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Legal Approaches to 'Unwanted' EU Citizens in the Netherlands

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This contribution examines the legal powers that Dutch authorities have to restrict the right to free movement of mobile but 'unwanted' EU citizens, including measures that seek to expel and ban EU citizens from re-entering the Netherlands. The article defines 'unwanted' EU citizens as mobile EU citizens in respect of whom national authorities seek to take measures to restrict their right of residence, either on the grounds of their being an unreasonable burden on the Dutch social assistance system or in respect of public policy and public security. We analyse the relevant EU legal rules, their interpretation by the Court of Justice of the EU and their national implementation and application in order to show the legal constraints faced by national authorities when seeking to restrict EU mobility. This legal study is supplemented by a discussion of existing data on the number of EU citizens expelled or removed from the Netherlands. Our analysis suggests that, due to the legal protection enjoyed by mobile EU citizens against measures restricting their residence rights, the Dutch authorities encourage voluntary departure as a pragmatic solution to the presence of 'unwanted' EU citizens.

Keywords: EU citizenship, free movement, residence, expulsion, social rights, abuse

Introduction

EU nationals and, especially, nationals of Central and Eastern European (CEE) states are a fast-growing group of migrants in the Netherlands. Unlike non-EU migrants, EU nationals can move to another EU state with few formalities and are entitled to access the labour market on an equal footing with nationals. Moreover, as EU citizens, their right to reside is protected against national measures seeking to restrict or end their stay in a host EU state. Data on the composition of the Dutch population (CBS 2021) suggest that the increase in the number of EU citizens in the Netherlands is linked to the EU's enlargement eastwards and the progressive opening of the Dutch labour market to CEE nationals. Yet, the 2004 and 2007 EU enlargements towards countries with poorer standards of living and pay caused debates about the desirability and effects of CEE mobility, including calls to limit it. CEE nationals are perceived as a source of cheap labour that has the potential to disrupt the Dutch labour market and undercut wages

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for national workers (Cremers 2011), as a potential burden on the Dutch welfare state due to their reliance on benefits (Kramer 2017) and as source of criminality and 'otherness' (Brouwer, van der Woude and van der Leun 2018).

The Netherlands is not unique in questioning the benefits of EU mobility and in conflating cheap labour with welfare tourism and criminality as markers of 'unwanted' EU mobility (Anderson 2012; Karstens 2020; Mantu 2018). Based on public and political discourses, poor EU citizens, criminal EU citizens or EU citizens claiming benefits can all be labelled 'unwanted', while legally they enjoy a fundamental right to EU mobility and the protection of EU law. In this contribution, our focus is on the legal dimension of 'unwanted' EU mobility in the Netherlands. As such, we examine on what grounds the Dutch authorities can restrict or deny EU residence rights and in which situations such measures can be accompanied by expulsion and exclusion from the Netherlands.

Our contribution is structured as follows. The second section presents the national context in which CEE mobility occurs and our methodological approach. The next section examines the relevant EU rules concerning the right of residence for mobile EU citizens. Then follows a discussion of the denial of EU residence rights where the EU citizen no longer meets the relevant conditions from the perspective of both EU and Dutch law and legal practice. The fifth section focuses on the restriction of EU residence rights on the grounds of public policy and public security, whereas the sixth examines the same issue in cases of abuse or fraud. Finally, the penultimate section focuses on voluntary departure as a practical alternative to dealing with unwanted EU citizens, before the last section concludes with an overall assessment of the Dutch legal response.

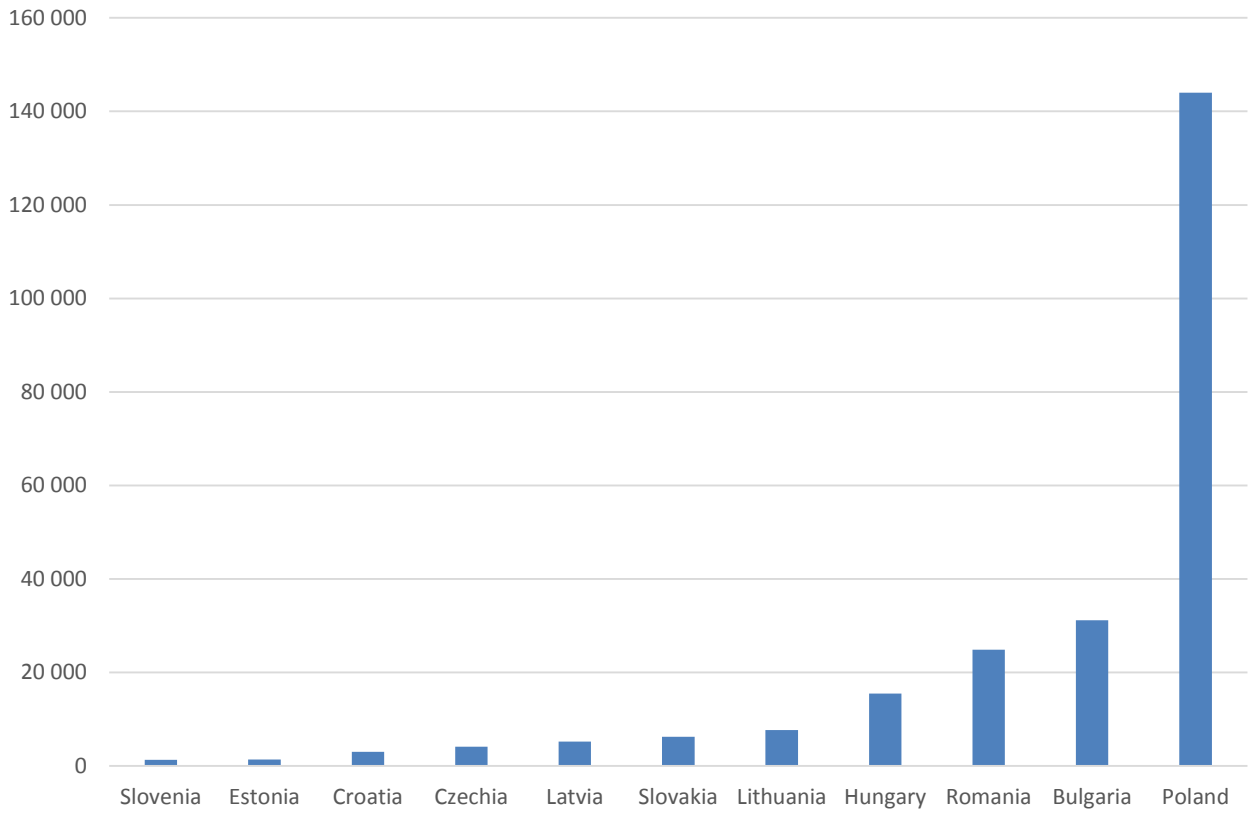
Contextual and methodological note

According to Eurostat data, the Netherlands hosts around 570,000 mobile EU citizens, of whom 43 per cent (245 000) are CEE nationals. Almost half of all CEE nationals are Polish nationals. They constitute the largest group of mobile EU citizens in the Netherlands (see Figure 1). Another 45 per cent of mobile EU citizens are made up of nationals from France, Spain, Belgium, Italy, the UK and Germany. The remaining 12 per cent consists of very small numbers of nationals from the remaining EU states. The available data reflect the number of EU citizens who are registered in the Netherlands and as such are known to the authorities. Based on the assumption that many EU citizens do not register in the Netherlands, existing numbers should be seen as a relative indication, rather than as an absolute value. For example, in 2017, it was estimated that some 90,000 Polish citizens resided unregistered in addition to the official number of 160,000 registered Polish citizens (Gijsberts, Andriessen, Nicolaas and Huijnk 2018).

