

A HOME FOR THE ROMA: WHY STRICT ENFORCEMENT OF MIGRATION LAWS IS NECESSARY FOR A UNITED EU

INTRODUCTION

In the past decade, two changes have fundamentally altered the otherwise cooperative nature of the European Union (“EU”): the admission of new member states¹ and the subsequent high levels of migration by citizens from the new member states to the established member states.² The demography of the EU has changed quickly in recent years, and the changes have sparked debates about how a larger, more mobile, and more multicultural EU will affect the cultures and economies of individual member states.³

1. *Enlargement: From 6 to 27 Members*, EUR. COMM’N, http://ec.europa.eu/enlargement/policy/from-6-to-27-members/index_en.htm (last visited May 23, 2012).

2. *Communication from the Commission: Policy Plan on Legal Migration*, at 3–4, COM (2005) 669 final (Dec. 21, 2005) [hereinafter *Communication from the Commission*], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0669:FIN:EN:PDF> (“Given the evolving EU economic and social situation, the international context and the likely growth of immigration in the future, an agreement on common EU rules covering the broad spectrum of migration issues is necessary in order to ensure an efficient management of migration flows both toward and inside Europe . . .”). Although the EU lacks or withheld publication of data on aggregate immigration to the EU from non-EU nations, a sampling of the immigration data from individual countries demonstrates a clear increase. Many EU nations saw increases in the number of foreign immigrants between 1998 and 2008, according to the most recent data published. *Immigration by Sex, Age Group and Citizenship*, EUROSTAT, http://appso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_imm1ctz&lang=en. For example, foreign immigration to Austria rose roughly 70%; Spain had fewer than 100,000 foreign immigrants in 1998, but over 900,000 in 2007 and nearly 700,000 in 2008; immigration to Greece increased over six-fold. *Id.* A few nations showed stable levels of foreign immigration or slight declines, but they still had high numbers of foreign-born citizens settling in their countries every year. *Id.* For example, Germany’s annual immigration slowly dipped from just above to just below 600,000 foreign immigrants per year. *Id.*

3. As of July 2010, the EU contained approximately 500,000,000 people who speak 23 different official languages and over 60 regional languages, an increase from approximately 327,000,000 people in 2000. *The World Factbook, European Union*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ee.html> (last visited Feb. 15, 2011); *Multilingualism*, EUR. COMM’N, http://ec.europa.eu/ipg/content/multilingualism/index_en.htm (last visited Feb. 15, 2011); Monica Marcu, *Population and Social Conditions*, EUROSTAT 1–2 (2009), available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-09-031/EN/KS-QA-09-031-EN.PDF. Within the last decade, EU citizens have displayed hostility toward the high volume of largely unrestricted immigration by supporting extreme anti-immigration parties. See Stephen Castle, *Swedish Anti-Immigration Party Claims Seats*, N.Y. TIMES (Sept. 19, 2010), <http://www.nytimes.com/2010/09/20/world/europe/20sweden.html> (discussing the success of Sweden’s center-right minister and similarly successful Danish and Norwegian anti-immigrant parties); Jurgen van de Pol, *Dutch Put Anti-Immigration Party in EU Parliament*, BLOOMBERG (June 5, 2009), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=arvd8D.6rQpQ> (describing European citizens’ resistance to the admission of the newest EU member states).

The European Parliament recently enacted legislation that defines when and how countries may deport EU citizens while still complying with the EU's right to freedom of movement.⁴ Because of the significant cultural, geographic, and economic differences among the member states, however, the wealthier, original EU members have significant incentives to shuffle minority populations to the newer, poorer EU member countries. Newer EU members are in the worst position to remedy the problems of minority integration and economic development, but as a result of weak enforcement of EU policy, original member states will continue to pursue isolationist policies at the expense of both newer EU members and the Union-wide goals to which all member states are bound.⁵ Therefore, the EU's success in fostering international cooperation will partly depend on nations' reactions when they have an incentive to act against the community interests of the EU. Where a member state has the incentive to subvert the EU's freedom of movement laws and acts on that incentive,⁶ the result will be an erosion of the EU's collaborative ethic.⁷

This Note will examine the responsibilities that EU law places on member states regarding migration management, discuss the European Commission's power and willingness to enforce those laws, and consider

4. See Council Directive 2008/115, 2008 O.J. (L 115) 98 (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:pdf>.

5. Treaty on European Union art. B, July 29, 1992, 1992 O.J. (C 191), available at <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html> ("The Union shall set itself the following objectives: to promote economic and social progress . . . to assert its identity [T]he objectives of the Union shall be achieved as provided in this Treaty").

6. See *The Schengen Area and Cooperation*, EUROPA, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm (last updated Mar. 8 2009) ("[A]ll countries cooperating in Schengen are not parties to the Schengen area. This is either because they do not wish to eliminate border controls or because they do not yet fulfill the required conditions for the application of the Schengen *acquis*.").

7. Surveys of EU citizens show a decline in preference for unity over nationalism. The European Social Fund (ESF) is a program that "seeks to reduce differences in prosperity across the EU and enhance economic and social cohesion." *About ESF*, EUR. SOC. FUND, <http://www.dwp.gov.uk/esf/about-esf/> (last visited Jan. 3, 2011). Recent research of EU citizens surveying their preferences for the goals of ESF shows that over twice as many citizens believe that the European Union should prioritize issues regarding crime (27%), as opposed to the 11% who believe that the EU should first address integration of minorities. *Special Eurobarometer 350*, EUR. SOC. FUND 5 (Nov. 2010), available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_350_en.pdf. Countries with high levels of immigration tend to have the highest proportions of the populations viewing crime as a priority (the Netherlands (42%) and the United Kingdom (40%), compared with Latvia (12%) and Poland (15%)). *Id.* See EUROSTAT, *supra* note 2 for immigration statistics. Data is not as clear on integration. The EU countries with the highest levels of immigration vary significantly in how strongly their populations prioritize minority integration, suggesting member states are sharply divided on their support of EU free migration values (Denmark and Sweden (27%), compared with the United Kingdom and Italy (11%)). *Id.* at 16.

incentives for states to implement them.⁸ Further, it will analyze the recent conflicts between the EU and particular member states in terms of human rights and migration policy, most notably France's deportation of the Roma people.⁹ The principal question is whether France's course of action is an aberration—the result of a nation concerned about a specific perceived internal problem—or instead a manifestation of a deeper desire among the original member states to reject social legislation by an EU over which they have decreasing control.

I. FREEDOM OF MOVEMENT IN THE EUROPEAN UNION

The EU currently includes 27 nations.¹⁰ Some have been members since the EU's inception in the mid-twentieth century (such as Belgium, France and Italy); others were admitted as recently as 2004 (the Czech Republic and Hungary) and 2007 (Romania and Bulgaria).¹¹ Nonetheless, some policymakers have feared the consequences of the Union's overexpansion,¹² in large part because the EU's fundamental right to move freely limits how an individual state may control its borders.¹³

Citizens of the EU are free to move among the member countries with only minimal oversight by the individual national governments, provided those countries are members of the Schengen area.¹⁴ The Schengen area

8. Significantly, this Note does not focus on the *actual* impact, positive or negative, of high migration flows for temporary work visas. Instead, it focuses on the *perceived* effect of cultural integration and the result on citizens' support for the European Union as a political institution.

