The Removal of EU Nationals: An Unaccounted Dimension of the European Deportation Apparatus

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In contrast to the apparently stringent EU legal regime, the deportation of EU nationals is a law enforcement device widely normalised in many European countries. Concerning deportation practices, the allegedly critical divide between EU citizens and third-country nationals does not seem to make much sense in practice for some – Eastern European – national groups. Initially, this paper explores the scope and scale of this increasingly salient component of the EU deportation system, by drawing on data supplied by national databases. Additionally, it examines why and how the deportation of EU nationals has gained traction across the European borderscape, a phenomenon that has much to do with rampant xeno-racist attitudes, widespread concerns over so-called 'criminal aliens' and, last but not at all least, the street-level management of poor populations and low-profile public order issues. Finally, this paper scrutinises the strength of institutional inertias in the management of enduringly subordinated – and racialised – Eastern European populations.

Keywords: deportation studies, EU citizens' legal regime, deportation of EU nationals, EU enlargement, crimmigration

Introduction

This paper examines deportation practices[1] targeting European Union (hereinafter, EU) nationals (hereinafter, CRD deportations).[2] As will be seen next, these legal measures are apparently a minor component of the national deportation systems of EU and EFTA member states. EU law provisions that have been transposed into the legal orders of these European countries give them that minor role. In contrast to this apparent legal irrelevance, CRD deportations have, incidentally, made their way into public and political conversations in a number of European countries such as France (Eremenko, El Qadim and Steichen 2017), Italy (Clough Marinaro 2009), and the UK (Turnbull 2017) since the late 2000s.

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This paper aims to explore whether, to what extent and, especially, why CRD deportations have actually been gaining traction both in these jurisdictions and elsewhere across Europe. In addition, this paper scrutinises whether certain EU national groups are being particularly targeted by these deportation policies.

This exploration brings deportation studies into uncharted territory. Deportation studies are a relatively novel academic subfield (Coutin 2015). Despite its recent emergence, this field of research has gradually consolidated its specific contribution to the analysis of border control and migration law enforcement policies (see e.g. Anderson, Gibney and Paoletti 2013; De Genova and Peutz 2010; Gibney 2008; Kalir 2019). In this framework, ethnographic studies examining the dramatic consequences of deportation practices for deportees, their families and their communities (e.g. Drotbohm and Hasselberg 2015, 2018; Golash-Boza 2015; Khosravi 2018) have been particularly vital in cementing this burgeoning literature. However, CRD deportations have fallen under the radar of this markedly anthropological gaze (Könönen 2020), at least until very recently (see Vrăbiescu 2019a). Arguably, this gap is even more noteworthy in the field of border criminology (Bosworth 2016, 2017; Bosworth, Franko and Pickering 2018; Pickering, Bosworth and Franko 2015). Almost no comparative criminology analyses have been conducted on the scale and characteristics of deportation practices in various jurisdictions (although see Weber 2015). This research lacuna is further exacerbated in the case of CRD deportations, for reasons related to their legally and politically controversial nature. Thus, this paper aims to bridge a significant gap in cross-national conversations on immigration enforcement practices.

For these purposes, the paper begins by presenting the legal framework characterising CRD deportations as exceptional legal measures, as well as by describing the research methods used in this study. Next, it examines the scale of these migration law enforcement practices, by taking stock of a number of national databases, which are largely underexplored by the extant literature on deportation studies. Subsequently, in discussing the results of this exploration, the paper analyses the main drivers of the impulse of CRD deportations – not only their nexus with the growing concerns over so-called 'criminal aliens' but also the part they play more generally in the coercive management of unwanted EU national groups. To conclude, the article reflects on the significance of the 2000s enlargements of the EU in the field of return policies, as well as on the administrative inertias that have resulted in the handling of certain EU national groups as if they were third-country nationals (hereinafter, TCNs).

Methodological note

Three key research methods have been used to carry out this exploration. Initially, the legal perspective has been elaborated by relying on the analysis of both current legal provisions regulating CRD deportations and the corresponding case law. The results of this legal scrutiny are mainly presented in the next section, which is focused on the legal background. To explore whether these repatriation measures are exceptional not only in legal but also in empirical terms, a thorough analysis of a number of national databases has been carried out. This is the most innovative aspect of this study. In fact, the significant obstacles posed by this comparative analysis are arguably the main reason why it has not been carried out thus far. In contrast to data on forced returns targeting TCNs, no information on CRD deportations is currently published by international reports, elaborated by either EU institutions or any other supranational body. This lacuna compels scholars to rely on data disclosed by various public institutions in some, but not all, European jurisdictions. In addition, these databases are frequently not published in English or in any other dominant European language – i.e. French or German. Thus, exploring the data presented in the next sections required locating and analysing official databases published in Dutch,

English, French, German, Greek, Italian, Norwegian and Spanish, which organise the available information following heterogeneous criteria. Finally, the analysis elaborated in the discussion and conclusion sections draws on the viewpoints of the border criminology literature examining CRD deportations and, especially, return policies focused on Eastern European nationals.

Legal framework: CRD deportations as an exceptional legal measure

The Directive 2008/115/EC of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals (hereinafter, Return Directive) cemented the critical role played by deportation orders in the governance of immigration within the EU. However, the EU features a markedly unbalanced deportation system, in which a small number of countries enforce the vast majority of removal orders, whilst many EU member states play a much less significant role in enforcing deportation policies. In fact, only 5 (the UK, Germany, Greece, France and Spain) out of the – up to February 2020 – 28 member states carried out roughly two-thirds (65 per cent) of the removals enforced in the EU from 2008 to 2019 (see Table 1).

