



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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From: The Presidency  
to: The Working Party on Social Questions  
on: 11 November 2013

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Subject: Proposal for a Directive of the European Parliament and of the Council on  
measures facilitating the exercise of rights conferred on workers in the context of  
freedom of movement for workers

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Delegations will find in the Annex the new Presidency text based on the discussions at the Social Questions Working Party meeting on 9 October 2013. The changes to the Commission's proposal are indicated in **bold** (changes based on the SQWP discussions) or in *italics* (changes on drafting by lawyer-linguists). The deletions are marked by [...] or [...].

At this stage of discussions, all delegations (except BG, LV and HU which lifted their scrutiny reservations) are considered to have general scrutiny reservations on the proposal; FR, MT, PL and UK have maintained parliamentary scrutiny reservations.

At the meeting of 9 October, DE entered scrutiny reservations on Article 2, 3(2), 4(1) and (2) and recitals 15, 16 and 20, SE entered scrutiny reservations on Article 5 and on the merging of the two paragraphs of Article 7, and UK entered a scrutiny reservation on Article 6. DE and AT have maintained linguistic reservations on Article 4. In addition, some delegations entered scrutiny reservations on new suggestions made during the meeting, in particular on Article 4."

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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The free movement of workers is a fundamental freedom of *Union* citizens and one of the pillars of the internal market in the Union enshrined in Article 45 of the Treaty on the Functioning of the European Union (*TFEU*). Its implementation is further developed by Union law *aiming to guarantee* the full exercise of rights conferred on Union citizens and the members of their *family*.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (2) The free movement of workers is also a key element to the development of a genuine Union labour market, allowing workers to move from high unemployment areas to areas where there are labour shortages, helping more people find posts better suited to their skills and overcoming bottlenecks in the labour market.
- (3) The free movement of workers gives every citizen *of the Union* the right to move freely to another Member State *in order* to work and reside there [...]. It protects them against discrimination on grounds of nationality as regards **access to** employment, remuneration, **dismissal** and other working conditions by ensuring their equal treatment in comparison to nationals of that Member State. *The free movement of workers* needs to be distinguished from the freedom to provide services, which includes the right *of the Union* undertakings to provide services in another Member State, for which they may *post* their own workers to another Member State temporarily *in order for them* to carry out the work necessary to provide services *in that Member State*.
- (4) With respect to *Union* workers and **members of their family** exercising their right to free movement, Article 45 *TFEU* confers substantial rights for the exercise of this fundamental freedom, *which are further* specified in Regulation (EU) No 492/2011 of the European Parliament and of the Council<sup>3</sup> [...].
- (5) The effective exercise of the freedom of movement of workers is, *however*, still a major challenge and many workers are very often unaware of their rights to free movement. **Because, inter alia, of their potentially more vulnerable position** they **may** still suffer from **unjustified restrictions to their right to free movement**, discrimination on grounds of nationality **and exploitation** when *they move to another Member State*. There is, therefore, a gap between the *law* and its application in practice that needs to be addressed. **However, not all obstacles to the free movement of workers can be removed through legislative measures.**

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<sup>3</sup> *Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1.)*

- (6) In July 2010, in its Communication on "Reaffirming the free movement of workers: rights and major developments" the Commission pointed out that it *would* explore ways of tackling the new needs and challenges in particular in the light of new patterns of mobility facing *Union* workers and *members of their family*. *It also stated that*, in the context of the new strategy for the single market, *it would* consider how to promote and enhance mechanisms for the effective implementation of the principle of equal treatment for *Union [...] workers and members of their family* exercising their right to free movement. **The Commission also summarised developments in legislation and case-law in particular on the personal scope of *Union* law on free movement of workers and the substance of the rights enjoyed by *Union* workers and members of their family.**
- (7) In *its* 2010 EU Citizenship Report *entitled* "Dismantling the obstacles to EU citizens rights" of 27 October 2010, the Commission identified the divergent and incorrect application of Union law on the right to free movement as one of the main obstacles that Union citizens are confronted with in the effective exercise of their rights under Union law. Accordingly, the Commission announced its intention to take action to "facilitate free movement of EU citizens and their third-country national family members by enforcing EU rules strictly, including on non-discrimination, by promoting good practices and increased knowledge *of* EU rules on the ground and by stepping up the dissemination of information to EU citizens about their free movement rights" (Action 15 of the 2010 EU Citizenship Report).
- (8) *In the Commission Communication of 18 April 2012, which formed part of the Commission's Employment package*, the Commission announced its intention to "present a legislative proposal (information and advice) in order to support mobile workers in the exercise of rights derived from the Treaty and Regulation (EU) No 492/2011 on freedom of movement for workers within the Union".
- (9) Adequate and effective application and enforcement are key elements in protecting the rights of **Union workers and members of their family**, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area.