In 2018, Statistics Netherlands listed work as the top reason for EU citizens moving to the Netherlands, followed by family reunion, study and other purposes (CBS 2020). The upward trend concerning EU mobility continued in 2020, with Polish nationals representing the top nationality of all incoming EU citizens (CBS 2021). EU-wide research has shown that the impact of mobile EU citizens on national welfare states is minimal (ECAS 2014; ICF/GHK 2013). For the Netherlands, the percentage of CEE nationals receiving unemployment benefits is explained by their more vulnerable position in the Dutch labour market and their concentration in sectors (agriculture, hospitality, transport, logistics, construction) where temporary contracts, job insecurity and exploitative practices are more prevalent and are used as strategies to reduce labour costs (Strockmeijer 2019). Moreover, when compared with inactive Dutch nationals, the percentage of inactive EU citizens who rely on the welfare system is lower (Strockmeijer 2019: 10). For its part, the Dutch government, through the voice of the Ministry of Social Affairs, sends mixed messages: it treats the number of EU citizens reliant on the welfare state as a problematic aspect

of free movement and one in need of close scrutiny (Asscher 2017; Kamp 2011; Koolmees, Ollongren, Knoops, van Ark and Keijzer 2019), while acknowledging that, in relative and absolute terms, this number is minimal (Asscher 2014).

Figure 1. Citizens from Central and Eastern European states registered (as residents) in the Netherlands on 1 January 2019



Source: Eurostat: EU and EFTA citizens who are usually resident in another EU/EFTA country as of 1 January (online data code: MIGR_POP9CTZ).

Although Polish nationals – fraudulently claiming Dutch social benefits, sometimes as part of large organised schemes – and Romanian skimmers make headlines in Dutch popular press, official data on EU citizens expelled or removed from the Netherlands is scarce. Moreover, there are no centralised data on the number of EU citizens whose right of residence has been terminated. Kramer (2017) has presented some fragmented data on this issue that showed an increase – from 20 in 2012 to 680 in 2016 – in the number of EU citizens whose residence was denied. We have not been able to obtain such data from the Dutch immigration authorities, ideally differentiated upon grounds for denial. The only data we have received show the number of EU citizens expelled but not the grounds upon which the expulsion measure was taken (see the section entitled 'Filling the gap between expulsion and effective removal').

In light of the legal focus of this contribution, by 'unwanted EU citizens' we understand mobile EU citizens in respect of whom national authorities seek to take measures to restrict their right of residence, either on the grounds of their being an unreasonable burden on the Dutch social assistance system or on grounds of public policy and public security. To capture the Dutch legal response to unwanted EU

citizens, we first examine the limits posed by EU law to restricting EU residence rights at the national level. To this end, we analyse EU primary (Treaty on the Functioning of the European Union – TFEU) and secondary law (Directive 2004/38) concerning the fundamental right to freedom of movement and its interpretation by the Court of Justice of the EU (CJEU). CJEU jurisprudence constitutes the other important legal source of rights for EU citizens since the Court's interpretation of EU law is binding for national authorities. We discuss CJEU jurisprudence that clarifies the link between the EU right to reside and access to social benefits in a host state and jurisprudence that addresses Member State obligations concerning measures taken on the grounds of public policy, public security and abuse of rights.

Secondly, we analyse the implementation of EU provisions in the Dutch legal order and their application by the administration and Dutch courts. In the Netherlands, the Immigration and Naturalisation Service (IND) is the administrative body responsible for implementing the policy on foreign nationals, which includes the transposition of Directive 2004/38 into Dutch law. The relevant provisions of national law are Articles 8.7 to 8.25 of the Aliens Decree 2000 and the implementation rules found in the Implementation Guidelines of the Dutch Aliens Act (Vreemdelingencirculaire, (Vc) B10/2.3) and in the so-called Work Instructions (Werkinstructies, (WI) 2020/10). Because IND decisions can be appealed before a court of law, we also discuss Dutch jurisprudence on the denial of EU residence rights and on expulsion, supplemented by the examination of policy papers and briefs, reports, existing scholarship and general information on this issue. Finally, to explain the gap between law and practice, we discuss data on voluntary departure from the Dutch NGO *Barka* as an alternative to expulsion and exclusion orders.

EU citizens' right to reside in another Member State based on EU law

EU citizens enjoy the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect (Article 21 TFEU). EU workers and self-employed persons' right to move and reside freely stems from Articles 45 and 49 TFEU, respectively. The conditions for the exercise of this right are detailed in secondary legislation, the most relevant pieces of which are Directive 2004/38 – applicable to all EU citizens – and Regulation 492/2011 – applicable only to EU workers.

Directive 2004/38 applies to EU citizens and their family members – irrespective of nationality – who move to another EU state other than the state of nationality of the EU citizen. Depending on the length of residence, with three months and five years as the relevant thresholds, Directive 2004/38 provides for different residence rights, to which different conditions are attached. For residence shorter than three months, EU citizens must possess a valid ID or passport (Article 6). For residence longer than three months, Directive 2004/38 differentiates between economically active and economically inactive EU citizens (Article 7). Economically active EU citizens must meet the definition of the notions of 'EU worker' and, respectively, 'self-employed' as detailed in CJEU jurisprudence. Economically inactive EU citizens must have sufficient resources for themselves and their family members not to become a burden on the social assistance system of their host state and must possess comprehensive sickness insurance. Moreover, students must be enrolled at an educational establishment for the principal purpose of following studies. Union citizens who have resided legally and for a continuous period of five years in a host Member State have a right of permanent residence there (Article 16). Union citizens (and their family members) enjoy that right without any further conditions, thus even if they no longer have sufficient resources or comprehensive sickness insurance cover. The Court has clarified that residence under

Directive 2004/38 constitutes an autonomous notion of EU law, which is to be interpreted as legal residence that meets the requirements of Article 7.[1]

Broadly speaking, Directive 2004/38 allows the host state to restrict the right to reside in three different scenarios. Firstly, where the EU citizen no longer meets the conditions attached to the exercise of the right to reside; secondly, on the grounds of public policy, public security and public health and, thirdly, in case of fraud or abuse of rights. The Directive lays down procedural safeguards (Articles 30 and 31) to be observed by the Member States in respect of all scenarios. These are meant to ensure that EU citizens are notified of any decisions taken in respect of them and that those decisions are justified and open to judicial redress procedures.

Restricting the EU right to free movement where the conditions attached to the exercise of the right of residence are not met

General rules under EU law

Based on Article 14(1) Directive 2004/38, EU citizens retain the right of residence for up to three months as long as they do not become an unreasonable burden on the host state's social assistance system. The main question here is what impact a request for social assistance has on the right to reside. Article 24(2) helps to elucidate this issue as it allows the host state to exclude EU citizens from receiving social assistance during the first three months of residence, when no conditions as to self-sufficiency are imposed. EU job-seekers can be excluded from receiving social assistance for the entire period of their job-seeking – this can last longer than three months – while students can be excluded from receiving maintenance aid for studies (study grants and student loans) prior to the acquisition of a right of permanent residence. Thus, the host state can see a request for social assistance made during the first three months of residence as placing an unreasonable burden on its system, leading to a denial of the right to reside based on Article 6. However, this provision is relevant only for economically inactive EU citizens. EU workers can rely on Article 45(2) TFEU and Article 7(2) of Regulation 492/2011 to claim equal treatment with nationals of the host state when it comes to social assistance. Likewise, EU job-seekers, based on Article 14(4)(b), enjoy a right of residence as long as they can show that they are looking for a job and have a reasonable chance of finding one.[2] Expulsion is equally not possible as long as job-seeking is ongoing.

The right of residence for longer than three months is retained as long as the conditions set out in Article 7 concerning worker/self-employed status or sufficient resources and comprehensive sickness insurance continue to be met (Article 14(2) Directive 2004/38). This aspect has become increasingly problematic for economically inactive EU citizens, citizens with fragmented work-life histories plagued by unemployment and those working on short-term or zero-hour contracts (FEANTSA 2019; Mantu and Minderhoud 2019; O'Brien, Spaventa and de Coninck 2016). This is the profile of a large percentage of CEE citizens working in the Netherlands. Such citizens have problems meeting the conditions attached to the status of EU worker or self-employed person, or alternatively the sufficient resource condition attached to Article 7. 'Asking for social benefits becomes a first step towards being considered an unreasonable burden' (Mantu and Minderhoud 2019: 313), leading to a denial of EU rights.

