

Inclusion and Exclusion in the EU

ACELG's Annual Conference 2015
20 November 2015

Library of the University of Amsterdam, Doelenzaal, Singel 425, 1012 WP Amsterdam
Organized by [Amsterdam Centre for European Law and Governance](#)

Against the backdrop of sustained austerity measures, the on-going financial crisis, and the current refugee crisis, the Amsterdam Centre for European Law and Governance in its yearly conference addresses the themes of inclusion and exclusion in the EU. The conference considers inclusion and exclusion both from an internal and external perspective.

Internally, the themes of inclusion and exclusion highlight the dynamics *between* Member States, the EU and EU citizens. The climate of sustained austerity measures begs the question of who is able to fully participate and enjoy their rights as citizens of the EU? How does the austerity climate affect the transnational solidarity between EU citizens? New national protectionism is closing off welfare systems and deprives EU citizens of certain rights to benefits across borders. How do the EU institutions react to opposition to free movement raised by Member States? Are there any signs of institutional co-operation between Member States to remedy the perceived negative impact of free movement on national welfare systems? At the same time, due to the growing role of the EU in devising austerity measures, the Union is increasingly also playing an important role with respect to social exclusion *within* the Member States. This raises questions such as: What are the effects of the exclusion of EU citizens across borders through national legislation for the Union as a whole? What is the role of the EU in combating social exclusion?

In the external context, the themes of inclusion and exclusion are also relevant for the way that the EU and its Member States are dealing with economic migration and refugees, as well as third country nationals in other contexts. Here the themes of inclusion and exclusion raise fundamental questions about the EU as a community based on humanistic standards. How does the EU deal with the 'other'? Does it meet its own standards? Does it meet international standards, e.g. of the European Convention on Human Rights? What role does solidarity among Member States play in the exclusion or inclusion of those that come from the outside?

Programme

09.00 – 09.30 **Arrival and Registration**

09.30 – 09.40 **Opening**

Deirdre Curtin, Amsterdam Centre for European Law and Governance

09.40 – 11.10 **EU EXTERNAL BORDERS: EXCLUDING THE OTHERS**

Chair: Maria Weimer, Amsterdam Centre for European Law and Governance

- **A Moment of Closure**

Jean-François Durieux, Director, International Refugee and Migration Law Programme, International Institute of Humanitarian Law, Sanremo (Italy)

- **The Migrant and the Refugee: Debunking the Myth of Separateness**

Nadine El-Enany, Birkbeck University of London

Comments: Violeta Moreno-Lax, Queen Mary University London

11.10 – 11.30 Coffee break

11.30 – 13.00 **EU POLICIES COMBATING SOCIAL EXCLUSION IN TIMES OF AUSTERITY**

Chair: Christina Eckes, Amsterdam Centre for European Law and Governance

- **Socializing the European Semester: Is there an EU Exclusion agenda after all?**

Bart Vanhercke, European Social Observatory/University of Amsterdam & Jonathan Zeitlin, ACCESS EUROPE, University of Amsterdam

- **The Role of the Social Protection Committee in Promoting Social Inclusion in the EU**

Roel Gans, Director for International Affairs of the Netherlands Ministry for Social Affairs and Employment

Comments: Anne Pieter van der Mei, Maastricht University

13.00 – 14.00 Lunch break

14.00 – 15.30 **NEW NATIONAL PROTECTIONISM: RESTRAINING FREE MOVEMENT**

Chair: Thomas Vandamme, Amsterdam Centre for European Law and Governance

- **What is left of Union Citizenship?**

Eleanor Spaventa, Durham University

- **Solidarity (still) in the making or a bridge too far?**

Paul Minderhoud, Nijmegen University

Comments: Annette Schrauwen, Amsterdam Centre for European Law and Governance

15.30 – 15.45 **Closing, followed by drinks**

Abstracts

Jean-François Durieux – A Moment of Closure

The 'Welcome, refugees!' signs recently seen in German and Austrian train stations are already giving way to deep-rooted fears and suspicions vis-à-vis uninvited strangers. At the same time, those positive manifestations should not be written off too quickly, especially because they ostensibly situate the refugee within a framework of 'European values'. This paper will interrogate the concept of the 'European refugee' as a privileged alien, and confront it with the letter and spirit of the Common European Asylum System (CEAS). Its basic argument is that the peculiar logic of EU construction has the effect of obscuring the positive features of refugeehood (and of the European people's receptivity to refugees): the EU - as opposed to simply European - concept of asylum induces the phenomenon of a 'vanishing refugee', excluded from the European demos and unrecognisable behind the smoke screen of asylum procedures. Finally, the question will be raised whether re-inclusion of the refugee in the European demos can be achieved in the courtroom, on the streets, or elsewhere.

