



Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament  
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa  
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament  
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European  
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

## FREE MOVEMENT OF WORKERS

One of the four freedoms enjoyed by EU citizens is the free movement of workers. This includes the rights of movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State and be treated on an equal footing with nationals of that Member State. Restrictions apply in some countries for citizens of new Member States. The rules on access to social benefits are currently shaped primarily by the case law of the Court of Justice.

### LEGAL BASIS

Article 3(2) of the Treaty on European Union (TEU); Articles 4(2)(a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (TFEU).

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; Regulation (EU) No 492/2011 on freedom of movement for workers within the Union; Regulation (EC) No 883/2004 on the coordination of social security systems and its implementing Regulation (EC) No 987/2009.

Case law of the Court of Justice (CoJ) of the European Union.

### OBJECTIVES

Freedom of movement for workers is one of the founding principles of the EU. It is laid down in Article 45 of the TFEU and is a fundamental right of workers. It entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

### ACHIEVEMENTS

At the end of 2014, according to Eurostat data, 3% of EU citizens (15.3 million people) resided in Member States other than those of which they are citizens. According to a 2010 Eurobarometer survey, 10% of people polled in the EU replied that they had lived and worked in another country at some point in the past, while 17% intended to take advantage of the right to free movement in the future.

#### A. Current general arrangements on freedom of movement

Any national of a Member State has the right to seek employment in another Member State in conformity with the relevant regulations applicable to national workers. He or she is entitled to receive the same assistance from the national employment office as nationals of the host Member State, without any discrimination on grounds of nationality, and also has the right to stay in the host country for a period long enough to look for work, apply for a job and be recruited. This right applies equally to all workers from other Member States, whether they are on permanent contracts, are employed as seasonal or cross-border workers or provide services. Workers may

not be discriminated against, for example with regard to language requirements which may not go beyond what is reasonable and necessary for the job in question.

These rules do not apply to posted workers, who are not availing themselves of their free movement rights: instead, it is the employers who are making use of their freedom to provide services in order to send workers abroad on a temporary basis. Posted workers are protected only by the Posting of Workers Directive (Directive 96/71/EC), which provides for certain minimum terms and conditions of employment in the host state, and the associated enforcement directive (Directive 2014/67/EU), in order to prevent the undercutting of local service providers. In view of the considerable discrepancies between Member States as regards the posting of workers, the Commission proposed a revision of the Posting of Workers Directive in March 2016, including the altered perspective that the same work in the same place should be rewarded by the same pay. By May 2016, eleven national parliaments had triggered the ‘yellow card’ procedure owing to subsidiarity concerns. In July 2016, the Commission re-examined the concerns raised, but decided to maintain its original proposal. The proposal is currently being discussed in Parliament.

## 1. Workers’ rights of movement and residence

Directive 2004/38/EC introduces EU citizenship as the basic status for nationals of the Member States when they exercise their right to move and reside freely on EU territory. For the first three months, every EU citizen has the right to reside on the territory of another EU country with no conditions or formalities other than the requirement to hold a valid identity card or passport. For longer periods, the host Member State may require a citizen to register his or her presence within a reasonable and non-discriminatory period of time.

Migrant workers’ right to reside for more than three months remains subject to certain conditions, which vary depending on the citizen’s status: for EU citizens who are not workers or self-employed, the right of residence depends on their having sufficient resources not to become a burden on the host Member State’s social assistance system, and having sickness insurance. EU citizens acquire the right of permanent residence in the host Member State after a period of five years of uninterrupted legal residence.

Directive 2004/38/EC amended Regulation 1612/68/EEC with regard to family reunification and extended the definition of ‘family member’ (formerly limited to spouse, descendants aged under 21 or dependent children, and dependent ascendants) to include registered partners if the host Member State’s legislation considers a registered partnership to be the equivalent of a marriage. Irrespective of their nationality, these family members have the right to reside in the same country as the worker.

