

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers’

COM(2013) 236 final — 2013/0124 (COD)

(2013/C 341/13)

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On 21 May 2013, the European Parliament and, on 13 May 2013, the Council decided to consult the European Economic and Social Committee, under Articles 46 and 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Proposal for a directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

COM(2013) 236 final — 2013/0124 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 September 2013.

At its 492nd plenary session, held on 18 and 19 September 2013 (meeting of 19 September), the European Economic and Social Committee adopted the following opinion by 133 votes, with 2 abstentions.

1. Conclusions and proposals

1.1 The Committee notes that, of the four freedoms enshrined in the Treaty, the free movement of workers is the one that continues to encounter the greatest obstacles in practice.

1.2 The Committee considers that exercise of the free movement of workers, without obstacles or discrimination, will help to safeguard fundamental rights and will improve the EU’s competitiveness, business productivity and the quality of employment for workers, being a pillar of the Europe 2020 strategy.

1.3 The free movement of workers in Europe must continue to be a political priority for the EU. The Committee considers that the directive will contribute to fair and balanced mobility.

1.4 The EESC supports the Commission’s proposal for a directive, which will facilitate equal treatment and non-discrimination on grounds of nationality for European workers exercising the right to free movement. Other obstacles to mobility persist, however, as the Committee has pointed out in other opinions.

1.5 In order to further reduce the existing barriers to mobility, additional measures should be adopted to make easily understandable information on labour and social law

available to mobile workers in their respective national languages. Workers should also have a specific right to advice. The relevant advice facilities should work closely with the social partners and EURES, ensuring that mobile workers are informed about social and legal conditions in the host countries before they leave their countries of origin.

1.6 The EESC supports the objectives which the Commission is seeking to achieve through the directive, such as the defence of rights derived from the principle of equal treatment of workers and members of their families in terms of employment and various social rights by means of administrative and judicial procedures; the activity of associations, organisations and other legal entities; the establishment of support and supervisory structures at national level; social dialogue; the improvement of information provided to businesses and workers. The Committee appreciates the fact that the implementation of the directive in national law will respect national legal procedures and practices.

1.7 The Committee is in favour of the establishment of information and advice services on the exercise of freedom of movement and mobility to assist workers. It would also be necessary to keep employers properly informed.

1.8 The EESC supports the Commission’s efforts to modify and expand the role of EURES in order to facilitate mobility and improve the match between skills and labour market needs.

2. The proposal for a directive

2.1 The May 2010 report by Mario Monti entitled A new strategy for the single market stressed that free movement of workers has been a success from the legal point of view but that it is the least used of the four single market freedoms. The gap between theory and practice is also reflected in the 2010-2014 political guidelines presented by the European Commission president, Mr Barroso.

2.2 The Commission proposes a directive aimed at improving the application of EU legislation and facilitating the exercise of the rights conferred on workers in the context of freedom of movement. The Treaty and the applicable European legislation grant all European citizens the right to move freely to another Member State to work and live, protect them from discrimination on the grounds of nationality when seeking employment, and guarantee them equal treatment.

2.3 In recent years three action plans for worker mobility⁽¹⁾ have been implemented, in 1997, 2002 and 2007 respectively. However, this right to EU mobility is being exercised by 3 % of European workers. The Commission, the Parliament, the Committee of the Regions, the EESC and the social partners have indicated the obstacles to the practical exercise of this right:

- national authorities which fail to comply with EU law (inconsistent or incorrectly applied legislation), with a negative effect on migrant workers in the EU;
- employers and legal advisers who fail to comply with EU law;
- EU migrant workers who do not have access to information or the means to enforce their rights.

2.4 As a result of these problems, discrimination on grounds of nationality often continues to be a major obstacle for EU migrant workers

2.5 The Commission has carried out wide-ranging consultations with the Member States, the social partners, civil society and specialist bodies, and has concluded that the most appropriate legal instrument to facilitate exercise of workers' rights to free movement is a directive, ensuring uniform respect of the rights conferred by Article 45 (TFEU) and Articles 1 to 10 of Regulation No 492/2011.

2.6 The scope of the directive will include aspects which, with regard to free movement of workers, are covered by Regulation 492/2011, which guarantees equal treatment and non-discrimination in:

- access to employment;

- conditions of employment and work in particular as regards remuneration and dismissal;
- access to social and tax advantages;
- membership of trade unions;
- access to training;
- access to housing;
- access to education for workers' children.

