social advantages granted on local level (which require in general minimum period of stay at given territory).

In *Slovakia,* access to social benefits and advantages is conditional upon having permanent residence permit. It contains following benefits: (a) childbirth benefit, (b) surcharge to childbirth benefit, (c) benefit for child care and (d) benefit for parents to whom three or more children were born or who have twins (within the period of 2 years).

In *Portugal* following benefits are open for EU citizens and members of their families: (a) allowances granted under social income for insertion framework,

(b) unemployment benefits, (c) parental allowances, (d) invalidity benefits, (e) sickness insurance, (f) parenthood and adoption benefits, (g) disable benefits, (h) retirement benefits,(i) family benefits, (j) student benefits, (k) death benefits and (l) dependency benefits (to third persons that help disable and elderly).

In *Luxembourg* following benefits and advantages are qualified as social advantages on basis of Article 7 (2) of Regulation 492/2011: (a), (a) childbirth allowance, (b) education allowance, , (c) back to school allowance, (d) minimum guaranteed income, (e) cost-of-living allowance, (f) social aid benefit, (g) state aid to finance a rental guarantee.

In *Ireland,* certain social benefits based on social insurance system are available, however they are based on residency requirement: (a) maternity benefit, (b) health and safety benefit; (c) adoptive benefit; (d) illness benefit; (e) carer's benefit; (f) treatment benefit. Additionally following social benefits, not based on social insurance system are available: (a) infectious diseases maintenance allowance; (b) blind welfare allowance; (c) rehabilitation training bonus. Those benefits are open for both EU citizens and members of their families.

In *Germany* the equal treatment of migrant EU workers and their family members fully applies to those who reside in Germany, therefore frontier workers do have practical problems. The same situation takes place in *Poland*, as there is residency requirement as a condition of granting various social advantages.

In *Denmark,* although general rule of equal treatment is applicable, in practice non registered EU citizens may encounter certain difficulties as regards access to public financed care homes and shelters benefits. The understanding is that if a non-registered EU citizens cannot supply for themselves during first 3 months of stay, than he shall be automatically qualified as constituting unreasonable burden to Danish society and therefore not legally residing in Denmark. There are also reported problems as regards access to discount on public transportation for students, as students from other Member States who are not entitled to Danish educational support are not entitled to such discounts. Currently, according to the rapporteur, the Danish Ministry for Education is working on the answer to the Commission. However, access to study grants for child of a worker is limited only to those who either reside in Denmark during the period when EU citizen is a worker or self-employed or who not reside, but who are supported by their parents at the commencement of studies.

In *Netherlands,* as in *Poland*, residence clauses may form an obstacle to gain social advantages. The *Netherlands* as a result of CJEU judgment in case C-542/09 the three out of six years' rule has been withdrawn according to which in order to be eligible to receive funding for higher educational studies abroad, the student must have resided legally in the Netherlands for at least three out of the six years preceding the beginning of the course abroad. But currently there is a possibility to put a maximum to the amount of students who can ask for study grant to take abroad. Currently new case is pending concerning the possibility under EU law from terminating the right to receive study finance for education or training outside the EU of an adult dependent child of a frontier worker with Netherlands nationality who lives in Belgium and works partly in the Netherlands and partly in Belgium, at the point in time at which the frontier work ceases and work is then performed exclusively in Belgium, on the ground that the child does not meet the requirement that she must

have lived in the Netherlands for at least three of the six years preceding her enrolment at the educational institution concerned. As the case has been launched in June 2013, no AG opinion has been issued yet.[15]

In *Belgium,* discriminatory problems occurs in granting unemployment benefits for young people who have just completed their studies and are looking for a job (so called *tideover allowance*). Still the requirement to complete at least 6 years studies in the host Member State is present in Belgian legislation, although it was claimed contrary to EU law by the CJEU in case C-367/11. As regards access to study grants, in French Community it is open for children of EU workers residing in Belgium (but not for workers themselves). In the Flemish Community, the combination of residence criteria and intensity of work is applicable in order to be granted study grants as a child of EU worker. The residence criteria applies also as regards exportability of study grants.

