



Do you want to work in another
EU Member State?

Find out about your rights!



European Commission

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European Commission

Directorate-General for Employment, Social Affairs and Equal Opportunities
Unit E.3

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Introduction

Free movement of persons is one of the fundamental freedoms guaranteed by Community law. EU citizens can move to another Member State in order to work or to study there, to provide or receive services, to set up a company, to settle there for retirement or, in the case of economically inactive persons, simply to reside there.

This guide describes **only** the legal position of **persons who migrate within the European Union for reasons of employment**. Its aim is to provide you with information about your rights as a migrant worker in an easily understandable questions and answers form.

Do you want to take up a job in another Member State? Are you working in another Member State and wondering what your rights are in comparison with workers from that country? What happens if you work in one country but reside in another? This guide will provide you with answers to those and many other questions.

This guide has been published in the framework of the European Year of Workers' Mobility 2006, which has been organised to raise awareness and understanding of the benefits of working abroad.



European Year of Workers' Mobility 2006 ●

The Community provisions on Free Movement of Workers

Free movement of workers has existed since the European Community was founded in 1957. It is enshrined in article 39 of the EC Treaty and has been developed by secondary legislation, particularly:

- Regulation (EEC) No. 1612/68¹;
- Directive 2004/38/EC². This Directive, an expression of the rights conferred by citizenship of the Union, consolidated and revised the previous body of legislation relating to free movement of persons, including workers. The Directive became effective on 30 April 2006.

The present brochure refers mainly to the rules established by these two legislative acts.

There are other Community provisions which govern issues which are of major importance for migrant workers, namely recognition of qualifications and diplomas³ and social security rights⁴. A brief reference will be made to these two issues as well.

The European Court of Justice plays a major role in interpreting and developing the concept and implications of this freedom. Its case-law will be therefore referred to in this guide⁵.

1. Do the provisions on the free movement of workers apply to me? Am I a worker covered by article 39 of the EC Treaty?

The Community provisions on free movement of workers apply to *migrant workers*, i.e. you will be covered if you are a national of one of the Member States of the European Union or of the European Economic Area (see question 3)

- 1 Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ No L 257, 19.10.1968.
- 2 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ No L 158, 30.04.2004.
- 3 http://ec.europa.eu/internal_market/qualifications/index_en.htm
- 4 http://ec.europa.eu/employment_social/social_security_schemes/index_en.htm
- 5 For more detailed information about the ECJ case-law on free movement of workers, see the Communication from the Commission "Free movement of workers – achieving the full benefits and potential", COM(2002) 694 final of 11.12.2002, http://ec.europa.eu/employment_social/free_movement/docs_en.htm.

and you move from your country of origin to another Member State (*the host Member State*) in order to work there. You can also rely on these provisions when returning into your country of origin after you have exercised your right of free movement. Instead, you will not be covered if you have never exercised that right.

A worker is defined by the case-law of the European Court of Justice as a person who (i) undertakes genuine and effective work, (ii) under the direction of someone else, (iii) for which he or she is paid. This definition is very broad and covers, for instance, somebody who works ten hours a week, a trainee, a person whose salary is lower than the minimum subsistence level set in the host Member State or than the minimal wage, etc. Civil servants and employees in the public sector are workers, and so are sportsmen/sportswomen who engage in gainful employment.

If you are self-employed, a student, retired or an economically inactive person, you will be covered by other provisions of EC law⁶.

2. What rights does the free movement of workers confer?

Basically free movement of workers means that you have:

- The right to look for a job in another Member State
- The right to work in another Member State
- The right to reside there during employment
- The right to be accompanied by your family
- The right to remain in the Member State where you have worked
- The right to be treated the same as nationals of the host Member State in terms of access to employment, working conditions and all other advantages which could help to facilitate your integration there.

6 You can obtain further information on the free movement of persons in general from the following internet addresses:

Provision of services and self-employment:

http://ec.europa.eu/internal_market/services/index_en.htm

Students: http://ec.europa.eu/dgs/education_culture/index_en.htm

General information concerning free movement of EU citizens:

http://ec.europa.eu/justice_home/fsj/citizenship/movement/fsj_citizenship_movement_en.htm

and http://ec.europa.eu/justice_home/doc_centre/citizenship/doc_citizenship_intro_en.htm

3. In which countries can I rely on the provisions concerning the free movement of workers?

You can rely on the Community provisions on free movement of workers in all of the 25 Member States in the European Union. These are:

Austria	Greece	Poland*
Belgium	Hungary*	Portugal
Cyprus	Ireland	Slovakia*
Czech Republic*	Italy	Slovenia*
Denmark	Latvia*	Spain
Estonia*	Lithuania*	Sweden
France	Luxembourg	United Kingdom
Finland	Malta	
Germany	Netherlands	

Free movement of workers also applies, in general terms, to the countries in the European Economic Area: Iceland, Liechtenstein and Norway⁷.