A recurring issue in CJEU jurisprudence is whether sufficient resources can be derived from social benefits paid by the host state to economically inactive citizens or job-seekers and with what consequences for the right to reside. This is explained by several factors: the ambiguous rules contained by

Directive 2004/38, including the lack of a clear definition of the notions of 'unreasonable burden' and 'sufficient resources', the trend towards restricting access to social assistance for EU citizens in several Member States and the reclassification of mixed social security benefits as social assistance (Minderhoud and Mantu 2017). The CJEU has recognised the right of the host state to end the right of residence of the person concerned but added that this should not be or become 'the automatic consequence of relying on the social assistance system'.[3]

Between 2013 and 2016, five important CJEU judgments were delivered on this topic (*Brey, Dano, Alimanovic, Garcia-Nieto* and *Commission v UK*),[4] which are generally interpreted as minimising the principle that there should be a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States resident there (Heindlmaier and Blauberger 2017; Verschueren 2018). These cases raise the question of whether a host state can consider an application for social assistance as an indication that the EU citizen does not fulfil the sufficient resource condition and can consider that no right to reside based on EU law exists or whether the state must perform an individual assessment before reaching such a conclusion. The Court's responses have varied, from individual assessment is necessary in *Brey*, to no individual assessment beyond the rules expressly contained in Directive 2004/38, either because no right to reside had ever existed (*Dano*) or because, as first-time job-seekers, the applicants were excluded from social assistance (*Alimanovic* and *Garcia-Nieto*). Moreover, recent jurisprudence shows a resurgence in cases discussing whether a person meets the conditions of the definition of EU worker or self-employment and the retention of such statuses under Article 7(3) of Directive 2004/38, since these categories of EU citizens enjoy equal treatment and cannot have their right of residence denied or cannot be expelled for claiming benefits.[5]

EU citizens who have acquired a right of permanent residence can lose that right only in the situation expressly listed in Article 16(4), namely through absence from the host Member State for a period exceeding two consecutive years. Previous research has shown that several Member States are policing the acquisition of the right of permanent residence in light of its unconditional nature by checking more thoroughly the legality and continuity of residence leading to the acquisition of Article 16 rights. Such policing does not *per se* occur during the five years of initial residence; rather, as in the Netherlands, checks occur when the EU citizen claims social rights as a permanent resident entitled to full and equal treatment with nationals of the host state (Minderhoud 2018).

No EU right to reside followed by an expulsion order

Article 14 of Directive 2004/38 reflects the difference between the adoption of a decision establishing that no EU right to reside exists and the adoption of an expulsion measure or an exclusion order. Besides setting the conditions for the retention of the right to reside, Article 14 lists situations in which the host state is not allowed to adopt an expulsion measure against workers, self-employed persons and job-seekers where no public policy, public security or public health considerations are at stake. *Per a contrario*, in cases of economically inactive citizens, the host state may adopt an expulsion measure because the EU citizen or his/her family members became an unreasonable burden on the social assistance system of the host state, provided that such a measure is not automatically adopted.

Conceptually, it is possible – and not unthinkable – for a host state to adopt a measure establishing that no EU right to reside exists without adopting an expulsion measure. Belgian authorities sent many EU citizens letters asking them to leave since they did not meet the self-sufficiency condition attached to Article 7 rights. No expulsion measure was adopted against them, nor was enforcement seriously considered by the authorities (Valcke 2020). The explanation is linked with the fact that Directive

2004/38 allows the Member States to adopt an exclusion order *only* in respect of an EU citizen against whom an expulsion measure was adopted on the grounds of public policy or public security (Article 15(3)). Thus, an EU citizen who no longer meets the conditions of Article 7 can lose the right to reside and an expulsion measure can be adopted against him or her but no exclusion order can be adopted, leading to the situation where the EU citizen can re-enter the host state (this issue is currently before the CJEU in Case C-719/19). Research by Heindlmaier (2020) on state practices in Austria and France shows that national authorities are aware of the limiting power of EU law and are unwilling to waste their resources on EU citizens. Third-country nationals (TCNs) over whom national authorities retain more power and against whom entry bans can be issued are seen as a more suitable and acceptable target when it comes to justifying spending scarce resources.

Dutch legal rules and legal practice

After the implementation of Directive 2004/38 in the Dutch legislation, the Dutch Aliens Act Implementation Guidelines ((Vc) B 10/2.3) provide detailed information, in the form of a sliding scale, about when a demand on public funds – consisting of an application for social assistance in accordance with the Dutch Social Assistance Act (now called the Participation Act) – results in the termination of the EU citizen's lawful residence by the immigration authorities (IND) in line with the wording of Article 8.16(1) of the Aliens Decree. The sliding scale constitutes the Dutch attempt to implement effectively the ambiguous nature of Directive 2004/38, balancing between the condition of sufficient resources and access to social assistance benefits as long as this does not place an unreasonable burden on the Dutch social assistance system. The policy's central idea is that the longer an EU citizen is residing legally in the Netherlands, the longer s/he can ask for social assistance benefits without losing the right to reside (see Table 1). The sliding scale is relevant only for economically inactive EU citizens. EU workers cannot have their right of residence terminated for asking for supplementary benefits, while EU job-seekers have no entitlement to them.

Each application for social assistance during the first two years of residence is considered unreasonable and, in principle, will result in the termination of the residence. In this scenario, the IND will assess the appropriateness of the request while considering the following circumstances of each case: the reason for the applicant's inability to earn a living, its temporary or permanent nature, ties with the country of origin, family situation, medical situation, age, other applications for (social) services, the extent of previously paid social security contributions, the level of integration and the expectation for future social assistance needs. These circumstances refer partially to the circumstances mentioned in recital 16 of Directive 2004/38. The sliding scale reflects the fact that an application for social assistance can concern financial benefits to fully cover the EU citizen's living expenses or only to supplement insufficient resources.

Table 1. Sliding scale as of 1 January 2020

Residence	More than supplementary	Supplementary
< 2 years	Any recourse	Any recourse
> 2 years	2 months or more	3 months or more
> 3 years	4 months or more	6 months or more
> 4 years	6 months or more	9 months or more
Entire period	During subsequent years	15 months within 3 years of residence

Source: Implementation Guidelines of the Dutch Aliens Act B 10/2.3; Kramer (2017).

The Dutch government has explored the possibility of tightening the rules around social assistance to ensure that no benefits are paid out where doubts exist as to the legality of the residence. In practice, this issue can be complex: local authorities are responsible for deciding on entitlement to social assistance, while the IND decides on the legality of residence. In some cases, the municipalities decided themselves that the application for benefits led to the loss of the right to reside and therefore did not provide any social assistance. According to the Central Appeals Tribunal (the highest court in social security cases) this is incorrect.[6] While the municipality is competent to decide on the grant of a social assistance benefit, the competent authority to decide on the legality of residence is the IND (the immigration authority). Municipalities have to assume the lawfulness of residence as long as the immigration authorities have not taken a decision on it in light of the request for social assistance. Municipalities are obliged to report to the IND the granting of social assistance benefits to EU citizens who reside between three months and five years in the Netherlands. Only from the moment when the IND decides to withdraw the right of residence can the municipality stop the social assistance benefit. Kramer's (2016) research has shown that, to decide on the lawfulness of residence, the IND often sends a letter listing 26 questions concerning the personal situation of the EU citizen, ranging from his or her place of residence, family ties, medical situation etc. to the ultimate question: 'Why do you think that you are not an unreasonable burden on the public resources and why do you think that in your case termination of your right of residence is a disproportionate measure?'.