- (10) A more effective and uniform application of rights conferred by Union rules on free movement of workers is also necessary for the proper functioning of the internal market.
- (11) The application and monitoring of the Union rules on free movement *of workers* should be improved to ensure **Union workers and members of their family** are better informed about their rights **and responsibilities**, to assist and to protect them in the exercise of those rights, and to combat circumvention of these rules by public authorities and public or private employers.
- (12) In order to ensure the correct application of, and to monitor compliance with, the substantive *Union rules on free movement of workers*, Member States should take the appropriate measures to protect *Union workers and members of their family* against both discrimination on grounds of nationality and any unjustified **restriction** to the exercise of that right.
- (13) To that end it is appropriate to provide specific rules for effective enforcement [...] and to facilitate a better and more uniform application of **the substantive rules governing the freedom of movement of workers according to** Article 45 *TFEU* and of Regulation (EU) No 492/2011.
- (14) In this context, **Union workers and members of their family** who have been subject to discrimination on the grounds of nationality, or to any unjustified restriction in exercising their right to free movement, should have adequate and effective means of legal protection and redress. When Member States [...] provide for administrative procedures **as a means of legal redress**, they **should** ensure that any administrative decision may be challenged before a tribunal *within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter "the Charter")*.
- (15) *In order to* provide more effective levels of protection, associations and legal entities should also be empowered to engage, as the Member States determine, on behalf of or in support of any **alleged** victim, **with his/her approval**, in proceedings. **This should be** without prejudice to national rules of procedure concerning representation and defense before the courts **and to other competences and collective rights of social partners, employees and employers' representatives, such as related to enforcement of collective agreements, where applicable, under national law and/ or practice.**

- (16) [...] In accordance with the case law of the European Court of Justice<sup>4</sup>, *national rules on time-limits for the enforcement of rights under this Directive [...]* should be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of *those rights [...]*.
- (17) Protection against discrimination based on the grounds of nationality would itself be strengthened by the existence of [...] **bodies** in each Member State with competence to promote equal treatment, to analyse the problems involved in **Union workers' and members of their family** cases, to study possible solutions and to provide specific assistance to Union workers and member of their *family* exercising their right to free movement. **The competence of those bodies should include, inter alia, provision of independant legal and/ or other assistance, such as legal information on the application of the relevant Union and national rules on free movement of workers, the complaint procedures to follow, help to enforce rights and may also include assistance in legal proceedings.**
- (18) *It should be up to each Member State to decide whether the tasks [...] to be carried out under this Directive by [...] bodies mentioned above are to be attributed to already existing bodies with similar objectives at national level, such as promotion of free movement of persons, implementation of the principle of equal treatment or safeguard of individuals rights. Should a Member State decide to expand the mandate of an already existing body, it should ensure allocation of sufficient resources to the existing body for the performance of [...] its existing and additional tasks.*
- (19) Member States should ensure the promotion of synergies with existing information and support tools at [...] Union level and, to this end, [...] should ensure that existing or newly-created bodies **work closely** with the existing information and assistance services, such as Your Europe, SOLVIT, EURES, Enterprise Europe Network and the Points of Single Contact.
- (20) Member States should promote dialogue with non-governmental organisations and between social partners to address and **combat unjustified restrictions in exercising the right to free movement or** different forms of discrimination on the grounds of nationality.

