



EUROPEAN COMMISSION

MEMO

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European Commission upholds free movement of people

(see also [IP/13/1151](#))

With over **14 million EU citizens** resident in another Member State on a stable basis, free movement – or the ability to live, work and study anywhere in the Union – is the EU right most cherished by Europeans. The main motivation for EU citizens to make use of free movement is work-related, followed by family reasons. Of all the EU citizens residing in another EU country ('mobile EU citizens') in 2012, more than three quarters (78%) were of working age (15-64), compared to around 66% among nationals. **On average the employment rate of mobile EU citizens (67.7%) was higher than among nationals (64.6%).**

Mobile EU citizens not in employment (namely students, retired persons, jobseekers and inactive family members) represent only a limited share of the total number of mobile EU citizens. Moreover, 64% of them had worked previously in their current country of residence. 79 % are living in a household with at least one member in employment. The overall rate of inactivity among intra-EU mobile citizens declined between 2005 and 2012 from 34.1% to 30.7%.

Free movement of citizens, which is enshrined in the EU Treaties, is an integral component of the Single Market and a central element of its success: **it stimulates economic growth** by enabling people to travel and shop across borders. Equally, the free movement of workers benefits not only the workers involved but also the Member States' economies, allowing for an efficient matching of skills with vacancies in the EU labour market. Despite the economic crisis, **today around 2 million vacancies remain unfilled in the EU.**

The Communication on Free Movement adopted today by the European Commission underlines the joint responsibility of Member States and the EU institutions to uphold EU citizens' rights to live and work in another EU country and outlines concrete actions to support Member States efforts to do so while helping Member States to reap the positive benefits it brings. The policy paper clarifies EU citizens' rights to free movement and access to social benefits, and addresses the concerns raised by some Member States in relation to the challenges that mobility can represent for local authorities.

1. Legal framework on free movement

What is free movement of workers?

EU workers have benefitted from the **freedom to work in another Member State** since the 1960s: this right was enshrined in the EU Treaties already at the launch of the European project in 1957. This right is now laid down in Article 45 of the [Treaty on the Functioning of the European Union](#) (TFEU). This includes the right not to be discriminated against on grounds of nationality as regards access to employment, pay and other working conditions.

[Regulation \(EU\) No 492/2011](#) details workers' rights to free movement and defines specific areas where discrimination on grounds of nationality is prohibited, in particular as regards: access to employment, working conditions, social and tax advantages, access to training, membership of trade unions, housing and access to education for children.

Tackling discrimination against workers from other Member States and raising awareness of EU nationals' right to work in other EU countries are the main objectives of the [proposal for a Directive to facilitate free movement of workers](#) put forward by the Commission at the end of April 2013 (see [IP/13/372](#), [MEMO/13/384](#) and [SPEECH/13/373](#)).

Labour mobility in the EU benefits not only the workers involved but also the Member States' economies. It benefits host countries because it allows companies to fill vacancies that would otherwise not be filled, and so produce goods and provide services that they would otherwise be unable to do. And it benefits citizens' countries of origin because it allows workers that would otherwise be less able to find jobs and so ensure financial support to their family back home and acquire skills and experience they would otherwise lack. When mobile workers subsequently return to their country of origin they benefit from this experience.

What is free movement of citizens?

20 years ago, with the Treaty of Maastricht, the right to **free movement was recognised for all EU citizens**, irrespective of whether they are economically active or not as one of the fundamental freedoms conferred on them by EU law (Article 21 of the Treaty on the Functioning of the European Union). It goes to the heart of Union Citizenship.

The specific rules and conditions applying to free movement and residence are set out in a Directive agreed by Member States in 2004 (Directive [2004/38/EC](#)).

Freedom of movement is the most cherished right of EU citizenship: for 56% of European citizens, free movement is the most positive achievement of the European Union. Indeed, more and more Europeans benefit from this right and live in another EU Member State: at the end of 2012, 14.1 million citizens were living in a Member State other than their own for one year or more. In Eurobarometer surveys, more than two thirds of Europeans consider that free movement of people within the EU has economic benefits for their country (67%).

Who can benefit from free movement?

First three months: Every EU citizen has the right to reside on the territory of another EU country for up to three months without any conditions or formalities.

