



Proposal for a Directive to facilitate the exercise of rights conferred on workers in the context of freedom of movement for workers

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Improving the national enforcement of the rules on Free Movement of Workers

1. *Why this proposal?*
2. *What are the main elements?*
3. *What will the "FMOW body" look like?*
4. *What innovations have the co-legislators added to the proposal?*




1. WHY THE PROPOSAL?


European Commission

EU citizens working in other EU Member States

6.9 million EU citizens residing and working in other MS (3.2%)

- 1.2 million frontier workers**
- 1.2 million posted workers**
- 918,000 EU jobseekers residing in other MS**



Data sources: DG EMPL, EU Employment and Social Situation in Europe 2013, EU Labour Force Survey 2013 Q3, 2012 and PDA1 2011

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European Commission

An impressive set of rights on paper

<i>Freedom of movement of workers</i>	<p>Article 45 TFEU</p> <p>Regulation (EU) No 492/2011</p> <p>Directive 2004/38/EC</p> <p>Case-law of the Court of Justice</p> <p><u>Limited derogations</u></p> <p><i>Public sector</i></p> <p><i>Transitional arrangements</i></p> <p><i>Language requirements</i></p>
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European Commission

Article 45(2) TFEU: a Treaty-based prohibition of discrimination

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



Poor enforcement and information at national level

Europe Direct *10,158 information requests in 2012-13*

Solvit *1/3 of cases*

CHAP *Around 300 cases per year*



Some examples of problems

Recognition of professional experience

Language requirements

Job advertisements

Recruitment conditions

Pay differentials

Social and tax advantages

Discrimination



EU Citizenship Report 2013

Citizens do not know what to do when their rights are not respected

***51%** feel they are not very well informed whilst **23%** feel that they are not informed at all about what they can do when their rights as an EU citizen are not respected*



Consultation process

- *The consultations started in October 2010 and ended in October 2012 with the presentation of a non- paper to the members of the Advisory Committee on Free movement of workers (representatives of Member States and of social partners at national and European level).*
- *Public consultation (from 17/06/2011 to 12/08/2011)*
- *Network of experts on free movement of workers (Evaluation reports in October 2010 and March 2012).*

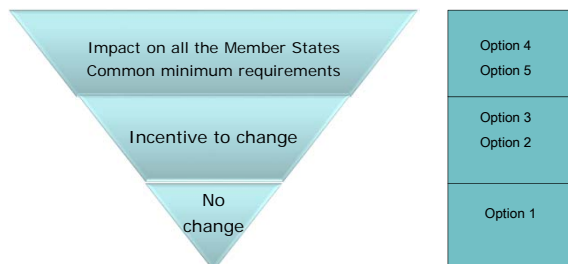


The options considered

Option1	Baseline scenario
Option2	Common guidance documents
Option3	Commission's recommendation to member States
Option4	Directive introducing support measures for EU migrant workers
Option5	Directive introducing an enhanced protection for EU migrant workers



The options considered - Impact





MAIN ELEMENTS OF THE PROPOSAL



Commission proposal for a Directive to facilitate the exercise of rights in the context of free movement of workers (COM (2013) 236 of 26.4.13)

"Support Measures for EU migrant workers"

3 main elements:

1. Assistance via one or more designated national body or bodies;
2. Better information provision at national level;
3. Ensuring effective protection of rights.



WHAT DOES THE "FMOW" BODY LOOK LIKE?



Article 5: a designated national "body or bodies" : tasks (1)

- Provision of independent legal and/or other assistance to workers...and their family members in pursuing their complaints
- Conducting independent surveys and publishing independent reports
- Publishing information on any issue relating to national application of the EU rules on free movement of workers



Article 5: a designated national "body or bodies" : tasks (2)

- Making use of and cooperating with existing information and assistance services at EU level
- [Added by Legislators] Acting as a contact point vis-a-vis contact points in other Member States
- [Added by Legislators in recital]: Cooperation between body/bodies and existing information services provided by social partners, other entities at national level



"FMOW body": flexibility for national implementation

- " a structure, a body or bodies"
- "may form part of agencies at national level with similar objectives"
- Possibility under Article 8(2) to extend competences to cover discrimination on ground of nationality under Article 18 TFEU



Resources for the body?

If a Member State decides to allocate the tasks to an existing body...

"It should ensure allocation of adequate resources...for the effective and adequate performance of its existing an additional tasks"

[Moved by legislators to recital]



OTHER ELEMENTS OF THE PROPOSAL



Provision of Information: Article 5(2)(d) and Article 7

- Art. 5(2)(d) • FMOW body to publish information on national implementation of EU rules
- Art. 7(1) • Duty on MS to provide information to all stakeholders about rights conferred by Directive and associated EU rights
- Art. 7(2) • Duty as to how the information should be provided: "clear, easily accessible, ...up-to-date", (added by legislators) in more than one EU language.



Defence of Rights: Article 3

- *Means of redress for breach of rights*
- *National procedural rules must comply with principles of equivalence and effectiveness*
- *No specific provision for effective, dissuasive and proportionate remedy – but implicit!*



Assistance with Protection of Rights: Article 4

- *Right of associations, organisations or other entities – with a legitimate interest in accordance with criteria laid down in national law - to represent migrant workers in judicial and/or administrative proceedings in order to ensure enforcement of rights*



Focus of the discussion with the co-legislators





Issue	Discussions
Material scope	Is the scope of Regulation 492/2011 adequately summarised in Article 2? Can anything be added?
Terminology and scope of action	"discrimination" and "unjustified restrictions on free movement"
Defence of Rights	Is there a need for a specific provision on remedies/victimisation?
Action of associations	Are differences between national labour law procedures adequately recognised?
"FMOW Body"	How to define the body; Need to define legal assistance?

