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MEMO

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Free movement of workers: Commission improves the application of worker's rights – frequently asked questions

(See also [IP/14/421](#))

The European Commission proposed a new Directive to make it easier for people to exercise their right to work in another Member State on 26 April 2013 (see [IP/13/372](#)). The European Parliament approved the proposal on 12 March 2014 (see [STATEMENT/14/67](#)). The proposal was definitely adopted by the EU's Council of Ministers on 14 April 2014 (See [IP/14/421](#)).

What are the main obstacles to free movement of workers?

The right to free movement of workers within the EU was enshrined in the Treaty more than 50 years ago and is one of the pillars of the Single Market. Article 45 of the [Treaty on the Functioning of the European Union](#) (TFEU) sets out the right of EU citizens to move to another Member State for work purposes. This right entails in particular the right not to be discriminated against on the grounds of nationality as regards access to employment, remuneration and other conditions of work. [Regulation \(EU\) No 492/2011](#) further details the rights derived from free movement of workers and defines specific areas where discrimination on grounds of nationality is prohibited.

Nevertheless, European citizens can still face problems and obstacles when moving within the EU borders.

The numerous complaints addressed to the Commission reveal that many workers are discriminated against on the basis of their nationality when applying for jobs, even though there is also proof that EU migrant workers are - more often than nationals - over-qualified for the posts they hold (see [Employment and Social Developments in Europe review 2011](#), page 272). In addition, there are a range of discriminatory practices and obstacles that affect EU migrant workers once they have obtained a post.

Experience shows that although many obstacles are of a cultural or socio-economic nature, there is evidence documenting the existence of obstacles of an administrative or legal nature. These hamper citizens from enjoying the rights which are conferred on them directly by EU law.

Examples of discriminatory practices and obstacles include:

- different recruitment conditions for EU nationals
- nationality conditions to access certain posts
- nationality quotas for EU citizens (e.g. in the field of professional sport)
- different working conditions in practice (remuneration, career prospects, grade, etc.)

- access to social advantages (such as study grants) subject to conditions which are more easily met by nationals than by EU citizens (e.g. a residence condition)
- professional experience acquired in other Member States (in particular in the public sector) not properly taken into account
- professional qualifications acquired in other Member States not taken into account or taken into account in a different way.

These practices and obstacles are compounded by the fact that citizens working in a foreign country are often unaware of where to find information about their rights. Indeed, in an October 2010 [public opinion survey](#) conducted by the Commission, 67% of respondents indicated that they were not well informed or not informed at all regarding their rights as EU citizens. The proposed Directive would target this issue by providing the means to bridge the gap between EU rights and practice, and therefore allow workers to exercise fully their rights.

Why is the European Commission proposing this Directive?

EU rules on free movement of workers are long-established and clear but the way in which they are applied in practice can give rise to barriers and discriminatory practices for EU migrant workers when working or looking for work in another Member State. Even though information tools and procedures to enforce workers' rights already exist at national level, there is a lack of awareness and consistency in the application of workers' rights to free movement.

The proposal for a Directive would give full effect to the application of Article 45 TFEU and [Regulation \(EU\) No 492/2011](#) while giving Member States flexibility to design implementing measures best suited to their national context. In some Member States, for example, equality bodies or other similar structures already exist and only certain adjustments to the powers and tasks of such bodies will be necessary. The proposed Directive would require Member States to take concrete actions to guarantee a more effective and homogeneous application of EU law on free movement of workers in practice.

Infringement proceedings launched by the Commission concerning breach of workers' right to free movement have invariably been against countries where information and support systems are not effective. The Directive would therefore aim to reduce the number of infringement cases against Member States.

Is free movement of workers sustainable in the context of the economic crisis, in particular in those Member States with high rates of unemployment?

Ensuring adequate matching between labour supply and demand is even more crucial in the current economic crisis, where there are massive gaps between the EU Member States in terms of unemployment rates and job vacancy rates. This was shown by the latest [European Vacancy Monitor](#) (see [IP/14/184](#)).

Even in the current context, any restriction on free movement of workers can only be a temporary derogation. This is why remaining transitional restrictions on the free movement of Bulgarian and Romanian workers ended on 31 December 2013, in line with the Accession treaties, and Member State restrictions on Croatian workers must end on 1 July 2020.

Is there not a risk of creating a "brain drain" in certain countries?

Whilst it is true that the home country loses out in the short-term when a worker moves abroad, the situation is more beneficial than if the worker stayed in the home country unemployed. Whilst the migrant worker remains employed abroad, he can contribute to the economy of his home state via remittances. When there is an economic upturn, workers overwhelmingly go back to their home country to make use of the skills they have acquired in the meantime. This was demonstrated by the number of Polish workers who moved to the UK to work after 2004 but have now returned to Poland. Nonetheless, there is always a role for measures to boost economic development in countries with fewer resources, for example with a better use of the structural funds.