Table 1. Deportations of TCNs enforced in the EU, 2008–2019

EU member state	Deportations (Total)	Deportations (%)	EU member state	Deportations (Total)	Deportations (%)
UK	581,705	22.2	Netherlands	113,415	4.3
Germany	347,815	13.3	Italy	71,575	2.7
Greece	337,355	12.9	Austria	70,080	2.7
France	221,380	8.5	Belgium	67,605	2.6
Spain	214,470	8.2	Others	295,100	11.3
Poland	159,310	6.1			
Sweden	138,545	5.3	TOTAL	2,618,355	100.0

Note: These deportation data show a slight correlation with the data on the number of undocumented immigrants detected from 2008 to 2019 (Eurostat: Asylum and managed migration data). Greece ranks first in this classification, followed by Germany, France, Spain and Hungary.

Source: Eurostat. Statistics on Asylum and Managed Migration (see Court of Justice of the European Union [hereinafter, CJEU] judgement in Case C-184/16 *Petrea* [2017], EU:C:2017:684).

These data only refer to the forced repatriation of TCNs, that is, non-EU citizens. Pursuant to Regulation (EC) No 862/2007 of 11 July 2007 on Community statistics on migration and international protection, Eurostat data on the enforcement of removal orders only focus on TCNs, eluding any reference to CRD return procedures. This legal statute unambiguously shows that the deportation of EU nationals has not ever been considered a crucial component of EU immigration enforcement policies. In fact, the most relevant EU law norms on repatriation measures, such as the Return Directive[3] (Article 2) and the EU Commission's Return Handbook (Commission Recommendation (EU) 2017/2338 of 16 November 2017; section 1.1) are only applicable to the deportation of TCNs, not to that of EU citizens. This is unsurprising, since the meaning and goals of those return practices lie outside the realm of EU immigration policies.

From an EU law perspective, the forced return of EU nationals is understood as an exceptional limitation to the freedom-of-movement rights to which European citizens are entitled. As a manifestation of

this legal conception, this type of return procedure is regulated in the framework of the so-called Citizens' Rights Directive (Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; Articles 14 and 27–33; hereinafter CRD). As far as EU primary law is concerned, both Article 45 of the Charter of Fundamental Rights of the EU and Article 20 of the Treaty on the Functioning of the EU (hereinafter, TFEU) set forth the right of EU citizens to freely move and reside within the Union's territory. In regulating this right, the CRD extends its prerogatives to designated EU nationals' family members.

Despite its legal nature as a fundamental right, the freedom of movement and residence is not an unconditional prerogative. On the contrary, CRD provisions allow EU member states to make the right of residence dependent on economic requirements, echoing legal conditions widely used in relation to TCNs. In fact, Articles 7 and 14 of the CRD set the legal basis for restricting this right to EU nationals who are considered both active members of the labour force and non-dependents on welfare benefits. As in any other directive, the extent of the leeway given by the CRD to Union member states is set by the corresponding national legislation. In addition, Chapter VI of the CRD regulates, as a restriction to both the right of entry and the right of residence, the deportation of EU nationals and their kin. As has been mentioned before, the exclusion of this type of forced return from the legal framework of the Return Directive is telling evidence of its exceptional character. In fact, CRD provisions contain more requirements and safeguards than the general provisions on return procedures (see Guild, Peers and Tomkin 2014; Queiroz 2018). When EU citizens are involved, deportation orders can only have standing on reasons of public policy and public security (Article 28(1) of the CRD; see Guild 2017) based on the personal conduct of an individual that 'must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society' (Article 27(2) of the CRD).[4] In addition, these deportation decisions can only be issued and enforced after having taken into account 'considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin' (Article 28(1) of the CRD).[5] Likewise, the coercive removal of EU citizens who have the right of permanent residence can only be based 'on serious grounds' of public policy or public security (Article 28(2) of the CRD).[6] Further, when the concerned EU citizen has either resided in the host member state for at least ten years or is underage, removal decisions can only be based on 'imperative grounds' of public security (Article 28(3) of the CRD).[7] Moreover, these return orders 'shall comply with the principle of proportionality' (Article 27(2) of the CRD). Article 33(1) of the CRD acknowledges that these deportation orders can be part of a criminal sentence, provided that all the aforementioned requirements are met. Nonetheless, Article 27(2) of the CRD establishes that 'previous criminal convictions shall not in themselves constitute grounds for taking' such forced return measures.[8]

In sum, in line with the critical importance of freedom-of-movement rights for the EU project, CRD removals have been regulated as a minor piece of the EU deportation system. The removal of these foreign nationals cannot be based on regular migration law breaches but only on more serious motives of public policy and public security. The salience and graveness of these motives is further laid bare by the fact that the perpetration of a criminal offence is not in itself enough to warrant the issuance and enforcement of a deportation order.

Table 2. Deportations of EU citizens enforced in Spain, 2008–2018

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Deportations EU nationals	104	135	232	298	398	433	448	560	515	427	374
Deportations total	10,616	13,278	11,454	11,358	10,130	8,984	7,696	6,869	5,051	4,054	4,181
Deportation EU nationals (% enforced)	1.0	1.0	2.0	2.6	3.9	4.8	5.8	8.1	10.2	10.5	8.9
Deportation rate, EU nations*	5.1	6.6	11.3	14.4	19.2	21.4	22.8	28.9	26.7	22.3	10.3

Note: 2018 data differ from the rest of the annual estimations because they have been provided by different (and not wholly reliable) databases. Therefore, the figure for 2018 may be slightly underestimated.

Sources: Parliamentary question made by Mr. Jon Iñárritu, MP in September 2018 (on file with the author); Spanish Home Office; Annual Reports of the Spanish National Mechanism for the Prevention of Torture (see www.defensordelpueblo.es/informes/resultados-busqueda-informes/?tipo_documento=informe_mnp); Spanish National Statistics Office, Population data (see www.ine.es/dynt3/inebase/es/index.htm?padre=1894&capsel=1895). In addition, an average of 122 EU citizens were annually detained in Spanish migration detention facilities from 2013 to 2018; the majority of them (72.2 per cent) were Romanian nationals.

