

Commission Staff Working Document Free Movement of Workers in the Public Sector

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Aim

To inform citizens, Member States' authorities, social partners and other stakeholders about how the Commission understands the most important aspects of free movement of workers in the public sector

Issues covered in the CSWD

- Posts reserved for nationals according to Article 45 (4) TFEU
- Recognition of professional qualifications
- Language requirements
- Recruitment procedures
- Recognition of professional experience and seniority for access to posts and for determining working conditions
- Taking account of qualifications, skills and training measures for access to posts and for determining working conditions
- Other issues like residence, status and coordination of social security schemes

Background

- 2009: systematic investigation of the national provisions on free movement of public sector workers and their application in practice via a Questionnaire to Member States
- Report by Prof. Jacques Ziller:
“Free Movement of European Union Citizens and Employment in the Public Sector”
 - 1° general part on the state of play of free movement of workers in the public sector
 - 2° part with country files on each Member State

Overview of Content

- Initiatives of Commission and Member States
- Particularities of free movement of workers in the public sector
- Detailed discussion of all the issues listed before

Initiatives of Commission and Member States

- Commission
 - Action of 1988 on nationality condition in 4 sectors
 - 2002 Communication
 - Network of Legal Experts
 - 2010 Communication
- Member States
 - Detailed discussion in the European Public Administration Network (EUPAN) and publication of a series of reports

Particularities of free movement of workers in the public sector (1)

- Definition of worker in the sense of Article 45 TFEU includes civil servants and public sector employees
- Limited scope of Article 45 (4) TFEU
 - covers only restrictions of access to certain posts for nationals
 - for any other aspect of access to posts or determining working conditions equal treatment must be guaranteed

Particularities of free movement of workers in the public sector (2)

- Member States' authorities have a dual role
 - Regulators
 - Employers
- EU law is neutral with respect to the internal organisation of Member States, but Member States must comply with EU law when deciding on the organisation of their public sector
- If Member States do not have statutory rules on certain aspects, it is nevertheless important that in practice equal treatment is guaranteed

Posts reserved for nationals according to Article 45 (4) TFEU (1)

- Court of Justice
 - Member States are authorised to reserve only those public service posts for their nationals which actually involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interest of the State or other public authorities (149/79 and confirmed in many other cases)
 - functional approach: case-by-case assessment with regard to nature of tasks and responsibilities covered by the post

Posts reserved for nationals according to Article 45 (4) TFEU (2)

- Captains' jurisprudence (C-405/01, C-47/02)
 - Private sector posts on which the State assigns public authority functions
 - Posts may be reserved for nationals only if the rights under powers conferred by public law on masters and chief mates are actually exercised on a regular basis and do not represent a very minor part of their activities
 - Commission: same reasoning applies to posts in the public sector
- Current situation in Member States
 - Different approaches when applying Art 45 (4) TFEU
 - Positive developments
 - Remaining challenges

Recognition of qualifications

- For being entitled to exercise a profession
- Directive 2005/36/EC on recognition of professional qualifications is applicable to regulated professions in the public sector
- Posts within the public sector often require a different type of diploma (a certain level of education or specific qualification)
 - Directive 2005/36 is not applicable
 - Position of Commission explained in 2010 Communication and CSWD

Language requirements

- Any language requirement must be reasonable and necessary for the job in question
- Employers cannot demand only a specific qualification as proof
- Employers must not require a mother tongue level

Recruitment procedures

- Member States are free to determine their recruitment methods but equal treatment of migrant workers must be guaranteed
- However, Court of Justice has ruled that fully qualified migrant workers are not obliged to participate in a competition used to recruit people for a specific training with a view to filling a post in the relevant field of public service after the completion of the training (C-285/01 *Burbaud*)

Recognition of professional experience and seniority

- Concerns access to the public sector and determination of working conditions
- Court of Justice (in particular C-419/92, C-15/96, C-187/96, C-195/98, C-224/01): previous periods of comparable employment acquired in another Member State must be taken into account in the same way as working periods acquired in the host Member State
- Current situation in Member States
 - Member States have made many reforms, which led to a reduction of complaints
 - Remaining challenges

Taking into account qualifications, skills and training measures

- Qualifications, skills and training measures can have an effect on:
 - access to posts: e.g. points awarded in recruitment procedure
 - determining working conditions: e.g. salary, career perspectives
- Comparable qualifications, skills and training measures have to be taken into account equally as those acquired in host Member State

Other issues

- Residence
 - Condition to apply or to work
 - Better conditions of recruitment
- Status and working conditions
- Coordination of social security schemes

Conclusions

- Good progress concerning free movement of workers in the public sector, but specific obstacles still exist
- To improve the situation joint efforts are necessary:
 - Member States have to undertake reforms and monitor the application of their rules in practice
 - To raise awareness information should be provided
 - The Commission will involve different levels and stakeholders to discuss the issues and will continue monitoring



Questions

Discussion