9. See *France Starts Removing Roma Camps*, UKWIREDNEWS (Aug. 6, 2010), <http://www.ukwirednews.com/news.php/80223-France-starts-removing-Roma-camps>.

10. *Countries*, EUROPA, http://europa.eu/about-eu/member-countries/index_en.htm (last visited Jan. 14, 2011).

11. *Id.*

12. See MADELEINE SUMPTION & WILL SOMERVILLE, *THE UK'S NEW EUROPEANS: PROGRESS AND CHALLENGES FIVE YEARS AFTER ACCESSION*, MIGRATION POLICY INSTITUTE 9 (2009), available at http://www.equalityhumanrights.com/uploaded_files/new_europeans.pdf (discussing problems and future risks associated with EU expansion and increased migration); *Enlargement*, EUROPA, http://europa.eu/pol/en_larg/index_en.htm (last visited Jan. 14, 2011) ("The experience of previous EU enlargements has shown how well the EU integration process works . . . [but in light of concerns] EU leaders agreed in June 2006 that future enlargements will take into account the Union's capacity to absorb new members.").

13. *Commission Adopts Revised Mechanism for Verifying the Application of Schengen Rules in the Member States*, EUROPA (Mar. 5, 2009), http://europa.eu/rapid/press-release_IP-09-359_en.htm?locale=en ("The Schengen area is based on full mutual trust between the Member States in their capacity to fully implement the accompanying measures which allow the lifting of internal border controls: e.g. checks at external borders are carried out by Member States not only to protect their own interests but also on behalf of all other Member States to which people could travel once they have crossed the external borders of the Schengen area.").

14. See *The Schengen Area and Cooperation*, *supra* note 6. See also Council Directive 2004/38, 2004 O.J. (L 158) 77, 78 (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=>

includes all of the EU except for the United Kingdom, Ireland, and new member states whose Schengen status has not yet been verified, including Bulgaria and Romania.¹⁵ The right to move freely is one of the core values of the EU,¹⁶ and absent extenuating circumstances, EU citizens are permitted entry into a host country for up to three months.¹⁷

There are few instances in which the European Parliament indicates that it is appropriate for a nation to abridge the right to freedom of movement. The decision to expel an EU citizen from a country may only be made when it is “justified on the grounds of public policy, public security or public health.”¹⁸ The European Court of Justice held that differences in culture or economic need are not reasons supported by EU law.¹⁹ Furthermore, member states do not have broad discretion to expel groups of EU citizens within the parameters of the permitted motivations; rather, nations must consider a variety of factors while making an individualized decision.²⁰ These factors include the “degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the

OJ:L:2004:158:0077:0123:en:PDF (“Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect The free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.”).

15. *The Schengen Area and Cooperation*, *supra* note 6. The Schengen area also includes several non-member states. *Id.* (“The precondition for association with the Schengen *acquis* by non-EU countries is an agreement on free movement of persons between those states and the EU . . .”).

16. Council Directive 2004/38, *supra* note 14, at 82. (“Enjoyment of permanent residence by Union citizens who have chosen to settle long term in the host Member State *would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union.*”) (emphasis added). Nonetheless, the rapid expansion of the EU has led to greater disagreement between the original member states and new entrants about the wide liberties permitted to new entrants under the Schengen agreement. *See, e.g.,* Juergen Baetz, *Germany, France Warn of Swift Schengen Expansion*, ASSOC. PRESS (Dec. 21, 2010), available at http://www.taiwannews.com.tw/etn/news_content.php?id=1466898&lang=tc_news&cate_img=1037.jpg&cate_rss=General.

17. Council Directive 2004/38, *supra* note 14, at 80. (“Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport.”).

18. *Id.* at 84. While the standard for expulsion under this test may seem to be a significant burden for governments to meet, some authors consider *any* legislation permitting the expulsion of migrants to be a major shift in EU policy towards more limited migration rights. *See, e.g.,* Abbey C. Furlong, Note, *Cultural Integration in The European Union: A Comparative Analysis of the Immigration Policies of France and Spain*, 19 TRANSNAT’L L. & CONTEMP. PROBS. 681, 696 (2010) (arguing that the inclusion of expulsion terms is an example of the EU taking a “hard line” on immigration).

19. Liav Orgad, *Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe*, 58 AM. J. COMP. L. 53, 83 (2010).

20. *See* Council Directive 2004/38, *supra* note 14, at 84.

links with their country of origin.”²¹ Moreover, “[t]he personal conduct of the [expelled EU citizen] must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.”²² Individuals who meet the criteria for expulsion must also be given the opportunity to appeal the decision within the expelling country.²³

In addition to limiting the abilities of member states to abrogate freedom of movement, the EU requires that member states uphold certain human rights standards.²⁴ On April 29, 2004, the European Parliament passed Directive 2004/38/ec (the “Directive”), which outlines the right of EU citizens to move freely among EU member states.²⁵ The Directive prohibits countries from expelling citizens solely because of previous criminal convictions²⁶ and explicitly prohibits discrimination on the grounds of nationality.²⁷ While the Directive allows for significant state

21. *Id.* Moreover, general justifications not based on particularized facts, instead “rely[ing] on considerations of general prevention” are unacceptable reasons for expulsion. *Id.* art. 27.

22. *Id.* The EU’s interest in cohesive migration policy is also evident in its concern regarding immigration into the EU, believing that the “admission of third-country nationals [citizens of non-EU nations] in one Member State may affect others” *Communication from the Commission, supra* note 2, at 4. Even though admissions decisions for applicants seeking to enter the EU for work are subject to the discretion of individual nations, the EU emphasizes that the nations “must also take into account the Community preference principle” when making determinations. *Id.*

23. Council Directive 2004/38, *supra* note 14, art. 31.

24. European Convention on Human Rights, Nov. 4, 1950, E.T.S. No. 5, available at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf. Under the Convention, member states carrying out arrests are required to inform the arrestee (in the arrestee’s language) of the reasons for the arrest and of any charges against him and to bring the arrestee promptly before a judge, in addition to other procedural safeguards. *Id.* § 1, art. 5. Countries in violation of these procedures are subject to suit for compensation by the victims of unlawful arrest. *Id.* § 1, art. 6.

25. See Council Directive 2004/38, *supra* note 14, at 79. “[D]irectives specify substantive goals that must be attained by countries but leave the means of reaching those goals to the discretion of nations themselves.” Jeffrey Oliver Newton, Note, *Taking the Nation out of International Law Reform: Considering a Purely Academic International Law Institute*, 47 COLUM. J. TRANSNAT’L L. 609, 642 (2009).

