



Free Movement of Workers

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DG Employment, Social Affairs and Inclusion
Labour Mobility Directorate

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Overview

- 1. Free Movement of Persons in the EU**
- 2. Workers, jobseekers, family members and their rights**
- 3. Access to employment and equal treatment**
- 4. Exercise of rights and enforcement**

Free Movement of Persons in the EU

Art 21 TFEU* gives all **EU CITIZENS** the right to move and reside freely, including **non-actives, pensioners, students** (subject to restrictions in secondary legislation)

Free Movement
of Workers (Art
45 TFEU)

EMPLOYED
plus
jobseekers,
family
members

Freedom of
Establishment
(Article 49
TFEU)

**SELF-
EMPLOYED**
plus family
members

Freedom to
Provide
Services
(Article 56
TFEU)

**POSTED
WORKERS**

Key Figures (Annual Mobility Report)



12.4 million EU-28 citizens of working age (20-64) were residing in another EU Member State than their country of citizenship in 2017


9.5 million economically active EU citizens living in another MS in 2017 (4% of total labour force in EU)

1.4 million cross- border workers

83% of EU citizens support "the free movement of EU citizens who can live, work, study and do business anywhere in the EU"

25% of EU citizens would definitely (8%) or probably (17%) consider working in another EU country in the next ten years (2015 survey)

The main legal instruments



Article 45 of the Treaty on the Functioning of the European Union (TFEU)

Regulation (EU) No 492/2011 on freedom of movement for workers

Directive 2014/54/EU on facilitation of the exercise of rights conferred on workers

Directive 2004/38/EC on the right of EU citizens to move and reside freely in the territory of the Member States

The core rights in a nutshell

- *look for a job in another Member State*
- *work and reside there for that purpose*
- *stay there after employment has finished*
- *enjoy equal treatment with nationals in access to employment, working conditions and other social and tax advantages*
- *as workers be joined by family members who have derived rights*

Who can benefit from EU law on free movement of workers?

- *EU mobile workers*

Any person who undertakes genuine and effective work for which he is paid under the direction of someone else

→ ***Cross- border link***

→ ***Case- by- case assessment of all criteria***

(case C-66/85 Lawrie-Blum)

Returning nationals (case C-18/95); frontier workers (C-57/96); people retaining the status of worker

- *Jobseekers*
- *Family members*

Access to Employment (I)

- *No work permits; no quotas (art. 1-3 Regulation 492/2011)*
- *Language requirements only permissible where reasonable and necessary for the job (art. 3(1) Regulation 492/2011; Case C-379/87 Groener)*
- *Transitional arrangements for acceding countries*

Access to employment (II)

Equal treatment with nationals except:

Access to posts in the public sector may be restricted to own nationals (Article 45(4) TFEU)*

Restrictive interpretation: only posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interest of the State

(Commission Staff Working Document 'Free movement of workers in the public sector' (14.12.2010, SEC (2010) 1609 final)

Job-seeking (I)

- *Receive same assistance from national employment office as nationals of that Member State (art. 5 Regulation 492/2011)*
- *Right to reside in Member State for job-seeking: no formalities during first 6 months (rec. 9 Directive 2004/38)*

Job-seeking (II)

- *Right to reside for more than 6 months: if Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged
(art. 14(4) Directive 2004/38, Case C-292/90 Antonissen)*
- *No access to social assistance while job seeking
(art. 24(2) Directive 2004/38)*

Rights of family members

- *Right to reside with the worker (art. 7(1)(d), 7(2) Directive 2004/38)*
- *Right to work (art. 23 Directive 2004/38)*
- *Children of migrant workers, regardless of their nationality, have the right to education in the host Member State (art. 10 Regulation 492/2011)*
 - Includes right to reside of primary carer of such child (case C-480/08 Teixeira)
- *Access to social advantages as a derived right (case C-337/97)*

Equal Treatment

Article 45(2) TFEU:

"Such freedom of movement shall entail 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"

(Note: Article 45 TFEU applies to both workers and jobseekers)

Article 45 TFEU covers 3 different types of barriers to free movement

Direct Discrimination: where a migrant worker is treated differently on the grounds of his nationality (Case C-225/85)

Indirect Discrimination: where an apparently neutral condition impacts disproportionately on migrant workers, for example a residence condition (Case C-237/94 O'Flynn)

Restrictions/ obstacles: measures which preclude or deter a national of a MS from leaving his country of origin to exercise his right of free movement (Case C-415/93 Bosman)

Equal Treatment – working conditions and trade union membership

Article 7(1) Regulation 492/2011

"...in respect of any conditions of employment of work, in particular as regards remuneration, dismissal, and...re-employment"

Article 8 Regulation 492/2011

"equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto..."

Equal treatment – social and tax advantages, housing (Articles 7(2) and 9 Regulation 492/2011)

- *'Social advantage' definition (case C-85/96 Martinez Sala) covers:*
 - financial (minimum subsistence, child-raising allowance, study grants, public transport fare reductions for large families)
 - non-financial (legal proceedings in specific language) advantages
- *Tax advantages (case C-527/06):*
 - no matter in which EU country you are considered a tax-resident, you should be taxed in the same way as nationals of that country under the same conditions
 - national tax rules should not deter a national of a Member State from exercising his right to free movement
- *Access to housing*
 - all rights and benefits in matters of housing

Rights after end of employment relationship

Equal treatment with nationals of the host Member State after end of employment relationship if status of worker is retained (art. 7(3) Directive 2004/38)

Right to reside permanently (art. 16 Directive 2004/38)

Better enforcement and improved access to information and assistance

- *Directive 2014/54 aims to facilitate the exercise of free movement rights*
 - Reinforced defence of rights- protection from victimisation/ assistance of NGO's, social partners in proceedings
 - Nomination of national bodies in every Member State to promote equal treatment ([the list of the bodies](#))
 - Improved access to information about free movement rights
- *More information at*
 - [DG EMPL website](#)
 - [Your Europe](#), [EURES](#) portals as gateway to information
 - [SOLVIT](#) centres help resolving problems related to exercise of citizens' rights in the internal market

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