



Free Movement of Workers

26 October 2015

DG Employment, Social Affairs and Inclusion

Overview

- 1. Context: Free Movement of Persons in the EU**
- 2. The rules on FMOW and the concept of "migrant worker"**
- 3. What rights are given?**
 - (a) Jobseekers**
 - (b) Access to Employment**
 - (c) Equal Treatment**
 - (d) Family members**
- 4. What types of barriers are prohibited by Art 45 TFEU?**
- 5. Enforcement of rights**
- 6. Coordination of Social Security schemes**



CONTEXT: FREE MOVEMENT OF PERSONS IN THE EU

Free Movement of Persons in the EU

Art 21 TFEU gives all **EU CITIZENS** the right to move and reside freely, including **non-actives, pensioners, students** (subject to restrictions in secondary legislation)

Free Movement
of Workers (Art
45 TFEU)

EMPLOYED
plus family
members

Freedom of
Establishment
(Article 49
TFEU)


**SELF-
EMPLOYED**
plus family
members

Freedom to
Provide
Services
(Article 56
TFEU)

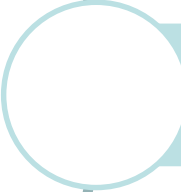
**POSTED
WORKERS**

The rules on FMOW: and the concept of "migrant worker"

The main legal instruments



Article 45 of the Treaty on the Functioning of the European Union (TFEU)



Regulation (EU) No 492/2011 on freedom of movement for workers



Directive 2004/38/EC on the right of EU citizens to move and reside freely in the territory of the Member States

The concept of migrant worker

- **Cross-border** element: *nationals of one EU Member State who leave their country of origin and go to work to another Member State; not persons who have never left their country of origin*
- Also: **migrants who return** after having exercised their right to free movement
- **Worker:** *person who (i) undertakes genuine and effective work (ii) under the direction of someone else (iii) for which he is paid (Case C-66/85 Lawrie-Blum).*

What rights are given?

EU citizens can:

- *look for a job in another EU country*
- *work there without needing a work permit*
- *reside there for that purpose*
- *stay there after employment has finished*
- *enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages*
- *As workers be joined by family members who have derived rights*

Job-seekers



Job-seeking I

- *Receive same assistance from national employment office as nationals of that Member State (Article 5 Regulation 492/2011)*
- *Right to reside in Member State for job-seeking: no formalities during first 6 months (See Recital 9 Directive 2004/38, Case C-292/90 Antonissen)*

Job-seeking II

- *Right to reside for more than 6 months: if Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged*

(Article 14(4) Directive 2004/38, Case C-292/90 Antonissen)



European
Commission

Access to Employment



Access to Employment I

- *No work permits*
- *No quotas*
- *Equal Treatment the rule (Article 3(1) Regulation 492/11)*
- *Language requirements only permissible where reasonable and necessary for the job (Case C-379/87 Groener)*

Access to Employment II

As an exception, access to posts in the public sector may be restricted to own nationals (Article 45(4) TFEU)

- **Restrictive interpretation: only posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interest of the State**

Equal Treatment



Equal Treatment

Article 45(2) TFEU:

"Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment".

(Note: Article 45 TFEU applies to both workers and jobseekers)

Equal Treatment – working conditions and trade union membership

Article 7(1) Regulation 492/2011

"...in respect of any conditions of employment of work, in particular as regards remuneration, dismissal, and...re-employment"

Article 8 Regulation 492/2011

"equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto..."

Equal treatment – social advantages (Article 7(2) Regulation 492/2011)

Definition (C-85/96 Martinez Sala):

"All advantages, whether or not linked to a contract of employment, that are generally granted to national workers primarily because of their objective status as workers, or by virtue of the mere fact of their residence on the national territory, and the extension of which to workers who are nationals of other Member States seems likely to facilitate their mobility within the EU".

Includes: minimum subsistence benefit;; child-raising allowance: study grants; public transport fare reductions for large families; the right to have legal proceedings in own language.

Rights of Family Members



Rights of family members

Right to work, Article 23 of Directive 2004/38

Children of migrant workers, regardless of their nationality, have the right to education in the host Member State, Article 12 Regulation 1612/68

- **includes an independent right to reside for children,**
- **Includes right to reside of primary carer of such child, [C-413/99 Baumbast, C-310/08 Ibrahim and C-480/08 Teixeira]**

Access to social advantages as a derived right:

- **Includes study grants**
- **No residence conditions**
- **No previous periods of residence required**

What types of barriers are prohibited by Article 45 TFEU?

**Article 45
TFEU covers
3 different
types of
barriers to
free
movement**

Direct Discrimination: where a migrant worker is treated differently on the grounds of his nationality

Indirect Discrimination: where an apparently neutral condition impacts disproportionately on migrant workers, for example a residence condition (See Case C-237/94 O'Flynn at para.18)

Measures which preclude or deter a national of a MS from leaving his country of origin to exercise his right of free movement (Case C-415/93 Bosman)

Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

Specific measures to ensure effective protection of rights conferred by Art 45 TFEU and Regulation (EU) No 492/2011.

National body or bodies must exist to provide assistance to Union workers (including jobseekers) and their family members;

Promotion of dialogue

Better information provision at national level;



Coordination of Social Security schemes- Regulations 883/2004 and 987/2009

The rules on social security coordination do not replace national systems with a single European one. All countries are free to decide who is to be insured under their legislation, which benefits are granted and under what conditions. The EU provides common rules to protect your social security rights when moving within Europe (EU 28 + Iceland, Liechtenstein, Norway and Switzerland).

Principles of coordination

- You are covered by the legislation of one country at a time so you only pay contributions in one country. The decision on which country's legislation applies to you will be made by the social security institutions. You cannot choose.*
- You have the same rights and obligations as the nationals of the country where you are covered. This is known as the principle of equal treatment or non-discrimination.*
- When you claim a benefit, your previous periods of insurance, work or residence in other countries are taken into account if necessary.*
- If you are entitled to a cash benefit from one country, you may generally receive it even if you are living in a different country. This is known as the principle of exportability.*

**FURTHER
INFORMATION?**



<http://ec.europa.eu/social/main.jsp?langId=en&catId=457>



EMPLOYMENT, SOCIAL AFFAIRS & INCLUSION

European Commission > Employment, Social Affairs & Inclusion > Working in another EU country



Policies and activities

News and multimedia

Publications

Working in another EU country

Search the

Your rights

when moving within Europe

- ▶ Free Movement - EU nationals
- ▶ Enlargement - transitional provisions
- ▶ Non-EU nationals
- ▶ Posted workers
- ▶ Legislation
- ▶ Network of experts



**Your social security rights
when moving within Europe**



The easy way to find information
on jobs and learning
opportunities throughout Europe