Nadine El-Enany - The Migrant and the Refugee: Debunking the Myth of Separateness

This paper examines the discourse of the “migrant” and the “refugee” in the context of the recent crisis at the European border. It seeks in particular to legally contextualise the media portrayal of those seeking entry into Europe and popular understandings of the distinction between the migrant and the refugee. It is well established that refugees struggle to access territory, and therefore protection, due to stringent controls on their movement despite the existence of laws such as the 1951 Geneva Convention for the Protection of Refugees. The paper identifies a dysfunctional relationship between the fields of asylum and migration law and outlines the practical problems for refugees in finding protection as a result of the effects of migration and border control in Europe. There has been insufficient attention paid in the literature to the ways in which the separateness of asylum and migration norms embodies itself in practice, as well as its political and ethical implications.

Bart Vanhercke & Jonathan Zeitlin - Socializing the European Semester: Is there an EU Exclusion agenda after all?

In their intervention, Bart Vanhercke and Jonathan Zeitlin will argue that, between 2011 and 2015, there has been a partial but progressive ‘socialization’ of the European Semester of policy coordination. This socialization can be understood not only as the response from the European Commission to the growing social and political discontent with austerity policies, but also as a product of learning and adaptation on the part of social and employment actors. While issues like employment, pensions and health care received more attention, the EU's social exclusion agenda seems to have lost momentum. The European Semester therefore raises key questions about the substance, nature and dynamics of the EU's evolving socio-economic governance.

Roel Gans – The Role of the Social Protection Committee in Promoting Social Inclusion in the EU

Social inclusion policy is primarily a competence of the Member States. The European Union has a supportive and coordinating role in this field. Over the last years, different EU instruments have been developed to coordinate social policy in the EU. Moreover, the European Union and its Member States have adopted the Europe 2020 Strategy, setting specific national and EU wide targets to address poverty and social inclusion. In 2000 the Social Protection Committee (SPC) has been established. The SPC advises the Employment and Social Affairs Ministers in the Employment and Social Affairs Council (EPSCO) on social protection and social inclusion policy. Making use of the 'Open Method of Coordination', the SPC monitors and reports on social developments in the EU and stimulates coordination of policy approaches by providing a platform for sharing experiences and best practices. The SPC also plays a role in the European Semester, with regard to Country Specific Recommendations in the field of social protection and social inclusion. This presentation will elaborate on the role of the SPC in promoting social inclusion in the EU, while highlighting the different instruments that have been developed.

Eleanor Spaventa - What is left of Union Citizenship?

This paper will investigate the extent to which the Treaty provisions on Union citizenship are still relevant following recent case law on Directive 2004/38. Thus, there are signs to suggest that migration and residence rights for Union citizens are now exhausted by Directive 2004/38. Furthermore, this same case law suggests that fundamental rights are becoming irrelevant in the Court's analysis. Both of these developments would signal a dramatic departure from established EU constitutional system not only in relation to Union citizenship law, but also in regard to the relationship between different EU institutional actors.

Paul Minderhoud - Solidarity (still) in the making or a bridge too far?

Political debates concerning the free movement of (poor) EU citizens (mainly from the newer Member States) have focused upon the issue of welfare tourism, despite the lack of any meaningful evidence that this actually is taking place on a wide scale in the EU. This so called welfare tourism is in various Member States used as an argument to restrict the rights of access to social (assistance) benefits for EU citizens. In the light of the recent judgments of the CJEU in the Dano and Alimanovic case it seems that if economically inactive EU citizens apply for a social assistance benefit this would automatically mean that they have no sufficient resources (and no residence right under Directive 2004/38) anymore.

Short bio's

Deirdre Curtin is Professor of European Law at the University of Amsterdam and Founding Director of the Amsterdam Centre for European Law and Governance. She will take up a fulltime position as Joint Chair of European Law and Politics at the European University Institute in January 2016.

Jean-François Durieux is Director of the International Refugee Law and Migration Law programme of the International Institute of Humanitarian Law, based in Sanremo (Italy). He is also contributing, both as a module convenor and as a tutor, to the distance-taught MA in Refugee Protection and Forced Migration Studies of the University of London, under the auspices of the Refugee Law Initiative. In 2011 Mr Durieux completed a 30-year career with UNHCR, during which he served in Africa, Asia, North America and Latin America, as well as at UNHCR Headquarters in Geneva, notably in the Division of International Protection and in the Regional Bureau for Europe. His last position in the organisation was that of Director in the Division of Programme Support and Management. In recent years, his research interest has focused on legal responses to mass influxes of refugees, including a comparison of African and European regimes and a reflection on the legal implications of refugee emergencies and protracted refugee situations. He has recently co-edited, with Dr David Cantor, a book based on the presentations and discussions in the February 2013 conference 'Refuge from Inhumanity', which he co-hosted in Oxford.