## 2. Employment

As regards working and employment conditions in the territory of the host Member State, workers who are nationals of another Member State cannot be treated differently from national workers because of their nationality. This applies in particular to matters pertaining to recruitment, dismissal and remuneration, and to occupational training and retraining measures. Nationals of one Member State working in another have the same social and tax benefits and access to housing as national workers, and are entitled to equal treatment in respect of the exercise of trade union rights.

The right to remain in the host country after stopping work is now laid down in Directive 2004/38/EC. Job seekers have the right to reside for a period exceeding six months (CoJ, Case C-292/89 Antonissen) without having to meet any conditions if they continue to seek employment in the host Member State and have a ‘genuine chance’ of finding work; during

this time they cannot be expelled. After acquiring the right of permanent residence in the host Member State, EU citizens are no longer subject to any conditions (such as sufficient financial means) but can, if necessary, rely on social assistance in the host Member State in the same way as its nationals can.

Since the introduction of EU citizenship, the CoJ has extended access to social benefits for EU citizens residing in another Member State (Cases C-184/99 *Grzelczyk*, C-224/98 *D'Hoop*). The status of first-time job seekers is currently the subject of intense discussion, as they do not have a worker status to retain. In Cases C-138/02 *Collins* and C-22/08 *Vatsouras*, the CoJ found that such EU citizens had a right of equal access to a financial benefit intended to facilitate access to the labour market for job seekers; such a benefit consequently cannot be considered to be 'social assistance', to which Directive 2004/38/EC excludes access. However, Member States may require a real link between the job seeker and the labour market of the Member State in question. The CoJ further clarified the situation of previously employed workers in its *Alimanovic* judgment (C-67/14). The individuals concerned had worked, and had consequently retained their worker status for a further six months after becoming unemployed (Article 7(3) (c) of the directive). However, the CoJ held that following the expiry of this period EU citizens can only claim equal treatment with nationals, and thus access to social assistance, if their residence in the Member State concerned complies with the conditions of the directive. Although Article 14(4)(b) of the directive prohibits the expulsion of unemployed EU citizens as long as they continue to seek employment, Article 24(2) expressly allows a Member State to refuse to grant social assistance to EU citizens whose right of residence is based solely on this non-expulsion provision. The CoJ further held that — contrary to expulsion decisions for which the individual situation of the EU citizen concerned has to be taken into account — no individual assessment is necessary when it comes to access to social assistance.

Conversely, the claiming of benefits by economically inactive EU citizens can be made dependent on their legal residence — which in itself presupposes sufficient financial means. However, the CoJ held in the *Brey* judgment (C-140/12) that the mere fact of claiming a benefit is not sufficient to prove that a person is not self-sufficient, and the particular circumstances of each case need to be considered when assessing the burden that granting a benefit would place on the national social assistance system. In *Brey*, the CoJ restated its *Trojani* case law (C-456/02), whereby as long as an economically inactive citizen has not been expelled, his or her right to equal treatment in relation to social benefits remains intact. However, the CoJ recently retreated considerably from this case law in rejecting the right to benefits of an inactive EU citizen who had entered the host Member State solely for the purpose of claiming benefits (Case C-333/13 *Dano*): it held that the right to equal treatment, which would include access to benefits, presupposes legal residence under Directive 2004/38/EC, which the claimant did not have owing to a lack of sufficient financial means. The CoJ confirmed the precedents of case law in 2016 (Case C-308/14, *Commission v UK*), holding that there is nothing to prevent the granting of social benefits to EU citizens who are not economically active being made subject to the substantive condition that those citizens meet the necessary requirements for possessing a right to reside lawfully in the host Member State.

By doing so, the CoJ appears to allow Member States to withhold equal access to social benefits without needing to terminate the inactive citizen's residence right. This new approach could endanger social cohesion in host Member States, as it creates a subclass of EU citizens who cannot be expelled but have to make do without the social assistance received by nationals of that Member State who are in the same situation. In view of the law being shaped through the CoJ in such a way, the Commission, in its proposal to amend the social security coordination rules, proposes clarifying the rights of non-active EU citizens moving abroad ([5.10.4](#)).