After the first three months: EU citizens' right to reside in another EU country for more than three months is subject to certain conditions, depending on their status in the host EU country:

- **Workers and the self-employed**, and their direct family members, have the right to reside without any conditions.
- **Job seekers** have the right to reside without any conditions for a period of six months and even longer, if they continue to seek employment in the host EU country and have a "genuine chance" of getting work. Job-seekers can export unemployment benefits from their home Member State for a minimum of three months while seeking work in another Member State, if they have first been registered as unemployed in their home Member State.
- **Students** and **other economically non-active** persons (e.g. unemployed, retired, etc.) have the right to reside for longer than three months if they have for themselves and their family **sufficient financial means** so as **not to become a burden on the host EU country's social assistance system** as well as **health insurance**;

After five years: After five years of continuous legal residence, EU citizens and their family members obtain the right to reside on a permanent basis in the host EU country. Once acquired, this right is no longer subject to the conditions applicable in the previous five years.

2. Social assistance and benefits

Who is entitled to social assistance?

Social assistance is a "subsistence benefit" and typically consists of benefits paid to cover minimum living expenses or assistance paid for special circumstances in life.

EU citizens who reside legally in another EU country must be treated equally with nationals. Thanks to the principle of equal treatment, they are therefore generally entitled to **benefits as well as social and tax advantages**, including social assistance, in the same way as the host country's own nationals.

However, EU law provides for **safeguards as regards access to social assistance for economically inactive** mobile EU citizens, to protect host Member States from unreasonable financial burdens.

- **First three months:** The host EU country is **not obliged by EU law to grant social assistance to economically non-active** EU citizens during the first three months of residence.
- **Between three months and five years:** Economically non-active EU citizens are in practice unlikely to be eligible for social assistance benefits, since to acquire the right to reside they would have initially needed to show to the national authorities that they had sufficient resources (see above).

If they apply for a social assistance benefits, for example because their economic situation subsequently deteriorates, their request must be assessed in the light of their right to equal treatment. But also here, EU law provides for safeguards:

First, in specific cases, claiming social assistance can give rise to a reasonable doubt on the part of national authorities that the person may have become an unreasonable burden on the social assistance system.

Furthermore, the Member State may make the grant of a social assistance or special non-contributory benefit (i.e. benefits that have elements of social security and social assistance at the same time and are covered by Regulation 883/2004) conditional on that citizen meeting the requirements for obtaining legal right of residence for a period of more than three months. However, the Member State cannot refuse to grant these benefits automatically to non-active EU citizens nor can they automatically be considered as not possessing sufficient resources and thus not having a right to reside.

National authorities should assess the individual situation, taking into account a range of factors (amount, duration, temporary nature of difficulty, overall extent of burden on national assistance system).

If, on the basis of such an individual assessment, authorities conclude that the persons concerned have become an unreasonable burden, they may terminate their right of residence.

After five years: EU citizens who have acquired the right of permanent residence are entitled to social assistance in the same way as nationals of the host EU country. No derogations are allowed under EU law.

Who is entitled to social security benefits?

Typical social security benefits include old age pension, survivor's pension, disability benefits, sickness benefits, birth grant, unemployment benefits, family benefits or health care.

Member States set their own **social security rules** in line with their own circumstances. The EU coordinates social security rules (Regulations [\(EC\) No 883/2004](#) and [987/2009](#)) only to the extent necessary to ensure that EU citizens do not lose their social security rights when moving within the EU.

This means that the host country's laws determine which benefits are provided for, under which conditions they are granted (such as taking into account the period of work), for how long and how much is paid. Benefit entitlement varies therefore in different EU countries.

[\(Regulation 883/2004/EC\)](#) merely ensures that mobile EU citizens remain protected by social security coverage after they move, essentially by deciding which one of the relevant Member States is responsible for the social security coverage.

Workers — employed or self-employed —and their dependants are covered by the host country's social security system under the same conditions as own nationals - because they contribute, like all other national workers, through their contributions and taxes to the public funds from which the benefits are financed.

For mobile EU **citizens who are not working** in the host Member State, the rule of the state of employment cannot be applied as, by definition, there is no country in which such people are working. Under EU law on co-ordination of social security schemes, the Member State of residence becomes responsible for the social security coverage only once such citizens pass a strict habitual residence test, proving that they have a genuine link with the Member State in question. The strict criteria of this test ensure that citizens who are not working may only have access to social security in another Member State once they have genuinely moved their centre of interest to that State (for example their family is there).

