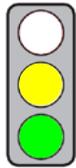


## KEY ISSUES

**Objective of the Directive:** Workers should be able to enforce their right to freedom of movement more easily. This will increase worker mobility.

**Parties affected:** Employees, employers, trade unions.



**Pro:** The proposal is an important addition to the Regulation on the freedom of movement for workers which, although it grants extensive rights, contains no provisions regarding their enforcement.

**Contra:** The deficiencies in the ability to realise the freedom of movement for workers cannot be satisfactorily rectified by way of a Directive; the proposed provisions should therefore be inserted directly into the Regulation.

## CONTENT

### Title

**Proposal COM(2013) 236** of 26 April 2013 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**

### Brief Summary

Note: References to articles without further addition relate to the Proposal for a Directive. References to the Regulation on the freedom of movement for workers within the Union [(EU) No. 492/2011] are followed by (Reg).

#### ► Basis and aim of the Directive

- The Commission criticises the fact that:
  - EU citizens and their families are still subject to obstacles when it comes to exercising their right to freedom of movement for workers (Art. 45 TFEU).
  - National authorities and employers are not complying with EU law, in particular the Regulation on freedom of movement for workers [Reg (EU) No. 492/2011].
  - Affected EU citizens lack the instruments for enforcing their rights.
  - EU citizens do not have sufficient information about their rights.
- The Commission considers its criticism to be confirmed by the fact that only 3.1% of EU citizens of employable age live in a Member State other than their own.
- This Directive aims to
  - facilitate the enforcement of the applicable law as well as
  - promote equality and facilitate access to information.
- The Directive applies to discrimination based on citizenship (Art. 2) pursuant to the Regulation on the freedom of movement [EU) No. 492/2011].

#### ► Background: Regulation on the Freedom of Movement (EU) No. 492/2011

- The Regulation places citizens from another Member State on an equal footing as – actual or potential – employees with the domestic citizens (Art. 1–10 Reg).
- This principle of equality applies, in particular, to
  - job hunting, support by employment offices and application procedures (Art. 1, 2 and 5 Reg),
  - employment and working conditions, particularly remuneration and dismissal (Art. 7 (1) Reg),
  - education, professional training and apprenticeships, including for family members (Art. 7 (3), Art. 10 Reg),
  - tax and social advantages (Art. 7 (2) Reg),
  - membership of trade unions (Art. 8 Reg) and
  - the rental or purchase of housing (Art. 9 Reg).
- Although the Member States may keep legislation which is based on nationality and treat their own nationals differently to foreigners, this legislation cannot be applied in the case of EU citizens. This applies, in particular, to
  - special recruitment procedures for foreign nationals (Art. 3 (2) a Reg) and
  - restrictions on the number of foreign employees coming in (Art. 4 (1) Reg).

- In certain cases it is possible to deviate from the principal of equality with respect to all foreign workers. This applies, in particular, to
  - the requirement for linguistic knowledge for the post to be filled (Art. 3 (1), paragraph 2 Reg) and
  - holding an office governed by public law (Art.8 Reg).

► **Enforcement of rights**

- Member States must ensure that any restriction on the freedom of movement for workers is legally enforceable. This also applies where the employment contract containing a breach has already ended (Art. 3 (1)).
- "Associations, organisations or other legal entities" (Art. 4 (1), with a legitimate interest should be able to engage on behalf of workers and their families whose rights have been infringed. Member States shall determine when a legitimate right exists.
  - The approval of the aggrieved party is required for such engagement.
  - The associations, organisations or other legal entities may act, where approval is given, in their own name or in the name of the aggrieved party.
  - The associations, organisations or other legal entities may initiate proceedings themselves or take part in them.
- Member States may set deadlines for the enforcement of rights (Art. 3 (2) and Art. 4 (2)).

► **Promoting equality and access to information**

- Member States must create "bodies" to monitor and support the equal treatment of all employees. This task may be undertaken by existing agencies insofar as they already handle other areas of discrimination. (Art. 5 (1))
- The agencies shall have the following powers (Art. 5 (2)):
  - providing legal and/or other assistance to those affected in pursuing their complaints,
  - conducting independent surveys concerning discrimination on the basis of nationality,
  - the publication of reports,
  - making recommendations in cases of discrimination and
  - publishing information on the application of EU rules.
- The agencies are to use and co-operate with "existing information and assistance services at Union level", such as the public information internet platform Your Europe and the European network of public employment services EURES (Art. 5 (3)).
- Member States can also commission the agencies to monitor their own compliance with the general right to freedom of movement (Art. 8 (2)).
- Member States are also to promote dialogue with non-governmental organisations and social partners about compliance with equal treatment (Art. 6).
- Member States shall ensure that EU law on the freedom of movement for workers, including this Directive, is brought to the attention of all "persons concerned by all appropriate means" (p. 22) (Art. 7 (1)).
- Information about rights to freedom of movement must be clear, easily accessible, comprehensive and up-to-date. They must at least be accessible via "Your Europe" and "EURES". (Art. 7 (2))

► **Concluding provisions**

- The Member States may introduce or maintain provisions which are more favourable (Art. 8 (1)).
- No later than two years after expiry of the deadline for transposition, the Commission shall issue a report on the implementation of the Directive and propose any necessary amendments (Art. 10).