Christina Eckes is Associate Professor of European Law and Adjunct Director of the Amsterdam Centre for European Law and Governance.

Nadine El-Enany is a Lecturer in Law at Birkbeck School of Law and Co-Chair of the Runnymede Race Equality Forum. Nadine teaches and researches in the fields of migration law, European Union law and

criminal justice. She has published widely in the field of EU immigration and asylum law. Her current research focuses on questions of criminal and social justice in protest and death in custody cases.

Roel Gans is Director of International Affairs at the Ministry of Social Affairs and Employment in the Hague, the Netherlands, and member of the Social Protection Committee of the European Commission. He has previously worked at the Ministry of Transport, Public Works and Water Management and was Managing Director at Berenschot consulting firm. Roel Gans holds a Master's degree in Political Science of the University of Leiden and a Master's degree in Management Consultancy of the University of Amsterdam.

Paul Minderhoud is an associate professor at the Centre for Migration Law of the Radboud University Nijmegen, the Netherlands. His main research interests are the legal and socio-legal aspects of immigration and social security. He is co-editor of the *European Journal of Migration and Law*. Until 2014 he was the coordinator of the European Network on Free Movement of Workers. For publications see his [personal webpage](#).

Violeta Moreno-Lax is Lecturer in Law at Queen Mary University of London and the EU Asylum Law Coordinator at the Refugee Law Initiative of the University of London. She is co-Director of the newly launched Centre for European and International Legal Affairs (CEILA) as well as Director and co-founder of the LLM programme in Immigration Law, currently in its second year, both at Queen Mary. Violeta is also co-Convener of the Migration Law Section of the Society of Legal Scholars; co-Chair of the Refugee Law Observatory; and a member of the Steering Committee of the Migration Law Network. She has also acted as expert consultant for the European institutions on various occasions and advised several organizations active in the

area of refugee and migrant rights. Her research focuses on the interface between border control, migration management and international protection under EU and international law, where she has published widely. Her monograph: *Accessing Asylum in Europe* is forthcoming with OUP.

Annette Schrauwen is Professor of European integration, in particular citizenship law and history, at the University of Amsterdam. In her research she focuses on the concept of Union citizenship. Her research is embedded in the research program of the Amsterdam Centre for European Law and Governance (ACELG). She is editor of *Legal Issues of Economic Integration*.

Eleanor Spaventa is Professor of European Union Law at the University of Durham. Her research interests lie in European law and in particular in the fields of European constitutional law, free movement, fundamental rights and co-operation in criminal matters in the EU. Eleanor Spaventa is an analytical expert for the [FreSco network](#), a network of independent experts on the free movement of workers and social security funded by the European Commission to provide expert guidance in these fields. In 2014 she co-authored an analytical report on the notion of restriction in the free movement of workers, and in 2015 she is co-writing a report on atypical employment contracts.

Thomas Vandamme is assistant Professor European Law at the University of Amsterdam. His research interests include several topics of European institutional law such as the role of national parliaments in the process of adopting and implementing EU law, the interaction between national constitutional law and European law and the role of federalism in EU institutional law. Recent Key Publication: EU directives and multi-level governance - can lessons be drawn from cooperative federalism? *Maastricht Journal of European and Comparative Law*, 21 (2), 341-358.

Bart Vanhercke is Director at the Brussels-based European Social Observatory (OSE). In 2013-2014, he was Associate Professor at the Institute for European Studies of the Saint-Louis University (FUSL). He will be defending his PhD at the University of Amsterdam on 'Inside the Social Open Method of Coordination: the hard politics of 'soft' governance' in 2016. His current research and publications focus on the social dimension of the new European economic governance, a topic on which he also works as an associate member of the academic staff at the Centre for Sociological Research, University of Leuven. Earlier research experience dealt with the Europeanization of domestic social inclusion, health care and pensions policies through different EU policy instruments (law, soft governance and financial instruments) and the social challenges of EMU and EU enlargement.

Maria Weimer is Assistant Professor of European Law at the University of Amsterdam and researcher within the project 'The Architecture of Postnational Rulemaking'.

Jonathan Zeitlin is Professor of Public Policy and Governance, and Distinguished Faculty Professor in the Department of Political Science and the Faculty of Social and Behavioral Sciences (FMG) at the University of Amsterdam. He co-founded and co-directs ACCESS EUROPE, a platform for research, education and public debate about Europe, the European Union and its member states. His research focuses on new forms of 'experimentalist' governance within and beyond the European Union. He has published extensively on EU governance and socio-economic policy coordination, and frequently serves as an advisor, speaker, and evaluator for the EU institutions on these issues. Together with Bart Vanhercke, he is currently completing a report for the Luxembourgish Presidency of the Council of the EU on 'Further Socializing the European Semester: Moving Forward for the Social Triple A'.

