



BULLETIN

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Reforming the Free Movement of Labour: The Scope of British–Polish Cooperation

Roderick Parkes, Anita Sobják

On 30th May, the European Commission took the UK to the European Court of Justice for non-compliance with Directive 2004/38 on the free movement of workers. The UK had been leading calls amongst older Member States for a restriction of the directive's provisions. Newer Members have resisted the discussion, worried about eroding a principle of EU integration of real benefit to their citizens. Yet, if the discussion is not soon broached, the older Members will choose unilateral channels. As a major origin country for labour migration, Poland should build a coalition of newer Members to leverage a more constructive approach.

Mobility rates amongst EU citizens are low—those living in another Member State amounted to only around 2.5% of the EU's population in 2011. Since labour mobility is important for the health of the economy and the establishment of an optimal currency area, the Union's focus has traditionally been on increasing flows. Yet for some time now, criticism of the free movement regime has been growing.

Two Problems Host Countries Face. Older Member States complain that the current regime fosters crime, with third-country nationals gaining access to welfare and rights to work throughout the EU by means of a sham marriage to an EU national. The free movement laws are also associated with human trafficking of EU citizens within the bloc. According to EU Commission figures from 2010, the highest number of presumed victims per 100,000 inhabitants was in Cyprus (6.3), the Netherlands (6), Bulgaria (5.7) and Romania (5.4). Assisted-return programmes are of little help since they are usually targeted at non-EU citizens.

Older Members are also experiencing pressure on the low-paid sector, education and healthcare services. In the UK, one quarter of foreign EU citizens are employed in so called elementary jobs—food-processing, agriculture, hospitality, cleaning or construction—and tend to settle in rural areas. Whilst certain stipulations can be made regarding their ability to support themselves financially, these are hard to enforce in countries where welfare benefits are universal and free at point of consumption. Moreover, those employed in the grey economy do not pay social contributions.

A Shift in the Terms of the Mobility Debate. Such concerns have pushed the accent from championing labour migration towards restricting it, particularly in the largest host countries. Luxembourg, which has by far the highest proportion of resident foreign EU citizens relative to its own native population (37% in 2011), and Austria, in sixth place with 4% as well as a high overall immigrant population, have long called for reform. Yet, perhaps the most significant shift towards a restriction occurred with the change of UK government three years ago. When still in opposition, the Conservative party pledged to cut net overall migration to tens of thousands by 2015. Since the government has little discretion over the free movement of EU migrants, it will struggle to meet its target.

Resistance to the idea of restriction has, however, been strong in Brussels. Stung by criticism about its failure to uphold the Schengen passport-free travel regime following the Arab Spring in 2011, the European Commission has responded with a special effort to enforce Directive 2004/38. In 2012, it began proceedings against 12 states for non-implementation, including Germany, which had imposed a re-entry ban on any EU citizen expelled from the country, as well as Austria and Sweden, which took a restrictive approach to family members of EU citizens. On 8th May, the Commission marked 2013, the “year of the citizen,” with a raft of proposals to facilitate the exercise of free

movement. And on 30th May, it took the UK to court for maintaining a system of tests on EU citizens' access to welfare benefits.

The Growing Momentum Towards Restriction. If the debate is sharpening it is because of the 1st January 2014 deadline for Member States to lift restrictions on immigration from Romania and Bulgaria. When these two joined the EU in 2007, other Member States introduced work restrictions for the maximum seven years. Most EU countries have since fully opened their labour markets, but the UK, along with Austria, Belgium, France, Germany, Luxembourg, Malta and the Netherlands, still requires Bulgarians and Romanians to have work permits.

There is unease about the upcoming liberalisation, particularly amongst British voters. In 2004, the UK opened its borders almost without safeguard. As only Sweden and Ireland did the same, the scale of immigration was greater than expected, the figures further inflated as migrants already in the country regularised. This time round, an official report estimates the number of new arrivals at just 15,000 instead of the alarmist claims of 350,000, pointing out that Britain is not a prime destination for nationals of these two countries. Yet the UK has broached the possibility of extending its restrictions not only on the two, but also on workers from crisis-hit Greece, Italy, Spain and Portugal.

Moreover, the UK has been uncharacteristically active in trying to build a coalition of governments around this issue. In late April, the British Home Secretary signed a letter with her Dutch, Austrian and German counterparts calling for a review of the free movement Directive at the June Justice and Home Affairs Council. The four demanded effective sanctions on abuse and fraud, as well as measures to alleviate pressures on social systems.

Avoiding False Remedies. In contrast to the calls for restriction, there have been recent signs of a constructive, if partial solution to the problems of criminality and welfare. Meeting in Vienna at the beginning of May, ministers and officials from across Europe discussed policy measures to better integrate EU citizens into domestic labour markets and societies. This "Welcome Culture" would encourage employers to help build their foreign employees' language skills and take responsibility for integration; improve recognition of EU migrants' qualifications; and boost broader societal acceptance of other EU citizens, not least by focusing on accelerating national citizens' own labour-market integration.

By conceiving of EU citizens for the first time as "immigrants," rather than as "practitioners of free movement," governments are dealing openly with the realities of the problem. There is, however, a subtext: immigrant integration measures may serve as a Trojan Horse for restriction. Language and cultural obligations are already imposed upon third-country immigrants to make travel and residence in the EU unattractive. Member States may turn to such underhanded channels if reform of the Directive is blocked. Such obligations would not only put off high-skilled and motivated EU citizens from moving within the Union, it would also entail the neglect of necessary integration efforts.

Recommendations. As with the citizens of other newer Members States, Poles clearly benefit from the principle of free movement. The increasing politicisation of the issue therefore poses a dilemma for Warsaw: to engage or not to engage? If Warsaw engages in the debate it may compromise the regime. This could prove unfortunate given that the UK's isolationism may undermine its restrictive coalition. But if Poland does not engage, it might miss its chance as a major sending country to give its perspective on the issue, thus leaving reform in the hands of the host countries. This would be a lost opportunity since host countries' policy failures have negative consequences for both sides.

The emigration of high-skilled workers from Central Europe may entail a "brain drain" unless they return home. This will be made worse should older Members introduce restrictions on newcomers, since those already in the West will stay put rather than risk losing their residence status. As for the citizens of newer Member States who end up working in the grey economy, they deprive their countries of origin of tax and social contributions, with negative implications upon their return. The introduction of new restrictions on access to public services by older Members will only push them further underground. Finally, crime problems are not simply "exported" by countries such as Romania and Bulgaria: failures to reduce trafficking in older Members disrupts crime-fighting efforts in the newer ones.

In the face of this dilemma, Poland should claim its role in the debate and attempt to engage other newer Members. Together, their mission should be to defuse populist motivations by underlining their willingness for cooperation and highlighting the fact that they too are affected by problems of free movement. The June Justice and Home Affairs Council meeting could be a good occasion for a coalition of newer Members to highlight the problems from their perspective and pressure London and its partners to find positive solutions.

In terms of practical measures, Poland should work with its partners on better operational cooperation and information-sharing to help reduce crime throughout the EU. The current debate relies on very poor information, which is partly a result of newer Members' reluctance to recognise the problem. As for integration, better pre-departure preparation by the newer Members is also needed—particularly for prospective migrants rural areas where information on mobility is often scarce and people emigrate without being aware of the risks, opportunities and obligations attached. Measures designed to help future emigrants integrate better into EU societies might be introduced into compulsory education but also carried out with recruiters and employers in the UK and elsewhere, and would complement current EU efforts to create a "Welcome Culture."