Table 3. Forced returns of EU nationals carried out in Germany, 2010–2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Forced returns EU nationals	793	–	879	994	963	899	1,024	1,115	1,177	1,296
Enforced returns %*	7,558	7,917	7,651	10,198	10,884	20,888	25,375	23,966	23,617	22,097
Forced returns Total	10.5	–	11.5	9.7	8.8	4.3	4.0	4.7	5.0	5.9
Deportation rate EU nationals	–	–	28.8	29.5	26.2	22.4	23.9	23.7	24.6	29.6

Note: Total return data presented in this paper do not take into account the so-called 'voluntary' return programmes which, in many – albeit not all – EU countries, play a significant role within the national deportation system. EU nationals are largely excluded from these voluntary return schemes, which are frequently focused on specific non-EU national groups. Among other countries, Sweden (Migrationsverket 2018) and Spain (Vrăbiescu 2019b) seem to be exceptions to this rule.

Sources: German Parliament (see www.proasyl.de/thema/fakten-zahlen-argumente/statistiken/); Germany; Federal Statistics Office (see www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Migration-Integration/Publikationen/Downloads-Migration/auslaend-bevoelkerung-2010200187004.pdf?_blob=publicationFile).

Results

In marked contrast to the legal framework presented above, empirical data drawn from various official national databases illustrate that the deportation of EU nationals is far from being a marginal phenomenon. In Spain, CRD removals have been playing an increasingly salient role within the Spanish deportation apparatus (Table 2).

These official data show that although the relevance of CRD removals was negligible at the turn of the decade, they accounted for more than ten per cent of all enforced repatriations in recent years. However, deportation rates[9] reveal that the relative scope of the Spanish system in this field is significantly narrower than those of other European countries such as France and Norway.

Unlike Spain, some EU and EFTA national administrations do not shy away from recognising this law enforcement practice. This laudable accountability standard has led a number of national statistics offices to make these return data publicly available.

Germany is one of these national cases. In Germany, CRD removals are a long-established migration control practice. Their scope is limited, though, compared with the sizeable dimension of the German deportation system. In addition, in the framework of the recent expansion of this national apparatus, its relative salience is declining. Nonetheless, on average 1,043 EU nationals were deported per year from Germany between 2012 and 2019 (see Table 3). Thus, the German Home Office has long been engaged in conducting these removal operations, many of which are carried out by land to neighbouring countries.

Geographical proximity and the surrounding countries' factor are critical as well in other national cases, such as Finland[10] and Greece. Similar to other main deporting jurisdictions, CRD removals are an established law-enforcement practice in Greece. However, as illustrated by Table 4, the relevance of this type of forced repatriation within the wide-encompassing Greek deportation system is relatively negligible. In addition, against the backdrop of the so-called migration crisis and its aftermath, which severely affected Greece, the number of CRD deportations has dwindled over the last five years, in contrast to what has happened in other European jurisdictions.

Table 4. Forced returns of EU nationals carried out in Greece, 2014–2018

	2014	2015	2016	2017	2018
Forced returns EU nationals	736	434	359	318	255
Forced returns Total	20,314	14,919	15,585	14,693	10,939
Enforced returns %	3.6	2.9	2.3	2.2	2.3
Deportation rate EU nationals	382.1	218.4	173.7	155	120.8

Source: Greek Data Office (see www.data.gov.gr/en/dataset/apelaseis-mh-nomimwn-metanastwn-ana-yphkoothta); Eurostat Population Data.

Norway is an additional (EFTA) country in which CRD deportations have taken centre stage in recent years (Franko 2020). On average, 1,187 EU citizens were either voluntarily or coercively returned per year from Norway between 2013 and 2019 (see Table 5), accounting for roughly one quarter of the repatriation operations conducted by the Norwegian border control system. The relevance of this migration control practice in the Norwegian case is further stressed by the very high deportation rate of these noncitizen groups.

Table 5. Returns of EU nationals carried out in Norway, 2013–2019

	2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Enforced returns EU nationals	1,268	1,389	1,531	1,425	1,157	839	702
Enforced returns. Total	5,198	5,295	6,412	6,255	4,548	3,438	2,926
Enforced returns %	24.4	26.2	23.9	22.8	25.4	24.4	24.0
Deportation rate EU nationals	–	456.8	466.6	417	331.9	237.6	195

Sources: Norwegian Directorate of Immigration (see www.udi.no/en/statistics-and-analysis/annual-reports/); Eurostat. Population data.

In countries that do not play a leading role within the European deportation system, the forced return of EU nationals is also an ordinary practice. In Belgium, on average 344 Romanian nationals were repatriated per year to their home country between 2015 and 2019 (Belgian Federal Immigration Office;[11] see also Maslowski 2015; Valcke 2017). Although no data on other EU national groups are provided, these removal operations alone accounted for 8.1 per cent of the coercive returns enforced over this 5-year period. The number of EU national returnees is significantly higher when so-called voluntary return (or 'soft-deportation'; see Kalir 2017) procedures are taken into consideration; on average, 514 Romanian nationals were voluntarily repatriated from Belgium per year between 2014 and 2019 (14.6 per cent of all voluntary returns).[12]

The Dutch deportation system also enforces CRD removal orders. Between 2016 and 2019, on average some 275 EU citizens were forcefully returned from the Netherlands each year, which accounts for around 5.3 per cent of the foreign nationals removed from the country over this period.[13] As in other Union countries, in the Netherlands EU nationals are almost exclusively repatriated under forced return schemes; in fact, the number of EU citizens repatriated in the framework of so-called voluntary return programmes is negligible.

