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Amendment 64

Pervenche Berès

on behalf of the Committee on Employment and Social Affairs

Report

Edit Bauer

Freedom of movement for workers

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A7-0386/2013

Proposal for a directive

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AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

DIRECTIVE 2014/.../EU

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on measures facilitating the exercise of rights conferred on workers in the context of
freedom of movement for workers**

(Text with EEA relevance)

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions **■** ,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 341, 21.11.2013, p. 54

² Position of the European Parliament of ...[(not yet published in the Official Journal)] and decision of the Council of ...

Whereas:

- (1) The free movement of workers is a fundamental freedom of Union citizens and one of the pillars of the internal market in the Union enshrined in Article 45 of the Treaty on the Functioning of the European Union (TFEU). Its implementation is further developed by Union law aiming to guarantee the full exercise of rights conferred on Union citizens and the members of their family. ***‘Members of their family’ should be understood as having the same meaning as the term defined in point 2 of Article 2 of Directive 2004/38/EC of the European Parliament and of the Council¹ which applies also to family members of frontier workers.***
- (2) The free movement of workers is also a key element in the development of a genuine Union labour market, allowing workers to move ■ to areas where there are labour shortages ***or more employment opportunities***, helping more people find posts which are better suited to their skills and overcoming bottlenecks in the labour market.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (3) The free movement of workers gives every citizen *of the Union, irrespective of his or her place of residence*, the right to move freely to another Member State *in order* to work there and/or to reside there for *work* purposes. It protects them against discrimination on █ grounds of nationality as regards *access to* employment, *conditions of employment and work, in particular* with regard to remuneration, *dismissal, and tax and social advantages*, by ensuring their equal treatment, *under national law, practice and collective agreements*, in comparison to nationals of that Member State. *Such rights should be enjoyed without discrimination by all Union citizens exercising their right to free movement, including permanent, seasonal and frontier workers. The free movement of workers* needs to be distinguished from the freedom to provide services, which includes the right of undertakings to provide services in another Member State, for which they may *post* their own workers to another Member State temporarily *in order for them* to carry out the work necessary to provide █ services *in that Member State*.
- (4) With respect to *Union* workers and *members of their family* exercising their right to free movement, Article 45 *TFEU* confers substantial rights for the exercise of this fundamental freedom, *which are further* specified in Regulation (EU) No 492/2011 of the European Parliament and of the Council █¹.

¹ *Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union* (OJ L 141, 27.5.2011, p. 1).

- (5) *The effective exercise of the freedom of movement of workers is, however, still a major challenge and many Union workers are very often unaware of their rights to free movement. Because of, inter alia, their potentially more vulnerable position, Union workers may still suffer from unjustified restrictions or obstacles to the exercise of their right to free movement, such as non-recognition of qualifications, discrimination on grounds of nationality and exploitation when they move to another Member State.* There is, therefore, a gap between the *law* and its application in practice that needs to be addressed.
- (6) In July 2010, in its Communication entitled "Reaffirming the free movement of workers: rights and major developments" the Commission pointed out that it *would* explore ways of tackling the new needs and challenges, ■ in particular in the light of new patterns of mobility, ■ facing *Union* workers and *members of* their family. *It also stated that*, in the context of the new strategy for the internal market, *it would* consider how to promote and enhance mechanisms for the effective implementation of the principle of equal treatment for *Union* workers and members of their *family* exercising their right to free movement. *The Commission also summarised developments in legislation and case-law, in particular with regard to the personal scope of the Union law on free movement of workers and the substance of the rights enjoyed by Union workers and members of their family.*

- (7) In the 2010 EU Citizenship Report entitled "Dismantling the obstacles to EU citizens' rights" of 27 October 2010, the Commission identified the divergent and incorrect application of Union law on the right to free movement as one of the main obstacles that Union citizens are confronted with in the effective exercise of their rights under Union law. Accordingly, the Commission announced its intention to take action to facilitate free movement of EU citizens and their third-country national family members by enforcing EU rules strictly, including on non-discrimination, by promoting good practices and increased knowledge of EU rules on the ground and by stepping up the dissemination of information to EU citizens about their free movement rights (action 15 of the 2010 EU Citizenship Report). ***In addition in the 2013 EU Citizenship Report entitled "EU citizens: your rights, your future", the Commission addressed the need to remove administrative hurdles and to simplify procedures for Union citizens living, working and travelling in other Member States.***