Throughout this guide the terms "country", "State" or "Member State" always refer to **the above 28 countries**. All other States are referred to as "third countries".

Under the transitional arrangements set out in the Accession Treaty, **certain restrictions to access to the labour market** apply to eight of the ten Member States which joined the European Union on 1 May 2004 (countries marked with "*"). For further details see the chapter "Enlargement – Transitional Measures" and the specific guide published by the European Commission⁸.

7 In these countries, some exceptions could apply as regards certain provisions of Directive 2004/38/EC concerning residence rights.

8 Guide "Free movement of workers to and from the new Member States. How will it work in practice?" available from the following internet address:
http://ec.europa.eu/employment_social/free_movement/docs_en.htm.

4. What happens if I am a posted worker?

Posted workers are a special case. Unlike migrant workers, posted workers are sent to another country to perform a service and, once they have completed their task, return to their country of origin, without joining the labour market of the host Member State. To cover this specific situation, a Directive was adopted to lay down a core of mandatory rules on the minimum protection to be guaranteed in the host country by employers who post workers to perform temporary work there⁹.

9 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services: http://ec.europa.eu/employment_social/labour Law/postingofworkers_en.htm.

Access to employment

5. What if I want to look for a job in another country?

If you are a national of a Member State you have the right to look for a job in another Member State. You will receive the same assistance from the national employment offices as nationals of that country.

If you are a jobseeker, according to the case-law of the Court of Justice you may stay in the host Member State for a "reasonable period of time, sufficient to enable you to apprise yourself of offers of employment and to take the necessary steps to be engaged". After expiry of such period, you cannot be expelled if you prove that you are still seeking employment and have chances of being engaged (for example, if you have job interviews scheduled).

According to the recent developments of the case-law of the European Court of Justice, jobseekers can have access to certain benefits of a financial nature on an equal footing with nationals of the host Member State, but the granting of such allowance may be subject to establishing that there is a "genuine link" between the jobseeker and the employment market of that State. This could be the case, in particular, by requiring that the jobseeker has, for a reasonable period of time, genuinely sought work in that Member State¹⁰.

The European Job Mobility Portal (EURES¹¹) provides you useful information on job opportunities in the European Economic Area. It contains information about the rules and procedures linked to employment in the Member States, practical information on living and working conditions (cost of living, taxes, social rights, demand for labour in different sectors) plus a vast database of vacancies in other countries. See also the EUROPASS website¹² to learn how to make your skills and qualifications clearly and easily understood throughout Europe.

10 See judgement of the ECJ of 23 March 2004 in case C-138/02, Collins.

11 <http://europa.eu/eures/>

12 <http://europass.cedefop.europa.eu/>

6. Do I have free access to employment?

You have the right to take up an activity in another Member State under the same conditions as apply to its own nationals, without being discriminated against on the grounds of your nationality.

One exception applies to access to certain posts in the public sector, where a nationality condition may be imposed (see question 8).

Another applies to linguistic knowledge: a certain level of language knowledge may be required, provided that it is reasonable and necessary for the job in question. This could be the case, for instance, when working in the educational system of another Member State. A certain level of linguistic ability can therefore be required but employers may not demand only one specific qualification as proof. While a high level of language proficiency may, under certain strict conditions, be justifiable for some jobs, a mother tongue requirement cannot be imposed.

You may not be required to obtain a work permit. However, access to the labour market is subject to certain restrictions for nationals of some of the Member States that joined the EU on 1st May 2004. These restrictions may entail in practice an obligation to apply for a work permit (see the chapter "Enlargement – Transitional Measures").

7. What happens if I obtained my professional qualifications in another Member State?

A general system of recognition of qualifications and diplomas exists in the EU. According to this system, if you are fully qualified to exercise a regulated profession (i.e. one that cannot be practised without certain specific professional qualifications) in one Member State, you can have your qualification recognised in another Member State. However, if the training or the field of activity of the profession in question there is substantially different, the host Member State may require you to undergo a period of adaptation or to take an aptitude test. In principle the choice is yours. Automatic recognition of diplomas exists for only a small number of professions¹³.