In Italy, by contrast, CRD deportations seem to be relatively rare. The Italian National Prison Ombudsman reports inform that 39 EU nationals were deported in 2016, whilst on average 80 Romanian citizens were annually deported from 2017 to 2019.[14] This narrow scale stands at odds with the outspoken stance adopted by the Italian government which, since the late 2000s, has championed a recurring political agenda aimed at deporting Eastern European EU nationals (Clough Marinaro 2009; Hepworth 2012; McMahon 2012). The relative insignificance of these deportation practices in Italy clearly resonates with the ineffectiveness characterising the operation of its national deportation model (Campesi and Fabini 2020; see also European Commission 2016).

As has been previously pointed out, Belgium, Italy and the Netherlands are not top deporting countries (see Table 1). Although the available data show that the consolidation of the deportation of EU nationals is spreading across Europe, neither Belgium nor Italy or the Netherlands have spearheaded this migration control change. In order to appraise the future prospects of this migration control phenomenon, the UK and France are surely the most salient national cases.

In Britain, this type of forced repatriation has long called public attention, incidentally sparking political debates. In line with this public relevance, the scale of this migration law enforcement device is striking. At least in absolute terms, Britain is only paralleled by France in the enforcement of these deportation orders. As can be seen in Table 6, on average 4,018 EU citizens have been annually deported from the UK over the last six years, rising from 1,317 CRD deportations carried out per year from 2008 to 2013. Interestingly, the salience of this repatriation scheme has significantly escalated over the last decade, since it rose from 3.9 per cent of all enforced return orders in 2008 to nearly 480 per cent in 2019.

Table 6. Forced returns of EU nationals carried out in the UK, 2008–2019

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Enforced returns EU nationals	676	785	973	1,297	1,815	2,358	3,158	3,848	4,905	4,914	3,783	3,498
Enforced returns. Total	17,239	15,252	14,854	15,063	14,647	13,311	14,395	13,690	12,469	12,049	3,783	3,498
Enforced returns %	3.9	5.1	6.6	8.6	12.4	17.7	21.9	28.1	39.3	40.8	40.2	47.5
Deportation rate EU nationals	38.2	41.3	47.6	55.2	75.4	91.9	120.4	128.8	153.1	135.4	98.0	95.0

Sources: UK Home Office (see https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/how-many-people-are-detained-or-returned); Eurostat Population data; UK Office for National Statistics. Population data (see www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality).

Table 7. Returns of EU nationals carried out in France, 2010–2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Enforced returns, EU nationals	4,243	5,424	7,727	5,300	4,136	4,068	3,653	3,142	3,293	3,294
Enforced returns. Total	19,622	22,927	26,812	22,753	21,489	19,991	16,489	17,567	19,957	23,746
Enforced returns %	21.6	23.7	28.8	23.3	19.3	20.4	22.2	17.9	16.5	13.9
Deportation rate EU nationals	–	–	–	–	282.1	270.3	239.2	198.4	213.4	205.3

Sources: French Home Office (see www.immigration.interieur.gouv.fr/Info-ressources/Etudes-et-statistiques/Statistiques/Essentiel-de-l-immigration/Chiffres-cles); Eurostat Population data.

Table 8. Returns and returns of former prisoners carried out in the UK, 2009–2019

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Returns. Total*	38,052	41,968	41,482	44,310	45,489	40,179	41,879	39,626	32,551	24,728	18,782
Returns, former prisoners	5,528	5,344	4,649	4,765	4,993	5,286	5,768	6,171	6,113	5,516	5,110
Returns %	14.5	12.7	11.2	10.8	11.0	13.2	13.8	15.6	18.8	22.3	27.2
Returns, former EU national prisoners	748	931	1,143	1,653	2,120	2,956	3,361	3,970	4,093	3,772	3,489
Returns, former prisoners %	13.5	17.4	24.6	34.7	42.5	55.9	58.3	64.3	67.0	68.4	68.3

Note: *This table presents the total number of returns, including both forced returns and so-called voluntary repatriations, because an unknown number of former prisoners have been returned following 'voluntary' procedures.

Source: UK Home Office.

CRD deportations are also frequent in France. As will be analysed later, the French government launched an EU-wide debate on the normalisation of this migration law enforcement practice in the late 2000s. Since then, thousands of EU citizens (on average, 4,428 between 2010 and 2019) (see Table 7) have been repatriated from France every single year (Directorate-General for Internal Policies 2016). In the context of the so-called migration crisis that has essentially involved TCNs, though, the relevance of this legal institution has been declining in recent years. Nonetheless, in terms of deportation rates, the scope of this sub-field of the French deportation system is far wider than that of other EU member states.[15] In fact, nearly 1 in every 200 EU national residents were targeted by forced return measures in France in the early 2010s – as they were in Norway in the mid-2010s.[16]

This analysis of the data available in some EU jurisdictions lays bare that CRD deportations, in apparent contrast to their regulation, are markedly widespread across Europe. What is more, in some jurisdictions such as Norway, France and the UK, this legal measure has come to play a very relevant role within the deportation system. This largely unaccounted-for scenario raises a number of questions as to why and how. The next section scrutinises the forces that have contributed to the generalisation of this severe restriction of freedom-of-movement rights.