26. Council Directive 2004/38, *supra* note 14, art. 27.

27. *Id.* at 83. The right to move freely within member states is permitted “irrespective of nationality.” *Id.* at 79. It is the responsibility of the European Commission to ensure that nations correctly implement the Directive within their individual governance structures. See *Governance Statement of the European Commission*, at 2 (May 30, 2007), available at http://ec.europa.eu/atwork/synthesis/doc/governance_statement_en.pdf (“[The] European Commission . . . present[s] proposals for European law [and oversees] the correct implementation of the Treaties and European law”). EU legislation on immigration policy addresses the powers retained by nations (the right of nations to “determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work,” among other rights) more fully than it addresses the implications of a nation’s failure to implement EU law (limiting discussion to the EU’s general power to “give effect to” the migration laws). See Consolidated Version of the Treaty on the Functioning of the European Union art. 79, Mar. 30, 2010, 2010 O.J. (C 83) 47 [hereinafter TFEU], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>. As a precursor to the Directive, compare the unadopted *Proposal for a Council Directive on the Conditions of Entry and Residence of*

autonomy to determine expulsion cases, all state laws affecting the decision must grant migrants at least as many liberties as those set out in the Directive.²⁸ The deliberately narrow circumstances in which a state may limit an EU citizen's freedom of movement emphasize that the ability of individual states to exclude certain groups from residence conflicts with the Union's stated goal of producing "social cohesion."²⁹

While the EU has removed many barriers to movement within the Union, the nations nonetheless remain autonomous, and the structure of the EU strongly prioritizes national independence.³⁰ As such, when the European Parliament passes legislation, member states are responsible for enacting the laws within their own countries.³¹ The European Commission

Third-Country Nationals for the Purpose of Paid Employment and Self-Employed Economic Activities, at 2, COM (2001) 386 final (Nov. 7, 2001), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0386:FIN:EN:PDF>. The proposed directive sought "[t]ransparency and rationality" and "[c]lear and simple procedures," presumably for the benefit of migrant workers, while still promising to "[r]espect . . . the domestic labor market situation." *Id.*

28. Council Directive 2004/38, *supra* note 14, art. 37 ("The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive."). If protections for EU-citizen migrants are binding on member states, policies regarding non-EU citizens will also be significantly more binding. In cases involving refugees or other third-party nationals, the EU stringently enforces its protective migration laws. For example, if a nation is found to be in violation of proper immigration procedure for reasons such as failure to give meaningful notice to deportees, the European Court of Human Rights may award compensation to aliens who did not receive proper process. See *Čonka v. Belgium*, 3 Eur. Ct. H.R. 91 (2002). In *Conka*, applicants for asylum were Slovakian nationals of Roma origin who requested political asylum on the grounds that they had been violently assaulted in Slovakia. *Id.* at 95. Their application was denied. *Id.* Belgian police sent notice to the applicants and other Slovakian families to meet at the police station to complete their applications for refugee status. *Id.* Once there, police served the families with notices of detention and orders to leave Belgium. *Id.* at 96. The European Court of Human Rights found that Belgium was in violation of the Convention for the Protection of Fundamental Rights and Freedoms. *Id.* at 97–99.

29. See Council Directive 2004/38, *supra* note 14, at 82 ("[S]ocial cohesion . . . is one of the fundamental objectives of the Union.").

30. Treaty on European Union, *supra* note 5 (The EU is premised on nations "desiring to deepen the solidarity between [nations'] peoples while respecting their history, their culture and their traditions.").

31. Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union art. 260, Sept. 5, 2008, 2008 O.J. (C 115) 1 [hereinafter *Treaties*], available at http://www.ecb.int/ecb/legal/pdf/fxac08115enc_002.pdf.

If the Court of Justice of the European Union finds that a Member State has failed to fulfil [sic] an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations . . .

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it . . .

. . . .

oversees the implementation of these laws and has the authority to bring nations to the Court of Justice if the member states fail to enact EU legislation.³²

II. CULTURAL DIFFERENCES AMONG MEMBER STATES

The expanded Union must consider its wide array of cultures and interests when forming migration policy. Surveys of the citizens of EU member nations generally show strongly divergent viewpoints on migration and cultural integration.³³ As a result of disparate values regarding the treatment of migrants and integration of minorities, the expanded EU will continue to have difficulty creating migration policies acceptable to all member nations.³⁴

The recent development of mainstream anti-immigrant sentiment and support for anti-migration political parties in some European nations is a measurable indicator of the increasingly divided perspectives on EU migration policy.³⁵ The Danish Peoples Party, based predominantly on

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission.

Id.

32. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Communities art. 9(D), Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon], available at http://www.ecb.europa.eu/ecb/legal/pdf/en_lisbon_treaty.pdf (“[The Commission] shall oversee the application of Union law under the control of the Court of Justice of the European Union.”).

33. In opinion polls regarding various labor and employment issues in the European Union, populations gave widely disparate answers when asked to decide whether “integration of people excluded from society” was a priority. See *Special Eurobarometer 350*, *supra* note 7, at 23. Among original member states, percentages ranged from only 5% of the Irish population who supported prioritizing integration to 29% of the Swedish population. Most original member states’ percentages, however, fell in the mid to high teens. *Id.* Among newer members, percentages ranged from 2% of Latvians to 13% of Cypriots, with the mean around 10–15%. *Id.*

34. Though the EU legislation attempts to address communal goals and values, the opinions of citizens clearly show that national interests dominate. For an example of self-interested behavior, see *Special Eurobarometer 350*, *supra* note 7, at 25 (the percentage of a national population that believes ESF aid should go only to the poorest countries correlates with a nation’s wealth: the wealthiest nations have the lowest percentages of citizens who believe aid should go exclusively to poorer EU countries).

35. See Marko Valenta & Nihad Bunar, *State Assisted Integration: Refugee Integration Policies in Scandinavian Welfare States: The Swedish and Norwegian Experience*, 23 J. REFUGEE STUD. 463, 470 (2010) (suggesting the rise of anti-immigrant parties affects national migration policy). Moreover, the percent of Spanish citizens who believed that “immigrants are a danger to [Spanish] culture and identity” increased by approximately 150% between 1999 and 2001. Furlong, *supra* note 18, at 686–87 (noting that the percentage of respondents agreeing with the statement increased from 10.6% in 1999 to 25.8% in 2001). Likewise, a 2002 poll showed that 77% of Spanish citizens surveyed “blamed immigrants for recent increases in the crime rate” in 2002. *Id.* at 687. In the Netherlands, “fifty-six

nationalism and seeking a high standard of assimilation for immigration, is the third-largest political party in Denmark.³⁶ Similarly, the Front National, France's right wing, anti-immigration party, has developed a sizeable faction of support.³⁷ It is unsurprising, therefore, that nations have begun testing the bounds of the European Commission's permissiveness when creating their own migration policies.

III. THE ROMA CONFLICT

France has become an archetype for the differing viewpoints on the extent to which EU member nations should be allowed to monitor and enforce residency within their borders, in significant part because France has experienced higher rates of immigration than many other member nations.³⁸ France attracted public attention in 2010 for ordering the expulsion of hundreds of thousands of Roma and other migrants from the camps the migrants established in France after the expiration of their temporary visas.³⁹ Some argue that a migrant's attack on French police in July 2010 and the subsequent migrant riots against French police motivated France's decisive action.⁴⁰ Soon after, French President Nicholas Sarkozy ordered the "immediate expulsion of Bulgarian and Romanian Roma who have committed public order offences."⁴¹

The Roma are the largest minority group in Europe,⁴² and many are Romanian nationals.⁴³ While some European nations seem to consider

percent of the Dutch population sees Islam as a threat, and fifty-seven percent maintain that allowing migration was 'the biggest mistake in Dutch history.'" Orgad, *supra* note 19, at 74.

36. Orgad, *supra* note 19, at 82.

37. See Yael Barbibay, Note, *Citizenship Privilege or the Right to Religious Freedom: The Blackmailing of France's Islamic Women*, 18 CARDOZO J. INT'L & COMP. L. 159, 172 (2010) ("[Front National] has received the support of a significant portion of French citizenry, receiving the votes of 15% to 21% of the electorate in various elections.").

