

Free movement of workers: measures facilitating the exercise of rights conferred on workers

2013/0124(COD) - 26/04/2013 - Legislative proposal

PURPOSE: to ensure the better application of EU legislation on people's right to work in another Member State than their own and thus to make it easier for people to exercise their rights in practice.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: freedom of movement for workers is **one of the four fundamental freedoms** on which the Single Market is based. It is one of the core values of the European Union and a fundamental element of EU citizenship. Article 45 of the Treaty on the Functioning of the European Union (TFEU) enshrines the right of EU citizens to move to another Member State for work purposes. It specifically includes the **right not to be discriminated against on the grounds of nationality** as regards access to employment, remuneration and other conditions of work. It also includes the removal of unjustified obstacles to the freedom of movement of workers within the European Union.

[Regulation \(EU\) No 492/2011](#) details the rights derived from the freedom of movement of workers, and defines the specific areas where **discrimination on the grounds of nationality is prohibited**, in particular as regards: (i) access to employment; (ii) working conditions; (iii) social and tax advantages; (iv) access to training; (v) membership of trade unions; (vi) housing; and (vii) access to education for children. Article 45 TFEU and Regulation (EU) No 492/2011 are directly applicable in all Member States.

Nevertheless, EU citizens who want to move or who actually move from one Member State to another for work purposes continue to face problems in exercising their rights. The difficulties they face go some way to explaining why geographical mobility between EU Member States has remained at a relatively low level: according to the EU-Labour Force Survey, in 2011, only 3.1% of the working-age European citizens (15-64) lived in an EU Member State other than their own.

In April 2009, Parliament adopted a [resolution](#) detailing persisting obstacles to the cross-border enjoyment of rights. It called on the Commission to produce a list of obstacles to the exercise of EU citizens' rights, based on the results of a public consultation, and to make specific proposals to address those obstacles. More recently, in another [resolution](#) on promoting workers' mobility within the Union, Parliament called on the Commission and Member States to take measures in order to "to guarantee...the correct implementation of the existing legislation on non-discrimination, to take practical measures to enforce the principle of equal treatment of mobile workers..." and also highlighted the gap between the rights that EU citizens have in theory and what happens in practice.

There are diverse examples of **obstacles and problems** faced by citizens, such as:

- public authorities not complying with EU law (non-conforming legislation or incorrect application) and the effect on EU migrant workers;
- employers and legal advisors not complying with EU law;
- EU migrant workers not having access to information or the means to ensure their rights.

IMPACT ASSESSMENT: in line with its policy on better regulation, the Commission conducted an impact assessment of policy alternatives, based on an external study, which concluded in April 2012. The different policy alternatives contain a range of options representing different degrees of EU intervention:

- **Option 1:** maintaining the *status quo*;
- **Option 2:** effecting change without regulation, or
- **Option 3:** regulating.

The Impact Assessment demonstrated that a binding legislative initiative would impact tangibly on the exercise of free movement rights.

The preferred option is a Directive combined with other initiatives, such as common guidelines on specific subjects to be adopted by the Technical Committee on free movement of workers (already set up under Regulation (EU) No 492/2011). A Common Guidance document would address the specific issue of the application of EU law in the field of the free movement of workers.

LEGAL BASIS: Article 46 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal for a Directive aims to improve and reinforce the way in which Article 45 TFEU and Regulation (EU) No 492/2011 are applied in practice across the European Union by establishing a general common framework of appropriate provisions and measures for facilitating a better and more uniform application of rights conferred by EU law on workers and members of their families exercising their right to free movement.

Scope: the proposal covers the following matters: (i) access to employment; (ii) conditions of employment and work in particular as regards remuneration and dismissal; (iii) access to social and tax advantages; (iv) membership of trade unions; (v) access to training; (vi) access to housing; and (vii) access to education for workers' children.

It does not modify the scope of application of the Regulation (EU) No 492/2011 and **only applies in cases of discrimination on the grounds of nationality** in relation to the matters covered by that Regulation, by introducing the provisions of **protection, information and support**. It underpins the guarantee of **equal treatment** and reinforces remedies in cases of unjustified obstacles in relation to eligibility and access to employment for workers exercising their right to free movement within the European Union.

The proposal introduces **legal obligations in regard to the following:**

- **means of redress:** the Directive would guarantee EU migrant workers an appropriate means of redress at national level. Any EU worker who believes that he/she has been the victim of discrimination on the grounds of nationality should be able to make use of appropriate administrative and/or judicial procedures to challenge the discriminatory behaviour; the proposal covers both judicial and extra-judicial means of redress, including alternative dispute settlement mechanisms, such as **conciliation and mediation; time limits for bringing actions** as regards the principle of equal treatment, provided that these time limits are such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of rights conferred by Union law on free movement of workers;
- **role of associations, organisations or other legal entities:** the Directive would further protect workers by ensuring that associations, organisations or other legal entities with a legitimate interest in the promotion of the rights to free movement of workers may engage in any administrative or judicial procedure on behalf or in support of EU migrant workers where there has been a violation of their rights;

- **national structures to provide information, support and assistance:** the Directive would set up structures or bodies at a national level to promote the exercise of the right to free movement by providing information and supporting and assisting EU migrant workers who suffer from nationality based-discrimination; the proposal details the tasks of these devolved structures;
- **awareness raising:** the Directive would raise awareness by providing employers, workers, and any other interested parties with **easily accessible relevant information**. The proposal leaves the choice of information tools to the Member States, but on-line or digital information with links to the existing information tools at EU level, Your Europe and EURES websites would be made compulsory;
- **dialogue:** the Directive would require Member States, in accordance with national traditions and practices, to take adequate measures to encourage and promote dialogue with social partners and non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of nationality.

BUDGETARY IMPLICATIONS: this proposal is expected to have limited implications on the Union budget. Expenses for an evaluation study in 2015 are estimated to not exceed EUR 300 000 and will be covered by funds available from the budget line financing the free movement of workers, coordination of social security systems and measures for migrants, including migrants from third countries.

Costs for human resources (EUR 131 000 p.a.) will be covered under heading 5 of the Multiannual Financial Framework.