Discussion: CRD deportations at the crossroads of xeno-racism waves, criminal fears and the ordinary needs of public order management

Even a superficial examination of CRD removal practices unveils one of the most distinctive traits of this sub-field of migration control policies – that is, it essentially targets Eastern European national groups (Bosworth *et al*. 2018; Franko 2020; Könönen 2020), especially Romanian citizens.[17] The available data are particularly revealing of the markedly biased character of these policies. Of the EU citizens deported from Spain between 2008 and 2017, 47.0 per cent were Romanian nationals (*source*: Parliamentary question put by Mr. Jon Iñárritu, MP). Romanians and Polish nationals combined accounted for 52.2 per cent of the EU citizens removed from Germany between 2012 and 2019 (*source*: German Parliament) and for 48.6 per cent of those deported from Norway between 2013 and 2019 (*source*: Norwegian Directorate of Immigration). Romanians in Belgium and Italy are also a distant first in this ranking (*sources*: Belgian Federal Immigration Office; Italian National Prison Ombudsman). In the UK, in turn, Romanian and Polish nationals combined accounted for 52.3 per cent of the EU citizens forcefully returned between 2008 and 2019 (source: UK Home Office 2016, 2019; see also Evans 2017). By contrast, in Greece, Bulgarian nationals stand out above any other national group; they accounted for 70.9 per cent of the EU nationals deported between 2014 and 2018 (*source*: Greek Data Office).

In France, although some reports show that Romanians rank very highly in the enforcement of CRD removals (*source*: La Cimade;[18] see also Vrăbiescu 2019a, 2021),[19] no comparable data on concrete nationalities are provided by official databases. However, France is a critical case with regards to this biased operation of the deportation system. It is estimated that the French government, in implementing a migration policy that was overtly decried by EU Commission officials, removed around 20,000 Roma Bulgarian and Romanian nationals in 2009–2010 (Eremenko *et al.* 2017; Lafleur and Mescoli 2018; Parker 2012). Since then, removals of Eastern European citizens, especially Romanians, have been carried out on a daily basis (Parker and López Catalán 2014).

It is evident that, beyond some specific forces operating in concrete EU jurisdictions such as the xenophobic wave triggered by the Brexit movement in Britain (Hamenstädt and Evans 2017; Turnbull 2017),[20] the two enlargements of the EU carried out in 2004 and 2007, which resulted in the integration

of 10 new Eastern and Central EU member states, are what paved the way for the subsequent consolidation of CRD deportations. The available data show that EU15 nationals play an almost insignificant part in the enforcement of this migration control device. These Western European nationals accounted for 16.2 per cent of the CRD deportations carried out in the UK between 2008 and 2019, for 15.3 per cent in Germany (2012–2019), for 13.8 per cent in Norway (2013–2019) and for only 4.8 per cent in Greece (2014–2018). However, in other EU jurisdictions the percentage of deported EU15 nationals is markedly higher: 34.2 per cent in Spain (between 2008 and 2017) and some 33 per cent in the Netherlands (2016–2019).

In sum, the accession into the EU of a number of middle-income Eastern European countries resulted in a devaluation of EU citizenship rights and, more precisely, in a significant erosion of the freedom of movement and residence (Currie 2008; McMahon 2012; Shimmel 2006; see also Amelina *et al.* 2020). This unveils that the EU enlargements of the mid-2000s gave rise to both intra-EU racialisation processes and a stratification of citizenship rights, in which some passports are more valuable than others and the restrictions of the freedom of movement are dependent on nationality criteria (Hepworth 2012; Kreide 2019; Parker and López Catalán 2014). Singling out the 2000s' EU enlargements as a critical turning point in the gradual consolidation of CRD deportations should not mean, though, understanding them as a sort of unbridgeable cleavage. On the contrary, as will be developed later, a closer look to the analysed topic unveils the persistence of some bureaucratic inertias in the implementation of these law enforcement policies. In any case, the biased orientation of European deportation policies reveals that they are framed and implemented in an 'Orientalist' fashion (Said 1978; see also Franko 2020) – that is, according to a clear West/East divide.

The analysed stratification of EU citizenship rights should be related to the notion of xeno-racism (Fekete 2009). To put it bluntly, the available evidence shows that deporting states are Western EU15 jurisdictions and that the universe of deportable subjects is essentially formed of a specific type of non-citizen, those coming from Eastern European jurisdictions. However, more traditional forms of racial discrimination underlie these biased punitive strategies. As was previously pointed out, in France Roma individuals and groups are particularly targeted by removal practices. This constitutes a conspicuous manifestation of the over-criminalisation tactics deployed against these racialised populations, in a framework where poverty, welfare and even lifestyle concerns undermine their apparently protected status as EU nationals (Barker 2017; Castañeda 2014; van Baar 2018; Weber 2015). In this regard, France mirrors hard-line securitisation practices affecting Roma groups that have long been consolidated in Central and Eastern EU member states (Feischmidt, Szombati and Szuhay 2013). However, the French case is not an exception in Western Europe, either. On the contrary, the academic literature has confirmed that Roma populations are over-policed in many other EU15 and EFTA countries (De Genova 2019; Fekete 2014; van Baar, Ivasiuc and Kreide 2019) such as Germany (Çağlar and Mehling 2013; End 2019), Italy (Hepworth 2012), Norway (Franko 2020), Spain (Parker and López Catalán 2014; Vrăbiescu 2019b, 2021), and Sweden (Barker 2017, 2018). These racially biased policing strategies are having an impact on the migration enforcement field, by crucially fuelling and orienting deportation practices. Therefore, it is highly likely that the Eastern European nationals prevailingly targeted by deportation measures are not 'individuals without qualities' – to freely borrow the title of Robert Musil's well-known book (1943/1996) – but racialised EU national Roma groups. Since available databases do not provide ethnic or racial data, there is still no way to unequivocally confirm this hypothesis continent-wide. However, long-standing anti-Roma sentiments appear to be a critical driver of the recent 'EU-ropeanisation' of the removal apparatus.

What has been pointed out so far, though, only provides a response to a 'why' question. In order to have a deeper comprehension of the migration control change under study, 'how' questions should also be addressed. From this how-perspective, one can ascertain that the consolidation of CRD deportations has essentially been the institutional reaction to two key political and social concerns on migration (on which, see Siegel 2019).