- (8) In the Commission Communication entitled "Towards a job-rich recovery" of 18 April 2012 (the Employment Package) **■**, the Commission announced its intention to: present a legislative proposal (information and advice) in order to support mobile workers in the exercise of rights derived from the TFEU and Regulation (EU) No 492/2011, ***and urged Member States to: raise awareness of and access to rights conferred by Union law in relation to anti-discrimination, gender equality and free movement of workers and to open and facilitate access by Union citizens to public sector posts, in accordance with Union law, as interpreted by the Court of Justice of the European Union. In this context, the Court has consistently held that the restriction of access to certain posts in the public service to a Member State's own nationals is to be interpreted restrictively and that it covers only posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities.***
- (9) Adequate and effective application and enforcement ***of Article 45 TFEU and Regulation (EU) No 492/2011, as well as awareness of rights***, are key elements in protecting the rights ***and equal treatment of Union workers and members of their family***, whereas poor enforcement undermines the effectiveness of Union rules applicable in this area ***and endangers the rights and protection of Union workers and members of their family.***

- (10) A more effective and uniform application of rights conferred by Union rules on the free movement of workers is also necessary for the proper functioning of the internal market.
- (11) The application and monitoring of the Union rules on the free movement *of workers should be improved to ensure that Union workers and members of their family as well as employers, public authorities, and other persons concerned are better informed about free movement rights and responsibilities, to assist and to protect Union workers and members of their family* in the exercise of those rights, and to combat circumvention of those rules by public authorities and public or private employers. *In that context Member States may also take into consideration the effects of increased mobility, such as "brain drain" or "youth drain".*
- (12) In order to ensure the correct application of, and to monitor compliance with, the substantive *Union rules on free movement of workers*, Member States should take the appropriate measures to protect *Union workers and members of their family* exercising their right to free movement against both discrimination on grounds of nationality and any unjustified *restriction or* obstacle to the exercise of that right.

- (13) To that end, it is appropriate to provide specific rules for effective enforcement ***and to facilitate a better and more uniform application*** of the substantive rules governing the freedom of movement of workers ***under*** Article 45 ***TFEU*** and Regulation (EU) No 492/2011. ***Enforcement of that fundamental freedom should take into consideration the principle of equality between women and men and the prohibition of discrimination of Union workers and members of their family on any ground set out in Article 21 of the Charter of Fundamental Rights of the European Union ("the Charter").***
- (14) In that context, ***Union workers and members of their family*** who have been subject to discrimination on the grounds of nationality, or to any unjustified restriction ***or obstacles to*** exercising their right to free movement, should ***be guaranteed real and effective judicial*** protection ■ . Where Member States ■ provide for administrative procedures ***as a means of legal redress, they should*** ensure that any administrative decision may be challenged before a tribunal ***within the meaning*** of Article 47 of the Charter. ***Taking into account the right to effective legal protection, Union workers should be protected from any adverse treatment or consequence resulting from a complaint or proceedings which aim to enforce the rights safeguarded under this Directive.***

- (15) ***In order to*** provide more effective levels of protection, associations and legal entities, ***including the social partners***, should also be empowered to engage, as the Member States determine, ***either*** on behalf of or in support of any ***alleged victim***, ***with his or her approval***, in proceedings. ***This should be*** without prejudice to national rules of procedure concerning representation and ***defence before the courts and to other competences and collective rights of social partners, employees' and employers' representatives, such as those relating to the enforcement of collective agreements, where applicable, including actions on behalf of a collective interest, under national law or practice. With a view to ensuring effective legal protection, and without prejudice to the existing collective defence mechanisms available to the social partners and national law or practice, Member States are invited to examine the implementation of common principles for injunctive and compensatory collective redress mechanisms.***
- (16) In **■** accordance with the case-law of the Court of Justice **■**, ***national rules on*** time limits ***for the enforcement of rights under this Directive*** should be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of ***those*** rights **■**.