13 You can obtain further information on the Community rules on recognition of qualifications from the following webpage: http://ec.europa.eu/internal_market/qualifications/index_en.htm.

A new Directive concerning recognition of qualifications was adopted in September 2005¹⁴. Its aim is to clarify and simplify the existing rules in order to facilitate the free movement of qualified people between the Member States.

8. What if I want to work in the public sector of another Member State?

As mentioned earlier, civil servants and employees in the public sector are workers, which means that the rules on free movement and the principle of equal treatment apply to them too.

However, there is one exception as regards **access to the public sector**: posts involving the exercise of public authority and the responsibility for safeguarding the general interest of the State may be restricted to nationals of the host Member State. This could include, for instance, specific functions of the State and similar bodies such as the armed forces, the police and other public order forces, the judges, the tax authorities or the diplomatic corps. However, not all posts in these fields imply the exercise of public authority and the responsibility for safeguarding the general interest of the State. These criteria must therefore be evaluated case-by-case in the light of the nature of the tasks and responsibilities of the post.

Apart from this exception, recruitment competitions for posts in the public sector must be open to EU citizens.

Once you have been admitted into the public sector, you may not be treated differently to nationals as regards other aspects of access to the post and working conditions. For instance, if you have acquired comparable professional experience in the public sector of another Member State, this experience must be taken into account in the same way as professional experience acquired in the host Member State¹⁵.

14 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ No L 255, 30. 9.2005. The Directive has to be transposed into national law by October 2007.

15 For more detailed information on questions related to the public sector, see the Communication from the Commission "Free movement of workers – achieving the full benefits and potential", COM (2002) 694 final, of 11.12.2002:
http://ec.europa.eu/employment_social/free_movement/docs_en.htm.



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Equal treatment

9. What are my rights compared with nationals of the host Member State?

If you are a migrant worker, you must be treated in exactly the same way as your colleagues who are nationals of the country where you work. You may not be discriminated against on the grounds of your nationality. The principle of equal treatment applies in particular to:

1. Access to employment (see question 5);
2. All working conditions, for instance, salary, dismissal and reinstatement;
3. Access to social and tax advantages.

This right to non-discrimination on grounds of nationality applies not only to open discrimination, but also to neutral rules which, unless objectively justified and proportionate to their aim, are intrinsically liable to affect migrant workers more than national workers and consequently risk placing migrant workers at a particular disadvantage. This is the so-called "indirect discrimination". This could be the case when, for example, a residence or length of residence condition is required.

10. What are the social advantages?

Social advantages have been defined by the Court of Justice as all the advantages which, whether or not linked to a contract, 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 whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community.

Examples of social advantages include public transport fare reductions for large families, child raising allowances, funeral payments and minimum subsistence payments.

11. What about tax advantages?

Migrant workers are entitled to the same tax advantages as national workers. For example, if the host Member State allows tax deductions in relation to contributions to an occupational pension and private sickness and invalidity insurance, it must allow equivalent deductions in relation to contributions paid by migrant workers in their country of origin.

12. Do I have other rights in terms of equal treatment?

You must also receive equal treatment as regards access to training, membership of trade unions and exercise of the rights attached, and housing.

13. What if I work in one Member State but reside in another?

If you are a frontier worker, you are entitled to all the benefits granted to migrant workers in the Member State where you are employed. You also have the right to the social advantages granted to national workers even if you do not reside there. You can invoke the right to equal treatment on income tax matters. For example, rules which make it more beneficial to be taxed as a couple than as a single person must apply to you in the same way as to couples in a similar situation in the Member State where you are employed and may not be conditional upon both spouses being resident in the State of employment.

Specific rules may apply for frontier workers as regards certain social security benefits¹⁶.

16 For further details, see the guide "The Community provisions on social security – Your social security rights when moving within the European union" available from the following internet address: http://ec.europa.eu/employment_social/social_security_schemes/index_en.htm.

Right of entry and residence

14. If I go to another country to work, are there any formalities that I must complete in order to enter its territory and reside there?

All you need in order to **enter** the territory of the host Member State is a valid identity card or passport. If you do not have your travel documents, you must be given, before turning you back, the opportunity to obtain them within a reasonable period of time or to prove by other means your identity and nationality and establish that you are covered by the right of free movement and residence.