38. In 2008, France received the fourth-highest number of immigrants of all European Union member states, with 183,220 new immigrants. Spain, Germany, and Italy were the other three countries with the highest numbers of immigrants. *Data on Immigration by Sex, Age and Broad Group of Country of Birth*, EUROSTAT, available at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_imm4ctb&lang=en (last visited Nov. 26, 2012).

39. See *France Starts Removing Roma Camps*, *supra* note 9; see also *France to Shut Illegal Roma Camps and Deport Migrants*, BBC NEWS EUR. (July 29, 2010), <http://www.bbc.co.uk/news/world-europe-10798440>.

40. See *France Starts Removing Roma Camps*, *supra* note 9.

41. *Id.*

42. Iskra Uzunova, Note, *Roma Integration in Europe: Why Minority Rights Are Failing*, 27 ARIZ. J. INT'L & COMP. L. 283, 285 (2010). "The term Roma generally refers to persons who '[describe] themselves as Roma, Gypsies, Travellers, Manouches, and Sinti . . .'" *Id.* at 287.

43. Rupert Wolfe Murray, *Romania's Government Moves to Rename the Roma*, TIME (Dec. 8, 2010), <http://www.time.com/time/world/article/0,8599,2035862,00.html>. There are an estimated 1.5

Roma a threat to the national economy and public safety (either officially or impliedly, as interpreted from governmental actions), human rights organizations emphasize the depraved situation of many Roma, largely resulting from international discrimination.⁴⁴ The EU particularly emphasizes the member nations' special responsibility to prevent the widespread persecution, poverty, and unemployment of Roma people.⁴⁵ The problem of Roma development uniquely blends the need for state sovereignty to protect the nation's autonomy and uphold its laws with the need for a transnational means of addressing widespread Roma poverty.

French attitudes toward immigrants appear particularly ethnocentric, though whether the sentiment is a response to high levels of immigration or an inherent cultural characteristic that exacerbates migration issues is unclear. One summary of French attitudes toward migration argues that "immigrants should strive to accept and embrace traditional French values, particularly the language and the notion of secularism, while simultaneously abandoning (or, at the very least, relegating to the private sphere) any continued adherence to their original cultures, particularly with respect to religion."⁴⁶ France's history of restrictive migration policy is intertwined with its long history of, and cultural perspective on, immigration.⁴⁷ Despite France's longtime EU membership, its cultural

million Roma in Romania. *Id.* Roma integration has recently become a dominant concern in Europe because in 2007, Romania and Bulgaria joined the EU. See SUMPTION & SOMERVILLE, *supra* note 12, at 9. After Romania, Bulgaria and other Eastern European nations joined the Union, and the EU's freedom of movement rights "led to a wave of immigration that was not only unprecedented, but highly unexpected." *Id.*

44. "Roma have a lower life expectancy . . . higher infant mortality rate, live in substandard conditions . . . and, in many instances, do not have access to healthcare or education." Uzunova, *supra* note 42, at 288. Data suggests that states' fear of the economic impact of Roma people is not unfounded; "in 2006, 90 percent of all Roma in Bulgaria lived on state benefits." *Id.* at 289. Moreover, "[u]nder Gypsy law, theft and fraud are crimes only when perpetrated against other Gypsies," and "often do not comply with the laws of the host country and often violate the host country's theft and fraud laws." *Id.* at 295. Governmental wariness at the impact of large settlements of Roma is, therefore, somewhat rationally founded on the fear that Roma will not integrate with local communities or obey national laws. See *id.* at 305 (Bulgarians will support integration of Armenians, another minority group, but not Roma, because after coming to Bulgaria, Armenians "know perfect Bulgarian. They identify themselves as Bulgarian They are pleasant guests, who are part of Bulgarian society.").

45. See *EU and Roma*, EUR. COMM'N, http://ec.europa.eu/justice/discrimination/roma/index_en.htm (last visited Nov. 26, 2012) ("The European institutions and EU countries have a joint responsibility to improve the social inclusion and integration of Roma by using all the respective instruments and policies for which they are responsible.").

46. See Furlong, *supra* note 18, at 683.

47. *Id.*

values on migration issues differ markedly from the values emphasized by EU programs,⁴⁸ resulting in power struggles like the Roma conflict.

While the Roma conflict is a recent manifestation of anti-immigration backlash against the EU, the older member states previously expressed concern about the impact of masses of foreign EU citizens permanently residing in the wealthier, often homogenous countries.⁴⁹ These countries have typically been concerned with economic issues—specifically, the rapid increase in the number of unskilled workers entering Western European countries in a short amount of time.⁵⁰ If leaders of EU countries foresaw problems stemming from cultural clashes between nationals and migrants, they were less vocal about them; any concerns over cultural issues lacked the public attention that economic issues received.⁵¹ The rise of purportedly ethnic-based discrimination in residency status is, therefore, a new problem brought to the EU’s attention as a result of increased intra-EU migration.⁵²

48. Council Directive 2004/38, *supra* note 14, at 82 (the EU requires the host Member State to examine an extensive series of factors when considering migrant expulsion). *See, e.g.*, European Social Fund, *supra* note 7.

49. *See* SUMPTION & SOMERVILLE, *supra* note 12.

50. *See* Roger J. Goebel, *The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden*, 18 *FORDHAM INT’L L.J.* 1092, 1177–78 (1995). As Eastern European nations joined the original member states in the European Union, the original members feared that a “flood of unemployed workers” would “augment the problems of chronic high unemployment” within the Union. Natalie Shimmel, *Welcome to Europe, but Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union*, 24 *BERKELEY J. INT’L L.* 760, 777 (2006).

51. Some information in this Note is based on arguments regarding non-EU citizen immigration and asylum policies. However, though the economic effect of employed non-EU migrants on a nation is likely different than the effect of refugees and unemployed EU migrants, the issues of cultural integration and conflict remain. *See Communication From the Commission, supra* note 2, at 4 (“An effective migration policy cannot be limited to instruments for the admission of immigrants Admission of economic immigrants is as inseparable from measures on integration on one hand, as it is from the fight against illegal immigration . . .”).

52. President Sarkozy acknowledges the cultural nature of the conflict between France and the Roma and other traveling people. *See* Bruce Crumley, *Anger as Sarkozy Targets Roma in Crime Crackdown*, *TIME* (July 23, 2010), <http://www.time.com/time/world/article/0,8599,2005818,00.html> (suggesting the Roma’s “nomadic lifestyle” prevents “‘assimilation into [the] communities’ they live near”). France nonetheless denies that its actions to expel the Roma people are ethnically discriminatory, insisting instead that the government has directed its actions at specific public threats. Press Release, European Commission on Human Rights, European Commission Assesses Recent Developments in France, Discusses Overall Situation of the Roma and EU Law on Free Movement of EU Citizens (Sept. 29, 2010) [hereinafter Press Release], available at http://europa.eu/rapid/press-release_IP-10-1207_en.htm (“The Commission took note today of the assurances given by France at the highest political level on 22 September 2010 that . . . [m]easures taken by the French authorities since this summer did not have the objective or the effect of targeting a specific ethnic minority, but treated all EU citizens in the same manner.”).