There is little Dutch jurisprudence on this subject. This might indicate that there are not many inactive EU citizens (staying less than five years in the Netherlands), who ask for social assistance, that the IND does not often withdraw the right of residence of these citizens or that EU citizens did not appeal against such a withdrawal. After the *Dano* judgment, there were some developments of a restrictive nature though. In an unpublished court case dating from September 2015, the IND used the *Dano* reasoning regarding an inactive EU citizen who had asked for social assistance benefit but had never searched for work.[7] According to the IND, it was current policy to consider such an EU citizen immediately as an unreasonable burden on Dutch public funds, 'even if there was only an appeal on social assistance of one day'. Another case in which the *Dano* reasoning was used is a judgment by the District Court The Hague of 18 January 2016.[8] In this case, the Court followed the immigration authorities and ruled that the Bulgarian applicant never had a right of residence due to being unemployable and not speaking Dutch.

Dutch legal practice on the termination of residence rights followed by expulsion

In the Netherlands, Article 14(3) Directive 2004/38 stating that 'an expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State' is implemented with a different wording. Article 8.16(1) of the Dutch Aliens Decree uses the words 'termination of the right of residence' instead of the words 'an expulsion measure'. The Council of State (the highest court in migration cases) has explicitly recognised this distinction in two recent judgments, marking a radical change in the assessment of this right. According to the Council of State, in the Dutch implementation of Article 14(3) the decision on the legality of the right of residence and the expulsion measure are interwoven. This is partly caused by the fact that, in the system of the Dutch Aliens legislation, the unlawfulness of residence gives the Dutch immigration authorities the competence to expel the EU citizen. For the Council of State, the decision that there is no right of residence is therefore also an expulsion measure in the sense of Directive 2004/38. To do justice to the requirement laid down in Article 14(3) and recital 16 Directive 2004/38, a balancing

of interests is therefore needed in all cases wherein the immigration authorities decide that the right of residence of an inactive EU citizen has been terminated or had never existed.[9]

The rulings that clarified this issue concerned a Romanian and a Polish citizen, respectively, who had never had sufficient means of subsistence and who were both homeless. The Romanian had appealed for a social assistance benefit but the Polish citizen had not. Both cases are also illustrative of how the Dutch IND treats homelessness, which is not a special legal category. Homeless EU citizens fall under the regime of Article 7(1)(b) Directive 2004/38 and are treated as not or as no longer having sufficient resources. They can be expelled but they do not fall under the public order regime of Article 27 (see section entitled 'Restricting the EU right to reside'). In the above cases, the IND considered that the EU citizens had to leave the Netherlands because they had never enjoyed lawful residence based on EU law. The Council of State found premature the decision of the IND to terminate the right of residence. It stated that, even if there is no right of residence stemming from Article 7(1)(b) of Directive 2004/38 (any more), an individual assessment must always be made as to whether or not the person concerned still has lawful residence or can be expelled. The Council of State's insistence on the need for individual assessment will also impact on cases of EU citizens who have not met the residence conditions continuously but only during certain periods of time. In such cases, too, there was often no balancing of interests because the IND simply stated that there was no right of residence, notwithstanding the rules in the administrative guidelines.

While individual assessment is deemed essential by the Council of State, questions can be raised about how this will work in practice. In what situation would the balancing of interests be to the advantage of the EU citizen? The Council of State refers in this context to the CJEU judgments in *Brey*, *Vomero* and *Garcia-Nieto* but not to *Dano* and *Alimanovic*, where such a balancing of interests was expressly not considered necessary. According to a judgment of the District Court of Rotterdam, in practice the balancing of interests means motivating that the EU citizen places an unreasonable burden on the social assistance system.[10] The Council of State argues that, if the balancing of interests is in favour of the EU citizen, this means that s/he cannot be expelled and is still deemed to have lawful residence in the Netherlands. The question which then arises is what the nature and basis of that lawful residence is. Van Melle and Van Houwelingen (2019) propose that these inactive EU nationals be granted a right of residence based on Article 20 or 21 TFEU since Directive 2004/38 would not apply to them. We have doubts about this construction. In our view, in the situation outlined above, the right to reside is still derived from Directive 2004/38. The EU citizen qualifies as economically inactive and the income is apparently sufficient because, despite a stated shortage of it, the EU citizen may remain with those resources. This is a plausible solution because, according to Article 8(4) Directive 2004/38, there is no fixed resource requirement in EU law. Another solution would be less logical because if, according to the IND, 'the conditions were never met', then there is no analogous right of residence based on Article 21 TFEU as in the *O.&B.* case,[11] nor does expulsion lead to the departure from the territory of the Union as a whole, as is required for a right of residence based on Article 20 TFEU.

Another possibility would be residence based on Article 7 of the EU Charter of Fundamental Rights by analogy with Article 8 European Convention on Human Rights ECHR (the right to private and family life) – except that this may reflect problems with the *Dano* and *Alimanovic* cases, where EU citizens were considered to fall outside the scope of the Charter, if they did not meet the conditions set out in the Directive. The legal basis upon which such EU citizens may nonetheless remain resident is relevant for the possibility to acquire permanent residence status under Directive 2004/38, which would then open the way towards full equal treatment in relation to social benefits and increased protection against expulsion. For example, although the immigration authorities are authorised to review the application of

Article 8 ECHR *ex officio* in the event of a termination of residence as a Union citizen, a successful appeal to Article 8 ECHR does not result in the person concerned having lawful residence as an EU citizen.[12]

In September 2019, the Dutch Council of State asked the CJEU to clarify the effects of an expulsion decision on the right of an EU citizen to return to that state. The case concerns a Polish national who was expelled from the Netherlands in 2018 because he did not have sufficient resources and therefore did not have legal residence under Article 7(1)(b) Directive 2004/38.[13] The Polish citizen stayed with friends in Germany for less than four weeks and then returned to the Netherlands, where he was arrested and detained. The Council of State has to judge on the lawfulness of detention in light of Directive 2004/38 and asked the CJEU to clarify whether the decision that an EU citizen has to leave the Netherlands is complied with when the EU citizen leaves the Netherlands within the designated period. If so, does the individual have legal residence immediately upon return? Alternatively, how long should he stay outside of the Netherlands?[14]

Restricting the EU right to reside on the grounds of public policy, public security and public health

The EU rules

Directive 2004/38 allows the Member States to restrict the right to move and residence on grounds of public policy, public security or public health (Article 27(1)). Restrictions include the refusal to allow exit or entry, the refusal to issue/renew a residence certificate or card, expulsion as well as exclusion orders or entry bans that prevent an EU citizen from re-entering a host state. Article 27 precludes the Member States from legality conflating public policy or public security with economic concerns, for example by attempting to expel EU citizens who are claiming welfare rights or unemployed EU citizens as a matter of public policy or public security. Article 27 clearly states that 'these grounds shall not be invoked to serve economic ends'.[15] It further establishes a series of material guarantees that Member States must respect as a matter of EU law. They include the principle of proportionality, the requirement that any measure should be based on the personal conduct of the person concerned, the threat posed by the individual must be genuine and present, previous criminal convictions are to be considered insofar as they are evidence of a personal conduct constituting a present threat to public policy and the ban on general preventive measures. The Court has further clarified that the concepts of public policy and public security need to be interpreted strictly and cannot be determined unilaterally by the Member States, although they enjoy some flexibility in determining the meaning of the two terms. Public health is strictly defined in Directive 2004/38 as being linked to illnesses with epidemic potential according to the World Health Organisation or other infectious or contagious parasitic diseases if restrictive measures are applicable to a country's own nationals as well.