3. Impact of mobile EU citizens on national social security systems

According to [figures communicated by Member States](#) and a [study recently published](#) by the European Commission in most EU countries, EU citizens from other Member States use welfare benefits no more intensively than the host country's nationals. Mobile EU citizens are more likely to receive housing and family related benefits in most countries studied.

In the specific case of cash benefits such as social pensions, disability allowances and non-contributory job-seekers allowances financed by general taxation rather than contributions by the individual concerned (so-called special non-contributory cash benefits - SNCBs), the study shows that **economically non-active EU mobile citizens account for a very small share of beneficiaries** and that the budgetary impact of such claims on national welfare budgets is very low. They represent less than 1% of all such beneficiaries (of EU nationality) in six countries studied (Austria, Bulgaria, Estonia, Greece, Malta and Portugal) and between 1% and 5% in five other countries (Germany, Finland, France, The Netherlands and Sweden).

The study also found that:

- the vast majority of EU nationals moving to another EU country do so to work
- activity rates among such mobile EU citizens have increased over the last seven years
- on average EU mobile citizens are more likely to be in employment than nationals of the host country (partly because more EU mobile citizens than nationals fall in the 15-64 age bracket)
- non-active EU mobile citizens represent a very small share of the total population in each Member State and between 0.7% and 1.0% of the overall EU population.
- on average, the expenditures associated with healthcare provided to non-active EU mobile citizens are very small relative to the size of total health spending (0.2% on average) or the size of the economy of the host countries (0.01% of GDP on average).
- EU citizens account for a very small share of recipients of special non-contributory benefits, which are benefits combining features of social security and social assistance at the same time: less than 1 % of all beneficiaries (who are EU citizens) in six countries (Austria, Bulgaria, Estonia, Greece, Malta and Portugal); between 1 % and 5 % in five other countries (Germany, Finland, France, the Netherlands and Sweden), and above 5 % in Belgium and Ireland (although figures for Ireland are estimates based on claims)
- There is no statistical relationship between the generosity of the welfare systems and the inflows of mobile EU citizens.
- Main characteristics of mobile EU citizens not in employment:
 - 64% of them have worked previously in their current country of residence
 - 71% of them are pensioners, students and jobseekers

79% of them live in a household with at least one member in employment

The latest study's results complement those of other studies that consistently show that **workers from other Member States are net contributors to the public finances of the host country**. EU workers from other Member States usually pay more into host country budgets in taxes and social security than they receive in benefits because they tend to be younger and more economically-active than host countries' own workforce. These studies include the [OECD's International Migration Outlook 2013](#), the Centre for Research and Analysis of Migration study on [Assessing the Fiscal Costs and Benefits of A8 Migration to the UK](#) and the recent [study](#) by the Centre for European Reform.

4. How to deal with potential abuse?

What tools are there under EU law to help Member States avoid abuse?

EU law includes strong safeguards to prevent abuse of the right to free movement.

EU rules on free movement of citizens allow Member States to take effective and necessary measures to fight against abuse, such as marriages of convenience, and fraud, such as document forgery, or other artificial conducts or deceptions solely made to acquire the right to free movement, by refusing or terminating rights conferred by [Directive 2004/38](#) (Article 35). Such measures must be proportionate and are subject to the procedural safeguards laid down in the Directive.

National authorities may investigate individual cases where they have a well-founded suspicion of abuse and, if they conclude that there is indeed an instance of abuse, they may withdraw the person's right of residence and expel him/her from the territory.

In addition, after assessing all relevant circumstances and depending on the gravity of the offence (for instance, forgery of a document, marriage of convenience with involvement of organised crime), national authorities may also conclude that the person represents a genuine, continuous and sufficiently serious threat to public order and, on this basis, also issue an exclusion order in addition to expelling him/her - thus prohibiting his/her re-entry into the territory for a certain period of time.

What does the Commission propose to address concerns raised by Member States?

The Commission is presenting **five concrete actions** that require the cooperation of Member States to succeed. These are concrete examples of how the EU can help national and local authorities maximise the benefits of the free movement of EU citizens, tackle cases of abuse and fraud, address the challenges of social inclusion, and use available funds on the ground.