The EU was skeptical that France's decision to expel Roma people complied with EU legislation.⁵³ As a result, it sought an explicit codification of the Directive into French national law with a hard deadline of October 15, 2010 before disciplinary actions against France would be taken.⁵⁴ Other members of the EU community, through the European Roma Rights Centre, also expressed disapproval of France's actions.⁵⁵ Despite apparent international disapproval of France's alleged failure to comply with EU law, many other EU member nations have been no more welcoming to migrants.⁵⁶

France asserted that its decisions to expel Roma people were not based on ethnicity.⁵⁷ France implemented the mechanisms to remove Roma, however, well before the July 2010 incidents occurred; in March 2010, the French legislature passed a bill that expedites the process of expelling non-French EU citizens for "abusive occupation of land," which critics argue unfairly targets Roma.⁵⁸ Despite the EU's purported interest in freedom of movement, it resisted taking a firm stance against France's actions toward the Roma.⁵⁹ Furthermore, upon France's last-minute promise to amend its immigration laws, the European Commission suspended any disciplinary

53. *Id.* ("At this stage, the Commission considers that France has not yet transposed the Directive on Free Movement into national legislation that makes these rights fully effective and transparent. Therefore, the Commission decided today that it will issue a letter of formal notice to France requesting the full transposition of the directive, unless draft transposition measures and a detailed transposition schedule are provided . . .").

54. *See id.* The EU only looked into France's failure to codify EU parliamentary law generally, and it did not charge France with violations of the Directive in the form of ethnic discrimination or expulsions based on prior convictions. *Id.*

55. The public interest group European Roma Rights Centre ("ERRC") submitted a complaint to the European Commission, alleging that the expulsions were ethnically based because they targeted Roma and therefore violated the Directive. Submission from Robert Kushen, Executive Director, European Roma Rights Centre, to European Commission (Sept. 27, 2010), available at <http://www.errc.org/cms/upload/file/france-ec-legalbrief-27-sept-2010.pdf>. The ERRC also alleges that France failed to make individualized decisions regarding deportation, as required by the Directive. *Id.*

56. *See generally* Uzunova, *supra* note 42 (discussing discrimination of minorities in EU member states including migrants). In particular, Italy and Germany, two countries with higher annual immigration rates than France, have begun taking measures to limit immigration and unlawful residence. *See* Pallavi Aiyar, *Brussels Takes on France over Roma*, BUS. STANDARD (Oct. 1, 2010), <http://www.business-standard.com/india/news/brussels-takesfrance-over-roma/409834/> (Italy's interior minister has announced plans to "make it easier to expel EU migrants with insufficient resources to support themselves."); *Germany Denies French Claim Over Roma Camps*, BBC NEWS EUR. (Sept. 17, 2010), <http://www.bbc.co.uk/news/world-europe-11345165> (Germany plans to return ten thousand Roma to Kosovo as well).

57. *See* Press Release, *supra* note 52.

58. *French MPs Say Yes to Stripping Nationality Law*, AL ARABIYA NEWS (Sept. 30, 2010), <http://www.alarabiya.net/articles/2010/09/30/120841.html>.

59. *EC Suspends Action Over France Roma Expulsions*, DAILY TEL. (Oct. 19, 2010), <http://www.telegraph.co.uk/news/worldnews/europe/france/8073216/EC-suspends-action-over-France-Roma-expulsions.html>.

action against France.⁶⁰ While France met the EU's deadline and proposed changes in its national policies to comport with EU law, it presented nothing more than a proposal, and the suspension of disciplinary action does not appear to be based on any requirement that the plans actually be administered.⁶¹ The EU's hesitancy to take a firm stance has not gone unnoticed throughout Europe. One organization, characteristic of those critical of EU restraint in enforcing migration policy, called the European Commission's dismissal an "extremely damaging . . . P.R. disaster, making the commission [sic] look weak and France look vindicated"⁶² The EU's position on the level of autonomy granted to France while the EU navigates the increasingly prevalent issue of minority integration will set the tone for how proactively member states can protect their own interests without breaching EU laws designed to foster common immigration policies in the future.

IV. ENFORCEMENT POWERS OF THE EUROPEAN UNION

When France, and similarly situated nations, set their own policies for Roma inclusion or exclusion in policy areas on which the European Parliament has explicitly legislated, they act against the communal intentions of the EU.⁶³ While the EU has emphasized from its inception the importance of national sovereignty and the broad right of nations to govern their own affairs,⁶⁴ EU law trumps national law in the case of a conflict.⁶⁵ One cause of the apparent power struggle between member

60. *Id.* See also Matthew Saltmarsh, *European Union Halts Action Against French on Expulsions of Roma*, N.Y. TIMES (Oct. 20, 2010), http://www.nytimes.com/2010/10/20/world/europe/20roma.html?scp=1&_r=0 (noting that France submitted its plans only an hour before the deadline after receiving the warning the prior month).

61. Constant Brand, *Commission Drops Legal Threat Against France*, EUR. VOICE (Oct. 19, 2010), <https://www.europeanvoice.com/article/2010/10/commission-drops-legal-threat-against-france/69196.aspx>. While France made "official commitments" to make changes in its immigration law, including ensuring that any expulsions are not "made on the basis of ethnicity or targeting specific groups" and assessing each expulsion "on a case-by case basis, taking into account social situation and age," there was no mention of a date by which time the changes must have been enacted. *Id.*

62. See Saltmarsh, *supra* note 60. The Open Society Institute fears that other states will take the Commission's failure to sanction France as complicity with its possibly discriminatory policies. *Id.*

63. See Treaty on European Union, *supra* note 5, at 4 (outlining the communal intentions of the EU).

64. See TFEU, *supra* note 27, art. 20 ("Citizenship of the Union shall be additional to and not replace national citizenship.").

65. TFEU, *supra* note 27, art. 2.

When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

states and the EU may be the somewhat ambiguous language of the EU law, referred to as the Functioning Treaty, which governs migration policy.⁶⁶ The EU does not, in the Functioning Treaty, declare itself to have exclusive competence in migration policy.⁶⁷ Rather, migration policy likely falls under member states' and the EU's "shared" competency under the "area of freedom, security and justice" subheading.⁶⁸ The EU could argue, however, that migration policy is more properly categorized as "development and humanitarian aid," in which case "the Union shall have competence to carry out activities and conduct a common policy."⁶⁹ Though the initial reading of the Functioning Treaty appears to grant the EU significant power, it includes the caveat that "the exercise of [the EU's development and humanitarian aid] competence shall not result in Member States being prevented from exercising theirs," thus preserving state autonomy.⁷⁰ As such, while the Functioning Treaty neatly defines control of non-EU immigration as a common problem, it fails to specify exactly which aspects of intra-EU immigration policy the member countries may legislatively manage.⁷¹

France is not the first nation whose policies arguably violate EU migration law.⁷² Nonetheless, as public clashes between the EU and member nations become more frequent, the Commission's responses are subject to heightened critical review by the public. As the EU's executive branch, the European Commission does not in and of itself have the power to discipline nations that fail to integrate EU law into their national laws.⁷³ Instead, the European Commission first issues a formal statement

When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence.

Id.

66. *Id.*

67. *Id.* art. 67.

68. *Id.* art. 4.

69. *Id.*

70. *Id.*

71. *Id.* art. 67.

72. After the publication of the Directive, the Spanish foreign ministry stated it would "not change its immigration policy" and that the Directive would "not affect the country's current laws." Furlong, *supra* note 18, at 697.