It is particularly evident that one of these concerns has been crime, namely criminal offences perpetrated by EU national 'aliens'. As has been previously highlighted, the CRD regulation authorises national law enforcement agencies to hand down and enforce CRD deportation orders as part of criminal sentences (Article 33(1)). However, this provision does not actually mandate member states to punish criminal offences perpetrated by EU citizens with deportation orders (see Article 27(2) of the CRD).

Therefore, EU law provisions apparently imply that these deportation orders, being a severe limitation of the sensible freedom-of-movement rights, should be treated as a sort of *ultima ratio* measure, not as a legal instrument to be regularly used for crime prevention purposes. However, this legal device has not been immune to the crimmigration turn spreading across many jurisdictions, EU and non-EU alike, in recent years (Bowling 2013; Stumpf 2006, 2013, 2015; van der Leun and van der Woude 2013; van der Woude, van der Leun and Nijland 2014; Wonders 2017). More precisely, the consolidation of CRD removals should be understood – at least, partially – as a side-effect of one of the quintessential aspects of crimmigration policies, which is the increasing utilisation of deportation measures as a tool to curb crimes committed by so-called criminal aliens (Brandariz 2021; Spena 2017; Stumpf 2013, 2015; van der Woude *et al.* 2014; Wonders 2017).

This crimmigration turn in the field of deportation practices has had a particular impact in the UK (Bosworth 2011; Turnbull and Hasselberg 2017). In Britain, this shift was initiated in April 2006, when the UK Home Office acknowledged that, since the turn of the century, no fewer than 1,000 foreign prisoners had been released without having their eligibility for post-prison removal measures considered (Aliverti 2013; Bhui 2007; Kaufman 2013, 2015; Pakes and Holt 2017). The subsequent public scandal forced the Home Office Secretary to resign and set the conditions for the eventual passage of the *UK Borders Act 2007*, which significantly expanded the scope of the deportation system. Specifically, this statute made all foreign prisoners eligible for post-release removal, depending on a judicial decision. In addition, it made these post-custody deportation orders mandatory for foreign inmates sentenced to one year of imprisonment or more and for EU and EFTA inmates sentenced to two years of imprisonment or more (Aliverti 2013; Bosworth 2011; Gibney 2013; Kaufman and Bosworth 2013).

This legal reform, coupled with a number of organisational and logistical measures (Aliverti 2013; Bosworth 2011; Kaufman 2013, 2015; Pakes and Holt 2017; Turnbull and Hasselberg 2017) significantly heightened the relevance of crime-related removals within the British deportation apparatus. The share of this type of return, in fact, has gradually increased over the last decade (see Table 8). Still, what is more important is the striking rise in the number of deportations involving former EU national prisoners (Turnbull 2017). In recent years, these national groups have been targeted by two-thirds of all removals involving released inmates.

In sum, in line with the crimmigration turn, in a critical national case such as Britain the impulse of the repatriation of EU nationals has been driven by the political will to amplify the influence of the deportation system within the criminal justice field. In this regard, the British case is paramount but not exceptional. Among other EU jurisdictions such as Austria (where 42 per cent of the foreign nationals deported in 2018 had criminal convictions – see Heilemann 2019), the Czech Republic,[21] Finland (Könönen 2020), Norway (Franko 2020), and Sweden (Barker 2018), Spain has followed – to a certain extent

– a similar path, in the wake of the crimmigration turn that has transformed the operation of the Spanish deportation model (Brandariz and Fernández-Bessa 2017; Fernández-Bessa 2016).

Having said that, the 'how' question previously posed cannot be adequately answered by merely referring to the prison-to-deportation pipeline. An additional phenomenon has also significantly contributed to the momentum gained by CRD deportation orders. Whilst the UK is the jurisdiction to be examined to grasp the crimmigration dimension of this topic, this additional dimension requires the taking into consideration of an additional critical national case – France.

In France, the impetus of CRD deportations has not been determined by collective anxieties over so-called criminal aliens. By contrast, this forced return measure has been regularly utilised for the street-level management of public order. Removal procedures in France have primarily targeted destitute – and racialised – Eastern European citizens for any sort of allegedly anti-social behaviour, including homelessness and nomadism (Parker and López Catalán 2014; Vrăbiescu 2019a, 2021). This approach to migration law enforcement devices is consistent with a negative stereotype, especially cemented in certain EU societies, that brands (Eastern) EU citizens as burdensome foreign populations who put an untenable pressure on already stressed welfare budgets (Barker 2018; see also Barbulescu and Favell 2020). In fact, the utilisation of return legal tools to cope with so-called welfare abusers has taken hold in some EU countries such as Belgium, Sweden, the UK and France (Barker 2013; Directorate-General for Internal Policies 2016; Evans 2017; Maslowski 2015; Parker and López Catalán 2014; Valcke 2017). These anti-poor policies gained particular momentum in the UK, where the Home Office used the CRD restrictions of the right of residence as a legal alibi to launch a programme aimed at detaining and deporting EU national rough sleepers (Bloom 2018; Demars 2017; UK Home Office 2016).[22]

This public order-driven mobilisation of removal orders is apparently very distant from the rights-based CRD legal provisions (Articles 14 and 27-33; see, though, Parker 2012). However, it is not only social protection resources that are at stake in these cases. There is evidence that these policing practices are also being used for crime prevention purposes. These administrative return orders operate as a – cost-effective, albeit questionable – alternative to regular criminal justice procedures in cases of low-level criminal offences. In other words, when (especially Eastern) EU nationals are involved, not only anti-social behaviour but also petty crimes are dealt by the French police by channelling these individuals into removal procedures, thereby circumventing ordinary criminal justice adjudication processes (Maslowski 2015; Vrăbiescu 2019a, 2021).