However, there are Member States, where access to social advantages is still restricted to EU workers and their family members. In *United Kingdom*, the "right to reside" test is under assessment of the Commission are contrary to principle of equality. The "right to reside" test is an additional condition for entitlement to the benefits in question which has been imposed unilaterally by the UK. UK nationals have a "right to reside" in the UK solely on the basis of their UK citizenship, whereas other EU nationals have to meet additional conditions in order to pass this "right to reside" test. For workers, self-employed and those who retain this status it is not necessary to show habitual residence, it is enough to prove that they hold such a status. However, for other categories of migrants, they are obliged to prove that they intend to settle in the United Kingdom. This means that the UK discriminates unfairly against nationals from other Member States, as it may result in denial to grant certain social benefits for those who are unable to work due to illness, disability or childcare responsibilities..

In *Malta* there are discriminatory rules as regards access to certain social advantages. Only residents and Maltese citizens are entitled to 40% of bus fare prices. Also water and electricity tariffs are preferential for Maltese citizens. The division is made between so called residential and domestic tariff – the second one is 30% higher and is reserved for second homes and non-residents, whereas residential tariff is open for primary home of Maltese citizens.

In *Lithuania* generally EU workers and members of their families shall have the right to certain benefits under the same conditions, however, there are certain exceptions. Settlement benefits and support for acquisition or rent of accommodation is conditional upon having permanent residence, funeral benefits are conditional upon having registered place of residence. As regards non-financial benefits, they are open for those foreigners who have temporary or permanent residence in Lithuania in the form of social services and support with accommodation.

5. Are there any tax incentives for EU citizens and members of their families as regards tax deductions, tax exemptions, tax reductions etc.? Is there a possibility for EU citizens to be subjected to common income tax with their

[15] Case C-359/13, B. Martens.

spouses on the same basis as it is possible for nationals (whenever applicable)?

Finnish, Austrian, Greek, Italian, Hungarian, Polish, Romanian, Czech legislation do not provide any tax incentives for EU citizens and members of their families. It is rather residency than nationality criteria for application of national tax regimes.

There is a special income tax for non-residents (SINK) and non-residents artists in *Sweden.*

In *Netherlands* foreign workers can benefit from so called “30% rule”, which means that 30% of the wage paid to employee can be untaxed. However, the rule has been significantly restricted in 2012 by introducing level of income and place of previous residence as eligibility criteria (income at least € 35 000 a year and at least living 150 km from Dutch border).

In *Denmark* there are tax incentives for key employees and researchers, regardless their nationality, but recruited abroad. (optional 26% gross taxation for up to 60 months).

In *Latvia* it is possible for economically active person to have tax relief for dependants (minor children, economically inactive spouses, parents, grandparents) not only for residents but also for non-residents of Latvia who are residents of other EU Member States and gained during fiscal year at least 75% of total income in Latvia. Additionally the problem arises as regards tax deduction regarding expenses on educational and medical services for workers and dependant family members. As regards medical expenses, unlike educational expenses, there is no provision entitling to make such a deduction for services received in other Member States. Moreover, deduction is possible only for health insurance which are offered by national companies and lastly it is not clear if such deduction is applicable where dependants are not Latvian residents.

In *Hungary,* it is not possible to grant tax relief for life insurance fees paid to non-resident Hungarian companies, since deductibility is guaranteed only if the contract has been concluded with a Hungarian resident company. However, according to the *Hungarian* rapporteur, it may be explained by the cohesion of applicable tax system, similar as in Belgium according to Bachmann court case (C0204/90).

In *Lithuania* permanent residents are entitled to have income tax deductions from life insurance contributions. Additionally there is a minimum not taxable amount, but non-permanent residents cannot apply it throughout the whole taxable period but only at the end of such a period, unlike residents. There is a difference in treatment as regards VAT tax. Unlike nationals, foreigners are obliged to register as VAT payers immediately after commencement of economic activities in Lithuania, while Lithuanian only after having exceeded approx.. 45 000 € within 12 consecutive months.

In *Ireland* it is possible for EU citizens to be subject to common income tax with their spouses (the Married Person's Tax Credit and the increased Rate Bond applicable).

Spouses are taxed separately in *Finland, Austria, Greece, Latvia, Czech Republic, Croatia, Bulgaria, Slovenia, Lithuania, Slovakia .*

It is possible to be taxed jointly by spouses in *Poland*, *Netherlands, Belgium, Denmark, Germany (*as from 2013 also same sex registered partners), *Sweden, Luxembourg, Portugal, Denmark*.