73. For an outline of typical Commission procedure, see Riva Froymovich et al., *2nd Update: EU Investigates Discrimination In Hungary's New Tax*, WALL ST. J. (Jan. 3, 2011), available at http://www.retail-it.info/index.php?view=article&catid=2%3Ageneral&id=5287%3Aeu-investigates-discrimination-in-hungarys-new-tax-&format=pdf&option=com_content&Itemid=2 (original source is no longer available).

describing the nation's infringement of EU law.⁷⁴ The nation then has an opportunity to amend its laws to comply with EU legislation.⁷⁵ If the nation fails to do so, the Commission can bring the matter before the Court of Justice.⁷⁶

If the Commission does not bring an issue before the Court of Justice, it declines out of deference to national discretion on heated political issues, not because the Commission lacks the power to so act.⁷⁷ This deference substantially degrades the Commission's political credibility.⁷⁸ On less politically charged issues, the Court of Justice has frequently struck down the laws of member states after investigations and recommendations by the European Commission.⁷⁹ The European Commission has been reticent, however, to act decisively when faced with highly political issues, especially those concerning migration or minority rights.⁸⁰ Nonetheless, by pressuring member states to change national laws to comport with EU legislation, the European Commission has created the appearance of compliance with EU law.⁸¹ Merely assuming voluntary compliance is not a viable long-term strategy for enforcing migration policy, however, since the interests of individual states differ

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *See, e.g.*, Saltmarsh, *supra* note 60.

79. *See, e.g.*, Georgina Adam, *Flavin and Viola Light Works Ruled "Not Art," THE ART NEWSPAPER* (Dec. 16, 2010), available at <http://www.theartnewspaper.com/articles/Flavin+and+Viola+light+works+ruled+%E2%80%9Cnot+art%E2%80%9D/22069> (describing the European Commission's decision defining what is and is not art for tax purposes); Sonya Angelica Diehn, *Dutch Public Broadcasters in the Hole for \$101M*, COURTHOUSE NEWS SERV. (Dec. 20, 2010), <http://www.courthousenews.com/2010/12/20/32736.htm> (holding that Dutch broadcasters had been overcompensated).

80. The president of the European Commission explains the apparent contrast in the Commission's actions, admitting, regarding a dispute over enforcement of media rights among the states, that "[t]here are the legal issues where we have to be extremely strict but there are also political considerations" Terri Schultz, *Hungary's Rocky First Week as EU President*, GLOBALPOST (Jan. 9, 2011), <http://www.globalpost.com/dispatch/european-union/110108/hungary-eu-president-media-law>.

81. For example, in 2008, Italy enacted anti-Roma policies similar to those implemented in 2010 in France. After a formal warning from the European Commission that Italy's laws violated the Directive, Italy's foreign minister assured the Commission that its policies would fully comply with EU law. *Rome v. Roma*, ECONOMIST (May 22, 2008), available at http://www.economist.com/node/11412932?story_id=11412932. Italy's promise of good faith appears to have been all the European Union sought; within months the EU cleared Italy of any charges of discrimination after the Italian government argued that the fingerprinting and other policies directed at Roma people were a necessary part of census-taking. Richard Owen, *EU Clears Berlusconi Over Roma Gypsies*, THE TIMES (Sept. 4, 2008), available at <http://www.timesonline.co.uk/tol/news/uk/article4674724.ece>.

significantly.⁸² If the European Commission remains reluctant to indict member states for facially illegal national laws, it jeopardizes the EU's permanent authority over the member states.

V. THE CONSEQUENCES OF SOFT ENFORCEMENT

Despite any inherent cultural ethnocentricity, data on France's migration policy and decision history indicates that France is consistent with the policies and decisions of original member states. In 2008 and 2009, France made many more immigration decisions than other EU nations.⁸³ Given the trend of anti-immigration policies in France, the high number of immigration decisions might suggest that France was particularly vigilant in rejecting applications for asylum. The percentage of asylum applicants accepted, however, was average compared to other European nations.⁸⁴ This statistic suggests that France's policies and

82. See *About ESF*, *supra* note 7.

83. *Final Decisions on Applications by Citizenship, Age and Sex Annual Data*, EUROSTAT, available at http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/dataset?p_product_code=MIGR_ASYDCFINA (last visited Nov. 28, 2012). In 2008, France made the highest number of decisions on asylum applications (24,350), followed by the United Kingdom (13,915), and Sweden (11,130). *Id.* France also made the highest number of decisions in 2009 (19,565). *Id.*

84. Using the available asylum data as a proxy for openness towards accepting migrants generally, it is possible to calculate the percent of applicants accepted for asylum. Looking at the five EU member countries that made the most decisions regarding applications—France, the United Kingdom, Germany, Sweden, and Switzerland—the total number of positive decisions was divided by the total number of decisions made. *Figure 1* shows the results. See *id.*

FIGURE 1: PERCENT OF ASYLUM APPLICATIONS ACCEPTED

	2009	2008
France	27%	26%
Germany	34%	25%
Sweden	13%	7%
Switzerland	10%	12%
United Kingdom	41%	36%

Despite its average rate of asylum applicants accepted, France in 2010 was one of the countries that most frequently ordered non-EU citizens to leave, suggesting it more actively enforces residency laws than many of its EU neighbors. See *Third Country Nationals Ordered to Leave*, EUROSTAT, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eiord&lang=en (last visited Nov. 28, 2010). In 2008, France ordered the second highest number of expulsions out of all Union nations for which data is available, with 97,515 orders. *Id.* In 2009, France ordered the third highest number of expulsions, ordering 88,565 third-country residents to leave. *Id.* In comparison, the United Kingdom ordered approximately 70,000 third-country nationals to leave in those years, and Germany ordered fewer than 15,000 third-country nationals to leave. *Id.* It is unclear from the data whether, because Romania and Bulgaria are not members of the Schengen area, Romanian and Bulgarian citizens were considered third-party nationals or EU citizens for purposes of expulsions.

attitudes towards migration reflect those of other original EU members.⁸⁵ France's actions are, therefore, merely the most publicized example of a nation grappling to solve a very real problem within the parameters of EU approval, but without any substantive EU assistance.⁸⁶ Given the data on the rise of anti-immigration parties throughout Europe,⁸⁷ the international condemnation of France's actions appears somewhat hypocritical.

While the wealthiest countries in the European Union have seen the largest political backlash against high volumes of immigrants and migrants,⁸⁸ they are not the only states affected by disparate enforcement of purportedly international migration policies.⁸⁹ As internal barriers have fallen,⁹⁰ border states have increasingly borne the burden of controlling the entry of non-E.U. citizens into the Schengen area.⁹¹ Though extra-Union immigration is governed by different laws and poses different issues than

85. Hosting Roma migrants poses unique challenges compared to hosting other immigrants, in part because of the insular Roma community. *See Uzunova, supra* note 42, at 294 (“Gypsy law has evolved to insulate Gypsies from the host society, and thus to maintain its own insularity from the host legal system . . .”). Moreover, because Roma are a minority in Romania, they are not represented by general data on Romanian migrants. For example, information that Romanian migrants are generally more skilled and more employed than the average migrant would not apply to the Roma. SUMPTION & SOMERVILLE, *supra* note 12, at 20. Despite these differences, the immigration process as a whole is bound to incite tensions between migrant groups and their hosting communities. Sumption and Somerville argue that “some of the more keenly felt impacts of [Eastern European] migration have been social and cultural, rather than economic,” citing “misunderstandings about ‘laws, regulations and community expectations’” as frequent catalysts for conflict. *Id.* at 41.