Surprising as it may seem, the French case – once again – does not appear to be an exception. In Spain, interviews conducted with high-ranking police officials confirm that CRD removals are being used in a very similar way – to tackle petty crimes and misdemeanours committed by EU citizens, especially Eastern European nationals.[23]

In sum, the analysis of national databases shows that CRD deportations are much more widespread and established than their irrelevance in political, public and even academic conversations might lead us to think. Their recent impetus appears to be associated in various ways with one of the most widespread concerns over 'alien' newcomers, i.e., criminal activities and crime prevention policies. This is the case not only in countries such as Britain, in which the expansion of CRD removals has followed the lines of the reinforcement of crime-related deportations. It is also the case in countries such as France, in which these forced return procedures have been essentially used for the ordinary, street-level management of public order, petty offences and extreme poverty-related behaviour. In addition, the downplayed and second-level status of Eastern EU nationals who were granted EU citizenship rights in the mid- to late-2000s has decisively assisted in amplifying the scale of these migration control policies.

Having said that, the French case, with its routine use of administrative removal orders for public order purposes, reveals an additional and largely unacknowledged aspect of the topic under study. After the impasse produced by the accession into the EU of 10 new Central and Eastern European member states in 2004 and 2007, bureaucratic inertias have come to prevail, by reinstating slightly modified old practices. Since the mid-2000s, general migration law provisions have no longer been available to deal with the then new EU national groups. However, as is illustrated by French policing strategies, law enforcement agencies finally ended up using CRD removal provisions in a very similar way, despite their more restrictive regulation (see also Parker 2012; Vrăbiescu 2019a, 2021). These state coercion practices have 'migrantised' certain EU national groups, virtually turning them – again – into TCNs (see also Barbulescu and Favell 2020; Çağlar and Mehling 2013; De Genova 2019).

From this perspective, the French government's plan in the late 2000s to deport thousands of Roma Eastern European individuals – allegedly via 'voluntary' return protocols – can be read as an attempt to find an alternative solution to coercively manage these populations once regular return provisions became inapplicable (see also Çağlar and Mehling 2013). Additional data show the strength of these administrative inertias. In Britain, 1,351 Romanian nationals were deported per year between 2004 and 2006 (UK Home Office 2016, 2019). Subsequently, after they became EU citizens this number dwindled to 175 removals per year from 2007 to 2011. However, it eventually escalated again to 1,084 deportations annually enforced in the subsequent eight years.[24] In Spain, 2,589 Romanian nationals were deported per year between 2001 and 2006 (Fernández-Bessa 2016). Eventually, the average number of removals involving Romanian citizens abruptly plummeted to 59 per year between 2008 and 2011, before mounting again to an annual average of 234 enforced returns between 2012 and 2017, in the context of a significant downsizing of the Spanish deportation system (information provided by Mr Jon Iñárritu, MP).

These data reveal a new dimension of an already well-known migration law enforcement strategy. Frequently, detention and deportation practices are used to manage foreign national groups considered dangerous or troublesome, instead of the more demanding, lengthier and rights-based criminal adjudication procedures. This has been recurrently confirmed in the case of TCNs (Aliverti 2020; Gundhus 2020). This paper verifies that (some) EU national populations are also targeted by this kind of resource-saving crime prevention tactic. However, the extent of these strategies is still unclear, since in some countries – e.g. Italy – the scope of CRD deportations, whether related to crime or to public order, is largely insignificant.

Conclusion

Further research is needed to elucidate whether, as in the case of the UK, France, Norway and other jurisdictions, penal policies have been the main determinant of the upsizing of CRD deportation practices or whether other drivers have played the leading role in this law enforcement change, e.g. concerns over welfare budgets. Meanwhile, it can be claimed that, despite EU law provisions, the consolidation of CRD deportations does not seem destined to be a short-lived phenomenon. These removal practices are expeditious and largely automated procedures, which makes them particularly cost effective for both criminal justice and migration control agencies. In fact, manageable deportation schemes allow these agencies to bypass more resource-consuming crime prevention tactics. In addition, CRD deportations are one of the few legal tools available to EU member states' administrations to make their national interests prevail in the framework of a multi-scalar system of migration governance such as that of the

EU (Brandariz and Fernández-Bessa 2020; Moffette 2018; Wonders 2017). Ultimately, the already long-lasting EU border's crisis (Vaughan-Williams 2017; see also De Genova 2017) does not make up the best political scenario to challenge this concerning erosion of EU citizenship rights. In the framework of that crisis, both national and supranational officials seem to have accepted that the detrimental consequences of these removal orders for the widely proclaimed freedom of movement of European nationals (Parker and López Catalán 2014) is a price worth to be paid.

Notes

[1] I use terms such as 'deportation', 'removal', 'return' and even 'repatriation' interchangeably throughout this article. This use of terminology does not mean that one should ignore the legal differences separating these measures. The analysis of those differences, though, lies beyond the scope of this article. In addition, no further specification is currently feasible, because the available national databases do not use standard categories – e.g. administrative law removals, criminal law deportations – to classify deportation practices.

[2] 'CRD deportations' stands for deportation measures regulated by the so-called CRD, that is, the Citizens' Rights Directive (Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states). This wording, though, is a synecdoche that is adopted for narrative purposes. From a legal perspective, not all deportation measures targeting EU and EFTA nationals are administrative law removals regulated by the CRD. Some countries have chosen to follow CRD provisions by enacting not only administrative law removal orders but also criminal law deportation orders targeting EU and EFTA citizens. Therefore, CRD deportations encompass both legal categories.

[3] See, on this, the Court of Justice of the European Union [hereinafter, CJEU] judgement in Case C-184/16 *Petrea* [2017], EU:C:2017:684.

[4] See, on this, the CJEU judgement in Case C-193/16 *E.* [2017] ECLI:EU:C:2017:542.

[5] See the CJEU judgement in Joined Cases C-331/16 and C-366/16 *K.* and *H.F.* [2018] ECLI:EU:C:2018:296.