Based on the new Directive on the right of residence, if you are an EU migrant worker you will no longer need to obtain a residence permit in the Member State where you **reside** for employment purposes: simple registration with the competent authorities will suffice, and even this will only be required if it is deemed necessary by the host Member State.

The formalities which you must complete depend on the *length of your employment in the host Member State*:

- If the employment is expected to last *less than three months*, no residence formalities are required. However, national authorities may request you to report your presence on their territory;
- If the employment lasts *more than three months*, the Member State may require you to register with the competent authority. The deadline for registration may not be less than three months from the date of arrival. A **registration certificate** should be issued immediately upon production of a valid identity card or passport and a confirmation of engagement from the employer or a certificate of employment. No other documents (payslips, electricity bills, housing, tax statements, etc.) may be required for that purpose.

If you fail to comply with these formalities, you could be liable to proportionate and non-discriminatory sanctions. However, you can start working before being registered.

For details of the right of entry and residence of your family members see the chapter "Family Members".

15. And what happens if I become unemployed or I go on training in the host Member State?

In the following situations you retain your status as worker:

- If you are in duly recorded **involuntary unemployment** after having been employed for more than one year and you have registered as a job-seeker with the relevant employment office;
- If you are in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and you have registered as a job-seeker with the relevant employment office. In this case, you retain your status as worker for not less than six months;
- If you embark on **vocational training** but only if the training is related to your previous job. However, if you are involuntarily unemployed, the training does not have to be related to your previous employment;
- If you are temporarily unable to work as the result of an **illness or accident**.

"Retaining" your status as worker means that in those cases you are still considered as a worker and, as such, you can claim the right of residence and access to social advantages (see question 10 in the chapter "Equal Treatment").

16. What if I live for a long time in the host Member State?

If you have legally resided for a *continuous period of five years*¹⁷ in the host Member State you acquire a **right of permanent residence** in that country. At your request, the host Member State should issue a document certifying permanent residence.

Once acquired, the right of permanent residence can be lost only if you leave the country for a period of more than two consecutive years.

17 Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

The right of permanent residence can also be acquired by your family members (see question 20). This gives you and your family a more stable status in the host Member State. You will no longer be subject to any conditions on the exercise of your right of residence and will receive virtually equal treatment compared with nationals. And you will be better protected against expulsion on grounds of public policy or public security.

In some specific circumstances you (and your family members, see question 20) can acquire this status earlier:

- If you stopped working because you reached retirement age (or you took early retirement) provided you had been working in the host Member State for at least the preceding twelve months and you have resided there continuously for more than three years;
- If you stopped working as a result of permanent incapacity to work provided you have resided in the host Member State for more than two years. If such incapacity is the result of an accident at work or an occupational disease no condition of length of residence applies;
- If after three years of continuous employment and residence in the host Member State, you work in another Member State, while retaining your residence in the host Member State, to which you return, as a rule, every day or at least once a week.

If you have acquired yourself the right of permanent residence as a result of one of the above-mentioned circumstances, your family members who reside with you in the host Member State will have also this right in this country.

17. Is my entry and residence in the host Member State subject to any restrictions?

Your right of residence in a Member State may be terminated if you are not a worker any longer or do not retain that status and you do not fulfil the conditions to have a right of residence under the Community law with another status (e.g. as non active, as a student, etc.).

Furthermore, your right to enter and to reside in another Member State as a worker may be restricted only for reasons related to public policy, public security and public health. The latter must be proportionate and based

exclusively on your personal conduct, which must represent a genuine, present and sufficiently serious threat to one of the fundamental interests of society. For instance, previous criminal convictions do not in themselves constitute grounds for taking such measures. Similarly, the expiry of the identity card used to enter the territory does not justify expulsion. Measures adopted for public health reasons may refer exclusively to the diseases referred to in Directive 2004/38/EC.

You must be notified of any decision against you on these grounds in writing and in such a way that you are able to comprehend its content and implications. You must be given access to the legal remedies available at national level.

The same rules apply to entry and residence of members of your family.

Family members

18. Which members of my family can join or accompany me in the host Member State?

The following family members, whatever their nationality, have the right to reside with you in the host Member State:

- **Your spouse;**
- **Your partner** with whom you have contracted a **registered partnership** in a Member State, but only if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down by the host Member State;
- Your **descendants** and those of your spouse or registered partner who are **under the age of 21 or are dependants;**
- **Your dependent relatives in the ascending line** and those of your spouse or registered partner.