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<sup>4</sup> [...]

- (21) [...]
- (22) Member States should **ensure that** employers, workers and other people **are** provided with easily accessible, relevant information *on* [...] this Directive and [...] *on* Regulation (EU) No 492/2011. This information should also be accessible through Your Europe and EURES.
- (23) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. Member States also have the possibility to extend the competencies of the organisations entrusted with tasks related to the protection of Union [...] workers against discrimination on grounds of nationality so as to cover the right to equal treatment without discrimination on grounds of nationality of all Union citizens and their family members exercising their right to free movement, as enshrined in Article 21 TFEU and Directive 2004/38/EC of the European Parliament and of the Council<sup>5</sup> [...]. The implementation of *this* Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (24) The effective implementation of [...] this Directive implies that Member States, when adopting the appropriate measures to comply with their obligations under this Directive, should provide a reference to this Directive or **be** accompanied by such a reference on the occasion of the official publication of implementing measures.
- (25) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

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<sup>5</sup> *Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States OJ L 158, 30.4.2004.*



- (26) After a sufficient time of implementation of *this* Directive has elapsed, the Commission should prepare a report on its implementation, evaluating in particular the opportunity to present any necessary proposal aiming to guarantee a better enforcement of *Union law on free movement* [...].
- (27) This Directive respects the fundamental rights and observes the principles recognised in the Charter [...] *in particular* the freedom to choose an occupation and the right to engage in work [...], the right to non-discrimination, [...] *in particular* [...] *on* grounds of nationality, the right to collective bargaining and action [...], fair and just working conditions [...], the right to freedom of movement and residence and the right to an effective remedy and a fair trial [...]. It has to be implemented in accordance with those rights and principles.
- (28) Since the objective of this Directive, namely to establish a general common framework of appropriate provisions, measures and mechanisms necessary for the better and more uniform application and enforcement in practice of the **free movement of workers'** rights conferred by the *TFEU* and Regulation (EU) No 492/2011, cannot be sufficiently achieved by the Member States, *but can rather*, by reason of the scale and effect of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### *Subject matter*

This Directive lays down provisions **which facilitate** *the* uniform application and enforcement in practice of *the* rights conferred **by** Article 45 of the Treaty on the Functioning of the European Union (TFEU) and [...] Articles 1 to 10 of Regulation (EU) No 492/2011 [...].

**This Directive applies to Union citizens and members of their family exercising those rights (hereinafter 'Union workers and members of their family').**

### *Article 2*

#### *Scope*

1. This Directive applies to the following matters, **specified in Articles 1 to 10 of Regulation (EU) No 492/2011**, in the area of freedom of movement for workers:
  - (a) access to employment;
  - (b) conditions of employment and work, in particular as regards remuneration, [...] dismissal **and, should Union workers become unemployed, reinstatement or re-employment;**
  - (c) access to social and tax advantages;
  - (d) membership of trade unions;
  - (e) access to training **in vocational schools and retraining centres;**
  - (f) access to housing;
  - (g) access to education, **apprenticeship and vocational training** for *Union* workers' children.
  
2. **This Directive shall not alter the scope of Regulation (EU) No 492/2011.**

## CHAPTER II ENFORCEMENT

### *Article 3* *Defence of rights [...]*

1. Member States shall ensure that, **after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures**, judicial [...] procedures [...], for the enforcement of obligations under Article 45 TFEU and Articles 1 to 10 of Regulation (EU) No 492/2011, are available to all *Union* [...] workers and members of their *family* who consider they have suffered or are suffering from unjustified restrictions *on* their right to free movement or *who* consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the **restriction or discrimination** is alleged to have occurred has ended.
2. Paragraph 1 *of this Article* shall apply without prejudice to national rules on time limits for enforcement of *the* [...] rights **referred to in Article 1**. **However, those national** time limits shall be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of **those** rights [...].

### *Article 4* *Action of associations, organisations or other legal entities in the defence of rights*

1. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down *in* their national law **or practice**, a legitimate interest in ensuring that this Directive *is* complied with, may engage, either on behalf of or in support of, *Union* workers and members of **their family**, with **their** approval, in any judicial and/or administrative procedure provided for the enforcement of *the* rights **referred to in Article 1**.