6. Are there any reported cross-border taxation problems? Is there a case law on this matter?

In *Finland* there are tax incentives for frontier workers – they may reduce from their income tax certain costs of maintenance home, regardless location of the premise. Until 2012 only costs covered by home located in *Finland* were deductible*.*

In *Lithuania* there are reported problems with proving that taxes have been paid abroad. It may lead to obligation to pay taxes for the second time in *Lithuania.*

In *Hungary* the European Commission expressed the view that Hungarian tax provisions treat in a discriminatory manner the purchase of a residential property in Hungary, following the sale of a previous residence, by providing for more favourable measures where the residence sold was in Hungary and not in the territory of another Member State. Thus, those provisions tax more heavily the purchase of residential property where the related sale was not of a previous residence in Hungary. However, the CJEU in its ruling (C-253/09) claimed that the restriction of the freedom of movement for persons and of freedom of establishment may be justified in order to preserve the coherence of the tax system.

Estonia used to *e*xclude non-resident pensioners from benefiting from the allowances laid down by the Law on income tax, where, because of the modest amount of their pensions, they are not taxable in the Member State of residence under the tax legislation of that State. Such a regulation was declared by the CJEU as discriminatory (in case C- 39/10).

In the *Netherlands* the possibility for employers to get a discount for 1-3 years on payment of the contributions for employees is possible only for those who enjoy a Dutch unemployment or disability benefit.

In *Belgium* property transfer tax in Brussels Capital Region allows for a tax base reduction when buying primary residence there on the condition of staying in the Region during next 5 years. According to European Commission it discourages from making use of free movement rights. Additionally the regulation granting tax credit for investing in venture capital only for those individuals being residents in the Flemish region shall be treated as questionable under EU law. Lastly preliminary condition to be able to have reduction in personal income tax when citizens buy shares or bonds of investment funds in Wallonia only when they reside there, irrespective in their income is entirely or almost entirely earned in Belgium shall also be treated as discriminatory. In all these 3 cases the Commission has launched the formal investigation against Belgium.

In *Denmark* there are problems with exit taxation which were declared as incompatible with EU law (C-261/11).In *Ireland* there are reported tax problems due to differences in tax regimes in Ireland and Northern Ireland. Therefore frontier workers commuting from Northern Ireland to Ireland face certain difficulties,

especially due to the fact that maternity and unemployment benefits have been typically significantly higher in Ireland than in Northern Ireland.

Summary:

As a rule neither the notion “social advantages” nor the notion “ social assistance” is defined at national level. Therefore it is not possible to define or make an exhaustive list of all kind of advantages or form of support qualified as social assistance in a single Member State. Although rapporteurs claim that as regards access to social advantages as it is regulated by directly applicable Regulation 492/2001, in general the principle of equality is fully applicable, more in depth analysis lead to the conclusion that existing in some Member States requirements may form at least indirect discrimination. This is the case when residency requirement in a given Member State is a prerequisite to be eligible for certain advantages. Another restriction concerns situations when family members are excluded from certain social advantages. However, generally there is no pending national court cases concerning definition of social advantages and social assistance. Similarly there is no national administrative practice in this respect.

As regards the possibility to exclude access to social assistance according to Art. 24 (2) Directive 2004/38, the vast majority of Member States have made use of such a possibility. Only 7 out of 28 of them do not limit the right to recourse to social assistance during first three months of stay as well as regards economically inactive migrants.

II. Access to social and tax advantages under Art. 7(2) Regulation 492/2011 for frontier workers.

1. Is there specific national legislation on frontier workers from other Member States?

There is no specific regulation on frontier workers in *Poland, United Kingdom, Spain, Slovakia, Luxembourg, Lithuania, Slovenia, Bulgaria Croatia, Sweden, Germany, Belgium, Netherlands, Czech Republic, Latvia, Estonia, Italy, Greece.*, *France, Cyprus, Hungary, Finland, Ireland.*

However, as regards *Ireland*, the Tax Consolidation Act 1997 (am amended in 2011) includes provisions giving income tax relief to individuals who are resident in the State but who work outside the State. It applies to individuals who commute daily or weekly to their place of work outside the State and who pay tax in the other country on the income from their employment. By far the largest category to benefit from this relief are cross-border workers who commute daily to work in Northern Ireland. Individuals who travel to the United Kingdom and elsewhere to work, returning at weekends, also benefit. The relief applies not only to cross-border workers but also to trans-border workers. The relief effectively removes the earnings from a qualifying foreign employment from liability to Irish tax, where foreign tax has been paid on

those earnings. In simple terms, the effect of the measure is that Irish tax will only arise where the individual has income other than income from a foreign employment.

