FEANTSA has had a long history of engagement on the issues that arise in relation to migration and homelessness. FEANTSA’s administrative council took a decision in 2012 to set up a working group on migration and dedicated our annual conference to the issue that year.

The free movement of persons in the EU has always provoked discussion about the level of rights accommodated for and has always been confronted by Member States that have tried, and still do, to impose restrictions on it or limit it outright, especially when it comes to persons who are not economically active. However, it is important to bear in mind that:

* free movement rights also benefit part-time workers or workers who obtain remuneration lower than the minimum guaranteed in a specific sector. Therefore, income is not important as long as the person pursues an activity which is ‘effective and genuine’;
* according to Union law, the status of ‘worker’ is retained also by those job-seekers who are recorded as being involuntarily unemployed after having either been employed for more than a year, after having completed a fixed-term employment contract of less than a year, or after having become involuntarily unemployed during the first twelve months;
* the free movement of workers also includes the right for nationals of Member States to seek employment in another Member State, though this can be subject to temporal limitation.

The freedom of movement of EU citizens has therefore developed to cover an increasing number of economic situations over the years.

The question FEANTSA has been putting to European and national institutions is what rights EU citizens have when they become destitute and homeless whilst exercising their right to free movement. Member States’ policies towards this group of service users vary. In several Member States, no publicly-funded shelters are open to irregularly residing immigrants. In these countries, EU citizens have to rely on very limited, privately funded support structures or may even be forced to develop autonomous survival strategies on the streets and in poor quality housing. Some Member States provide unconditional support in principle to all people in need. However, if resources are scarce, this obviously puts a lot of strain on service providers and risks creating a situation where a choice between nationals and non-national service users will have to be made.

Art. 24(2) of directive 2004/38 provides a derogation to the general principle of equal treatment between EU mobile citizens residing on the basis of the directive and nationals of the host Member State. Under Art. 24(2) of the directive, Member States are not obliged to confer entitlement to social assistance to EU citizens in their first three months of residence and for longer periods to those who entered the host Member State in order to seek employment. If access to shelters is considered as an entitlement to social assistance, it might be possible for a Member State to forbid access to shelters to those who have been resident for less than three months and to job-seekers who have never worked in the host country (the categories of job-seeker who are still considered within the definition of ‘worker’ are entitled to equal treatment as long as the status of worker is retained). On the other hand, under article 14(4)(b) of the directive, a Member State cannot expel EU citizens in their first three months of residence or those job-seekers that can provide evidence that “they are continuing to seek employment and that they have a genuine chance of being engaged”. Such policy plans lead shelters to deny services to homeless people who are in the situations described above, thus provoking an increase in rough-sleeping.

A number of EU member states have services that support EU citizens to return to their country of origin or provide a ‘ticket home’ service. Repatriation of EU citizens has always been contentious among FEANTSA members. While it is very clear that coercion does not work, and can put the lives of mobile EU citizens at risk by driving them away from support services, FEANTSA accepts that an option of supported return to the country of origin has a place in the suite of services that should be available to those experiencing homelessness. We have noted that the best practice in this area is where the person is provided with support to address any underlying issues and stabilise prior to returning to their country of origin. In some cases, the stability is a spur to seeking support to return to the country of origin.

Over the past years, we have learnt of several cases of mobile EU citizens being expelled because they were sleeping rough or living in encampments. In France, expulsions of Roma are systematically carried out: in 2009, France deported 10,000 Romani back to Romania and Bulgaria; the next year, at least another 8,300 Romani were deported up until August[[1]](#footnote-2); in 2013, almost 11,000 Romanian nationals were deported from France[[2]](#footnote-3). We have also received several reports of expulsion of homeless mobile EU citizens from Denmark, one of the latest concerns a Lithuanian national who had been sleeping rough and collecting bottles to support himself[[3]](#footnote-4).

However, as far as we are aware, UK is the first country whose public authorities have provided instructions which include rough sleeping as a reason to administratively remove a mobile EU citizen. Even more worrying is the fact that mobile EU citizens or their family members who are sleeping rough may be administratively removed even if they have been in the UK for less than 3 months or are otherwise exercising Treaty Rights. Moreover, individuals removed for rough sleeping will be subject to re-entry restrictions for 12 months following their removal or voluntary departure.

UK seems to suggest that an EU citizen who experiences a crisis which leads to homelessness fall outside of the protection of their treaty rights. The interpretation of the UK that an experience of homelessness is an ‘abuse’ or ‘misuse’ of treaty rights is contrary to the spirit and intention of the regulations and directives which set out the terms of free movement and in the view of FEANTSA are in contravention of same.

We believe that these measures infringe EU law, we oppose arbitrary expulsions and call for the respect of procedural safeguards as provided by EU law, which clearly affirms that:

* as long as the beneficiaries of the right to residence do not become an unreasonable burden on the social assistance system of the host Member State, they should not be expelled and an expulsion measure cannot be the automatic consequence of a Union citizen’s recourse to the social assistance system of the host Member State
* in no case should an expulsion measure be adopted against workers, self-employed persons or job-seekers as defined by the Court of Justice save on grounds of public policy, public health or public security;
* expulsion of Union citizens and their family members on grounds of public policy, public health or public security should be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, social and cultural integration in the host State, family and economic situation and the links with their country of origin. These grounds cannot be invoked to serve economic ends.
* any restriction of the right of entry and the right to residence need to comply with the principle of proportionality, and must be based exclusively on the personal conduct of the individual concerned. Such conduct must represent a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society'
* the longer a person has resided in the territory of a Member State, the stronger the safeguards against expulsion. In any case the host Member State may not take an expulsion decision against EU mobile citizens and their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security. No expulsion decision may be adopted, save on grounds of public security, against EU mobile citizens who have resided in the Host Member State for more than 10 years and who are minors.

We also consider that including rough sleeping as a form of abuse of rights is largely beyond the notion of abuse under EU free movement rules and beyond the scope of article 35 of directive 2004/38.

1. *Who Are Gypsies, and Why Is France Deporting Them?* <http://content.time.com/time/world/article/0,8599,2013917,00.html> Time, 26/08/2010 [↑](#footnote-ref-2)
2. France's unwanted Roma <http://www.bbc.com/news/magazine-25419423> BBC, 13/04/2014 [↑](#footnote-ref-3)
3. <http://www.udln.dk/da/Praksis/Adm_udvisning/EU_borger/FAM_2016_66.aspx> [↑](#footnote-ref-4)