

Free Movement of Workers

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acquis

- **One of four fundamental freedoms**
- **Art. 39 EC**
- **Regulation 1612/68**
- **Directive 2004/38/EC**
- **case-law of the ECJ**

Needs

Legislative:

- need for full and **detailed implementation of the *acquis* by accession**
- ministries need to implement *acquis* by preparing adequate drafts or amendments

Administrative:

- Key institutions involved in the process
- **adequate training** authorities for implementation of the *acquis*
- Private employers and public in general need to be sensitised

Rights of EU migrant workers- Basics

- the right to look for a job in another Member State
- the right to work in another Member State
- the right to reside there for that purpose
- the right to remain there
- the right to equal treatment in respect of access to employment, working conditions and all other advantages which could help to facilitate the worker's integration in the host Member State
- the right to be joined by family members who will have derived rights

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.

Limitations to the exercise of this right

- Some limitations to regarding access to **public service** of the host Member State
- Some limitations on **public security, public policy and public health grounds**

The right to look for a job in another Member State

- right to **look for a job** in another Member State
- national employment offices need to offer **same assistance** as to nationals of host state
- Right to **stay** in host country under certain conditions **while seeking job**.

Residence Rights & formalities

- Follows right to work in another Member State.
- **no longer residence permit** system but host Member State may have **simple registration** system
- formalities depend on the length of employment
- **In case of non-compliance: only proportionate and non-discriminatory sanctions.**
- Right to start work independent of completion formalities

Right of permanent residence

- Basic rule: residence for a **continuous period of five years**
- Right may be lost only if worker leaves the country for a period of more than two consecutive years
- Also in case of **retirement**
- Also in case of **permanent incapacity to work**
- Special case of **frontier worker**

Equal treatment

- a) Free Access to employment
- b) Working conditions
- c) Social and tax advantages
- d) trade union rights

Derived rights family members

- Including from third countries
- Definition spouse/partner
- Children
- Ascendants
- Registration formalities
- Similar residence rights
- No work permit for access to labour market
- Equal access to social/tax advantages, education etc...

Employment in the public sector

- According to Article 39(4) of the EC Treaty,
- interpreted in a very **restrictive way**: only those posts in which the **exercise of public authority and the responsibility for safeguarding the general interest of the State** is involved may be restricted to their own nationals.

Third country nationals

Governed by national legislation and not EC law unless:

- (1) spouse/children of EU migrant worker.
- (2) covered by bilateral agreements containing provisions on migrant work
- (3) JLS directives for TCNs e.g., long-term residents directive, family reunification

Website address for more information

- http://ec.europa.eu/employment_social/free_movement/index_en.htm