The strength of the protection enjoyed by EU citizens against expulsion is linked with the length of their residence and their level of integration in the host state. Concerning the length of residence, Article 28 of Directive 2004/38 provides for increased protection against expulsion after the acquisition of permanent residence – that is, after five years of continuous and legal residence in the host EU state. Permanent resident EU citizens and their family members can only be expelled on 'serious' grounds of public policy and public security. Where the permanent resident EU citizen has resided for longer than 10 years in a host EU state, she can be expelled only on 'imperative' grounds of public security – this level of protection is reserved for EU citizens only, TCN family members are excluded. Furthermore, the rules contained in Directive 2004/38 rely on the notion of 'integration' to link residence and protection

from expulsion: the longer the EU citizen has resided in a host state, the better integrated s/he is, therefore the better protected against expulsion.[16] The Court has defined integration as based 'not only on territorial and temporal factors but also on qualitative elements, relating to the level of integration in the host Member State'.[17] The commission of crimes and the execution of prison sentences are examples of situations that negatively affect the integration of the EU citizen and have the potential to undermine the higher level of protection against expulsion that is reserved for permanent resident EU citizens.[18]

According to Article 32 of Directive 2004/38, the Member States can adopt an exclusion decision against an EU citizen on the grounds of public policy or public security provided that the safeguards of Article 27 are also met.[19] The aim of an exclusion order is to prevent the EU citizen from re-entering the Member State that issued the order. The article does not specify whether such a decision always follows an expulsion measure. The excluded EU citizen can apply to have the measure lifted at the earliest three years after the enforcement of the order validly adopted in accordance with EU law. Recital 27 of the Directive specifies that life-long exclusion bans are prohibited.[20] The EU citizen must show that there has been a material change in the circumstances which justified the exclusion decision and the Member State must reach a decision within six months of the submission. In the *Petrea* case,[21] the CJEU clarified that a Member State can adopt an expulsion order against an EU citizen who returned to that state in spite of an existing exclusion order and who was seeking to have the latter order lifted as long as the examination of the application has been finally concluded. *Petrea* blurrs the difference in legal treatment between EU citizens and TCNs since it allows EU states to rely on the arrangements set out for the removal of TCNs under the Return Directive in respect of EU citizens, too.

Dutch rules on expulsion and exclusion on the grounds of public policy, public security and public health

Articles 27, 28, 30 and 32 of Directive 2004/38 are implemented in Article 8.22 of the Aliens Decree. The most relevant part states that the residence right can be withdrawn or terminated on grounds of public order or public security where the personal conduct of the alien forms a present, real and serious threat to one of the fundamental interests of society. Before reaching a decision, the authorities must consider the EU citizen's duration of residence, age, health situation, family and economic situation, social and cultural integration in the Netherlands and ties with the country of origin. An EU citizen whose right to reside has been restricted on public order or public security grounds is obliged to leave the Netherlands independently. Failure to do so can lead to forced removal by the authorities. Additionally, the EU citizen can be declared undesirable (Article 67 Dutch Alien Act). A pronouncement of undesirability is an administrative measure that aims to ban a person who is no longer allowed to stay in the Netherlands. In most cases a pronouncement of undesirability is imposed on someone who has committed a crime. Failure to comply with the obligation to leave stemming from the declaration of undesirability is a criminal offence (Article 197 Dutch Criminal Code).

To decide on the termination of the right to reside on public order or public security grounds, the immigration authorities rely on a sliding scale that is applicable to all aliens who have committed criminal offences in the Netherlands (Article 3.86 Aliens Decree). This scale takes the form of a table and is used to determine whether residence can be terminated on the basis of the conviction for a criminal offence. The table reflects the principle that aliens should enjoy greater protection against expulsion after a longer period of legal residence and must have committed a more serious public order crime to justify termination of their legal residence. While the sliding scale is meant to offer migrants and policy-makers a greater degree of legal certainty and limit the risk of arbitrary decisions, it fails to consider changes

in the alien's behaviour since the commission of the crime and thus questions the urgency of the public order threat (ACVZ 2018).

Concerning EU citizens, the sliding scale system is vulnerable to criticism in light of the principles of proportionality and effectiveness. The immigration authorities tend to skip the step of first assessing whether the benchmarks listed in Articles 27 and 28 Directive 2004/38 (personal conduct, present and sufficiently serious threat, proportionality etc.) allow for the termination of residence rights. Instead, where the EU citizen has committed a crime, they often directly apply the national system of the sliding scale to decide on the right to reside.

In practice, the legal treatment of petty criminality has raised issues. The Implementation Guidelines that are used by IND caseworkers when applying the Aliens Decree stipulate that the immigration authorities can terminate or withdraw the right to reside on grounds of petty criminality where the EU citizen habitually commits small criminal offences that, individually, could not lead to the termination or withdrawal of the right to reside (VC B 10/2.3). In such cases, the nature and number of criminal offences, as well as the damage caused to society, are relevant. EU citizens who engage in petty criminality feature regularly in the information letters through which Dutch ministers inform the Dutch parliament about the situation of EU citizens in the Netherlands. They are portrayed as a small but highly disruptive group of EU citizens over whom the Dutch authorities, including the municipalities in which such citizens are present, would prefer to have a much stronger grip in order to expel and remove them based on national, rather than EU, law.

Existing jurisprudence indicates that administrative decisions still fall short concerning the requirement of a present, real and sufficiently serious threat to a fundamental interest of the society. On 18 June 2013, the Council of State gave an important judgment on how to approach the expulsion of habitual offenders.[22] In this case, the EU citizen was pronounced undesirable and therefore had to leave the country. He or she had committed a number of petty crimes which, individually, were not enough to demonstrate that his/her behaviour constituted a genuine and sufficiently serious threat to a fundamental interest of society even though, taken together, they fulfilled this condition. The Council of State declared the undesirability pronouncement in this case unjust but left enough room for the immigration authorities to decide otherwise in other situations given the circumstances of future cases. With a reference to the CJEU judgment in the *Polat* case,[23] EU citizens convicted for several petty crimes in a row can still be pronounced undesirable (and therefore expelled) but the safeguards of Article 27 Directive 2004/38 must be applied beforehand.

Fraud or abuse of rights

Article 35 of Directive 2004/38 allows the Member States to adopt the necessary measures to refuse, terminate or withdraw any right conferred by the Directive in case of abuse of rights or fraud, such as marriages of convenience. Any such measures must respect the procedural safeguards stemming from Articles 30 and 31 and the principle of proportionality. The latter requires EU states to consider the gravity of the abuse before terminating rights and, where less restrictive measures are possible, these should be contemplated. Based on the Court's case law, most cases where fraud or the abuse of rights have been invoked by the Member States revolve around TCN family members who enjoy derived rights of residence or entry based on the EU citizen's exercise of free movement rights.[24] The Member States' sensitivity around marriages of convenience as a specific form of abuse or fraud prompted the Commission to issue guidelines on this topic (COM(2014) 604 final). There has, as yet, been no case where an exercise of free movement rights coupled with a request for social assistance has been addressed as

a question of fraud or abuse of rights although, in some states, 'welfare tourism' has been framed as abusive (Evans 2020).

The CJEU interprets Article 35 as requiring '… first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the EU rules, the purpose has not been achieved, and, second, a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it' (*McCarthy*, para. 54). Moreover, the Court clarifies that any measure restricting rights based on Article 35 can only be justified in individual cases, no matter what the systemic concerns may be (Guild, Peers and Tomkin 2019: 310). Measures taken on Article 35 grounds could be followed by an expulsion measure as long as the principle of proportionality is also respected.

Article 8.25 of the Dutch Aliens Decree, which implements Article 35 Directive 2004/38, uses a more general wording: '[t]he Minister may withdraw the right of residence if the alien has submitted wrongful information or has withheld information which should have had as a consequence the refusal of entry or residence'. This provision suggests that the grounds for withdrawal of the right of residence may be used in cases that actually are not covered by Article 35 of the Directive. The policy rules on abuse of rights are set out in the Implementation Guidelines of the Aliens Act ((VC) B10/2.3). Residence permission can be withheld or withdrawn according to this section if (i) the EU citizen or his/her family member has provided incorrect information or withheld information which, if known, would have led to a refusal to grant entry or residence permission; or (ii) rights have been abused. Also listed in this enumeration is residence in another Member State as a family member of a Dutch citizen, that does not qualify as genuine and effective, the so-called *Europe route*.[25] Following this enumeration, the implementation guidelines give a description of what is meant by 'artificial behaviour' – i.e. behaviour the sole purpose of which is to obtain a right of entry or residence under EU law. Although such behaviour, strictly speaking, satisfies conditions set out in EU law, it violates the purpose of those rules. A violation of EU law is, in any case, assumed by the IND if the sole purpose of obtaining a right of residence under Directive 2004/38 is to circumvent national laws and policy rules.

