


Lithuania-Poland conference on Free Movement

Vilnius, 28 October 2010


**'Reaffirming the free movement of workers: rights and major developments'**



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- Communication "Reaffirming the Free Movement of Workers: rights and major developments"  
COM(2010)373 final, 13.7. 2010  
<http://ec.europa.eu/social/main.jsp?catId=457&langId=en>
- Follow-up to
- Communication "Free movement of Workers: achieving the full benefits and potentials"  
COM(2002)694 final, 11.12.2002  
<http://ec.europa.eu/social/main.jsp?catId=458&langId=en>




**40 years free movement of workers**



- One of four fundamental freedoms
- Transitional period until 1968
- Active working population → Union citizenship
- EU migrant worker ↔ EU citizen




**Mobile EU citizens in EU Member States**




- 11 M living abroad
- 6 M working abroad
- 1 M frontier workers
- 0.04 M first time jobseekers

Approx. figures by Eurostat, April 2009




**Free movement of workers**



EU citizens have the right to work and live in another EU Member State without being discriminated against on grounds of nationality

- Article 45 TFEU
- Regulation 1612/68
- Directive 2004/38


Directive 2005/36, Regulations 883/2004 and 987/2009, Directive 98/49



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5

**Who can benefit from EU law on free movement of workers?**



**EU migrant workers:**  
Any person who undertakes genuine and effective work for which he is paid under the direction of someone else (66/85 Lawrie-Blum)

**Other beneficiaries:**

- Family members
- Jobseekers
- People retaining the status of worker



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6

## Cross-border link

- Person must be a migrant worker:
  - Work in another Member State than country of origin
  - Reside in one Member State and work in another Member State ("frontier workers") (Meints C-57/96)
    - Includes residence in another Member State and work in Member State of origin (Hartmann C-212/05)
  - Returning migrant worker: who has exercised right to free movement as a worker and then returns to country of origin (Singh C-370/90)



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7

## Where does it apply?

### Professional activities carried out

- In territory of EU Member State and territories as defined by Treaty (Article 52 TEU, Article 355 TFEU)
- Outside EU territory 'if legal relationship of employment is located within the territory of a Member State or retains sufficiently close link with that territory' (Lopes da Veiga 9/88) (Boukhalfa C-214/94)



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8

## What are core rights of free movement of workers?

- Right to look for a job in another Member State
- Right to work in another Member State
- Right to equal treatment:
  - Access to employment
  - Working conditions
  - All other advantages that can help to facilitate the worker's integration in the host Member State



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9

## Right to look for a job in another Member State

- Receive same assistance from national employment office as nationals of that Member State (Article 5 Regulation 1612/68)
- Right to reside in Member State for job-seeking: no formalities during first 6 months (Recital 9 Directive 2004/38, Antonissen C-292/90)
- 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, Antonissen C-292/90)



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10

## Rights of jobseekers

- Equal treatment with nationals as regards access to employment
- Equal treatment with nationals as regards access to benefits 'of a financial nature intended to facilitate access to employment on the labour market of the host Member State'
  - If there is a genuine link between jobseeker and geographic employment market (reasonable period of job-seeking; proportionate residence criterion)
  - Exception of Article 24(2) Directive 2004/38 does not apply to financial benefits to facilitate access to the labour market (Collins C-138/02, Ioannidis C-258/04, Vatsouras C-22/08)



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11

## Right to work – taking up an activity Equal treatment in access to work

### Equal treatment in access to work (Article 3(1) Regulation 1612/68)

- language requirements
  - Reasonable and necessary for the job
  - no grounds for excluding workers from other Member States

### 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



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12

## Right to work – taking up an activity Equal treatment in access to work

- Access to labour market of other Member State to exercise regulated profession:
  - Directive 2005/36/EC, recognition of professional qualifications
- Sport
  - Professional and semi-professional sportsmen are workers
  - no direct or indirect discrimination, no obstacles



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13

## Equal treatment

- No direct or indirect discrimination (Article 45 TFEU)
- No obstacles (Article 45 TFEU)
- Same working conditions (Article 7(1) Regulation 1612/68)



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14

## Equal treatment – social advantages (Article 7(2) Regulation 1612/68)

- 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.*

- Financial (minimum subsistence, child-raising allowance, study grants, public transport fare reductions for large families) and non-financial (legal proceedings in specific language)



## Rights after end of employment relationship

Equal treatment with nationals of the host Member State after end of employment relationship if status of worker is retained

- Article 7(3), 24 Directive 2004/38
- Case C-22/08 Vatsouras



## Residence rights

- Directive 2004/38: brings together previous rules
- Distinction economically active – non-active EU citizens
- Same rules for residence up to 3 months: no formalities, only ID
- Residence for period of more than 3 months:
  - Migrant workers may be asked to report presence
  - family members have right to reside with the worker and to take up an economic activity
  - Permanent residence after 5 years of uninterrupted lawful residence
  - Permanent residence after shorter period (Article 17)



## Further 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:
  - Includes study grants
  - No residence conditions
  - No previous periods of residence required





## More information

- Websites
  - Free movement of workers <http://ec.europa.eu/social/main.jsp?catId=457&langId=en>
  - EUR-lex (legislation and case law) <http://eur-lex.europa.eu/en/index.htm>



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19