



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 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).

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 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.

Nationals of EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) have the right to work in the EU with the same rights and obligations as EU workers. The EU also has special agreements with other non-EU countries.

ACHIEVEMENTS

In 2021, according to Eurostat data, among EU citizens of working age (20-64), 3.9% (10.2 million) resided in an EU country other than that of their citizenship – up from 2.4% in 2009. Additionally, 1.7 million cross-border workers and 3.6 million postings were recorded..

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 \(EU\) No 492/2011 on free movement for workers](#), [Regulation \(EU\) 2019/1149 establishing a European Labour Authority](#) and [Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers](#).

1. Workers' rights of movement and residence

Directive 2004/38/EC introduced 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 in order 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 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 (EU) No 492/2011 lays down 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 line 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. Furthermore, 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 Directive 2004/38/EC 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 (CJEU) has refined the interpretation of Directive 2004/38/EC in a range of case law on the free movement of workers. A dedicated Commission online [database](#) presents case law in this area.

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 CJEU.

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 no transitional periods in force.

Brexit put an end to the freedom of movement of workers between the UK and the EU-27 on 31 December 2020. The rights of the EU-27 citizens already living and working in the UK and those UK citizens who were living and working in the EU-27 are covered under the Withdrawal Agreement, which allows for their continued right to remain or work, ensures non-discrimination and protects their social security rights. All new cross-border situations starting on or after 1 January 2021 are covered by the [EU-UK Trade and Cooperation Agreement](#) with respect to social security.

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 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 (EC) No 883/2004, and a directive on cross-border healthcare ([Directive 2011/24/EU](#)).
- 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](#)).

The European Labour Authority (ELA), an initiative under the European Pillar of Social Rights, was established on 31 July 2019. Its main aims are to ensure better enforcement of EU rules on labour mobility and social security coordination, to provide support services for mobile workers and employers, to support coordination between Member States in cross-border enforcement, including joint inspections and mediation to resolve cross-border disputes, and to promote cooperation between Member States in tackling undeclared work.

The agency integrates or absorbs various previous European initiatives of relevance for labour mobility, in particular the job mobility portal, EURES (European Employment Services) and the European platform tackling undeclared work.

D. Impact of the COVID-19 pandemic and of Russia's aggression against Ukraine on free movement of workers

The COVID-19 pandemic, which hit the EU in early 2020, led to unprecedented restrictions on free movement of labour across EU Member States, notably as a result of the re-introduction of border controls at internal borders. Consequently, cross-border, seasonal and posted workers experienced barriers to mobility and increased unemployment. In March 2020, the Commission issued guidelines concerning the exercise of the free movement of workers during the COVID-19 outbreak. On 13 October 2020, the Council adopted a [recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic](#) with provisions on waiving quarantine requirements for essential workers, following by an [update](#) to the recommendation on 1 February 2021.

Following the Russian invasion of Ukraine, millions of people fled Ukraine for the European Union. The Commission immediately proposed a [Temporary Protection Directive](#) to provide effective assistance. The Directive grants people fleeing Ukraine



a residence permit and access to education and the labour market. The Commission has produced [guidance](#) to help people access jobs, training and adult education. This guidance aims to ensure the rapid and effective integration of Ukrainian refugees into the European labour market and to facilitate the recognition of their academic and professional qualifications. Figures from July 2023 indicate that more than 4.1 million people from Ukraine are currently benefiting from the temporary protection mechanism.

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 should not 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 (ELA) in its [resolution of 16 April 2019](#). It pushed for the creation of a single portal for free movement, as well as for the possibility for the ELA to propose joint inspections on its own initiative. Moreover, 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 Parliament) continues its activities.

In its 17 April 2020 [resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences](#), Parliament called for cross-border travel to remain open for seasonal and cross-border workers, especially in essential sectors. On 19 June 2020, Parliament adopted a [resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis](#). A year later, in a resolution of 19 May 2021 [on impacts of EU rules on the free movements of workers and services: intra-EU labour mobility as a tool to match labour market needs and skills](#), Parliament once again drew attention to the particularly vulnerable situation of frontier, posted, seasonal, cross-border and other mobile workers during the COVID-19 pandemic and called for structural shortcomings in the European and national regulatory frameworks to be addressed. Parliament called for improved implementation, enforcement and monitoring of the revised Posting of Workers Directive and the establishment of a one-stop shop where workers and employers can access digital services for labour mobility and the posting of workers.

For more information on this topic, please see the [website](#) of the Committee on Employment and Social Affairs

Aoife Kennedy
10/2023

