



Erasmus+



# Labour mobility within the EU: principles and practise

- I. Introduction to the Free movement of persons
- II. Free movement of persons in practise: European citizenship; Schengen cooperation; residence rights
- III. Free movement of workers: migrant workers x posted workers

# 1.1 Basic figures (2015)

- EU = 4 M km<sup>2</sup> and 503 M inhabitants
- 28 Member states + 24 official languages
  - 1957, 73, 81, 86, 95, 2004, 07, 13
- 11 M of Europeans living abroad
  - Romania (2.3 M), Poland (1.9 M), Italy (1.7 M), Germany (1.5 M), UK (1.4 M)
- 7 M working abroad
- 1.9 M frontier workers
- 2.05 M of posted workers

## 1.2 Free movement in general

- The free movement of persons is one of 4 fundamental freedoms of the EU internal market
- Internal market is characterised by the abolition between Member States (MS) of obstacles to the free movement of factors of economic production
- Goods
- Persons
- Services
- Capital

## 1.3 Free movement of persons: legal basis

- The free movement of persons is a fundamental right guaranteed to EU citizens by the Treaties and secondary legislation
  - Art. 21 TFEU: Free movement of EU citizens
  - Art. 45 TFEU: Free movement of workers
  - Art. 49 TFEU: Freedom of establishment
  - Art. 56 TFEU: Freedom to provide services
- Derogations and barriers
  - Public order and security, public health, public administration
  - Language requirements and requirements on qualifications
  - Different social security schemes and taxes

## 1.4 Free movement of persons: history

- Free movement of persons initially reserved for workers
- x Self-employed (and companies) could benefit from Freedom of Establishment (permanent) and of Services (temporary)
- Gradually extended to other categories of persons
  - Family members: regulation 1612/68
  - Retired people
  - Students
- EU citizenship extended it to every nationals of MS irrespective of their economic status = no need to be economically active but economically self-sufficient
- It was developed by *Schengen acquis*

## II.1 European citizenship

- = introduced by Maastricht treaty in 1992, this complementary status to nationality of a MS gives to its holders a set of rights:
- **to move, reside and work freely in the EU**
  - to vote and stand as a candidate in
    - Elections to EP
    - Municipal elections in their MS of residence
  - to benefit from diplomatic / consular protection from any MS when traveling to 3S
  - to address (and obtain an answer) any EU body in one of 24 official languages
  - to petition to EP and to complain to EU ombudsman

## II.2 Schengen cooperation

- = no police and/or customs checks on internal borders
- Founded on the Schengen Agreement of 1985 (FR, DE, BE, LUX, NL) x currently 26 states
  - incorporated into the European Union legal framework by the Treaty of Amsterdam of 1997
- Common control of single external borders and cooperation between police services and judicial authorities
  - SIS II
  - Frontex, Europol, Eurojust
- Common rules and procedure applied with regard to visas, asylum and border controls
  - Regulation 539/2001: list of countries whose citizens must have a visa and whose citizens are exempt from
  - Common procedure of treatment of requests for asylum

## II.3 Residence rights

- Provided by Directive 2004/38
  - Distinction according to the length of stay
  - Distinction economically active x non-active EU citizen
- Residence up to 3 months: no formalities, only ID
  - Jobseekers up to 6 months or more
- Residence for period of more than 3 months:
  - migrant workers may be asked to register
  - family members have right to reside with the worker
  - students can stay for their studies when proving they have financial support and sickness insurance
  - Non-active have the same obligation
- Permanent residence after 5 years of uninterrupted lawful residence



## III.1 Labour mobility

- Free movement for the purpose of work in the EU has different faces:
- labour migration = free movement of workers
- cross-border commuting = free movement of workers
- posting of workers = free movement of services
- self-employed providing services temporarily = free movement of services
- self-employed providing services permanently = freedom of establishment

## III.2 Migrant workers

- = person who undertake genuine and effective work for which he is paid under the direction of someone else (66-85 Lawrie-Blum) who moved for work to another MS
- = subject to the law and Social security system of host MS
- has equal rights as its nationals to
  - Equal access to jobs
  - Equal treatment in working conditions (pay, time, leaves...)
  - Equal social and tax advantages
  - Equal access to training
  - Equal trade unions rights
  - Equal right to housing
  - Equal right on education for their children.

## III.3 Posted workers (PW)

- = employee who is sent by his employer to carry out a service in another MS on a temporary basis who maintains his residence at home state
- = subject to the law and Social security system of home MS
- but has rights in host MS to:
  - minimum rates of pay x soon: *equal rates of pay*
  - maximum work periods and minimum rest periods
  - minimum paid annual leave
  - health, safety and hygiene at work
  - equal treatment between men and women

## III.4 Posting of workers: situations

- Employer sends its employees abroad for itself
- Employer sends its employees abroad within the same group
  - PW sent for training to parent company
- Employer sends its employees abroad to execute the contract concluded with a foreign partner
  - PW sent for perform tasks under subcontracting agreement
- Employer being an agency of temporary work sends its employees abroad to user enterprise
  - PW engaged under the assignment contract (*contrat de mission*)
  - To be used by a foreign enterprise under the contract for the provision of staff (*contrat de mise à disposition*)

## III.5 Posting of workers: rules

- Posting of workers is provided by Directive 96/71/EC = same rights as nationals
- Social security of posted workers is regulated through [Regulation no 883/2004](#)
  - Posting should last maximum 24 months x *soon: 12+6*
  - PW should have effective contract with employer during all the period of posting
  - PW should work for the employer 1 month before or be in domestic Social security system
  - PW should have A1 form (certificate of affiliation to home social security system) and other documents (EHIC and working docs) on them
  - PW should be declared in advance

# Conclusion

- Free movement of persons has different meanings:
  - travel to another Member State using just passport or ID without a visa or other permission
  - live and/or work as migrant, frontier, posted worker or self-employed in another Member State without the need for any residence or work permit
  - set up a new business as self-employed in another Member State
  - study in another Member State
  - live in retirement in another Member State

# THANK YOU FOR YOUR ATTENTION!

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