1. **Fight marriages of convenience:** The Commission will help national authorities implement EU rules which allow them to fight potential abuses of the right to free movement by preparing a **Handbook** on addressing marriages of convenience.

2. **Apply EU social security coordination rules:** The Commission is working closely with the Member States to **clarify the 'habitual residence test'** used in the EU rules on social security coordination ([Regulation 883/2004/EC](#)) in a practical guide that will be produced by the end of 2013. The strict criteria of this test ensure that citizens who are not working may only have access to social security in another Member State once they have genuinely moved their centre of interest to that State (for example their family is there).
3. **Address social inclusion challenges:** Help Member States further use the **European Social Fund** to tackle social inclusion: in the 2014-2020 programming period at least 20% of the ESF allocation in each Member State (compared to the current share of around 17%) must be spent on promoting social inclusion and combating poverty and any form of discrimination. In addition, the ESF will also be able to fund capacity building for all stakeholders at national, regional or local level. Policy guidance will be provided to Member States, of both origin and destination of mobile EU citizens, for developing social inclusion programmes with the support of the ESF. The Commission will keep up its efforts to help build the capacity of local authorities to use European structural and investment funds efficiently.
4. **Promote the exchange of best practices amongst local authorities:** The Commission will help local authorities to share best practices developed across Europe to implement free movement rules and address social inclusion challenges. The Commission will produce by the end of 2013 a study evaluating the impact of free movement in six major cities. It will **invite mayors in February 2014** to discuss challenges and exchange best practices.
5. **Ensure the application of EU free movement rules on the ground:** The Commission will set up an **online training module** to help staff in local authorities fully understand and apply free movement rights of EU. The Commission has proposed that legal support and information bodies for mobile EU workers be set up in all the Member States (see [IP/13/372](#)) and will propose to modernise EURES, the European network of employment services, to enhance the role and impact of employment services at national level, improve the coordination of labour mobility in the EU and develop EURES into a fully-fledged European placement and recruitment tool Today [47% of EU citizens say](#) that the problems they encounter when they go to live in another EU country are due to the fact that officials in local administrations are not sufficiently familiar with EU citizens' free movement rights.

More information

European Commission study on impact of non-active EU mobile citizens on social security:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1980&furtherNews=yes>

European Commission – EU free movement

http://ec.europa.eu/justice/citizen/move-live/index_en.htm

Information on social security coordination:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=849>

Homepage of Viviane Reding, Vice-President of the European Commission and EU Justice Commissioner:

<http://ec.europa.eu/reding>

Homepage of Commissioner responsible for employment, social affairs and inclusion, László Andor:

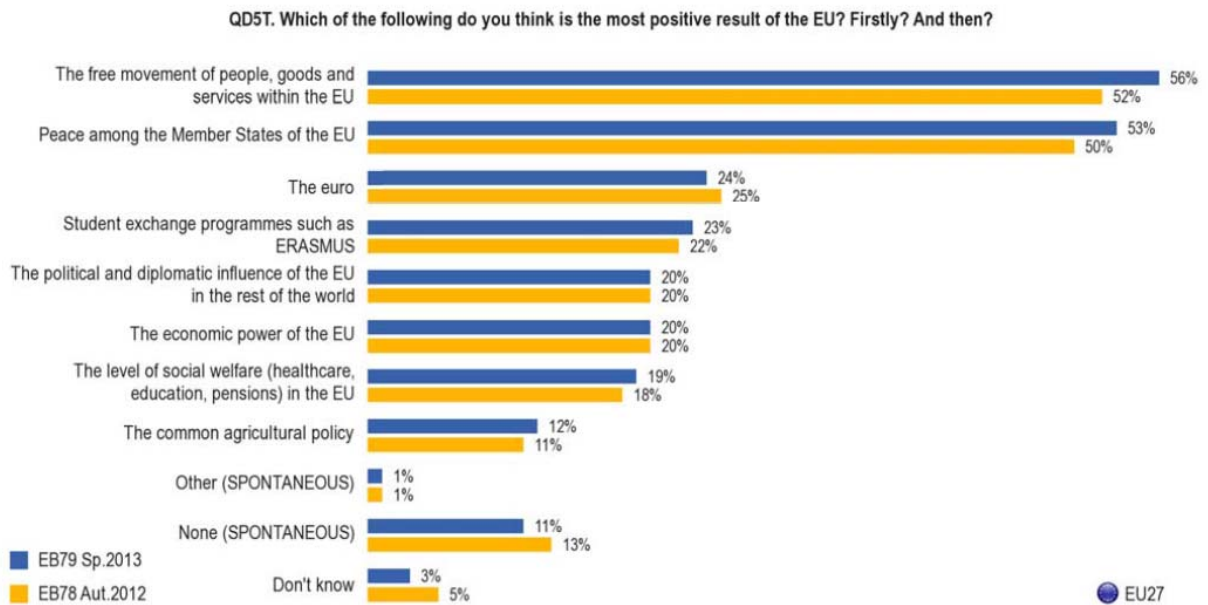
<http://ec.europa.eu/andor>

Follow Vice-President Reding on Twitter: [@VivianeRedingEU](https://twitter.com/VivianeRedingEU)

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Annex

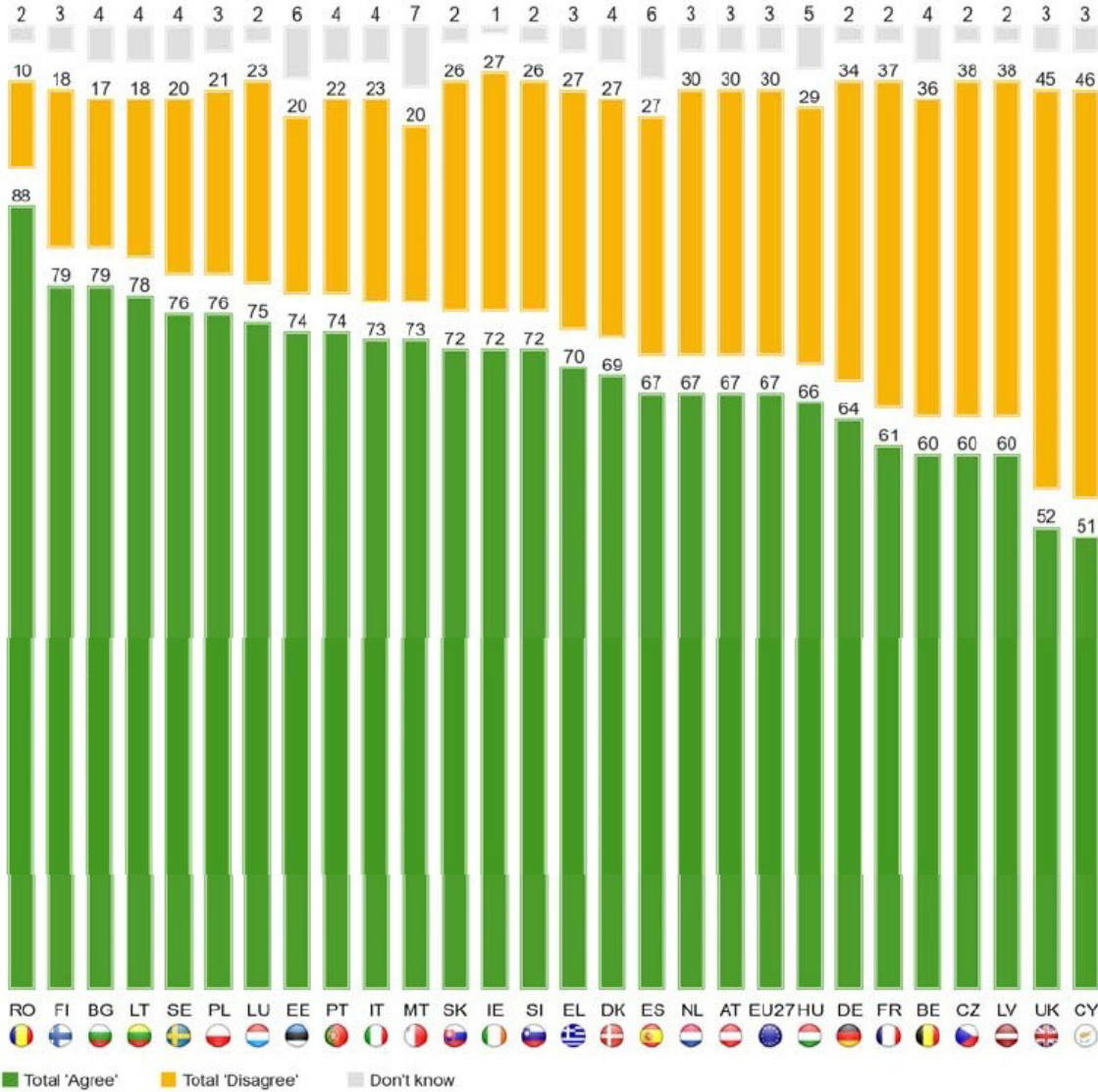
Annex 1: Free Movement is the most cherished right