Does free movement of workers lead to so-called "social benefit tourism"?

No. The vast majority of people moving to another Member State do so to work. This is borne out by public opinion surveys and statistical evidence such as EU barometers on mobility and the EU labour force survey that show that the main incentives for citizens moving to another Member State are related to employment and work prospects.

According to independent studies and data provided by Member States, EU citizens moving to another Member State are more likely to be economically active than nationals of the host Member States and less likely to claim social benefits. They tend to be net contributors to the welfare systems, and are therefore unlikely to represent a burden on the welfare systems of host Member States. No Member State has given the Commission any statistical evidence that "social benefits tourism" is significant or widespread.

Looking at the population of migrants by labour status, EU- labour force survey data (2012Q3) indicate that 68.1% of the EU working-age (15-64) citizens living in another Member State are in employment and only 9.3% are jobseekers (Eurostat, EU- labour force survey). Finally, among the mobile EU citizens who are unemployed, the vast majority lost their job in their current destination country, not before migrating.

What specific examples does the Commission have of obstacles and discrimination met by people working or seeking work in another EU country?

In **The Netherlands**, Lukasz, a Polish worker in the construction sector, doing the same job as his Dutch colleagues, receives a lower salary. This nationality-based discrimination, operated by private employers in relation to working conditions including salary, is prohibited by Article 45 TFEU and Article 7 (1) of Regulation 492/2011. Lukasz can claim before the national courts for equal pay but it could be very difficult and costly for him to initiate administrative and/or judicial procedures. The proposal for a Directive, in its Article 5 (equality bodies), would help people like Lukasz by requiring Member States to establish bodies for assisting and advising EU migrant workers in such a situation. Moreover, Article 4 of the proposal, would allow associations with a legitimate interest or trade unions to engage, either on behalf of or in support of Lukasz in any judicial and/or administrative procedure provided for the enforcement of equal treatment rights.

Job advertisements by a private company for English teachers in **Spain** required applicants to be native speakers. As a consequence, Aliute, a Lithuanian candidate with sufficient knowledge of English to carry out the job was not accepted. According to the EU law on free movement of workers, language requirements must be reasonable and necessary for the job in question and cannot constitute grounds for excluding workers from other Member States. Once the Directive were adopted and implemented, Aliute, could ask for assistance and advice from the equality bodies foreseen in Article 5 of the proposal.

Helmut, an Austrian teacher with 15 years of work experience in Austria was hired by a public school in **Italy**. However, his work experience was not taken into account for determining his salary. He was put on the lowest pay scale. According to EU law on free movement of workers migrant workers' previous periods of comparable employment acquired in other Member States must be taken into account by public sector employers for the purpose of access to posts and for determining working conditions in the same way as working periods acquired in the host Member State's system. The proposed Directive would allow Helmut to benefit from the new enhanced information requirements imposed on Member States by and, if he went to court to assert his right to pay commensurate with his experience, he could be assisted by the new equality bodies required by the proposed Directive.

Tino is an Italian national who plays senior hockey on skates in **France**. He resides in France and holds a working contract with a French hockey on skates club. In June 2012, the French Roller Sports Federation adopted a new rule which stipulates that only three foreign players can take part in each official match. Tino is concerned that he will lose his job because of this new rule. Although the French Roller Sports Federation is strictly not a government body, the settled case-law of the Court of Justice makes clear that Article 45 TFEU can be relied upon in these circumstances to outlaw discrimination on grounds of nationality. Tino would be able to benefit from Article 5 of the proposed Directive as it would require Member States to set up equality bodies to provide support to migrant workers to enforce their rights.

Joanne, a UK national working in **Finland**, complained that she was unable to get her fixed-term contract converted into an open-ended contract on the grounds that she did not speak Finnish. Her employer was nonetheless happy to offer her another fixed-term contract. This form of indirect discrimination in relation to working conditions is contrary to Article 7(1) of Regulation 492/2011. Article 4 of the proposed Directive would ensure, for example, that Joanne's trade union could take action to assist her to enforce her rights under the Regulation.

José, a Spanish national looking for work, was told by the employment services in **Ireland**, that he could not apply for certain jobs as the employer would accept only Irish nationals. Article 5 of Regulation 492/2011 requires a Member State's employment services to give the same assistance to nationals of other states as to their own nationals. Article 5 of the proposed Directive would require Member States to set up a designated equality body to which people like José could complain about the practice he experienced in the Irish employment office.

Jean-Claude is a frontier worker who works in **Luxembourg**, but lives with his family in France. His son wants to apply for a study grant from Luxembourg but is prevented from doing so due to the requirement that he must be resident there. Article 7(2) of Regulation 492/2011 confers equal treatment as regards social advantages on the children of migrant workers. Jean-Claude and his son would be able to benefit from Article 5 of the proposed Directive as it would require Member States to set up an equality body to assist migrant workers and their family members to pursue their rights.