Denmark and *Finland* provide specific regime for frontier workers.

Romanian legislator has specific regulation only on frontier workers who are third country nationals.

Austrian legislation provides special rules for frontier workers: they may deduct expenditures of contributions for an Austrian or foreign statutory health care insurance from their income subject to Austrian income tax. Additionally they may deduct € 54 from their income subject to Austrian income tax just because of the fact that they are working as frontier workers and if they are not insured against the risk of sickness in the state of employment can be included into the social security system of Austria as the state of residence by legal decree.

In *Portugal,* frontier workers that earn at least 90% of their income in Portugal may be subjected to tax on the same footing as non-married residents.

In *Denmark* frontier workers have possibility to obtain tax relief similar to that of persons being unlimited tax liable, when their earn main part of their income in Denmark. Additionally, if a frontier worker earns at least 75% of his global income in Denmark, he may choose access to deduction for expenses which will result in placing him in a position similar to a person subjected to unlimited tax liability.

In *Finland* frontier workers are covered by social security system of the state where he works. As regards health services, both frontier workers and members of his family have the right to support in a place of work only in emergency cases. As regards taxation issues, it is conditional upon place of living – if the frontier worker lives in a municipality that is located at the frontier are, he is taxed in the country of residence. In other situations – in the country of work.

Poland does not provide for any tax incentives for frontier workers.

2. Are there any reported tax problems or restrictions for frontier workers mainly due to the non-resident status of frontier workers?

Majority of rapporteurs declare that frontier workers face tax problems and restrictions due to having non-resident status.

In *Austria* frontier workers face discrimination due to their status as non-residents who are subject to limited tax liability. They can deduct expenditures only if they are related to Austrian income and they are not allowed to deduct extraordinary expenses. However, if frontier workers gain at least 90% of their income they may apply for being treated as under unlimited tax liability (although they have neither a residence nor a habitual abode in Austria (this rule was introduced to Austrian tax law as a consequence of the CJEU Schumacker case .[16]

[16] C 279/93.

There are problems in *Northern Ireland* as regards access to social benefits. The problems relate to frontier workers who either live in Northern Ireland and work in the Republic or the contrary. They pay social contributions and have access to benefits in the state where they work not necessarily where they live. This has consequences for their family members who may not be covered for some benefits.

In *Ireland* the habitual residence condition is a prerequisite that has to be satisfied for the award of social benefits. Therefore as a rule, job-seekers allowance is excluded for migrants. However, due to Operation Guidelines on this habitual residence condition, it is claimed that a person who has a right to enter and reside on basis of EU law shall have a right to reside in the State. Consequently there have been several cases before the Irish Social Welfare Appeals Tribunal on the meaning and interpretation of the Habitual Residence Condition. These cases, however, are not reported.

In *Luxembourg* tax bonus for dependent children are only open for residents.

In *Lithuania* frontier workers are obliged to pay tax there.

In *Latvia,* if a frontier worker does not earn at least 75% of his total income there, he shall have no rights to tax relief available to Latvian residents.

In *Netherlands,* as follow up of the Renneberg case[17], a new decision in 2012 has been published, according to which those EU citizens who earn more than 90% of their income in the Netherlands can deduct the mortgage interest they pay for the house they own in another Member State.

There are tax incentives for frontier workers in *Denmark*.

3. Are there residence clauses that form a prerequisite for the award of any social benefits and advantages? Is there any national case law on this problem?

In majority of Member States there are residence clauses that form obstacle for frontier workers to benefit from social benefits and advantages. Such situation takes place in *United Kingdom. Spain, Austria, Poland, Slovakia, Lithuania, Bulgaria, Sweden, Germany, Denmark, Netherlands, Latvia, Hungary, Italy, Greece.*

No such clauses exist in *Portugal*. Also in *Romania* frontier workers are entitled to the same social advantages as residents.