Source: [Standard Eurobarometer 79](#), Spring 2013

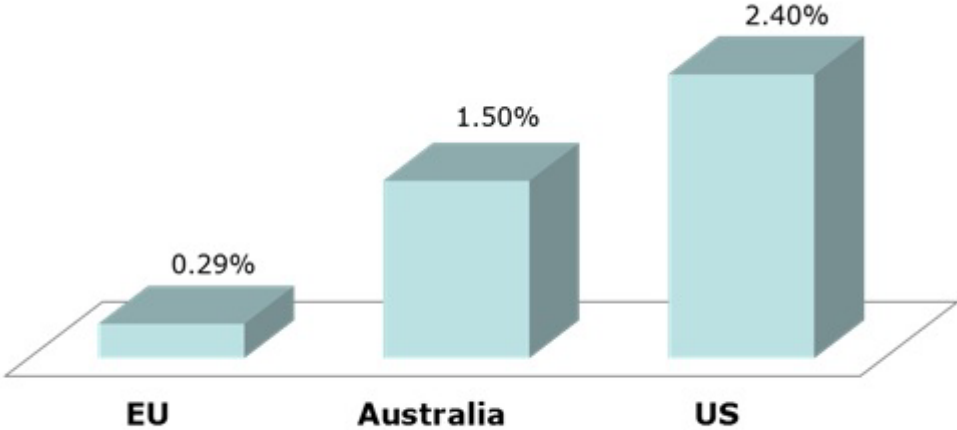
Annex 2: Public perception about free movement

Q6. Do you agree or disagree with the following statement: Free movement of people within the EU brings overall benefits to the economy of your country.



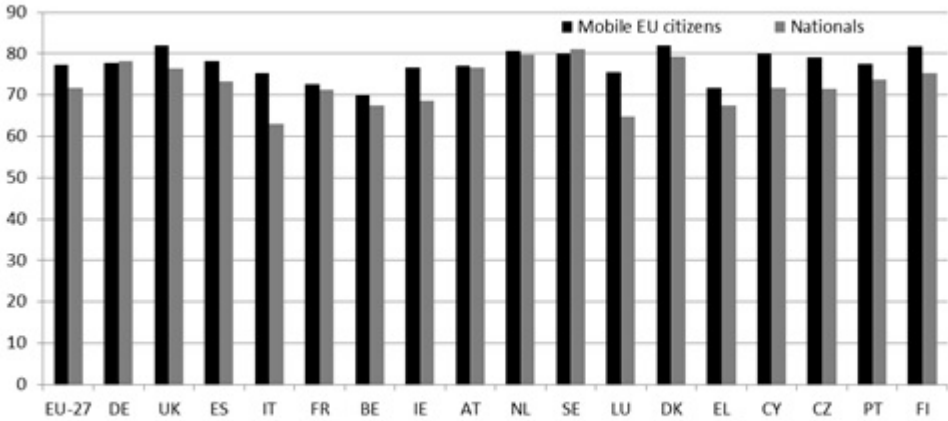
Source, [Flash Eurobarometer 365](#) on 'European Union Citizenship', p44

Annex 3: How many EU citizens are mobile?



Annual cross-border mobility rate in the EU compared to the USA and Australia
 Source: OECD Economic Survey of the EU – 2012

Annex 4: EU mobile citizens are more likely to be economically active than Member States' own nationals



The chart is sorted according to the number of working-age (15-64) mobile EU citizens residing in the country.

Source: Eurostat, EU Labour Force Survey (table lfsa_argan). Note: only the main destination countries of mobile EU citizens are shown in the chart. These 17 Member States account for 99% of the mobile EU citizens in 2012.