

### **Strategy 3: Civil society organisations should be empowered to help citizens overcome obstacles**

*Empowering civil society groups to inform and assist mobile citizens will ensure that these citizens can make effective use of those rights and overcome obstacles that may come their way.*

A significant proportion of non-governmental organisations that work on the rights of migrants tend to focus exclusively on non-EU citizens. In part, this is understandable because they make up about two-thirds of migrants living in EU countries, as compared to the remainder that consists in EU citizens living in a Member State other than their country of nationality<sup>1</sup>. As a result, many migrant rights organisations lack sufficient knowledge or expertise to be able to assist EU free movers who face problems in enforcing their free movement rights. There is therefore a need to develop further the capacity of civil society to assist EU citizen to overcome obstacles that they may face when moving within the EU.

Empowering civil society will assist in meeting the legal needs of EU citizens<sup>2</sup>. Despite a significant majority of EU citizens being aware that they have a right to move within the EU, almost two-thirds of them feel they do not have a sufficient awareness of their EU rights<sup>3</sup>. Less than a quarter of citizens feel sufficiently well informed about what to do if their EU rights are not respected<sup>4</sup> and about a fifth of the problems were the result of citizens' own lack of awareness of their rights<sup>5</sup>.

The problems are not limited to awareness of rights. EU citizens who make use of their right to free movement continue to face significant obstacles in the exercise of their EU rights<sup>6</sup> with more than 25% of citizens reporting that they encountered problems in moving within the EU<sup>7</sup>.

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<sup>1</sup> Eurostat, [Nearly two-thirds of the foreigners living in EU Member States are citizens of countries outside the EU-27](#), Statistics in Focus 31/2012.

<sup>2</sup> These needs are likely to grow in light of budgetary cuts which are affecting the availability of legal aid in a number of EU Member States. As a result of legal aid cuts in the UK, EU migrants and their family members are unable to obtain legal aid in order to obtain advice on immigration or social welfare issues: see Sheona York [“The End of Legal Aid in Immigration – A Barrier to Access to Justice for Migrants and a Decline in the Rule of Law”](#), *Journal of Immigration Asylum and Nationality Law* (2013) Vol 27 No 2, Pat Feast and James Hand, [Impact of legal aid cuts on the Citizens Advice Bureau](#), Haslbury's Law Exchange, and Desmond Rutledge [What legal aid is still available for work undertaken on welfare benefits post-LASPO?](#) Garden Court Chambers Blog. As regards legal aid cuts in Belgium, the issue has been raised in a [letter](#) addressed by the [Council of Bars and Law Societies in Europe](#) to the Belgian Minister of Justice. For an overview of the availability of legal aid in the EU in immigration cases pre-dating these reforms, see European Migration Network, [Ad-Hoc Query on organisation and management of legal assistance provided to foreigners in the EU Member States](#), 2012.

<sup>3</sup> [Flash Eurobarometer 365](#) on European Union Citizenship.

<sup>4</sup> [Report on progress towards effective EU Citizenship 2011-2013](#) and [Flash Eurobarometer 365](#), both cited above.

<sup>5</sup> [The EU Citizens' Agenda: Europeans have their say](#), 2012.

<sup>6</sup> [Report on progress towards effective EU Citizenship 2007-2010](#) and [Report on progress towards effective EU Citizenship 2011-2013](#), Single Market Scoreboard and Ramboll, [Understanding citizens' and businesses' concerns with the Single Market: A view from the assistance services](#), all cited above.

<sup>7</sup> [The EU Citizens' Agenda: Europeans have their say](#), cited above.

[http://ec.europa.eu/justice/citizen/files/eu-citizen-brochure\\_en.pdf](http://ec.europa.eu/justice/citizen/files/eu-citizen-brochure_en.pdf)

In light of these circumstances, it is therefore to be welcomed that in its Decision<sup>8</sup> implementing the Equality and Citizenship Programme for the period 2014 to 2020<sup>9</sup> the Commission will continue to support activities aiming to promote the free movement of persons as has been the

**Case study: Cuts in legal aid are affecting the ability of EU citizens to access justice**

*Legal aid aims to provide state-funded legal advice and representation for those who cannot afford to pay for the services of a lawyer. Legal aid is a vital component in the functioning of justice systems. The right to legal aid is guaranteed by Article 47 of the EU Charter of Fundamental Rights.*