There is some Dutch jurisprudence in this respect which mainly concerns marriages of convenience. Most cases are on the establishment of conflicting statements which justify the conclusion that there were serious doubts as to the nature of the marriage involved.[26] Usually, the Council of State refers in such cases to the 2014 European Commission's guidelines. It also emphasises that the burden of proof is with the immigration authorities and that no systematic and random controls are allowed consistent with the CJEU in *McCarthy*, supra note 24.

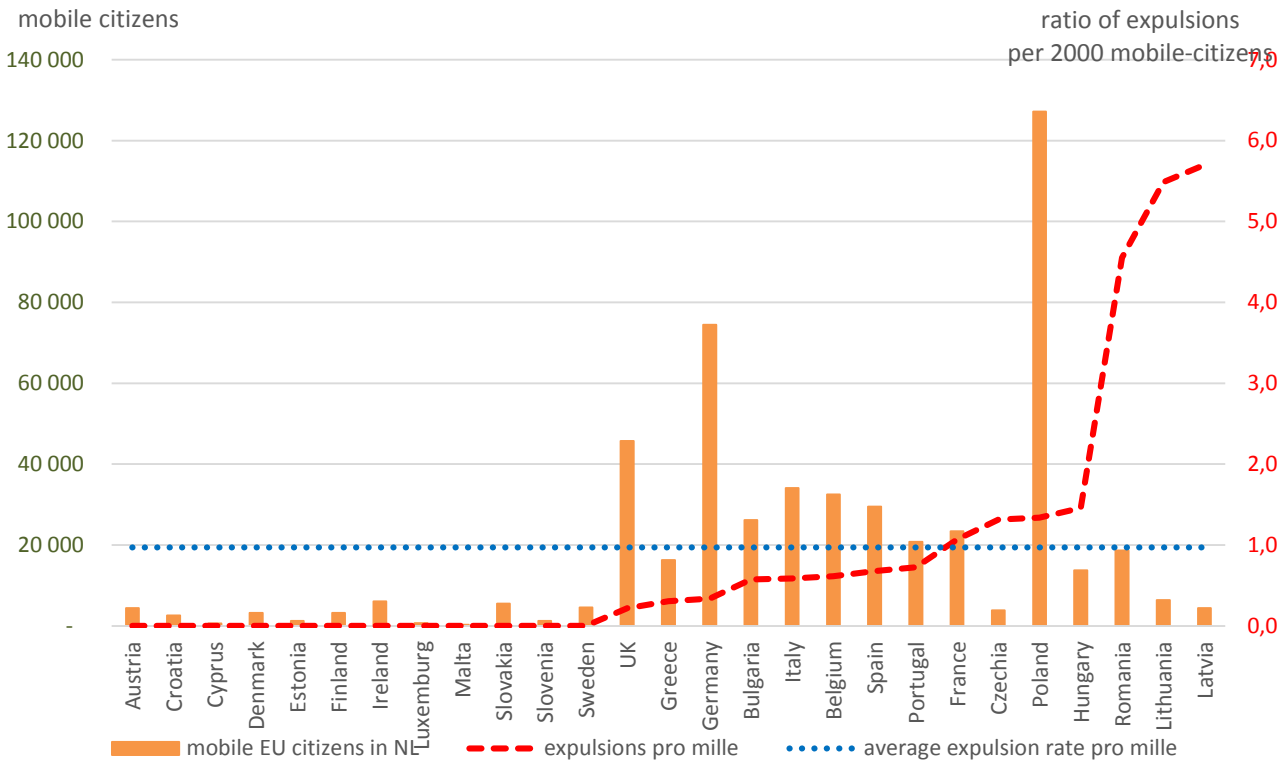
Filling the gap between expulsion and effective removal

The previous sections have shown that the power to restrict the residence rights of EU citizens or to expel or remove such persons is limited by EU law and its operation in the Dutch legal order. The number of persons who are issued with an expulsion order and declared undesirable is relatively small.

As far as the available statistics and data provided by the Dutch immigration authorities allow us to conclude (see Figure 2), between 2016 and 2019, an average of 16,000 aliens per year had to leave the Netherlands, either voluntarily or forced. Of these aliens, 16 per cent (2,500) were forced to depart. The remaining 84 per cent left unforced, meaning that 29 per cent left demonstrable and 55 per cent non-demonstrable. Of these 2,500 forced departures per year from the Netherlands, only 10 per cent refer to EU citizens. Thus, an average of 250 EU citizens have been forced to depart each year, which is only 1 out of every 2,300 registered EU citizens. Some nationalities figure more often in these statistics than

others. The 'expulsions pro mille' or dashed line in Figure 2 shows the average expulsion rate: 1 per 2,000 citizens per EU state. This figure shows that, in the last four years, Romanians, Lithuanians and Latvians were five times more often than average forced to leave the Netherlands. Remarkably, Polish citizens, although the largest group of EU citizens in the Netherlands (indicated by the vertical bars in the figure), have an average expulsion rate – i.e. just over 1.

Figure 2. Ratio of expulsions from the Netherlands (average between 2016 and 2019) of (non-Dutch) EU citizens who are usual resident in the Netherlands, by nationality



Source: Dutch Repatriation and Return Service, https://data.overheid.nl/dataset/immigratie-dtenv-vertrek.

The existing data on removed EU citizens do not necessarily support the politicised and securitised discourses that circulate within the public sphere in relation to mobile EU citizens. This reflects the higher level of protection enjoyed by EU citizens in relation to expulsion and removal when compared with non-EU foreigners, since the Dutch authorities can issue exclusion orders only on grounds of public policy and security. It is worth stressing that the relevant part of the IND work instructions concerning the application of the rights of mobile EU citizens and their family members deals mainly with the expulsion and removal of TCN family members of EU citizens; only limited space is dedicated to the removal of EU citizens as such, reflecting their stronger position.[27]

The more limited powers enjoyed by the Dutch authorities in relation to EU citizens are seen as causing problems at the local level. To deal effectively with homeless EU citizens and petty criminals, the Dutch authorities have developed an integrated approach to EU citizens who make a nuisance of themselves in public spaces, an approach that involves the cooperation of various central and local authorities from different departments (immigration, police, public health services etc.) with a view to taking

a decision on the legality of residence of the EU citizen concerned, followed by a decision to leave the Netherlands (Kramer 2017: 24). However, not all EU citizens who are issued with a decision in fact leave and not in all cases is residence terminated. Thus, municipalities perceive as sources of nuisance those EU citizens whose rights of residence have been terminated but who do not comply with the obligation to leave the Netherlands, EU citizens who are homeless or destitute, and EU citizens who engage in petty criminality but cannot be expelled. Such persons are seen as posing a threat to the security, wellbeing and cohesion of the local community.

The general context in which this takes place is one where the Dutch government and some municipalities have minimised access to social support for EU citizens, including access to shelters for homeless EU citizens (Scholten, Engbersen, van Ostaijen and Snel 2018). Some Dutch local authorities have developed programmes to assist the voluntary return of homeless and destitute EU citizens to their states of origin as a more effective alternative to (forced) state removal, which would first require a decision terminating residence. Existing local initiatives and their relative success in removing 'unwanted' EU citizens from the street prompted the Dutch government to set up a special fund, accessible to NGOs that operate return and reintegration projects for EU citizens. This is the so-called '*subsidieregeling*',[28] which mimics the policy that is pursued in relation to irregular TCNs. Its focus consists of EU citizens who, although they intended to reside in the Netherlands, lack sufficient resources to fend for themselves; equally, they lack the resources to return on their own to their country of origin and will need social support when they get there.

