



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 for the public service. The European Labour Authority serves as a dedicated agency for the free movement of workers, including posted workers.

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.

OBJECTIVES

Freedom of movement for workers has been one of the founding principles of the EU since its inception. It is laid down in Article 45 of the TFEU and is a fundamental right of workers, complementing the free movement of goods, capital and services within the European single market. It entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment. Moreover, this article stipulates that an EU worker has the right to accept a job offer made, to move freely within the country, to stay for the purpose of employment and to stay on afterwards under certain conditions.

ACHIEVEMENTS

At the end of 2017, according to Eurostat data, 3.8% of EU citizens (17 million people along with 1.4 million commuters) resided or worked in Member States other than those of which they are citizens – up from 2.5% in 2007. Mobility is highest among tertiary graduates.

A. Current general arrangements on freedom of movement

The fundamental right of free movement of workers has been embodied in various regulations and directives since the 1960s. The founding regulation on freedom of movement of workers (Regulation 1612/68) and the complementing directive on the abolition of restrictions on movement and residence (Council Directive 68/360) have



been modernised several times. Currently, the key EU provisions are Directive 2004/38/EC on the right of movement and residence, Regulation 492/2011 on free movement of workers, and the Regulation establishing a European Labour Authority to be published in spring 2019.

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 in EU territory. For the first three months, every EU citizen has the right to reside in 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.

The right of Union citizens to reside for more than three months remains subject to certain conditions: for those 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 on them having sickness insurance. Students and those completing vocational training also have the right of residence, as do (involuntarily) unemployed persons who have registered as unemployed.

EU citizens acquire the right of permanent residence in the host Member State after a period of five years of uninterrupted legal residence.

The directive has modernised **family reunification** by extending 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

Regulation 492/2011 sets rules for employment, equal treatment and workers' families. 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. Member States are not allowed to apply any discriminatory practices, such as limiting job offers to nationals or requiring language skills going beyond what is reasonable and necessary for the job in question. Further, a mobile worker is entitled to receive the same assistance from the national employment office as nationals of the host Member State, 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.

However, these rules do not apply to posted workers, as they are not availing themselves of their free movement rights: instead, it is 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 by the Posting of Workers Directive (Directive EU 2018/957 amending Directive 96/71 EC), which provides for the same rules on



remuneration as local workers in the host country and regulates the period after which the labour law of the host country applies (2.1.13).

As regards working and employment conditions in the territory of the host Member State, nationals of one Member State working in another have the same social and tax benefits and access to housing as national workers. Moreover, they are entitled to equal treatment in respect of the exercise of trade union rights.

Anti-discrimination rules apply also to the children of a mobile worker. Member States should encourage these children to attend education and vocational training in order to facilitate their integration.

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.

3. Case law on free movement of workers

Since the introduction of EU citizenship, the Court of Justice of the European Union (CoJ) has refined the interpretation of the directive in a range of case law on the free movement of workers. A dedicated Commission online database presents case law in this area.

As regards residence, 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.

Other cases relate to access to social benefits. The CoJ has extended access 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 has been 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.

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. There are currently transitional periods for Croatian nationals, which must be lifted by July 2020 at the latest.

C. Measures to support freedom of movement

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

- Reform of the system for recognition of professional qualifications completed in other EU Member States in order to harmonise and facilitate the procedure. This includes the automatic recognition of a number of professions in the health sector and of architects (Directive 2013/55/EU amending Directive 2005/36/EC [2.1.6](#));
- The issuing in 2016 of a European Professional Card to test an electronic recognition procedure for selected regulated professions;
- The coordination of social security schemes, including the portability of social protection, thanks to Regulation (EC) No 883/2004 and implementing Regulation (EC) No 987/2009, currently under revision ([2.3.4](#));
- A European Health Insurance Card (2004) as proof of insurance in accordance with Regulation No 883/2004, and a directive on cross-border healthcare (Directive 2011/24/EU). One further activity planned for spring 2018 is pending: a Commission proposal to establish a European Social Security Number in order to facilitate administrative procedures for citizens and the verification of their social security insurance status;
- Improvements in the acquisition and preservation of supplementary pension rights (Directive 2014/50/EU);
- The obligation to ensure judicial procedures providing redress for workers discriminated against and to nominate bodies promoting and monitoring equal treatment (Directive 2014/54/EU).

In spring 2019, the founding regulation for a new European Agency, the European Labour Authority (ELA), will come into force. This agency's main objective is to ensure better enforcement of EU law with respect to posted workers, and to provide supporting services for mobile workers and employers (EURES). Through a single website for free movement it offers vacancies and provide information on living and working conditions in EU countries, as well as information on rights and obligations for workers, employers and national administrations. Further, it supports coordination between Member States in cross-border enforcement, including joint inspections and mediation to resolve cross-border disputes. In addition, it supports the coordination of social security systems and cooperation between Member States in tackling undeclared work. Thus, it contributes to fair labour mobility as part of the Social Pillar.

The agency integrates or absorbs various existing European initiatives of relevance for labour mobility, in particular EURES (European Employment Services), a cooperation network set up by the Commission in 1993 in order to fulfil the obligations provided for in the Treaty to support the free movement of workers (Article 46 TFEU). This network



involves the Commission, the public employment services of the EU and EEA Member States and Switzerland, and other partner organisations (2.3.3). Through Regulation (EU) 2016/589 (amending Regulation (EU) No 492/2011), EURES shall improve self-service tools on its digital platform so as to allow for automated matching of jobseekers and job openings. Member States have the obligation to transfer information on all vacancies to the European job mobility portal which will be hosted by the European Labour Authority in cooperation with the Single Digital Gateway. Funding for EURES is provided by the European Social Fund.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has always stressed that the EU and its Member States should coordinate their efforts in order to promote the free movement of workers.

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 and called on the Member States to refrain from any actions that could affect the right of free movement.

Parliament supported the establishment of a European Labour Authority (in its report of 20 November 2018). It pushed for the creation of a single portal for free movement, as well as the possibility that the ELA suggests joint inspections on its own initiative. Further, it added cooperation on undeclared work to its key tasks, thus ensuring that the European Platform tackling Undeclared Work (which was founded in 2016 with strong support from the European Parliament) continues its activities.

Susanne Kraatz
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