Basic information

2010/2273(INI) INI - Own-initiative procedure	Procedure completed
Promoting workers' mobility within the European Union **Subject** 2.30 Free movement of workers 4.15.04 Workforce, occupational mobility, job conversion, working conditions 7.10 Free movement and integration of third-country nationals	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
EMPL Employment and Social Affairs	UNGUREANU Traian (PPE)	22/09/2010
	Shadow rapporteur TURUNEN Emilie (S&D) BLINKEVIČIŪTĖ Vilija (S&D) HARKIN Marian (ALDE) CORNELISSEN Marije (Verts/ALE) MURPHY Paul (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	BLINKEVIČIŪTĖ Vilija (S&D)	09/12/2010
FEMM Women's Rights and Gender Equality	ČEŠKOVÁ Andrea (ECR)	28/10/2010

European Commission

Commission DG	Commissioner
Employment, Social Affairs and Inclusion	ANDOR László

Key events

Date	Event	Reference	Summary
13/07/2010	Non-legislative basic document published	COM(2010)0373	Summary

25/11/2010	Committee referral announced in Parliament		
16/06/2011	Vote in committee		Summary
20/07/2011	Committee report tabled for plenary	A7-0258/2011	
24/10/2011	Debate in Parliament		
25/10/2011	Decision by Parliament	T7-0455/2011	Summary
25/10/2011	Results of vote in Parliament		
25/10/2011	End of procedure in Parliament		

Technical information	
Procedure reference	2010/2273(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/7/04573

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE458.756	17/02/2011	
Amendments tabled in committee		PE460.965	24/03/2011	
Committee opinion	LIBE	PE462.617	25/05/2011	
Committee opinion	FEMM	PE462.600	31/05/2011	
Committee report tabled for plenary, single reading		A7-0258/2011	20/07/2011	
Text adopted by Parliament, single reading		T7-0455/2011	25/10/2011	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2010)0373	13/07/2010	Summary
Commission response to text adopted in plenary	SP(2012)28	22/02/2012	

Promoting workers' mobility within the European Union

2010/2273(INI) - 13/07/2010 - Non-legislative basic document

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.

Promoting workers' mobility within the European Union

2010/2273(INI) - 25/10/2011 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on promoting workers' mobility within the European Union in response to a Commission communication on the question.

Living and working in a different Member State is one of the Union's fundamental freedoms -, a basic component of Union citizenship and recognised by the Treaties. Yet statistics show that still too few people take advantage of this right despite the specific initiatives taken to support workers' mobility. Workers can face difficulties and challenges when seeking employment in a Member State that is not their own and the current workers' mobility rate is not sufficient to enhance labour market efficiency in the European Union with only 2.3% of people in the EU residing in a Member State other than the state of which they are citizens.

Despite EU legal acts and programmes aimed at promoting free movement of workers, there are **barriers** to the full implementation of this fundamental freedom (e.g. social, linguistic, cultural**,** legal and administrative barriers, poor return policies that do not meet the needs of migrant workers, lack of recognition of mobility experience, difficulties concerning the employment of spouses or partners, and a delayed process for the recognition of diplomas and professional qualifications). Although Parliament welcomes the Commission's communication, which describes and explains the current state of play, they regret the lack of concrete measures or solutionsto the problems of mobility.

Parliament calls on the Member States to **remove obstacles to workers' mobility** by offering persons (the majority of whom are women) who follow their spouses or partners to another Member State appropriate services such as courses to facilitate their integration into their new social and cultural environment, for example language courses and vocational courses.

Other measures are proposed:

- extend and improve the scope of projects aiming at increasing **women's labour mobility**;
- further promote labour mobility by presenting a **long-term, comprehensive, multidisciplinary, mobility strategy** to ban all existing legal, administrative and practical barriers to free movement of workers;
- promote further strategies to provide **simplified information concerning the rights of migrant workers** and the benefits of mobility for the overall process of development and for the economies of both the EU and its Member State;
- **mitigate at EU level the negative side effects of increased mobility**, leading to brain drain and youth drain;
- enhance the mobility of the workforce by planning and promoting further **strategies to provide simplified information** concerning the rights of migrant workers and the benefits of mobility;

- **remove obstacles to workers' mobility** by offering women who follow their husbands or partners to another Member State appropriate services to facilitate their integration into their new social and cultural environment;
- **create mechanisms of cooperation** aimed at preventing the devastating effects on families, especially on children, caused by the separation from their parents and the distance between them.

Administrative simplification and legalaspects: Parliament urges the Commission to promote the **streamlining of administrative practices and administrative cooperation** so as to allow synergies between national authorities. It encourages Member States to create more effective channels of communication between migrant workers and the corresponding State services, so that workers have full access to information regarding their rights and obligations and stresses that 'workers' rights' can be better implemented if and when an EU migrant is employed in a legally paid activity in a host Member State.