## Statement on Subsidiarity by the Commission

The uniform application of the Regulation on the freedom of movement for workers can only be guaranteed by action at EU level.

## Policy Context

The Commission already announced this Directive in its Communications "Towards a Job-Rich Recovery" [COM(2012) 173; see [cepPolicyBrief](#)] and "Towards Social Investment for Growth and Cohesion" [COM(2013) 83; see [cepPolicyBrief](#)].

## Legislative Procedure

26 April 2013	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

## Options for Influencing the Political Process

Directorates General:	DG Employment and Social Affairs (leading)
Committees of the European Parliament:	Employment (leading), Rapporteur Edit Bauer (EVP Group, SK); Education; Legal Affairs; Equal Treatment; Petitions
Federal Ministries:	Labour and Social Affairs (leading); Economic Affairs; Justice;
Committees of the German Bundestag:	Employment (leading); EU Affairs; Internal Affairs; Legal Affairs
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

## Formalities

Legal competence:	Art. 46 TFEU (Freedom of movement for workers)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (Ordinary legislative procedure)

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

The "small" proportion of EU citizens who work in a Member State other than their own is no indication of obstacles to mobility due to nationality because the decision to migrate is affected by a variety of factors such as language barriers, bond with the home country, assistance for the unemployed in the home country or the recognition of professional qualifications in the target country. Greater commitment by the EU in the enforcement of the freedom of movement for workers is nevertheless justified because, even if the Member States have undertaken, in Art. 45 TFEU and in the Regulation on the freedom of movement for workers, to allow the discrimination-free access of all EU citizens to the domestic labour market, national politics provides the incentive – that is re-election – to keep certain professions sealed off from European competition.

The agencies of the Member States that monitor equal treatment can identify discrimination against foreigners by employers. Whether they – as government bodies – are able to enforce the freedom of movement for workers as against other government authorities is questionable. To guarantee this, the agencies must be sufficiently independent.

For wider use of the freedom of movement for workers by the public it is important to have clear and easily accessible information about the rights applicable when taking up work in another Member State. It is therefore right to make greater use of "Your Europe" and EURES.

### Impact on growth and employment

Overcoming the obstacles to freedom of movement for workers may, within limits, lead to greater employee mobility and thus relieve imbalances – labour shortages and unemployment – on national labour markets. This will increase growth and employment.

### Impact on Europe as a business location

An essential criterion for the decision on where to locate a business is the availability of qualified staff. Dismantling cross-border obstacles to mobility, insofar as it succeeds as a result of the proposed measures, facilitates EU-wide recruitment and strengthens the EU as an investment location.

## Legal Assessment

### Legislative competence

The EU is competent to take all necessary measures to bring about the freedom of movement for workers (Art. 46 TFEU).

### Subsidiarity

Unproblematic.

### Proportionality

**The proposal is an important addition to the Regulation on the freedom of movement for workers which, although it grants extensive rights, contains no provisions regarding their enforcement.** This gap may be closed by way of the proposed Directive.

In particular, the ability of associations, organisations and other legal entities to engage on behalf of affected parties is necessary and does not exceed the action required to achieve the objective because, firstly, cases of discrimination on the basis of nationality regularly affect employees for whom both the legal system and the language of the host Member State are foreign. The involvement of third parties in this case is appropriate. Secondly, the express approval of the aggrieved party is still required to avoid the possibility of any misuse. And thirdly, it remains for the Member States to define the bodies that have a legitimate interest.

#### Other compatibility with EU law

Unproblematic.

#### Impact on German law

No impact on German law is expected. The main provisions on legal redress are contained in the *Allgemeine Gleichbehandlungsgesetz* (General Equal Treatment Act – AGG). The Anti-discrimination Agency of the Federation is also nominated as the agency which will support victims of discrimination and monitor equal treatment.

#### Alternative action

In view of the Commission's criticism of the lack of information for employers and employees about the right of freedom of movement and the insufficient possibilities for enforcing rights, the proposed Directive does not seem to go far enough. **The deficiencies found in the realisation of the freedom of movement for workers cannot be satisfactorily rectified by way of a Directive** because this still allows the Member States extensive scope for discretion. **The proposed provisions should therefore be included directly into the Regulation on the freedom of movement for workers** [(EU) No. 492/2011].

The provisions on legal redress (Art. 3) and on the representation authorisation for associations, organisations or other legal entities (Art. 4) could be inserted as a new Article 10a and 10b in a separate Section 4 of Chapter 1 of the Regulation. The provisions on the promotion of equality and access to information could be included in the Regulation under their own chapter.

#### Conclusion

The proposal is an important addition to the Regulation on the freedom of movement for workers which, although it grants extensive rights, contains no provisions regarding their enforcement. The deficiencies in the ability to realise the freedom of movement for workers cannot be satisfactorily rectified by way of a Directive; the proposed provisions should therefore be inserted directly into the Regulation.