- (17) Protection against discrimination based on the grounds of nationality would itself be strengthened by the existence of *effective bodies with appropriate expertise* in each Member State with competence to promote equal treatment, to analyse the problems faced by *Union workers and members of their family*, to study possible solutions and to provide specific assistance to them. *The competence of those bodies should include, inter alia, the provision to Union workers and members of their family of independent legal and/ or other assistance, such as the provision of legal advice on the application to them of the relevant Union and national rules on free movement of workers, of information about complaint procedures, and of help to protect the rights of workers and members of their family. It may also include assistance in legal proceedings.*
- (18) It *should be* up to each Member State to decide whether to attribute the tasks *to be carried out under* this Directive to the *bodies referred to above or whether to attribute those tasks to existing bodies with similar objectives at national level, for example, the promotion of free movement of persons, the implementation of the principle of equal treatment or the safeguarding of individual rights. Should a Member State decide to expand* the mandate of an existing body, *it* should ensure allocation of sufficient resources to the existing body for the *effective and adequate* performance of *its existing and* additional tasks. *Where the tasks are allocated to more than one body, Member States should ensure that they are adequately coordinated.*

- (19) *Member States should ensure that one or more of those bodies act as a contact point and that they cooperate and share information, such as the contact details of all the bodies, the means of redress and the contact details of the associations, organisations or other legal entities which provide information and services to Union workers and members of their family, with equivalent contact points in other Member States. The list of contact points should be made publicly available.*
- (20) *Member States should promote cooperation between the bodies designated by them under this Directive and existing information and assistance services provided by the social partners, associations, organisations or other relevant legal entities, such as organisations with responsibility for coordination arrangements under Regulation (EC) No 883/2004 of the European Parliament and of the Council¹ and, where relevant, labour inspectorates.*
- (21) Member States should ensure the promotion of synergies with existing information and support tools at [] Union level and, to that end [], should ensure that existing or newly -created bodies *work closely* with the existing information and assistance services, such as Your Europe, SOLVIT, [] Enterprise Europe Network [], the Points of Single Contact *and EURES, including, where relevant, EURES cross-border partnerships.*

¹ *Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004. p. 1).*

(22) Member States should promote dialogue with *the social partners and with appropriate* non-governmental organisations ■ to address and combat *unjustified restrictions and obstacles to the right to free movement or* different forms of discrimination on the grounds of nationality.

■

(23) Member States should establish how *Union citizens, such as workers, students and recent graduates, as well as* employers, *the social partners* and ■ other interested parties ■ can be provided with easily accessible, relevant information on the ■ provisions of this Directive and of Regulation (EU) No 492/2011, *including information about the bodies designated under this Directive and available means of redress and protection. Member States should take measures to make this information available in more than one official Union language taking into account demands in the labour market. This should not interfere with Member States' legislation on the use of languages. That information could be provided by individual counselling and* should also be easily accessible through Your Europe and EURES.

- (24) *In order to facilitate the enforcement of the rights granted under Union law, Council Directive 91/533/EEC¹ should be implemented and monitored consistently.*
- (25) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. Member States also have the possibility to extend the competences of the organisations entrusted with tasks related to the protection of Union ■ workers against discrimination on grounds of nationality so as to cover the right to equal treatment without discrimination on grounds of nationality of all Union citizens exercising their right to free movement and the members of their family, as enshrined in Article 21 TFEU and Directive 2004/38/EC. The implementation of *this* Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (26) The effective implementation ■ of this Directive implies that Member States, when adopting the appropriate measures to comply with their obligations under this Directive, should provide a reference to this Directive or *be* accompanied by such a reference on the occasion of the official publication of implementing measures.