Kasia, a Polish national, worked in the **UK** but then was injured in a road traffic accident. The accident prevented her from working and, due to complications in her condition; she was unable to return to work for at least 6 months. Kasia made a claim for an incapacity benefit to enable her to have some income whilst she was unable to work. Her claim was refused on the basis that she was an inactive migrant and not entitled to such a benefit. But under EU law a worker who is temporarily incapacitated as a result of illness or accident retains the status of worker. Kasia was therefore entitled, even whilst not working, to the same social advantages as UK nationals. Kasia would benefit from the new enhanced information duties imposed on Member States by Article 7 of the proposed Directive. Moreover, Article 4 of the proposed Directive would ensure, for example, that NGOs with a legitimate interest could assist her to request a review of the welfare authorities' decision.

Access to all jobs in the Ministry of the Interior in **Bulgaria** are restricted to Bulgarian nationals. Such restrictions are, according to the Court of Justice's interpretation of Article 45 TFEU, permissible only in very restricted circumstances. Dimitrios is a qualified lawyer but was prevented from applying to work in the Bulgarian Ministry on the basis that he is a Greek national. Article 5 of the proposed Directive would require Bulgaria to set up a designated equality body in Bulgaria to advise Dimitrios on the legality of the exclusion and, if appropriate, to assist him to challenge his exclusion from applying for the job.

Biser is a Bulgarian national working in the construction industry in **Germany**. His employer pays him a salary but does not make any social insurance payments for him. When Biser suffered an accident at work, he found out he was not entitled to healthcare for his condition. Articles 4 and 5 of the proposal would require Germany to establish associations and equality bodies to advise and assist EU migrant workers on their rights and on how to enforce them.

What do we know about mobility within the EU?

Mobility within the EU remains relatively low: according to the EU-Labour force survey, in the third quarter of 2013, around 8 million economically active EU citizens were residing in another EU Member State than their own, making up only around 3.3% of the total EU labour force.

A 2009 Eurobarometer on geographical and labour mobility showed that around 10 % of EU citizens have already worked and lived in another country at some time, but 38 % for less than one year (and 13% for a period between one and two years).

Data available on intra-EU mobility and comparison to other regions in the world (US, Australia, Canada) lead to the conclusion that the right to free movement is underused.

The perception from workers is that mobility is potentially costly for them and subject to many obstacles. This led to 60% of them expressing the opinion that free movement of workers is good for the European integration but only 48 % of them stated that it was a good thing for individuals (2009 Eurobarometer on labour and geographical mobility).

EU citizens working in an EU Member State other than their own (excluding cross-frontier workers), by nationality, in thousands (and in % of total employment in their origin country), 2012

Citizens from:	Number of workers in thousands	In % of total employment in the origin country
AT	138.9	3.3
BE	114.1	2.5
BG	221.8	7.6
CY	16.1	4.1
CZ	69.7	1.4
DE	376.0	0.9
DK	53.3	2.0
EE	25.2	4.0
ES	210.0	1.2
FI	49.0	2.0
FR	315.3	1.2
EL	241.7	6.4
HU	121.4	3.1
IE	196.8	10.7
IT	676.2	3.0
LT	142.8	11.2
LU	16.5	7.0
LV	75.6	8.5
MT	8.1	4.7
NL	228.4	2.7
PL	1,016.3	6.5
PT	542.9	11.7
RO	1,212.9	13.1
SE	59.4	1.3
SI	19.2	2.1
SK	121.6	5.2
UK	329.8	1.1
All EU citizens	6,599.0	3.1

Source: Eurostat, EU-LFS. Note: Value for MT workers unreliable due to small sample size.

EU-nationals working in another Member State in 2012, in thousands and in % of total population

Member State of Residence	EU nationals in thousands	EU nationals in % of total population
BE	300.5	6.6
BG	:	:
CZ	34.1	0.7
DK	81.2	3.0
DE	1,612.0	4.0
EE	2.0	0.3
IE	200.4	10.9
EL	59.0	1.6
ES	761.7	4.4
FR	608.4	2.4
IT	769.3	3.4
CY	53.8	13.8
LV	2.1	0.2
LT	:	:
LU	107.8	45.7
HU	17.2	0.4
MT	1.8	1.0
NL	165.7	2.0
AT	226.3	5.4
PL	10.4	0.1
PT	27.5	0.6
RO	:	:
SI	2.4	0.3
SK	3.1	0.1
FI	29.0	1.2
SE	118.8	2.6
UK	1,402.0	4.8
EU27	6,599.0	3.1

Source : Eurostat, EU-Labour force Survey

For more information

[IP/13/372, STATEMENT/14/67](#)

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