2. Paragraph 1 *of this Article* shall apply without prejudice to national rules **of procedure concerning representation and defence before the courts and national rules or practice** on time limits for enforcement of *the* [...] rights **referred to in Article 1. However, those national** time limits shall be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of *those* rights [...].
3. **Paragraph 1 of this Article shall apply without prejudice to other competences and collective rights of social partners, employees and employers' representatives, where applicable, under national law and/ or practice.**

### CHAPTER III PROMOTION OF EQUAL TREATMENT

#### *Article 5*

##### *Bodies to support Union workers and members of their family*

1. Member States shall designate [...] bodies for the promotion, analysis, monitoring and support of equal treatment of **Union workers and** members of their family without discrimination on grounds of nationality **or unjustified restrictions to their right to free movement** and make the necessary arrangements for functioning of such bodies. These bodies may form part of **existing** bodies at national level with similar objectives. [...].
2. Member States shall ensure that the competences of these bodies include:
  - (a) *providing independent legal and/or other assistance to Union workers and members of their family [...],* without prejudice to the rights of *those* workers **and** members of their **family, [...]** and of associations, organisations *and* other legal entities referred to in Article 4 [...];
  - (b) conducting independent surveys concerning **unjustified restrictions to the right to free movement or** discrimination on grounds of nationality **of Union workers and members of their families;**

- (c) publishing independent reports and making recommendations on any issue relating to such **restrictions or** discrimination;
  - (d) publishing **relevant** information on [...] the application at national level of *Union* rules on free movement of workers.
3. Member States shall ensure that existing or newly created bodies are aware **of and are able to** make use of and **to** co-operate with the existing information and assistance services at Union level, such as Your Europe, SOLVIT, EURES, Enterprise Europe Network and the Points of Single Contact.

*Article 6*

*Dialogue*

Member States shall encourage dialogue with appropriate non-governmental organisations and the social partners which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against **unjustified restrictions to the right to free movement or** discrimination on grounds of nationality **of *Union* workers and members of their family** with a view to promoting the principle of equal treatment.

**CHAPTER IV**

**ACCESS TO INFORMATION**

*Article 7*

*Dissemination of information*

[...] Member States shall ensure that the provisions adopted pursuant to this Directive [...] **and information on the rights** *under* Articles 1 to 10 of Regulation (EU) No 492/2011, are brought to the attention of the persons concerned, **in particular *Union* workers and employers**, by all appropriate means throughout their territory **in a clear, accesible, comprehensive and up-to-date way**.

[...] This information should also be easily accessible through Your Europe and EURES.

**CHAPTER V**  
**FINAL PROVISIONS**

*Article 8*

*Minimum requirements*

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. Member States may provide that the competencies of the [...] bodies referred to in Article 5 of *this Directive* for the promotion, analysis, monitoring and support of equal treatment of **Union** workers **and** members of their family without discrimination on grounds of nationality, also cover the right to equal treatment without discrimination on grounds of nationality of all *Union* citizens and their family members exercising their right to free movement, as enshrined in Article 21 TFEU and Directive 2004/38/EC of the European Parliament and of the Council [...].
3. Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of *Union* workers and *members of their families*, in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

*Article 9*

*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ..\* [...]. They shall forthwith communicate to the Commission the text of those provisions.

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\* *OJ: please insert a date: 2 years after the date of entry of this Directive.*

2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 10*

*Report*

*No later than ....\**, the Commission shall report to the European Parliament, the Council, the European Economic and Social Committee, **and the Committee of the Regions** on the implementation of this Directive, with a view to proposing where appropriate, *any* necessary amendments.

*Article 11*

*Entry into force*

This Directive shall enter into force on the *twentieth* day following that of its publication in the Official Journal of the European Union.

*Article 12*

*Addressees*

This Directive is addressed to the Member States.

Done at xxx,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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\* *OJ: please insert a date: 2 years after the expiry of deadline for transposition of this Directive.*