¹ *Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).*

- (27) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (28) After sufficient time for the implementation of *this* Directive has elapsed, the Commission should prepare a report on its implementation, evaluating in particular the opportunity to present any necessary proposal aiming to guarantee a better enforcement of [] Union law on free movement. ***In that report, the Commission should address the possible difficulties faced by young graduates looking for employment across the Union and by third-country spouses of Union workers.***
- (29) This Directive respects the fundamental rights and observes the principles recognised in the Charter ***in particular*** the freedom to choose an occupation and the right to engage in work [], the right to non-discrimination [], in particular ***on*** grounds of nationality [], the right to collective bargaining and action [], fair and just working conditions [], the right to freedom of movement and residence [] and the right to an effective remedy and a fair trial []. It has to be implemented in accordance with those rights and principles.

(30) *This Directive respects the different labour market models of the Member States, including labour market models regulated by collective agreements.*

(31) Since the objective of this Directive, namely to establish a general common framework of appropriate provisions, measures and mechanisms necessary for the better and more uniform application and enforcement in practice of *the rights relating to free movement of workers* conferred by the *TFEU* and by Regulation (EU) No 492/2011, cannot be sufficiently achieved by the Member States, *but can rather*, by reason of the scale and effect of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter

This Directive lays down provisions *which facilitate the* uniform application and enforcement in practice of *the* rights conferred by Article 45 TFEU and Articles 1 to 10 of Regulation (EU) No 492/2011 . *This Directive applies to Union citizens exercising those rights and to members of their family ('Union workers and members of their family').*

Article 2
Scope

1. This Directive applies to the following matters, *as referred to in Articles 1 to 10 of Regulation (EU) No 492/2011*, in the area of freedom of movement for workers:
 - (a) access to employment;

- (b) conditions of employment and work, in particular as regards remuneration, *dismissal, health and safety at work, and, if Union workers become unemployed, reinstatement or re-employment*;
- (c) access to social and tax advantages;
- (d) membership of trade unions *and eligibility for workers' representative bodies*;
- (e) access to training;
- (f) access to housing;
- (g) access to education, *apprenticeship and vocational training for the children of Union* workers;
- (h) *assistance afforded by the employment offices.*

2. *The scope of this Directive is identical to that of Regulation (EU) No 492/2011.*

Article 3
Defence of rights

1. Member States shall ensure that **after possible recourse to other competent authorities** including, where they deem it to be appropriate, **conciliation procedures, judicial procedures**, for the enforcement of **obligations** under Article 45 *TFEU* and Articles 1 to 10 of Regulation (EU) No 492/2011, are available to all **Union workers and members of their family** who consider that they have suffered or are suffering from unjustified restrictions **and obstacles to** their right to free movement or **who** consider themselves wronged by **a** failure to apply the principle of equal treatment to them, even after the relationship in which the **restriction and obstacle or** discrimination is alleged to have occurred has ended.



2. Member States shall ensure that associations, organisations, including the social partners, or other legal entities, which have, in accordance with the criteria laid down in their national law, practice or collective agreements, a legitimate interest in ensuring that this Directive is complied with, may engage, either on behalf of or in support of, Union workers and members of their family, with their approval, in any judicial and/or administrative procedure provided for the enforcement of the rights referred to in Article 1.

3. *Paragraph 2 shall apply without prejudice to other competences and collective rights of the social partners, employees' and employers' representatives, where applicable, including the right to take action on behalf of a collective interest, under national law or practice.*
4. *Paragraph 2 shall apply without prejudice to national rules of procedure concerning representation and defence in court proceedings.*
5. *Paragraphs 1 and 2 of this Article shall apply without prejudice to national rules on time limits for enforcement of the rights referred to in Article 1. However, those national time-limits shall not render virtually impossible or excessively difficult the exercise of those rights.*
6. *Member States shall introduce in their national legal systems such measures as are necessary to protect Union workers from any adverse treatment or adverse consequence as a reaction to a complaint or proceedings aimed at enforcing compliance with the rights referred to in Article 1.*