Stichting Barka is the largest NGO working with Dutch local municipalities in assisting the voluntary return of homeless EU citizens. Initially, *Barka* focused on Polish nationals in Utrecht. Currently, it cooperates with a number of municipalities in the Netherlands (Utrecht, Rotterdam and The Hague) and has nation-wide mobile intervention teams. Its director, Magdalena Chwarścianek, estimated that there are about 3,000 homeless Polish nationals in the Netherlands. Based on its annual reports, the organisation helps more than 500 persons per year to return to their state of nationality.[29] About 70 per cent of them are Polish and the rest are from other CEE countries. The returns organised by *Barka* are voluntary, require the cooperation of the EU citizen concerned and include persons who have not yet lost their right to reside but whose integration in the Netherlands is deemed unsuccessful and lacking any opportunities. In our view, the organised return of a substantial number of Polish citizens could be interpreted as an explanation of why the actual expulsion ratio for Polish nationals in Figure 2 is so low, since these EU citizens return 'just before' their residence is terminated and they are expelled. There is no information available on the effectiveness of these returns or on Polish returnees going back to the Netherlands. The website of *Barka* provides anecdotal information about returnees living on 'care farms' in Poland as part of reintegration projects run by the Polish branch of *Barka*.[30]

Conclusions

This contribution has examined Dutch legal responses to 'unwanted' EU citizens. Although CEE mobility has been politicised and securitised through its depiction as a source of crime and welfare abuse, the available data on the number of EU citizens who have been expelled show a different reality. We have identified tensions between EU law and its transposition and application at the national level caused by the repeat attempts of Dutch immigration authorities to apply as strictly as possible EU rules. At this level of the analysis, in respect of the denial of residence rights based on appeals to social assistance or on the grounds of public policy and public security, we notice a constant search for the limits of the discretion left by EU law to national authorities to the detriment of the rights of mobile EU citizens. Dutch courts have played an ambiguous role, sometimes upholding the restrictive interpretation proposed by the

immigration authorities and other times seeking to uphold the EU requirements of proportionality and effectiveness by emphasising the obligation of the administrative authorities to perform an individual assessment in all cases where the right to reside or the possibility to expel are questioned.

In our view, the much higher number of EU citizens who are helped to return voluntarily via *Barka* as opposed to expelled EU citizens suggests that EU law poses clear limits to the power of Dutch authorities to deal with 'unwanted' EU citizens, be they petty criminals or unemployed. To deny EU residence rights, the Dutch authorities must mobilise resources and ensure that the safeguards prescribed by EU law have been satisfied. Creating alternatives to the legal termination of residence is probably cheaper and more effective than enforcing return and has the advantage of not clogging up the administrative or the judicial systems with claims in respect of which a higher threshold than the national one has to be met. This strategic approach to EU mobility, which sees cooperation between different levels and across different branches of government and civic society, deserves further investigation as it raises complex questions about the roles of law and policy in the governance of EU mobility, issues of responsibility stemming from the exercise of EU mobility rights and the best way to ensure that the rights of EU citizens are effectively respected in practice. Our analysis shows that the higher threshold of protection applicable to EU citizens has an impact on how the national authorities engage with their mobility despite its politicised image.

Conflict of interest statement

No conflict of interest was reported by the authors.

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Notes

[1] CJEU 21 December 2011, C-424/10 and C-425/10, *Ziolkowski* & *Szeja*, EU:C:2011:866, para. 46.
[2] CJEU 15 September 2015, C-67/14, *Alimanovic*, EU:C:2015:597.
[3] CJEU 20 September 2001, C-184/99, *Grzelczy*k, EU:C:2001:458, para. 43; CJEU 7 September 2004, C-456/02, *Trojani,* EU:C:2004:488, para. 3.
[4] CJEU 19 September 2013, C-140/12, *Brey*, EU:C:2013:565; CJEU 11 November 2014, C-333/13, *Dano*, EU:C:2014:2358; CJEU 15 September 2015, C-67/14, *Alimanovic*, EU:C:2015:597; CJEU 25 February 2016, C-299/14, *Garcia-Nieto*, EU:C:2016:114; CJEU 14 June 2016, C-308/14, *Commission v. United Kingdom*, EU:C:2016:436.
[5] CJEU 20 December 2017, C-442/16, *Gusa*, EU:C:2017:1004; CJEU 11 April 2019, C-483/17 *Tarola*, EU:C:2019:309.
[6] Central Appeals Tribunal 18 March 2013, NL:CRVB:2013:BZ3853 and 20 January 2015, NL:CRVB:2015:57.
[7] District Court The Hague 1 September 2015, case number AWB 15/4877.
[8] District Court The Hague 18 January 2016, NL:RBDHA:2016:3075.
[9] Council of State 7 November 2018, NL:RVS:2018:3584 and 3585.
[10] District Court The Hague 19 April 2019, AWB 18/4352.

[11] CJEU 12 March 2014, C-456/12, *O&B*, EU:C:2014:135.
[12] Council of State 21 February 2019, NL:RVS:567.
[13] Council of State 25 September 2019, NL:RVS:2019:3262.
[14] Request for a preliminary ruling from the Dutch Council of State, lodged on 30 September 2019, Case C-719/19.
[15] The Court has considered this issue explicitly in cases of restrictions placed on exit by the state of the migrant's own nationality with a view to securing the repayment of debts owed to the state (CJEU 17 November 2011, C-434/10 *Aladzhov*, EU:C:2011:750) or to a private entity (CJEU 4 October 2012, C-249/11, *Byankov,* EU:C:2012:608). Only in the latter case did the Court find that such a measure clearly served purely economic ends and was prohibited by EU law – see Guild *et al.* (2019: 266–267).
[16] See, for example, CJEU 23 November 2010, C-145/09, *Tsakouridis*, EU:C:2010:708, para. 25.
[17] CJEU 16 January 2014, C-378/12, *Onuekwere*, EU:C:2014:13, para. 24.
[18] See, for example, CJEU 17 April 2018, C-316/16, *B*. and CJEU 17 April 2018, C-424/16,*Vomero*, EU:C:2018:256.
[19] In CJEU 4 October 2012, C-249/11, *Byankov,* EU:C:2012:608, the Court has found that Article 32 applies also to national measures preventing the EU citizen from leaving his state of nationality.
[20] The rule stems from CJEU 19 January 1999, C-348/96, *Calfa,* EU:C:1999:6 and was further elaborated on in CJEU 4 October 2012, C-249/11, *Byankov,* EU:C:2012:608.
[21] CJEU 14 September 2017, C-184/16, *Petrea,* EU:C:2017:684.
[22] Council of State 18 June 2013, NL:RVS:2013:62.
[23] CJEU 4 October 2007, C-349/06, *Polat*, EU:C:2007:581.
[24] CJEU 19 October 2004, C-200/02, *Zhu and Chen*, EU:C:2004, 639; CJEU 25 July 2008, C-127/08, *Metock*, EU:C:2008:449; CJEU 18 December 2014, C-202/13, *McCarthy a.o.,* EU:C:2014:2450; CJEU 16 July 2015, C-218/14, *Singh*, EU:C:2015:476.
[25] Under this construction a Dutch citizen resides for a consecutive period of a minimum of three months with a third-country family member in another member state and claims upon return to the Netherlands a derived right of residence for the family member under Article 21 TFEU. This construction is of interest because the EU rules regarding family reunification are more liberal than the Dutch rules. See CJEU 12 March 2014, C-456/12, *O&B*, EU:C:2014:135.
[26] See, *inter alia*, Dutch Council of State 19 October 2017, NL:RVS:2017:2847, Dutch Council of State 20 July 2016, NL:RVS:2016:2120 and 2006.
[27] IND, Werkinstructies SUA, WI2018/4 Het Recht van de Europese Unie, pp. 34–35.
[28] Subsidieregeling ondersteuning zelfstandig vertrek 2019, *Staatscourant* No. 71321, 19 December 2018.
[29] Reports are available at https://www.barkanl.org/anbi/ (accessed: 26 June 2021). The following data are available: 2014 – 606 persons; 2015 – 698 persons; 2016 – 507 persons and 2017 – 537 persons.
[30] https://www.barkanl.org/het-parool-van-dakloze-naar-boer/ (accessed: 26 June 2021).

