Promoting workers' mobility within the European Union

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PURPOSE: Communication on reaffirming the free movement of workers: rights and major developments.

BACKGROUND: according to the latest Eurostat data available, **2.3% of EU citizens (11.3 million persons) reside in a Member State other than the state of which they are a citizen**, and many more exercise this right at some point in their life. That number has grown by more than 40% since 2001. According to a recent Eurobarometer survey, 10% of persons polled in EU-27 replied that they had lived and worked in another country at some point in the past, while 17% intended to take advantage of free movement in the future. In principle, every EU citizen has the right to work and live in another Member State without being discriminated against on grounds of nationality. However, despite the progress that has been made, there are still legal, administrative and practical obstacles to exercising that right.

A recent report on the application of the Directive 2004/38/EC concluded that its overall transposition was rather disappointing and highlighted a number of problems EU citizens on the move, workers or not, faced abroad. The conclusion drawn from the European Year of Workers' Mobility in 2006 was that, in addition to the legal and administrative obstacles on which recent efforts have generally focused (e.g. recognition of qualifications and portability of supplementary pension rights), there are other factors that influence trans-national mobility. These include housing issues, language, the employment of spouses and partners, return mechanisms, historical 'barriers' and the recognition of mobility experience, particularly within SMEs.

Tackling these problems therefore calls for a broader approach, combined with effective implementation of the principle of free movement. President Barroso stated in his political guidelines that the principles of free movement and equal treatment for EU citizens must become a reality in people's everyday lives.

This was followed up by the Commission proposal to promote EU mobility under the Europe 2020 strategy, and in particular in the flagship initiative '**An Agenda for new skills and jobs**'

CONTENT: the aim of this communication is to:

- present an overall picture of the rights of EU migrant workers;
- update the Commission's previous communication on the subject with regard to developments in legislation and case-law, and
- raise awareness generally and promote the rights of migrant workers who are in a more vulnerable situation than national workers (for instance, in terms of housing, language, employment of spouses and partners etc.).

Beneficiaries of free movement: the first part of the Communication discusses the EU rules on free movement of workers. the principle of the free movement of workers is enshrined in Article 45 TFEU and has been developed through secondary law (Regulation (EEC) No 1612/68 and Directive 2004/38/EC, as well as Directive2005/36/EC) and by the case-law of the European Court of Justice. The existing body of EU law in this area gives European citizens the right to move freely within the EU for work purposes and protects the social rights of workers and of their family members. It protects them from discrimination as regards employment, remuneration and other working conditions in comparison to their colleagues who are nationals of that Member State.

Every national of a Member State has the right to work in another Member State. The term 'worker' has a meaning in EU law and covers any person who undertakes genuine and effective work for which he is paid under the direction of someone else. It does not cover third country migrant workers. It is the responsibility of the national authorities to undertake, in the light of that definition, a case-by-case evaluation to establish whether those criteria are met. In addition to meeting the definition of a worker, a person must be a migrant worker in order to be covered by EU law, i.e. he or she must have exercised his or her right to free movement: EU rules apply when a person works in a Member State other than his country of origin or in his country of origin while residing abroad.

Other categories of persons also fall within the scope of Article 45 TFEU: family members of the worker, people retaining the status of worker, and jobseekers under certain conditions.

Rights of migrant workers: the Communication describes the rights currently enjoyed by EU migrant workers taking into account the development of legislation over the last ten years. It discusses the implications of a series of judgements on the subject by the ECJ, as well as the manner in which these judgements apply to the rights of migrant workers.

Jobseeking and access to benefits: EU citizens have the right to look for employment in another Member State and to receive the same assistance from the national employment office there as nationals of that Member State. While such jobseekers were previously considered as having to be treated on an equal footing with nationals as regards access to work alone, the ECJ concluded that they should also qualify for equal treatment with regard to access to benefits of a financial nature intended to facilitate access to employment on the labour market of the host Member State. However, to limit the strain on social assistance systems, the ECJ added that a Member State could require that there be a genuine link between the jobseeker and the geographic employment market in question, such as the person needing to have, for a reasonable period, genuinely sought work in the Member State in question.

Access to work under the same conditions as national workers: EU citizens have the right to take up an activity in another Member State under the same conditions as those that apply to its own nationals. However, one restriction and several specific aspects apply, dealing with the recognition of professional qualifications language requirements, access to public sector posts and free movement of sports people.

Equal treatment: Article 45(2) TFEU entails the abolition of any discrimination based on nationality between workers of the Member State as regards employment, remuneration and other conditions of work and employment. EU law entitles migrant workers to the same social advantages as national workers from the first day of their employment in the host Member State. The concept of social advantage is very broad and covers financial benefits75 and non financial advantages which are not traditionally perceived as social advantages.

With regard to tax advantages, in spite of the absence of harmonising measures at EU level, Member States may not introduce legislation discriminating directly or indirectly on the basis of nationality. There is a growing body of ECJ case-law on the application of the Treaty freedoms to direct taxes, including Article 45 TFEU.

Residence rights: historically, migrant workers have enjoyed better conditions as regards certain rights related to residence than non-active EU citizens. The Directive, which brings together previous rules on EU citizens' residence rights, continues to distinguish between economically active and non –active EU citizens.

Family members: family members of migrant workers, regardless of their nationality or whether they are dependent of the EU citizen, have the right to work in the host Member State. Migrant workers' children,

whatever their nationality, have the right to education in the host Member State on the same terms as its nationals. Family members of migrant workers have access to social advantages, including study grants, without any residence conditions or previous periods of residence in the host Member State.

Better enforcement and administrative cooperation: as shown by the foregoing, the legal framework for free movement of workers is substantive, detailed and well-developed. Making workers, members of their families and stakeholders aware of the rights, opportunities and instruments that exist to promote and guarantee freedom of movement is a key point in enforcing EU law. The Commission is conducting a broader exercise aimed at tackling comprehensively all obstacles European citizens encounter when they exercise their rights as Union citizens in all aspects of their daily lives. To this end, the Commission has announced its intention to present a Report on Citizenship in its 2010 Work Programme.

For workers in particular, the Commission will look at how the social partners and NGOs can play a part in helping to strengthen their rights and to make them effective, with the support of the existing network of academic experts.

Despite the improvement brought about by recent developments, the issue of the enforceability of Regulation (EEC) No 1612/68 still needs attention. The Commission will explore ways of tackling the new needs and challenges (in particular in the light of new patterns of mobility) facing EU migrant workers and their family members.

In the context of the new strategy for the single market it will consider how to promote mechanisms for the effective implementation of the principle of equal treatment for EU workers and members of their families exercising their right to free movement.