Article 4

Bodies to promote equal treatment and to support Union workers and members of their family

1. ***Each Member State*** shall designate one or more structures or bodies (***'bodies'***) for the promotion, analysis, monitoring and support of equal treatment of ***Union*** workers ***and*** members of their ***family*** without discrimination on grounds of nationality, ***unjustified restrictions or obstacles to their right to free movement*** and shall make the necessary arrangements for the proper functioning of such bodies. Those bodies may form part of ***existing bodies*** at  national level which have similar objectives  .
2. Member States shall ensure that the competences of those bodies include:
 - (a) ***providing or ensuring the provision of independent legal and/or other assistance to Union workers and members of their family***, without prejudice to their ***rights***, and to the rights ***of*** associations, organisations ***and*** other legal entities referred to in Article 3.

- (b) acting as a contact point vis-à-vis equivalent contact points in other Member States in order to cooperate and share relevant information;*
- (c) conducting or commissioning independent surveys and analyses concerning unjustified restrictions and obstacles to the right to free movement, or discrimination on grounds of nationality, of Union workers and members of their family;*
- (d) ensuring the publication of independent reports and making recommendations on any issue relating to such restrictions and obstacles or discrimination;*
- (e) publishing relevant information on the application at national level of Union rules on free movement of workers.*

In relation to point (a) of the first subparagraph where bodies provide assistance in legal proceedings, such assistance shall be free of charge to persons who lack sufficient resources, in accordance with national law or practice.

- 3. Member States shall communicate to the Commission the names and contact details of the contact points and any updated information or changes thereto. The Commission shall keep a list of contact points and shall make it available to the Member States.*

4. Member States shall ensure that existing or newly created bodies are aware *of, and are able to* make use of, and cooperate with, the existing information and assistance services at Union level, such as Your Europe, SOLVIT, EURES, Enterprise Europe Network and the Points of Single Contact.
5. *Where the tasks referred to in paragraph 2 are allocated to more than one body, Member States shall ensure that those tasks are adequately coordinated.*

Article 5

Dialogue

Member States shall *promote* dialogue with *the social partners and with relevant* non-governmental organisations ■ which have, in accordance with national law or practice, a legitimate interest in contributing to the fight against *unjustified restrictions and obstacles to the right to free movement, and* discrimination on grounds of nationality, *of Union workers and members of their family* with a view to promoting the principle of equal treatment.

Article 6

Access to and dissemination of information

1. Member States shall ensure that the provisions adopted pursuant to this Directive **and under** Articles 1 to 10 of Regulation (EU) No 492/2011, are brought to the attention of the persons concerned throughout their territory, **in particular Union workers and employers**, by all appropriate means.
2. Member States shall provide, **in more than one official language of the institutions of the Union**, information on the rights conferred by ■ Union law **concerning the** free movement of workers that is clear, **free of charge**, easily accessible, comprehensive and up-to-date ■ . This information should also be easily accessible through Your Europe and EURES.

Article 7

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. Member States may provide that the competences of the ■ bodies referred to in Article 4 *of this Directive* for the promotion, analysis, monitoring and support of equal treatment of *Union* workers *and* members of their *family* without discrimination on grounds of nationality also cover the right to equal treatment without discrimination on grounds of nationality of all *Union* citizens exercising their right to free movement and the members of their family, in accordance with Article 21 TFEU and Directive 2004/38/EC.

3. The implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of *Union* workers **and members of their family**, in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on ...*, provided that this Directive is complied with.

Article 8

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...**. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

* ***OJ: please insert the date of entry into force of this Directive.***

** ***OJ: please insert a date: 2 years after the date of entry into force of this Directive.***

Article 9

Report

By ...*, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, with a view to proposing, where appropriate, the necessary amendments.

Article 10

Entry into force

This Directive shall enter into force on the *twentieth* day following that of its publication in the Official Journal of the European Union.

* OJ: please insert a date: 54 months after the date of entry into force of this Directive.

Article 11
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

Or. en