Member States are also under an obligation to facilitate the entry and residence of:

- Other family members who are dependants or members of your household or who require your personal care due to serious health grounds, and
- The partner with whom you have a durable relationship, duly attested¹⁸.

This obligation requires the authorities of the host Member State to undertake an extensive examination of the personal circumstances and to justify any denial of entry or residence of those persons. Nevertheless, Member States are not obliged to grant them the right of residence automatically.

18 This may cover different situations, such as marriage between same sex partners, registered partnership, other legal partnerships and cohabitation.

19. What administrative formalities must they complete in order to enter and reside in the host Member State?

If your family members are citizens of the European Union, they can **enter** the territory of the host Member State upon production of a valid identity card or passport. If they are third-country nationals, a valid passport and, in some cases, an entry visa will be required¹⁹. However, if they do not have the necessary travel documents or the necessary visas, they must be given the opportunity to obtain them within a reasonable period of time or to prove by other means that they are covered by the right of free movement and residence before any refusal of entry.

Member States should grant family members every facility to obtain the visas which should be free of charge. They should be issued as soon as possible and on the basis of an accelerated procedure. If your family member already has a residence card issued by a Member State (see below), no visa requirement may be imposed.

The formalities linked to the right of **residence** of more than three months depend on whether your family members are EU citizens or third-country nationals.

Family members who are EU citizens may be required, like you, to register with the competent authority, in which case they will be issued with a **registration certificate**. For this purpose, only the following documents may be required:

- A valid identity card or passport
- Proof of the family relationship or of the registered partnership
- The registration certificate of the worker whom the family members are accompanying or, in the absence of a registration system, any other proof of residence in the host Member State
- In the case of dependant relatives, other family members or durable partnerships, proof that they fall into these categories.

¹⁹ The requirement of an entry visa will be made in accordance with Regulation (EC) No 539/2001 or, in the United Kingdom or Ireland, where the Regulation is not applicable, with national law.

Family members who are third-country nationals will be issued a "**residence card** of a family member of a Union citizen". This residence card will be valid for five years or for the envisaged period of residence of the Union citizen, if this period is less than five years. The documents that can be required for the purpose of issuing a residence card are the same as those listed above with the sole exception that third-country family members must present a valid passport as identity document. The deadline for applying for a residence card must be not less than three months from the date of arrival.

20. Do they also have a right to permanent residence?

If your family members are EU citizens, they too will qualify for the right of permanent residence in the host Member State after a continuous period of residence of five years. Upon application, the host Member State should issue them with a document certifying permanent residence.

If your family members are third-country nationals they will acquire this right if they have legally resided with you in the host Member State for five continuous years. If this condition is met they will be issued with a permanent residence card renewable every ten years.

Under certain circumstances you and your family members can acquire this status earlier (see question 16).

21. What happens if I divorce (+ annulment of marriage or termination of registered partnership), I die or I go to another country? Can my family members stay in the host Member State?

If your family members have already acquired the right of permanent residence, they are entitled to stay in the host Member State and no longer have to prove that they meet any conditions.

If they have not yet acquired the right of permanent residence, the situation will depend on the nationality of your family members.

If they are EU citizens they are entitled to reside in the host Member State in their own right. They should, however, prove that they meet the residence conditions in any of the capacities foreseen in Community law, such as workers

themselves, self-employed, students, retired or economically inactive persons or family members of an EU citizen who satisfies these conditions²⁰.

The situation is different for family members who are not nationals of a Member State, in which case the conditions depend on the circumstances:

- In the case of death of the migrant worker, they are entitled to stay in the host Member State if they have been residing there as family members for at least one year before his death, and if they are "economically independent"²¹ (either they are workers or self-employed, or they have sufficient resources and sickness insurance, or they are members of the family already constituted in the member State of a person satisfying these requirements – this covers e.g. children who do not fulfil themselves the residence condition but whose remaining parent does);
- In the case of termination of marriage (by annulment or divorce) or of a registered partnership a third-country family member is entitled to remain if:
 - the marriage (or partnership) has lasted at least three years, including one year in the host Member State; or
 - the third-country national spouse has custody of the EU's citizen children; or
 - this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence; or

20 No conditions would be required in the event of death of the migrant worker if the worker had, at the time of death, resided continuously on the territory of that Member State for two years; or the death resulted from an accident at work or an occupational disease or the surviving spouse lost the nationality of that Member State following marriage to the worker. In those circumstances the family members will be granted right of permanent residence in the host Member State.

