

## Strategy 5: Member states should deepen their collaboration on the free movement of persons

*Member States can only develop appropriate and effective responses to challenges generated by the free movement of persons through cooperation guided by independent expertise.*

Despite the alarmist tone of the joint letter sent the Austrian, British, Dutch and German governments to the Irish Presidency of the European Council<sup>1</sup> – which appeared to call into question the very idea of the free movement of persons<sup>2</sup> – the letter did raise some legitimate concerns concerning abuses. The collection of data recommended as part of our previous strategy<sup>3</sup> would enable to determine the scale of the problem. Tailored solutions could then be developed to address these abuses on the basis of empirical evidence.

In formulating these solutions, transparent cooperation between Member States is the key. Such cooperation should be guided by independent expert advice and coordinated by the Commission. It is preferable to a situation where each Member States goes its own way by taking unilateral action that results in a clamp down on legitimate forms of free movement in a blind attempt to curb abuses.

While the Commission has established a group of Member States' experts on the practical implementation of Directive 2004/38/EC<sup>4</sup>, there is no legal instrument that provides a framework of its operation. As a result, the minutes of its meetings are not made available to the public and nor are its recommendations or other documents which it produces. Moreover, there is no involvement of civil society organisations that could participate as members or observers.

The EU institutions should therefore give consideration to the establishment of a formal network that links together the national authorities and involves civil society. The aim would be for the network to develop best practices on free movement<sup>5</sup> on an EU-wide basis and foster collaboration between national authorities<sup>6</sup>. Such a network should be under a duty to provide information on free movement to the public<sup>7</sup> in order to ensure transparency of its proceedings and promote the sharing of best practices.

The creation of this network could include but not be limited to the following options:

- Expanding the remit of the European Migration Network<sup>8</sup> established under Council Decision 2008/381<sup>9</sup> that presently gives national authorities the possibility of exchanging

<sup>1</sup> A copy of this letter is accessible [here](#).

<sup>2</sup> See further the European Policy Centre, [Strong attack against the freedom of movement of EU citizens: turning back the clock](#), 2013, which highlights the absence of concrete evidence on the subject:

<sup>3</sup> Strategy 4: Member states should collate better statistics on the free movement of persons can be found [here](#).

<sup>4</sup> [Report on progress towards effective EU Citizenship 2007-2010 \(COM\(2010\) 602\)](#).

<sup>5</sup> Such a network would allow Member States to learn from local initiatives such as the "[EU Migrant street coaching](#)" which aims to prevent the abuse of EU workers in Rotterdam (the Netherlands).

<sup>6</sup> There are a number of examples of such local collaboration, most notably as regards cross-border mobility such as [Border People](#) between Ireland and the UK, and [Ibermovilias](#) between Portugal and Spain.

<sup>7</sup> This is the case for the Europe Migration Network which "*also serve[s] to provide the general public with information*" migration in accordance with Article 1 of Decision 2008/381.

<sup>8</sup> Further information on the European Migration Network can be found [here](#).

best practices in migration and asylum and is coordinated by the Commission's Directorate General for Home Affairs;

- Expanding the remit and membership of the Advisory Committee on Free Movement of Workers<sup>10</sup> established under Regulation 492/2011<sup>11</sup> (originally Regulation 1612/68) which brings together representatives from the Member States, trade unions and employers' representatives and is supported by the Commission's Directorate General for Employment and Social Affairs; or
- Creating a new advisory committee similar to the Advisory Committee on Free Movement of Workers which has the mandate to discuss EU Citizenship and the free movement of

***Case study: Formalising cooperation between Member States would promote transparency***

Although the Commission has established a group of Member States' experts on the practical implementation of Directive 2004/38, this group is not governed by an official legal instrument. Unlike the situation of other cooperation networks existing in the area of free movement and immigration the group's work is not made public.

Establishing a cooperation network on the basis of a formal legal instrument could ensure that its findings are made public and ensure the transparency of its proceedings. This would promote the wider dissemination of best practices. It could also establish mechanisms for participation by civil society groups.

persons in general under the auspices of the Commission's Directorate General for Justice.

Whatever the form such a network may take, it will be crucial for it to be linked to other specialised networks, such as the FreSsco network<sup>12</sup>, in such a way that it can request research and studies on specific issues relating to the free movement of persons. This will encourage a coordinated approach to policy-making based on independent expert advice.

It is only through cooperation that is guided by independent expertise that Member States will be able to develop appropriate and effective methods to respond to challenges that might be generated by the free movement of persons.

*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.*

© 2014 Anthony Valcke, Legal Supervisor, EU Rights Clinic – all rights reserved

<sup>9</sup> Council [Decision 2008/381](#) establishing a European Migration Network.

<sup>10</sup> Further information on the Advisory Committee on the Free Movement of Workers can be found [here](#).

<sup>11</sup> [Regulation 492/2011](#) on freedom of movement for workers within the Union.

<sup>12</sup> The network of independent experts on free movement of workers and social security coordination – led by the Ghent University – merges the activities of the [Network of experts on free movement of workers](#) and the [trESS network](#) which focussed on training and reporting on European Social Security.