



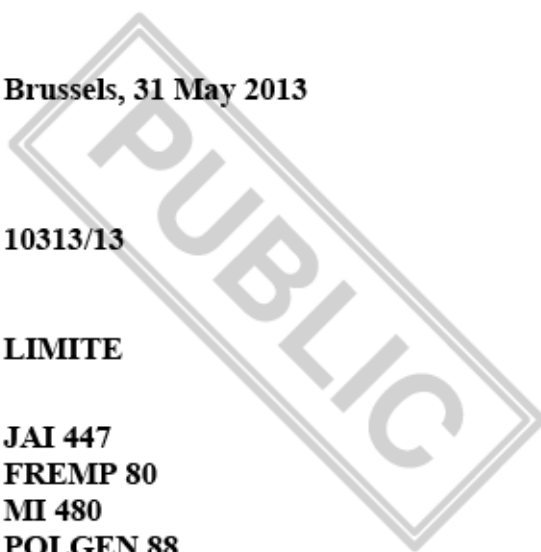
**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 31 May 2013**

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**NOTE**

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from: Presidency  
to: Council

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Subject: JHA Council, 6-7 June 2013  
- Issues related to the free movement of persons  
Letter from the Ministers of Interior of Austria, Germany, the Netherlands and the  
United Kingdom

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Delegations will find in the Annex a letter from the delegations of Austria, Germany, the Netherlands and the United Kingdom to be discussed on the Home Affairs day of the JHA Council on 6-7 June 2013.



REPUBLIC OF AUSTRIA  
FEDERAL MINISTRY OF THE INTERIOR



Federal Ministry  
of the Interior



Ministry of Security and Justice



Home Office

His Excellency  
Mr Alan SHATTER  
Minister for Justice and Equality  
President of the European Council  
for Justice and Home Affairs  
94 St. Stephen's Green,  
IRL - DUBLIN 2  
- Republic of Ireland -

Dear colleague,

Freedom of movement in Europe is one of the central achievements of the European integration process and one of the most important and visible benefits of the European Union for its citizens.

We are fully committed to the common European right to the freedom of movement. We will always welcome Union citizens who move to another EU country to work or to take up professional training or university studies.

However, the right of EU citizens to freedom of movement is not unconditional; rather, Article 21 of the Treaty on the Functioning of the European Union stipulates that Union citizens may move freely subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The limitations and conditions have been specified above all in Directive 2004/38/EC on the freedom of movement of persons.

Currently, a number of municipalities, towns and cities in various Member States are under a considerable strain by certain immigrants from other Member States. These immigrants avail themselves of the opportunities that freedom of movement provides, without, however, fulfilling the requirements for exercising this right.

This type of immigration burdens the host societies with considerable additional costs, in particular caused by the provision of schooling, health care and adequate accommodation. On top of this strain on vital local services, a significant number of new immigrants draw social assistance in the host countries, frequently without a genuine entitlement, burdening the host countries' social welfare systems.

As responsible Ministers we are committed to protecting the rights of those Union citizens who exercise their right to the freedom of movement in line with the common European regulations. However, we are equally committed to protecting the rights and legitimate interests of the citizens of our countries who have to shoulder the burden caused by the immigration of European citizens who actually fail to meet the requirements governing freedom of movement. And we are equally committed to preventing and combating the fraudulent use of the right of free movement by Union citizens or by third country nationals abusing free movement rights in order to circumvent national immigration controls.

This type of immigration threatens our common goal, which is to promote the mobility of those European citizens wishing to work, study or set up a business in another Member State, and to strengthen the social cohesion in the host societies by integrating new immigrants.

This kind of mobility between the Member States and the excessive strain on the social systems in the receiving societies threaten the acceptance of the European idea of solidarity, particularly if and when new immigrants seek the right to reside in another Member State through fraud or the systematic abuse of the right to free movement.

If Union citizens and the host Member States are to accept the right to free movement, we need to make sure that it is exercised responsibly and that abuse is combated in an effective manner.

For this reason, all necessary measures need to be taken to deal with the consequences of this type of immigration and to fight its causes. This includes legal as well as financial measures.

Member States must have at their disposal the necessary legal tools to fight abuse and fraud effectively in connection with the right to free movement.

However, the responsible authorities in the Member States have found that in many cases enforcing the applicable legal provisions is ineffective. It is true, for example, that persons who have acted fraudulently or abused the provisions governing the freedom of movement

may generally be expelled; the way the provisions are construed now, however, means that they may not be subject to a ban on re-entry at the same time. In fact, those who have actually been expelled because of fraud or document forgery cannot be stopped from re-entering the country virtually the next day.

It is not enough for Directive 2004/38/EC to stipulate requirements for free movement and to seek to prevent abuse and fraud, while Member States are unable to enforce the regulations because the sanctions are ineffective. This situation undermines the confidence of the citizens in the receiving states in the common European right to free movement.

While Article 35 of Directive 2004/38/EC does generally permit the Member States to adopt the necessary measures to combat abuse and fraud, it does not spell out what measures these could be and how the failure to comply should be sanctioned.

Bearing in mind the existing provisions of Directive 2004/38/EC, we wish to develop, together with the Commission, a common understanding of how to fight fraud and systematic abuse in connection with the freedom of movement more effectively. The aim should be a common understanding of what concrete actions and violations of provisions, alongside marriages of convenience, represent fraud or systematic abuse.

And we should also seek to interpret the Directive consistently in order to be able to take effective sanctions against fraud and the abuse of the right to move freely within the European Union. The sanctions to be discussed in this context include expulsion and bans on re-entry for appropriate periods.

At the same time we need practical measures to address the pressures placed on our social welfare systems. Arrangements at national or EU level that allow those who have only recently arrived in a Member State and have never been employed or paid taxes there to claim the same social security benefits as that Member State's own citizens are an affront to common sense and ought to be reviewed urgently.

We request the Council Presidency to put this issue on the agenda of the upcoming Justice and Home Affairs meeting in June this year, so that these matters can be discussed.

We call upon the Member States of origin to permanently improve the local living conditions of those concerned. We also call upon them to make sure that the EU funds which have already been set aside for these purposes are actually used to benefit those concerned. It is up to the Commission to carefully monitor whether the funds are spent in a targeted manner.

We call on the Commission to take note of the recent developments as regards the misuse of the right to move freely within the EU, and the legitimate concerns of the citizens in the receiving states. We also call upon the Commission to counteract this development and to draw up proposals swiftly which can be submitted to the Member States for further consultations. Finally, we call upon the Commission to make sure that the earmarked funds are put to

effective use. At the same time we need to look at whether further funds can be used for the integration of those concerned. In this context Vice-President Reding, Commissioner Malmström, and Commissioner Andor will receive copies of this letter.

Yours sincerely



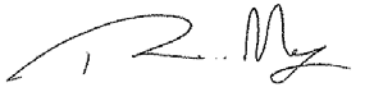
Johanna Mikl-Leitner  
Federal Minister of the Interior, Austria



Dr. Hans Peter Friedrich  
Federal Minister of the Interior, Germany



Fred Teeven  
Minister for Immigration, The Netherlands



The Rt Hon Theresa May MP  
Secretary of State for the Home Department, United Kingdom

*Copies to responsible Ministers of EU MS; Commissioners Reding, Malmström and Andor*