21 No conditions would be required if the worker had, at the time of death, resided continuously on the territory of the host Member State for two years or the death resulted from an accident at work or an occupational disease or the surviving spouse lost the nationality of that Member State following marriage to the worker. In those circumstances, the family members will be granted right of permanent residence in the host Member State.

- by agreement between the couple, the third-country national spouse has the right of access to a minor child, provided the court has ruled that this access must be in the host Member State, and for as long as it is required.

If one of these conditions is met, the family members have to prove also that they will be "economically independent" (see above for explanation) or that they are members of the family already constituted in the host Member State of a person satisfying such requirement.

Under no circumstances may the migrant worker's departure from the host Member State or death entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there and until the completion of their studies.

22. What other rights do my family members have? Can they also work in the host country?

Irrespective of nationality, your family members have the right to take up an employment or self-employment in the host Member State. If they are third-country nationals, this means that no work permit will be required. Your family members have the right to equal treatment, including social advantages.

Your children, whatever their nationality, have the right to education in the host Member State on the same terms as its nationals. This includes, for instance, the right to equal treatment in relation to study grants.



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Enlargement: transitional measures

23. What are the transitional measures?

As mentioned earlier, the European Commission has already published another guide which describes the transitional arrangements for the free movement of workers from the Member States which joined the European Union on 1 May 2004²². The information below is just a brief summary of those measures. See the above-mentioned guide for fuller details.

NB: "EU-15 Member States" means all Member States forming part of the EU before 1 May 2004.

"EU-10 Member States" means all States that joined the EU on 1 May 2004.

"EU-8 Member States" means all EU-10 Member States except for Malta and Cyprus.

On 1 May 2004 the then 15-Member EU was enlarged and welcomed ten new Member States. The 2003 Accession Treaty which prepared the ground for this enlargement contains transitional arrangements on the free movement of workers. These transitional measures apply to nationals of eight "new" Member States (EU-8): the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia and Slovenia. No transitional arrangements apply to Cyprus and Malta except for the possibility for Malta to invoke a safeguard clause if it experiences serious disturbances on its labour market.

The transitional arrangements allow the EU-15 Member States to delay application of the Community law on *access* to employment by nationals of the EU-8 Member States and instead to apply national rules in this respect. In practical terms, this means that if you are a national of one of the EU-8 Member States, you may be required to obtain a work permit before you can take up employment in one of the EU-15 Member States.

The EU-8 countries can apply reciprocal restrictions to the nationals of EU-15 Member States which apply restrictions to their citizens.

22 Guide "Free movement of workers from and to the new Member States. How will it work in practice?", available from the following internet address:
http://ec.europa.eu/employment_social/free_movement/docs_en.htm.

Workers from the Member States that joined the EU on 1 May 2004 and who are subject to transitional arrangements must be given priority over workers from third countries. Once the worker has obtained access to the labour market, he/she receives equal treatment.

Moreover, nationals of EU-8 Member States who were legally working in one of the EU-15 Member States on or after the date of accession, and had been admitted to the labour market of that Member State for an uninterrupted period of twelve months or longer have direct access (without work permits) to the labour market of *that* Member State, but not automatically to the labour markets of the other EU-15 Member States.

24. For how long will the transitional measures be applied?

This transitional period started on 1 May 2004 and will irrevocably end on 30 April 2011. The transitional period is divided into three phases. Different conditions apply during each phase.

First phase

EU-15 Member States may apply national measures for two years following accession. They may, however, decide to liberalise access to their labour markets and abolish the obligation to obtain a work permit²³.

Second phase

By 30 April 2006 EU-15 Member States must notify the Commission if they wish to continue applying restrictions for a further three years²⁴.

23 During the first phase of the transitional period Sweden and Ireland decided to apply no restrictions on access to their labour markets. The UK also opted for no restrictions but introduced a Workers Registration Scheme. All other EU-15 countries maintained a work permit system, in some cases combined with quotas. Malta issued work permits for monitoring purposes. Poland, Slovenia and Hungary decided to apply reciprocal restrictions to nationals from the EU-15 Member States applying restrictions. All EU-10 Member States opened their labour markets to workers from other EU-10 Member States.