[6] See CJEU Case C-145/09 *Tsakouridis* [2010] ECLI:EU:C:2010:708, which ruled that Article 28(2) of the CRD should be interpreted in line with the concept of 'particularly serious crime' which is referred to in Article 83 of the TFEU.

[7] See the CJEU judgements in the following cases: Joined Cases C-316/16 and C-424/16 *B.* and *Vomero* [2018] ECLI:EU:C:2018:256; Case C-400/12 *M. G.* [2014] ECLI:EU:C:2014:9; and Case C-348/09 *P.I.* [2012] ECLI:EU:C:2012:300.

[8] On this, see CJEU Case C-554/13 *Z. Zh. and I. O.* [2015] ECLI:EU:C:2015:377.

[9] In exploring these national databases, I have used an unusual indicator, that of the deportation rate, which estimates the number of individuals (in this case, EU nationals) removed per 100,000 foreign (in this case, EU citizen) residents (see also Weber 2015). Largely inspired by a measure widely used in the prison field – that of the incarceration rate – this indicator provides valuable information on the relative impact of the corresponding deportation sub-field, by weighing its relevance in relation to the number of EU citizens residing in the given jurisdiction.

[10] In Finland, 428 Estonian nationals were deported in 2015. Apparently, the number of Estonian deportees was similar in previous years (EMN National Contact Finland 2016).

[11] See dofi.ibz.be/sites/dvzoe/FR/Statistiques/Pages/Rapports-statistiques-de-l%27OE.aspx (accessed: 27 January 2021).

[12] See www.fedasil.be/sites/default/files/content/download/files/annual_report_2019.pdf (accessed: 27 January 2021).

[13] See data.overheid.nl/datasets?sort=score%20desc%2Csys_modified%20desc&search=immigrati e&facet_group%5B0%5D=https%3A//data.overheid.nl/community/groepen/immigratie-vertrek (accessed: 28 January 2021). These data, supplied by the Repatriation and Departure Service of the Dutch Ministry of Justice and Security, are not completely accurate because they are rounded to the closest multiple of 10.

[14] See www.garantenazionaleprivatiliberta.it/gnpl/it/pub_rel_par.page (accessed: 28 January 2021). These reports further indicate that, on average, 113 EU nationals were confined per year in Italian migration detention facilities between 2016 and 2019. As usual, Romanians accounted for the overwhelming majority (84.0 per cent) of these EU national detainees.

[15] Austria should be added to the list of EU jurisdictions in which the removal of EU citizen is currently playing a prominent part within the deportation system. In 2018, 22 per cent of returns and 33.6 per cent of forced returns (2,272 individuals) carried in Austria involved EU nationals (Heilemann 2019). These more than 2,000 EU national deportees accounted for a deportation rate of 327.4 returned individuals per 100,000 residing EU nationals.

[16] In the framework of this early 2010s impetus, France was an exception to the insignificance of 'voluntary' return programmes for the repatriation of EU citizens. From 2010 to 2012, on average 5,928 EU nationals were returned per year under these allegedly voluntary schemes. Since then, though, the impact of these programmes on EU national returnees has constantly and dramatically dwindled (on average, 93 EU citizens were voluntarily returned per year between 2013 and 2019) (*source*: French Home Office). As has been previously pointed out, Belgium is also an exception to the widespread rule according to which voluntary return programmes give preference to TCNs.

[17] In 2019, the deportation rate of Romanian citizens was 1,330.0 deportees per 100,000 residents in Norway, 324.6 in Belgium, 315.2 in the UK, 85.2 in Greece (2018), 66.0 in Germany, 34.7 in Spain (2017) and 8.5 in Italy.

[18] See www.lacimade.org/publication/?numpage=2&numpage=3&numpage=1 (accessed: 21 October 2019).

[19] These *La Cimade* reports also reveal that 1,000–1,500 Romanians are annually detained in French migration detention facilities.

[20] Despite the momentum gained by anti-immigration sentiments in the framework of the Brexit process, it remains unclear whether its conclusion in February 2020 will result in a surge in the number of CRD deportations. In fact, the Brexit scenario did not prevent the British immigration enforcement system from following a downward trend that has affected the number of both deportations – which plummeted by 45.6 per cent between 2013 and 2018 (UK Home Office 2016, 2019) – and immigration detainees – who declined by 19.5 per cent from 2016 to 2019 (*source*: Global Detention Project; www.globaldetentionproject.org/countries/europe/united-kingdom#statistics-data; accessed: 4 February 2021).

[21] In the Czech Republic, the number of Slovakian and Romanian nationals combined effectively deported following a criminal conviction was 118 in 2018 and 131 in 2017. On average, 78 Slovakian nationals were annually targeted by enforced criminal deportation orders between 2015 and 2018 (*source*: EMN Contact Point in the Czech Republic. Online: ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/reports_en; accessed: 22 October 2019).

[22] In December 2017, this Home Office policy was overturned by the UK High Court (*Gunars Gureckis and others v. Secretary of State for the Home Department*. Online: www.judiciary.uk/judgments/gunars-

gureckis-and-others-v-secretary-of-state-for-the-home-department/; accessed: 29 December 2019), which ruled that it stood in contempt of EU citizenship law. It is estimated than some hundreds of EU citizens were effectively removed from the UK following these Home Office guidelines between 2015 and 2017 (Crisis 2018).

[23] Interviews conducted with two high-ranking Spanish police officials heading immigration enforcement units in February 2019 (on file with the author). I thank Esther Montero (Loyola University of Andalusia, Spain) for her invaluable help in carrying out this fieldwork.

[24] Between 2005 and 2009, the annual average number of deportations of nationals of the eight Eastern European nations integrated in the EU in 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) combined was 154. In contrast, it rose to 1,497 removals per year between 2010 and 2019.

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