Finally, Article 35 of the directive expressly grants Member States the power, in the event of abuse or fraud, to withdraw any right conferred by the directive.

#### **B. Restrictions on freedom of movement**

The Treaty allows a Member State to refuse an EU national the right of entry or residence on the grounds of public policy, public security or public health. Such measures must be based on the personal conduct of the individual concerned, which must represent a sufficiently serious and present threat to the fundamental interests of the state. In this regard, Directive 2004/38/EC provides for a series of procedural guarantees.

Under Article 45(4) TFEU, free movement of workers does not apply to employment in the public sector, although this derogation has been interpreted in a very restrictive way by the CoJ, according to which only those posts involving the exercise of public authority and of responsibility for safeguarding the general interest of the state concerned (such as its internal or external security) may be restricted to its own nationals.

During a transitional period after the accession of new Member States, certain conditions can be applied that restrict the free movement of workers from, to and between those Member States. These restrictions do not concern travel abroad or self-employed activity, and they may differ from one Member State to another. The remaining transitional periods applicable to the accession of Bulgaria and Romania in 2007 were lifted on 1 January 2014. There are currently transitional periods for Croatian nationals, which must be lifted by July 2020 at the latest.

#### **C. Measures to encourage freedom of movement**

As a basic principle, any EU citizen should be able to practise his or her profession freely in any Member State. However, the practical implementation of this principle is often hindered by national requirements for access to certain professions in the host country. The system for recognition of professional qualifications has been reformed to help make labour markets more flexible, and to encourage more automatic recognition of qualifications. Directive 2005/36/EC (as modernised by Directive 2013/55/EU) on the recognition of professional qualifications consolidates and updates the 15 existing directives covering almost all recognition rules ([3.1.5](#)), and provides for innovative features such as the European professional card and the mutual evaluation of regulated professions.

The EURES (European Employment Services) cooperation network involves the Commission, the public employment services of the EU and EEA member states and other partner organisations, and Switzerland (see [5.10.3](#)). Through Regulation 2016/589 (replacing former Regulation 492/2011), EURES from 2016 has further improved the self-service tools on its digital platform so as to become a real Europe-wide job mobility portal, introducing automated matching of job seekers' skills and job openings. Member States should now make available to the EURES portal all job vacancies and job applications published at national level, and the portal should provide general information on living and working conditions in the country of destination, including language courses, and provide more personalised career and recruitment advice. It will also better involve social partners in the network and provide better support for cross-border partnerships.

The EU has made major efforts to create an environment conducive to worker mobility. These include:

- a European health insurance card and a directive on cross-border healthcare;
- the coordination of social security schemes thanks to Regulation (EC) No 883/2004 and implementing Regulation (EC) No 987/2009 ([5.10.4](#));

- the adoption in April 2014 of Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights;
- the adoption in April 2014 of Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, which specifically provides for new means of redress for workers discriminated against.

## **ROLE OF THE EUROPEAN PARLIAMENT**

The European Parliament considers all employment-related topics to be among the EU's main priorities, and has always stressed that the EU and its Member States should coordinate their efforts in this regard and promote the free movement of workers as one of the objectives of the completed internal market. Parliament plays a dynamic role in establishing and improving the internal market, and has always energetically supported the efforts of the Commission in this area.

In its resolution of 16 January 2014 on respect for the fundamental right of free movement in the EU, Parliament recalled that the right of free movement for work purposes cannot be associated with abuse of social security systems (see also CoJ judgment in Case C-413/01 Ninni-Orasche), and called on the Member States to refrain from any actions that could affect the right of free movement.

As regards social security coordination, in its January 2014 resolution on social protection for all, Parliament called on the Commission to review the legislation and monitor the implementation and coordination of social security systems in order to safeguard EU migrant workers' benefit entitlements.

[Marion Schmid-Drüner](#)  
[06/2017](#)