24 During the second phase of the transitional period four further EU-15 decided to open their labour markets: Finland, Greece, Portugal and Spain (Finland introduced a registration scheme). Some other countries reduced restrictions in some sectors/professions: Belgium, France, Luxembourg and the Netherlands. Italy increased the quota for EU-8 workers. Only Hungary and Poland maintained the reciprocal measures.

Third phase

In principle EU-15 Member States should fully apply Community law after five years after accession. However, if there are serious disturbances of the labour markets (or if there is a threat thereof), they may extend national measures for a further two years after notifying the Commission.

The EURES website²⁵ provides detailed updated information about the rules applicable in each Member State during each phase of the transitional period.

25. What about the next enlargement to Romania and Bulgaria?

It is foreseen that when Bulgaria and Romania accede to the EU there will also be the possibility for the EU-25 MS to apply similar transitional arrangements.

25 <http://europa.eu/eures/>



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Third-country nationals

26. What about nationals from third countries? Do they also have the right to free movement and equal treatment?

Members of the family of a Community migrant worker are in a more favourable position than other third country nationals. They have the right to follow the worker and the right to work in the host Member State without needing to obtain a work permit.

Apart from these cases, third-country nationals who want to work in an EU Member State are subject to the national legislation of that Member State. In most cases, they will have to obtain a work permit.

The EU has concluded agreements with several third countries which contain a clause providing for equal treatment as regards working conditions. This means that once nationals of these countries have gained access to the labour market of a Member State in accordance with its national rules, they have to be treated in the same way as nationals of that Member State.

Third-country nationals who are admitted onto the territory of one Member State *do not* have the right to move freely to another Member State. However, third-country nationals legally residing in the territory of a Member State for five years who, upon fulfilment of the conditions prescribed by Directive 2003/109/EC acquire a "long-term resident status – EC" laid down by the Directive may move from one Member State to another under certain conditions including, where required by the Member State, an obligation to go through certain national procedures. Once residing in another Member State, they will be entitled to the rights and benefits very similar to those granted in the first Member State.

Nevertheless, Directive 2003/109/EC is not applicable to Ireland, United Kingdom and Denmark. For this reason third-country nationals residing in these Member States are not entitled to acquire a "long-term resident status – EC" and consequently they will not be able to move to another Member State. Furthermore, third country nationals who acquired "long-term resident status – EC" in the Member States bound by the Directive will not be in the position to go to these three Member States either²⁶.

26 For further information on these issues see the following internet address:
http://ec.europa.eu/justice_home/fsj/immigration/fsj_immigration_intro_en.htm.



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Social security rights

27. What happens with my social security rights when I move to another country for employment?

There are Community provisions to prevent you from losing part or all of your social security rights when you move from one Member State to another. A detailed overview of these can be found in the guide entitled "The Community provisions on social security – Your rights when moving within the European Union" published by the European Commission²⁷.

Supplementary old-age pension schemes are also important. In order to reduce problems stemming from the lack of "portability" of such schemes, the European Commission adopted a proposal for a directive on this specific issue²⁸.

27 Available from the following internet address:

http://ec.europa.eu/employment_social/social_security_schemes/index_en.htm.

28 Proposal for a directive of the European Parliament and of the Council on improving the portability of supplementary pension rights, COM(2005) 507 final of 20.10.2005, available from the following internet address:

http://ec.europa.eu/employment_social/news/2005/oct/dir_191005_en.pdf.



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How to enforce your rights

28. What can I do if the national authorities or my employer do not respect my rights as a migrant worker?

If you feel that your rights as a migrant worker are not being respected by the national authorities of the Member State where you work or by your employer, it is extremely important that first of all you seek redress before the national authorities whenever you think a particular rule or a specific decision which concerns you might be contrary to the EC rules on free movement of workers.

You can also:

- Seek assistance through the *SOLVIT system*²⁹;
- Seek assistance through the *Citizens Signpost Service*³⁰;
- Address a complaint to the European Commission³¹; however, the Commission will not be able to intervene if your problem relates to decisions made by a private employer. Moreover, lodging the complaint will not have a direct effect on your individual case. Therefore, it is vital that you seek redress before the national authorities;
- Send a petition to the European Parliament³².