86. While the EU sets standards for admission and deportation of intra-union migrants, it does not provide assistance to national governments to aid in the naturalization of migrants or extra-Union immigrants. *See* Council Directive 2004/38, *supra* note 14, art. 37 (implying extra-Union migration is an issue for States to regulate). In contrast, EU regulations on asylum procedures acknowledge that hosting a large volume of refugees places significant burdens on host countries. *See generally* Council Directive 2001/55, 2001 O.J. (L 212) 12 (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>; *see also* Stanley Pignal, *Migrant Crisis in Greece Strains EU Open Borders*, FIN. TIMES (Dec. 20, 2010), <http://www.ft.com/intl/cms/s/0/0a5616a8-0c6b-11e0-8408-00144feabdc0.html#axzz2DYRz1ZA6> (noting that the EU offered assistance for the first time to aid Greece in handling a large flux of refugees).

87. *See, e.g.,* Castle, *supra* note 3 (“Sweden became the latest European nation to see [a rise in] anti-immigration.”).

88. *See* Valenta & Benar, *supra* note 35.

89. *See* Immigration, EUR. COMM’N, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/index_en.htm (last updated Dec. 19, 2012) (discussing immigration issues in the EU as a whole).

90. *See The Schengen Area and Cooperation, supra* note 6 (“The Schengen area represents a territory where the free movement of persons is guaranteed.”).

91. *See generally* Nicholas De Blouw, *Drowning Policies: A Proposal to Modify the Dublin Agreement and Reduce Human Rights Abuses in the Mediterranean*, 40 CAL. W. INT’L L.J. 335 (2009). Malta and other southern European countries particularly feel the push of new immigrants from Africa upon their borders. *Id.* The EU’s regulations “place a disproportionate responsibility on southern Europe in the absence of a clear EU responsibility-sharing mechanism.” *Id.* at 347 (citations omitted).

EU citizen movement and residency, the EU's failure to adequately share the burden of monitoring and distributing the costs of immigration among all member states can be felt by newer EU nations as well.⁹²

The probable consequence of failure to enforce EU-wide migration policies is a continued dissolution of international collaboration and minority integration.⁹³ Furthermore, it appears that public distrust of immigrants is a common viewpoint in the EU. Indeed, even the Chancellor of Germany "endorsed claims that religious young men of Muslim origin are more likely to commit acts of violence than other young Germans."⁹⁴ Discrimination against the Roma people, in particular, is a longstanding problem in Europe, and nationalist migration policies threaten to worsen the situation of the Roma. For example, in 2008, Italian officials began to record the fingerprints of thousands of Gypsies in Italy.⁹⁵ Similar to its reaction in the French case, the EU Parliament urged Italy to cease collecting the fingerprints, suggesting the practice was ethnically discriminatory, but later backed away from its condemnation, tacitly permitting complete state sovereignty in migration issues.⁹⁶ In light of this earlier Italian activity, France's treatment of Roma people seems not an aberration; but rather, it is consistent with the autonomy the EU has impliedly granted nations to handle perceived migration issues. The European Parliament's and the European Commission's refusal to formally penalize nations expelling or documenting Roma has resulted in a cycle that ultimately erodes both Roma rights and EU authority: national governments enforce a national migration law; EU citizens contend that the laws constitute discrimination; the EU Parliament or Commission condemns the law, but ultimately files no formal indictment. As a result, nations are effectively determining their own migration policies unconstrained by the EU's communal motives.

92. *See generally id.*

93. For example, in Germany where nearly one in five residents is an immigrant or the child of immigrant parents, many members of the public blame immigrants for social and criminal problems. David Frum, *Germany's Merkel Is Right—Multiculturalism Has Failed*, CNN OP. (Oct. 18, 2010), http://articles.cnn.com/2010-10-18/opinion/frum.merkel.multicultural_1_germany-s-merkel-chancellor-merkel-angela-merkel?_s=PM:OPINION. As in the French case, the catalyst to anti-immigration sentiments in Germany began after two teenagers, one an immigrant and one the child of immigrant parents, assaulted a 76-year-old man. *Id.* This cultural clash began a wave of public opinion that resulted in much of the German public associating immigrants with crime and violence. *See id.*

94. *Id.*

95. Uzunova, *supra* note 42, at 283.

96. *Id.* at 284.

Member states' treatment of Roma under their individual national policies varies significantly.⁹⁷ Whether or not Roma inclusion and social aid are reasonable goals, it is clear that these goals will not be achieved unless the EU takes a strong transnational stance to improve the Roma situation.⁹⁸ The EU is consistent in its official discourse about the need for Roma improvement and integration, but its lack of action presents an entirely different message to member states.⁹⁹

One possible, if simple, explanation is that the EU is overwhelmed by the economic and cultural challenges stemming from its new multiculturalism. The EU, like any institution, has limited economic and political capital; perhaps it simply cannot afford to expend much beyond lofty legislation to protect minority interests. When Germany announced its plan to deport non-EU citizen Roma, it encountered virtually none of the international backlash France weathered,¹⁰⁰ suggesting that the disapproval of France's actions depended upon the EU citizen status of the minorities in question.

Although the EU enacted legislation to establish community-wide standards, its lack of enforcement predictably results in minority alienation.¹⁰¹ To remedy this, the EU must first define succinctly whether the EU or the member states controls the power to enforce intra-EU migration policy. If they share the responsibility, treaties must more explicitly delineate the limits of each party's power. Many members of Parliament fear destabilization of the EU through casual enforcement of its

97. On the more discriminatory end of the spectrum, see Murray, *supra* note 43 (describing Romanian policies). In contrast, see Spain's highly proactive policy for integrating Roma. *Spain Shows Education Key to Roma Integration*, THE DIPLOMAT (Oct. 2010), available at <http://www.the-diplomat.ro/articol.php?id=1489> (last visited Feb. 18, 2010).

98. Uzunova, *supra* note 42, at 304. National governments, particularly local elected authorities, "are often unwilling to implement measures' . . . for Roma inclusion, because such programs are unpopular with their constituents." *Id.* (citations omitted).

99. A few months before the Italy fingerprinting conflict, the European Commission "called upon member states to use 'all means possible to improve the inclusion of the Roma people.'" Uzunova, *supra* note 42, at 317 (citing F. VILLARREAL & C. WALEK, EUROPEAN ROMA SUMMIT CONFERENCE REPORT 2 (2008)), available at http://www.gitanos.org/upload/63/41/European_Roma_Summit_16092008.pdf. Critics argue, however, that immigration may be the catalyst to the ultimate destabilization of the EU. See Baetz, *supra* note 16 (noting the tension between new Schengen entrants Romania and Bulgaria and original members France and Germany over the latter's perceived power to discriminate against the former).