Practical information

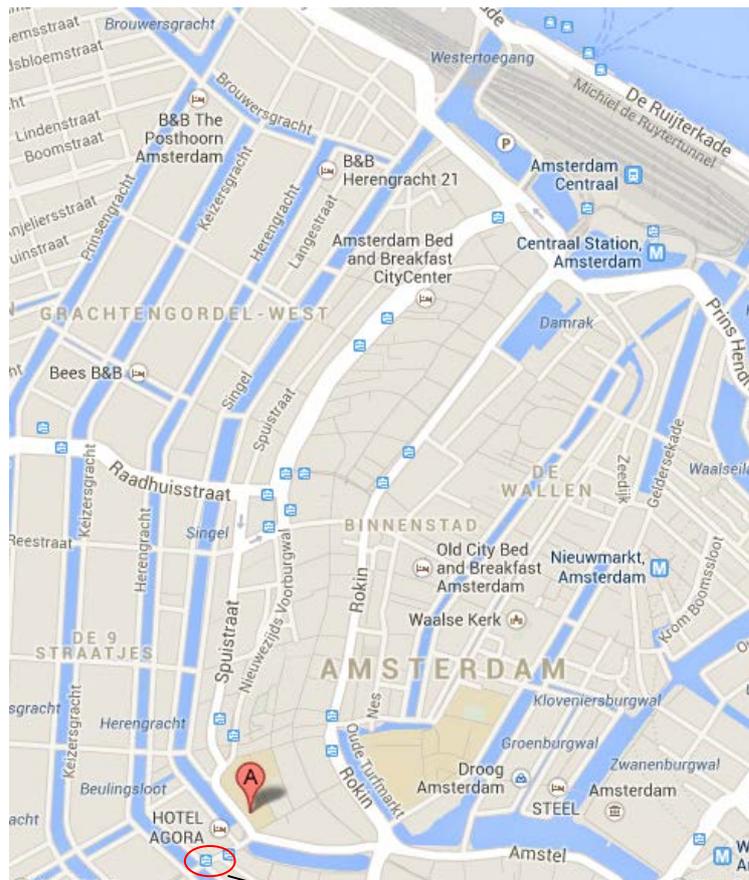
Venue

Library of the University of Amsterdam
Room: Doelenzaal
Singel 425
1012 WP Amsterdam

Contact

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Directions within Amsterdam



Tram stop Koningsplein

By public transport

From Central Station take tram 1, 2 or 5 and disembark at stop Koningsplein. From there it is a short walk to the conference venue (A on the map).

By car

Parking space near the University Library is scarce. Closest parkings are:

Parking Bijenkorf
Beursplein 15 - 1012 JW Amsterdam

Parking Stopera
Valkenburgerstraat 238 - 1011 ND Amsterdam

Public transport

- **Arrival at Schiphol Airport**

From Schiphol airport, trains leave every few minutes to Amsterdam Central Station – see [railway journey planner](#). The journey takes about 20 minutes. Chipcards are sold in the airport's central hall, either at the counter of the NS (Dutch Railways) or at vending machines. See below for instructions on the use of the machines.

- **Public transport within Amsterdam**

Disposable chipcards valid for 1 hour (EUR 2.90), 24 hours (EUR 7.50) or 48 hours (EUR 12.00) after check-in are sold

- at (few) GVB vending machines in Central Station (look for the blue GVB logo)
- at the GVB Tickets & Info office in front of Central Station or
- at ticket machines in the metro stations.

The 1-hour card can also be bought on board of trams and busses (not in the Metro).

- **Buying single-use chipcards for use in trains**

Single-use chipcards for immediate use between Schiphol and Amsterdam can be used to or from any train station in Amsterdam – but not on Amsterdam trams, busses or the metro. Tickets can be bought at the NS Tickets & Service counter in Schiphol airport or Amsterdam Central station or from an NS ticket machine (with a blue sign and white NS logo on top).



Ticket machine with NS logo

- **How to buy a single-use chipcard at the ticket machine?**

- Change the language to English from the bottom left corner of the screen
- Then press “Buy single ticket or OV-chipcard”
- Select “Single ticket”
- Press “Single ticket” and follow the instructions on the screen
- You can choose to pay with a VISA, MasterCard, Maestro and V Pay card or cash (coins only)
- Pick up your single-use chipcard from the box below the left bottom corner of the screen
- On your ticket you can see whether you need to check-in and check-out
- Check in at the check-in points
- Do not forget to check out when you get off the train



Check-in point