Parliament is concerned by the poor transposition and implementation of current directives on free movement of workers, especially Directive 2004/38/EC with respect to the right of entry and residence for third-country family members, and cumbersome administrative procedures and additional residence documents (work permits, evidence of satisfactory accommodation) inconsistent with Directive 2004/38/EC. It calls on the Commission to fully exercise its prerogatives under the Treaties, by continuous and comprehensive monitoring of the implementation of Directive 2004/38/EC, which affects the exercise of free movement of workers including, if necessary, the exercise of its right to initiate infringement procedures against non-compliant Member States.

Member States are called upon to review their provisions regulating the transitional periods for access to their labour markets, which, in the long term, can have negative effects on the fundamental values and rights enshrined in the EU Treaties, such as freedom of movement, non-discrimination and solidarity and equal rights.

Links with other policies: Parliament notes that the right of free movement of workers cannot be viewed in isolation from other rights and basic principles of the EU and that respect for the European social model and the rights guaranteed in the European Convention on Human Rights, as reflected in the EU Charter of Fundamental Rights, will offer the possibility of decent jobs, adequate working conditions, including protection and safety at work, social security rights, equal treatment, reconciliation of family and working life and the freedom to provide services. The importance of equal treatment of workers is stressed, combined with the adequate protection of labour rights, to be in accordance with the rules in force laid down in national legislation and collective agreements in the Member State concerned. Members believe that the principle of 'equal pay for the same work in the same place' in conjunction with **gender equality should apply throughout the EU in order to prevent wage and social dumping**.

The resolution urges the Member States and the Commission to strengthen EU policy on fighting direct and indirect discrimination. Member States are encouraged to increase the attention which authorities responsible for monitoring the labour market devote to protecting the rights of mobile workers, particularly by improving education and raising of awareness in the field of labour law.

Parliament considers that, for the efficient implementation of all policies tackled by the free movement of workers, action must be coordinated, especially in the fields of completion of the internal market, coordination of social security systems, supplementary pension rights, protection of workers, cross-border health care, education and vocational training, tax measures such as those designed to avoid double taxation, and anti-discrimination.

Parliament reiterates that, in order to avoid inconsistencies in the area of the EU internal market, for the purpose of employment, Member States must give preference to Union citizens and may give preference to third-country nationals who apply for highly qualified employment. Members stress the importance of rejecting applications for an EU Blue Card in labour market sectors for which the access to workers from other Member States is restricted on the basis of transitional arrangements. Member States should also tackle the issue of false self-employment among mobile workers and give these workers access to rights and protection.

Measures to promote free movement:Members stress that efficient controls are an essential element to guarantee equal treatment and a level playing field. They call on the Member States to increase **labour inspection** and give labour inspections sufficient resources. They encourage the Commission to pursue its initiatives aimed at promoting the **geographical mobility of young people** through learning mobility schemes. They welcome the Commission's plan to establish a regular systematic assessment of long**-term supply and demand in the EU labour markets** up to 2020 and strongly advise the coordination of labour and educational policies between Member States with a view to meeting the targets set in the EU 2020 Strategy regarding job creation and avoiding future indirect barriers that may hinder the exercise of the right of free movement.

The Commission is called upon to **explore and publish both positive effects and drawbacks derived from labour mobility for the host and home countries and the EU**, from a socio-economic and geographical cohesion point of view, highlighting consequences such as: economical losses, increased undeclared work and abusive working conditions due to unclear legal situation when transitionary measures are in place, lack of awareness of rights among EU citizens and the outcomes due to delayed actions by Member States to integrate EU workers from the 2004 and 2007 integration wave.

Employment services and information of workers: Members call for developing EURES' institutional capabilities and its reinforcement of the one-stop instrument to facilitate mobility of workers and their families. They call on the Commission and Member States to take the necessary steps to make cooperation between EURES and the corresponding national public authorities more productive and effective. Parliament urges strengthening the implementation of the Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (so-called "Information Directive").

It invites Member States to monitor the activities of recruitment agencies more strictly in order to ensure that the rights of mobile workers are not violated or their expectations disappointed. It calls on the Commission and Member States to monitor the situation of agencies and organisations offering jobs to workers from other Member States and to detect potential illegal or black market employment, or agencies or organisations providing fictitious jobs.

Gathering skills and knowledge to become more competitive: Members take the view that active labour market policies and in particular vocational training and life-long learning, must be reinforced as they can contribute to increasing labour mobility, facilitate transitions in times of structural unemployment, and allowing workers to adapt to labour market changes. They call on the Commission and the Member States to cooperate on achieving higher comparability of school and University curriculaand education systems in the EU, through **simplified mutual recognition of diplomas**.

Lastly, Parliament encourages Member States to boost the participation of SMEs in **lifelong learning** by providing incentives for their respective employees and employers with particular emphasis on **learning languages** and the **new technologies**.