100. *Germany Contradicts French Statement on Roma Camps*, BBC NEWS (Sept. 16, 2010), <http://www.bbc.co.uk/news/world-europe-11338112> ("The issue of Roma deportations from France dominated an EU summit."). For example, the "EU Justice Commissioner, Viviane Reding, had appeared to compare France's actions to persecutions in Nazi-occupied France." *Id.*

101. *Situation of Roma in Europe: EU Parliament Quizzes the Commission*, EUROPA (Sept. 30, 2010), http://www.eu-un.europa.eu/articles/en/article_10144_en.htm. The EU Parliament insisted that the European Commission "must apply zero tolerance to any failure to transpose the [Directive]." *Id.*

laws. Indeed, some of them consider the Commission to be showing “disastrous weakness” in failing to present a competent and firm response to the nations potentially violating EU law.¹⁰² The “elegant middle way” of legislation by directive, without substantive Commission support, threatens to tarnish the credibility of the Union’s future legislation.¹⁰³ While proponents argue that strong national autonomy permits nations to serve as “laboratories” for testing versions of EU Parliamentary directives,¹⁰⁴ this experiment can only result in increasingly liberal interpretations of EU law that weaken the Union from within.

Dissension on migration issues is a primary reason original member states have begun to vote in favor of more isolationist policies, producing the first fracture in the solidarity of the EU. In December 2010, three months before Romania, Bulgaria, and Cyprus were due to enter the Schengen area, France and Germany pressured the European Union to delay their admission.¹⁰⁵ Though there are many factors that determine whether a country should join the EU, the reluctance to admit these new states suggests that the original member states may believe the new states are ill prepared to protect the original states’ interests through responsible immigration and monitoring policies. As a result, the new countries’ entrance date into the Schengen area is under review to appease the established-state interests.¹⁰⁶ This discriminatory and indefinite exclusion of the new states has effectively created a separate “class” within the EU, including countries with only partial rights, in sharp conflict with the EU goal of establishing a collaborative community.¹⁰⁷

In addition to harming the unity of the EU, soft enforcement of EU law stunts both minority integration and new state development. Many

102. *Id.*

103. See Newton, *supra* note 25 (“Aside from their elegant middle way between Europe-wide control and total respect for national sovereignty, [directives] also allow for a measure of experimentation among various states in the pursuit of the ‘best’ expression of the norm posited by the directive.”).

104. *Id.*

105. Justyna Pawlak, *Romania and Bulgaria Face Delay in Joining Schengen*, REUTERS (Dec. 22, 2010), <http://af.reuters.com/article/worldNews/idAFTRE6BL10T20101222> (“‘In our opinion it is still premature to envisage the entry into the Schengen zone in March 2011,’ the interior ministers of France and Germany wrote in a letter . . . to the European Commission . . .”). Germany and France urged the EU to delay admission because the inclusion of the new countries would cause “‘serious consequences for the internal security of the European Union,’” while Romania’s president condemned the countries’ concerns as unfair discrimination in violation of EU law. *Id.*

106. See ‘Populism’ Decried as Romania, Bulgaria Barred From Schengen, EURACTIVE (Sept. 23, 2011), <http://www.euractiv.com/justice/populism-decried-romania-bulgaria-barred-schengen-news-507867>.

107. Treaty on European Union, *supra* note 5.

advocates denounce France's expulsion of migrants as a violation of the migrants' human rights and a form of oppressive discrimination.¹⁰⁸ The problem will be exacerbated if the EU tacitly permits states to set their own immigration policies, as less developed countries that are only newly eligible for admission to the EU will bear a larger burden of immigration screening because of their location on the perimeter.¹⁰⁹ Because many EU immigrants come from the East,¹¹⁰ new EU countries will likely be forced to make many more border migration and asylum decisions than before their entry into the EU.

Others skeptical of the EU's immigration policies argue that the new member countries may admit fewer immigrants due to the nations' lack of experience in making high-volume migration decisions, and therefore, the established EU nations are using the new border of Eastern European nations to limit immigration to the EU.¹¹¹ If France, Italy, and other comparatively wealthy European nations have sufficient control of the EU to prevent Romania and Bulgaria's admission to the Schengen area and are not formally prohibited from deporting migrants like the Roma to new EU nations outside the Schengen area, the poorer European countries will bear the burden of integrating minority populations.

108. *French MPs Say Yes to Stripping Nationality Law*, *supra* note 58.

109. European Union policies consistently shift the burden of migration policy to border states that are inherently the newest members of the European Union. *See generally* De Blouw, *supra* note 91 (discussing the EU's Dublin Regulation in terms of migration concerns). For a discussion of the consequences of such a delegation of responsibility in terms of asylum policy and the EU's steps to make asylum a Union-wide responsibility, see Barry Junker, Note, *Burden Sharing or Burden Shifting? Asylum And Expansion In The European Union*, 20 GEO. IMMIGR. L.J. 293 (2006). Like the EU's attempts at establishing migration policy, EU legislation on asylum policy that calls the processing of refugee applications a "Union-wide problem" is "little more than a statement of values [with] no bearing on the actual application of EU asylum law." *Id.*

110. OANA MIHAELA ET AL., *MIGRANTS AND BORDERS: ROMANIA AND MOLDOVA*, EUROROADMAP 3 (2011), http://halshs.archives-ouvertes.fr/docs/00/63/82/53/PDF/EWP_migrants_borders_moldova.pdf ("[I]n 2008, Romania was the second [most popular] EU member as regards the non-UE immigrants' rate (86%) [of entrance into the EU], after Slovenia. As a new gate for entering the EU space, Romania is expected to become even more attractive for non EU migrants in the future.").

111. Shimmel, *supra* note 50, at 793. Not all authorities agree, however, that European nations have become more protectionist in the face of high levels of immigration. *See* DEMETRIOS G. PAPADEMETRIOU ET AL., *MIGRATION AND IMMIGRANTS TWO YEARS AFTER THE FINANCIAL COLLAPSE: WHERE DO WE STAND?*, MIGRATION POLICY INST. 3 (2010), *available at* <http://www.migrationpolicy.org/pubs/MPI-BBCreport-2010.pdf>. Though the past several years has seen the rise of "pay-to-go" policies, deportations, increased enforcement measures, higher bars for visa eligibility, and reduced quotas, "for the most part, policymakers have understood that [protectionist] labor market policies designed to protect domestic workers' jobs will . . . adversely affect their competitiveness. Protectionism has not dominated immigration policies, nor have legal foreign residents experienced a retrenchment of their rights." *Id.*

CONCLUSION

The European Commission's consistent failures in both clarifying the meaning of Parliamentary directives and enforcing those directives when violations allegedly occur endangers the Union as a whole by incentivizing opportunistic disobedience of EU law.¹¹² Nations joined the EU to "ensure the economic and social progress of their States by common action . . . [the] removal of existing obstacles calls for concerted action in order to guarantee steady expansion . . . [and] their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions."¹¹³ Perhaps most importantly, the member states joined the Union to "confirm the solidarity which binds Europe."¹¹⁴ It is the duty of their elected leaders to address the real problems facing member countries and strive to provide workable, non-idealistic solutions so that countries ultimately benefit from their membership in the EU.¹¹⁵

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112. Because many of the expulsion decisions were allegedly made on a generalized, rather than particularized basis, France's actions appear to facially violate the terms of the Directive. Council Directive 2004/38, *supra* note 14, at 84. The Directive prohibits nations from expelling migrants who have stayed past the typically permitted three months if the migrant is employed, a student in the host state, has sufficient resources to support himself, or is a family member of someone meeting one of the other conditions. *Id.* at 93–94. France may have also violated the Directive if deportees met the above criteria and did not pose rational public threats. *Id.*

113. Treaties, *supra* note 31, pmbl.

114. *Id.*

115. *Id.*

* J.D. (2012), Washington University School of Law.