*However, the austerity cuts imposed in several Member States have led to a reduction in legal aid in order to bring proceedings before the first-level court in cases relating to residence rights, social security or employment issues.*

*Legal aid has also been cut in Germany, Ireland and Portugal according to the EU's Fundamental Rights Agency, as well as Belgium and the Netherlands.*

*Sources: FRA, "Fundamental rights: key legal and policy developments in 2013" and "Fundamental rights: challenges and achievements in 2012"; Tilburg University "Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?"*

case in previous years<sup>10</sup>. However, further resources need to be dedicated to supporting civil society groups that deliver direct assistance to EU citizens and their family members<sup>11</sup>. It should also review its opposition to funding "actions consisting in legal actions"<sup>12</sup>: supporting civil society groups to litigate strategic issues relating to free movement in the national courts will reduce the Commission's substantial enforcement burden<sup>13</sup>.

While the newly-adopted Directive on the free movement of workers<sup>14</sup> will hopefully assist EU citizens assert their rights to equal working conditions, its impact is likely to be limited. The Directive only applies to workers, it does not relate to residence formalities and, although Member States will be required to ensure that civil society organisations are allowed to "engage ... in any judicial and/or administrative procedure provided for the enforcement of [EU workers'] rights" this is subject to compliance with national rules of procedures such as those relating to legal representation. The Directive does not

<sup>8</sup> Commission [Decision C\(2014\) 2257](#) and [annual work plan for 2014](#).

<sup>9</sup> [Regulation 1381/2013](#) establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020.

<sup>10</sup> See further the Commission's [annual work programmes](#) for implementation of Council Decision 2007/252 establishing for the period 2007-2013 the specific programme Fundamental Rights and Citizenship as part of the General programme Fundamental Rights and Justice.

<sup>11</sup> Following the 2013 call of the Fundamental Rights and Citizenship programme, only [one out of thirty funded projects](#) will be supported by the European Commission in respect of the free movement of persons. This will fund local welcome policies for EU migrants by the Municipality of Amsterdam.

<sup>12</sup> See [Guide for Applicants – Action grants JUST/2013/AG](#), 2013.

<sup>13</sup> According to the Commission "1566 individual queries on free movement and residence issues were submitted to the Commission [between 1 January 2011 and 31 March 2013], of which 581 were registered as formal complaints. The Commission also replied to 147 European Parliament questions and 137 petitions.", *Report on progress towards effective EU Citizenship 2011-2013*, cited above.

<sup>14</sup> [Directive 2014/54](#) on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

provide for concrete remedies or regulate evidence<sup>15</sup>. Regrettably, the Directive fails to contain any provision that guarantees that access to justice should be “expeditious and either free of charge or inexpensive”<sup>16</sup> to give further substance to the right to an effective remedy that is guaranteed by the EU Charter of Fundamental Rights<sup>17</sup>.

The Court of Justice has previously observed that citizens have a full role to play in the enforcement of EU law<sup>18</sup>. Empowering civil society groups to inform and assist mobile citizens will ensure that citizens can make effective use of their fundamental right of free movement<sup>19</sup> and overcome obstacles that may come their way.

*These recommendations were formulated by the EU Rights Clinic’s Legal Supervisor, Anthony Valcke, at the occasion of the [2014 conference of the Fédération Internationale du Droit Européen](#) which focused on EU citizenship and the final conference of the [EUCROSS](#) project that examines the relationship between cross-border activities of EU residents and their collective identities.*

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<sup>15</sup> See further Steve Peers, [The new Directive on discrimination against EU citizen workers: spitting into the wind?](#), EU Law Analysis Blog.

<sup>16</sup> To borrow the terminology of Article 6 of [Directive 2003/4](#) on public access to environmental information.

<sup>17</sup> Article 47 of the [Charter of Fundamental Rights of the European Union](#).

<sup>18</sup> In *Van Gend & Loos (Case 26/62)*, the Court remarked that “[t]he vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by [Articles 258 and 259] to the diligence of the Commission and of the Member States.”

<sup>19</sup> The right of free movement is guaranteed by Article 45 of the [Charter of Fundamental Rights of the European Union](#).