29 http://europa.eu/solvit/site/index_en.htm

30 http://europa.eu/citizensrights/signpost/front_end/index_en.htm

31 http://ec.europa.eu/secretariat_general/sgb/lexcomm/index_en.htm

32 <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=49&language=EN>

29. What is the role of the Court of Justice of the European Communities?

The European Court of Justice has issued numerous judgments on how to interpret the Community rules on free movement of workers, most of them in favour of migrant workers and members of their families. It has contributed to greater protection of European citizens. The role of the European Court of Justice is therefore essential when doubts arise about the scope of the Community provisions, their application to individual cases and their interpretation with regard to national law.

It is therefore no exaggeration to state that without the case-law of the European Court of Justice, the protection offered by the Community provisions on free movement of workers would be less efficient, less complete and less satisfactory. The Court of Justice is the legal guardian of European citizens exercising their right to move and to stay within Europe.

30. Can I bring a case before the European Court of Justice?

Given this important role of the European Court, you should know what to do to get the Court involved in the decision on your case:

- The European Court of Justice **does not directly decide on individual cases**. Its judgments are limited to the interpretation of the relevant Community provisions in the light of a particular case. This interpretation is binding, however, on all parties involved (national courts, national institutions and individuals) and therefore essential for the final decision on your case.
- It follows that there is no possibility for you to bring your case directly before the European Court of Justice. You must **make use of all the legal procedures and appeals available to you under national law**.
- In case of doubt, the national court dealing with your case may ask the Court of Justice how a specific Community rule on free movement should be interpreted if the decision in your case depends on the interpretation. This is called a "reference for a preliminary ruling". Every national court concerned, even at first instance, may ask for such a preliminary ruling. If no further appeal is possible against the decision of

the national court, it must then apply for a preliminary ruling. You can therefore always suggest that the judge in your case should consult the European Court of Justice, except, of course, in clear-cut cases where no such ruling is necessary.

- Finally, another possibility is that the European Commission may refer to the European Court of Justice if it considers that national laws and regulations are incompatible with European rules (the "infringement procedure"). However, such a procedure is time-consuming and will have no direct effect on your personal situation.



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Sources of information

Documents

- Communication from the Commission "Free movement of workers – achieving the full benefits and potential", COM(2002) 694 final, of 11.12.2002
http://ec.europa.eu/employment_social/free_movement/docs_en.htm
- Guide "Free movement of workers to and from the new Member States. How will it work in practice?"
http://ec.europa.eu/employment_social/free_movement/docs_en.htm
- Guide "The Community provisions on social security – Your rights when moving within the European Union"
http://ec.europa.eu/employment_social/social_security_schemes/index_en.htm

Useful internet links

- Free movement of workers in the EU
http://ec.europa.eu/employment_social/free_movement/index_en.htm
- Free movement of persons in the EU
http://ec.europa.eu/justice_home/fsj/citizenship/movement/fsj_citizenship_movement_en.htm and
http://ec.europa.eu/justice_home/doc_centre/citizenship/doc_citizenship_intro_en.htm
- Freedom to provide services and freedom of establishment
http://ec.europa.eu/internal_market/services/index_en.htm
- Recognition of diplomas and qualifications
http://ec.europa.eu/internal_market/qualifications/index_en.htm
- Social security rights
http://ec.europa.eu/employment_social/social_security_schemes/index_en.htm
- Supplementary pension schemes
http://ec.europa.eu/employment_social/social_protection/pensions_en.htm#forum

- EURES (The European Job Mobility Portal)
<http://ec.europa.eu/eures/>
- EUROPASS
<http://europass.cedefop.europa.eu/>
- Posted workers
http://ec.europa.eu/employment_social/labour_law/postingofworkers_en.htm
- Immigration
http://ec.europa.eu/justice_home/fsj/immigration/fsj_immigration_intro_en.htm
- Students
http://ec.europa.eu/dgs/education_culture/index_en.htm
- European Year of Workers' Mobility
http://ec.europa.eu/employment_social/workersmobility2006/index_en.htm
- SOLVIT
<http://europa.eu/solvit/>
- Citizens Signpost Service
http://europa.eu/citizensrights/signpost/front_end/
- EC legislation
<http://eur-lex.europa.eu/>
- European Court of Justice
<http://curia.europa.eu/en/index.htm>
- General information about the EU
http://europa.eu/index_en.htm
- "Your Europe"
<http://europa.eu/youreurope/>
- Europe direct
http://europa.eu/europedirect/index_en.htm

European Commission

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