References

ACVZ (2018). *Gewogen gevaar; de belangenafweging in het vreemdelingrechtelijke openbare-orde beleid*. The Hague: Adviescommissie voor Vreemdelingenzaken.

Anderson B. (2012). *What Does 'The Migrant' Tell Us About the (Good) Citizen?* Working Paper 94. Oxford: University of Oxford.

Asscher L. F. (2014). *EU-arbeidsmigratie, voortgang en maatregelen – Vrij verkeer werknemers van de nieuwe EU-lidstaten*. Tweede Kamer 2014–2015, 29 407, no. 198.

Asscher L. F. (2017). *Vrij verkeer werknemers uit nieuwe EU-lidstaten*. Tweede Kamer 2016–2017, 29 407, no. 209.

Brouwer J., van der Woude M., van der Leun J. (2018). (Cr)immigrant Framing in Border Areas: Decision-Making Processes of Dutch Border Police Officers. *Policing and Society* 28(4): 448–463.

CBS (2020). *Werk en gezin belangrijkste migratiemotieven voor immigranten*. Online: https://www.cbs.nl/nl-nl/nieuws/2020/30/werk-en-gezin-belangrijkste-migratiemotieven-voor-immigranten (accessed: 18 June 2021).

CBS (2021). *Hoeveel immigranten komen naar Nederland?* Online: https://www.cbs.nl/nl-nl/dossier/dossier-asiel-migratie-en-integratie/hoeveel-immigranten-komen-naar-nederland- (accessed: 18 June 2021).

Cremers J. (2011). *In Search of Cheap Labour in Europe: Working and Living Conditions of Posted Workers*. Brussels/Utrecht: European Institute for Construction Labour Research/International Books, CLR Studies No. 6.

ECAS (2014). *Fiscal Impact of EU Migrants in Austria, Germany, the Netherlands and the UK. Brussels: European Citizen Action Service*. Online: http://ecas.org/fiscal-impact-eu-migrants-selected-countries (accessed: 18 June 2021).

Evans M. (2020). Abusing or Misusing the Right of Free Movement? The UK's Policy towards EU Nationals Sleeping Rough, in: S. Mantu, P. Minderhoud, E. Guild (eds), *EU Citizenship and Free Movement Rights*, pp. 302–322. Leiden: Brill.

FEANTSA (2019). *The 'Working Poor' and EU Free Movement: The Notion of 'Worker' in the Context of Low-Wage and Low-Hour Employment*. Online: https://www.feantsa.org/en/report/2019/05/22/the-working-poor-and-eu-free-movement-the-notion-of-worker-in-the-context-of-low-wage-and-low-hour-employment (accessed: 18 June 2021).

Gijsberts M., Andriessen I., Nicolaas H., Huijnk W. (2018). *Bouwend aan een toekomst in Nederland. De leefsituatie van Poolse migranten die zich na 2004 hebben ingeschreven. Sociaal en Cultureel Planbureau*. Online: https://www.scp.nl/publicaties/publicaties/2018/04/24/bouwend-aan-een-toekomst-in-nederland (accessed: 28 June 2021)

Guild E., Peers S., Tomkin J. (2019). *The EU Citizenship Directive. A Commentary*. Second edition. Oxford: Oxford University Press.

Heindlmaier A. (2020). Mobile EU Citizens and the 'Unreasonable Burden'. How Member States Deal with Residence Rights at the Street-Level, in: S. Mantu, P. Minderhoud, E. Guild (eds), *EU Citizenship and Free Movement Rights*, pp. 129–154. Leiden: Brill.

Heindlmaier A., Blauberger M. (2017). Enter at Your Own Risk: Free Movement of EU Citizens in Practice. *West European Politics* 40(6): 1198–1217.

ICF/GHK (2013). *A Fact Finding Analysis on the Impact on the Member States' Social Security Systems of the Entitlements of Non-Active Intra-EU Migrants to Special Non-Contributory Cash Benefits and Healthcare Granted on the Basis of Residence*. Online: https://op.europa.eu/en/publication-detail/-/publication/c6de1d0a-2a5b-4e03-9efb-ed522e6a27f5/language-en (accessed: 18 June 2021).

Kamp H. G. J. (2011). *Maatregelen arbeidsmigratie uit Midden en Oost-Europa*. AV/SDA/2011/4771, pp. 8–10. Online https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/violk8w42dyi (accessed: 28 June 2021).

Karstens F. (2020). How Public Discourse Affects Attitudes towards Freedom of Movement and Schengen. *European Union Politics* 21(1): 43–63.

Koolmees W., Ollongren K., Knoops R., van Ark T., Keijzer M. (2019). *Aanpak misstanden arbeidsmigranten*, 21 June 2019. Online: https://www.rijksoverheid.nl/documenten/kamerstukken/2019/12/20/kamerbrief-over-integrale-aanpak-misstanden-arbeidsmigranten (accessed: 28 June 2021).

Kramer D. (2016). Earning Social Citizenship in the European Union: Free Movement and Access to Social Assistance Benefits Reconstructed. *Cambridge Yearbook of Legal Studies* 18: 270–301.

Kramer D. (2017). *'In Search of the Law': Governing Homeless EU Citizens in a State of Legal Ambiguity*. ACCESS Europe Research Paper 2017/04. Amsterdam: VU University Amsterdam. Online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3091539 (accessed: 18 June 2021).

Kramer D., Sampson T. J., van Hooren F. (2018). Responding to Free Movement: Quarantining Mobile Union Citizens in European Welfare States. *Journal of European Public Policy* 25(10): 1501–1521.

Mantu S. (2018). Controlling 'Poverty Migration'– Asserting Gradations of EU Citizenship, in: H. Mercier, E. Ni Chaoimh, L. Damay, G. Delledone (eds), *La Libre Circulation Sous Pression, Régulation et Dérégulation des Mobilités dans l'Union Européenne*, pp. 170–184. Brussels: Bruylant.

Mantu S., Minderhoud P. (2019). Exploring the Links between Residence and Social Rights for Economically Inactive EU Citizens. *European Journal of Migration and Law* 21(3): 313–337.

Minderhoud P. (2018). *Social Assistance for Economically Inactive EU Citizens in the Member States*. Centre for Migration Law Working Paper Series 2018/03. Nijmegen: Radboud University.

Minderhoud P., Mantu S. (2017). Back to the Roots? No Access to Social Assistance for Union Citizens Who are Economically Inactive, in: D. Thym, (ed.), *Questioning EU Citizenship. Judges and the Limits of Free Movement and Solidarity in the EU*, pp. 191–207. Oxford: Hart Publishing.

O'Brien C., Spaventa E., de Coninck J. (2016). *Comparative Report: The Concept of Worker under Article 45 TFEU and Certain Non-Standard Forms of Employment*. Brussels: European Commission.

Scholten P., Engbersen G., van Ostaijen M., Snel E. (2018). Multilevel Governance from Below: How Dutch Cities Respond to Intra-EU Mobility. *Journal of Ethnic and Migration Studies* 44(12): 2011–2033.

Strockmeijer A. (2019). *Stromen Oost-Europese arbeidsmigranten vaker de WW in dan Nederlandse werknemers?* UWV Kennisverslag 2.

Valcke A. (2020). Expulsions from the 'Heart of Europe': The Belgian Law and Practice Relating to the Termination of EU Residence Rights, in: S. Mantu, P. Minderhoud, E. Guild (eds), *EU Citizenship and Free Movement Rights*, pp. 155–189. Leiden: Brill.

Van Melle B., Van Houwelingen T. (2019). Belangenafweging bij verwijderingsmaatregel tegen Unieburger. *Asiel&Migrantenrecht* 3: 113–116.

Verschueren H. (2018). The Right to Reside and to Social Benefits for Economically Inactive EU Migrants: How to Balance Freedom of Movement and Solidarity?, in: H. Mercier, E. Ni Chaoimh, L. Damay, G. Delledone (eds), *La Libre Circulation Sous Pression: Régulation et Dérégulation des Mobilités dans l'Union Européenne*, pp. 33–52. Brussels: Bruylant.

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