In *Finland,* instead of residence clause, there is “four months rule”, according to which is an applicant is employed in Finland for at least 4 months a year, than he is eligible for such social benefits as national health insurance, child care subsidy, accruing credits towards national pension and survivor’s pension, rehabilitation benefits and unemployment allowances. If the rule is not fulfilled, it may result in exclusion from benefits in both Finland and country of residence.

[17] C-527/06.

However, in *Denmark,* such social benefits as day care, cost-free Danish courses aiming at facilitating access to Danish labour market us also opened for frontier workers.

In *Lithuania* family benefits are related to working place and not residence place, therefore they are open also for those workers, whose family live outside Lithuania.

In *Austria* maintenance payments are only granted to children with Austrian nationality residing in Austria*,* which has been declared by the Austrian Supreme Court as contrary to Art. 7 (2) Regulation 492/2011 in case of children of frontier workers who are residing with the child in another Member State but are working in Austria.

In *Spain* several bilateral agreements have been concluded with Portugal in order to grant social benefits for Portuguese frontier workers working in Spain.

In *Luxembourg* following CJEU judgment in C-20/12 the law will be changed so that financial aid for student will not be conditional upon residency requirement.

In *Sweden some* family benefits are based on work (such as pregnancy allowance), while some other family benefits are based on residence (such as care allowance). The same remark concerns work injury benefits.

In *Germany* basing on constitutional law arguments and not EU ones, social benefits under Social Code shall be given to frontier workers. However, the permanent residence is necessary to be eligible for study grants. The same concerns job-seeker allowances.

In *Netherlands,* only residents are entitled to social assistance benefits while earning less than social minimum. Therefore frontier workers are excluded. Basing on Hendrix judgments, in 2008, Central Appeals Tribunal decided not to cease right to social assistance benefit for British citizens residing in the Netherlands for the period of visiting rehabilitation clinic in Scotland.

In *Latvia* residence clauses are applicable as regards: right to state flat-rate allowances, social aid and social services, study grants and study loans.

In *Italy* maternity benefits are conditional upon having residential status.

Summary:

Taking into account legislation of Member States in the light of position of frontier workers, it shall be claimed that majority of Member States do not possess any specific legal regime as regards frontier workers. However, certain requirements, which are not particularly addressed solely to frontier workers in practice have significant impact on this category of workers. Contrary to the aim of the Regulation 492/2011 which makes it clear that not only permanent but also seasonal and frontier workers shall have an unrestricted right to equal treatment in comparison with national workers, many national legislations restrict this right by introducing the obligation to have a place of residence in the territory of a given Member States in order to be eligible to certain social benefits.

Overall summary:

Analysis of the situation in all Member States regarding access to social and tax advantages and benefits for EU workers and members of their families leads to a conclusion that in general majority of rapporteurs in general declare that in their Member States EU rules as regards access to certain social and tax advantages and benefits as regulated in Directive 2004/38 and Regulation 492/2011 are fully applicable at national level. However, a more in depth analysis leads to a conclusion that in practice in many Member States EU workers and members of their families face certain difficulties as regards equal access to certain benefits in comparison with national workers. The reasins are as follows:

First of all, there is no uniform definition of social advantages and tax advantages in EU law and the definition as specified by Court of Justice is very broad. On the other hand it is obvious that creation of uniform and exhaustive definition of social advantages and tax advantages is not possible as it would interfere with national competences. This causes, however, that in certain Member States these notions are understood in a different way. Although majority of rapporteurs stress that the Regulation 492/2011 is fully and directly applicable in their countries, in practice it is difficult to qualify certain social benefits available on basis of national law as social advantage as defined in Art. 7(2) of the Regulation. Additionally, there are sometimes problems in proper qualification of a given benefits as either social benefits or social assistance on national level. Moreover in many Member States access to social benefits is conditional upon having a residence or permanent residence in a host Member State. This condition is especially detrimental to frontier workers, who practically are very restricted in benefiting from the rule of equal treatment with national workers. Additionally there are situations where although EU workers in general do benefit from the right to equal treatment as regards access to certain financial benefits, unlike members of their families. Surely such a situation shall be qualified as additional practical obstacle to free movement of workers.

As regards economically inactive EU citizens, there is a strong tendency to restrict the right for them to benefit from any financial benefits. Therefore, majority of Member States make use of possible derogation available on the basis of Article 24 (2) Directive 2004/38.