2.7 The directive will require Member States to:

- set up national contact points to inform, assist and advise migrant workers on the rights guaranteed by European legislation, including non-discrimination and free movement;
- provide and ensure the availability of administrative and/or judicial means of redress at national level;
- ensure that trade unions, NGOs and other legal entities can engage in administrative or judicial procedures to ensure compliance with the rights derived from Article 45 TFEU and Articles 1 to 10 of Regulation (EU) No 492/2011 on behalf or in support of workers and members of their families, with their consent, in accordance with national law;
- provide better information to migrant workers in the EU and employers about European legislation on free movement.

3. General comments: European citizens and free movement

3.1 The European Union must fully mobilise labour market capacity in order to drive growth and employment, fully develop the potential of the single market and create a dynamic and inclusive European labour market with better prospects for long-term employment. To this end, it is essential to remove any obstacles to the free movement of workers, and to guarantee the rights and responsibilities of workers and businesses.

3.2 The EESC welcomes that fact that, during the European Year of Citizens, the Commission has adopted the present proposal for a directive to facilitate the free movement of European workers. Free movement of persons is one of the four fundamental freedoms (alongside freedom of movement of goods, capital and services) underpinning the single market, and is enshrined in the Treaty, which guarantees that EU citizens moving to another Member State for work purposes have the right not to be discriminated against on grounds of nationality.

⁽¹⁾ COM(1997) 586 final, COM(2002) 72 final, COM(2007) 773 final.

3.3 In 2011 the Committee drew up an exploratory opinion ⁽²⁾ at the request of the Belgian Presidency in which it analysed the role of immigration in the EU demographic context. It concluded that as a consequence of the negative demographic situation and labour market imbalances, Europe must improve the internal mobility of European workers and facilitate immigration from third countries.

3.4 In 2009, the Czech Presidency also requested an exploratory opinion ⁽³⁾, which identified the outstanding obstacles to mobility within the internal market. The Committee considered that, in spite of the Treaty and European legislation, EU citizens who want to move or who actually move to another Member State for work purposes continue to face numerous problems that seriously hinder exercise of the right to free movement. The opinion argued, among other things, that "mobility in Europe should remain one of the EU's political priorities", and that "measures [...] must contribute to establishing a new concept for a fair and balanced mobility", "curbing social dumping and undeclared work".

3.5 The Commission's proposal for a directive will facilitate equal treatment and non-discrimination on grounds of nationality for European workers exercising the right of free movement. However, other obstacles and risks still hamper mobility, as the EESC has pointed out in a number of opinions ⁽⁴⁾ in which it puts forward various solutions in areas such as:

- the transitional periods that temporarily limit the free movement of European workers, generally or in specific sectors;
- Member State labour laws that create legal and administrative obstacles; similarly, collective agreements must facilitate free movement for workers;
- the problems in the areas of taxation and social security which cross-border workers have to confront in order to exercise the right to free movement;
- the lack of language skills;
- insufficient coordination between public social security systems and problems with the portability and recognition of supplementary pensions;
- the continuing serious problems regarding the recognition of vocational and academic qualifications;
- difficulties in access to lifelong training;

- the lack of information and advice on European law and procedures regarding the free movement of workers available at national level to workers, businesses, the social partners and NGOs, as well as the courts and other legal practitioners;
- the lack of information and advice for workers on labour and social-law issues and contacts in the host country, provided before workers leave their country of origin;
- housing prices and lack of availability, including the lack of social housing;
- discriminatory taxes and social contributions and benefits;
- difficulties in access to health services;
- obstacles in education arrangements for children.

3.6 The EESC has also drawn up opinions ⁽⁵⁾ on legislation to combat discrimination on various grounds. The Committee considers that both Regulation 492/2011 and the anti-discrimination Directives 43/2000 and 78/2000 must be applied and used to eliminate discrimination in national legislation, administrative and legal practice, and in collective agreements, in order to facilitate labour mobility in the EU.

3.7 Mobility is considered to be positive for both businesses and workers, if it operates effectively and fairly and on a voluntary basis. BUSINESSEUROPE and the European Trade Union Confederation have expressed this view. Businesses will have more recruitment opportunities, and workers will be able to choose from a wider range of employment opportunities.

3.8 A distinction must be made between free movement for workers, as set out in the present proposal, and the freedom for companies to provide services. The EESC recently adopted an opinion on the latest proposal for a directive on the posting of workers ⁽⁶⁾.

3.9 The EESC supports the new efforts to improve the functioning of the EU's internal market and the measures facilitating mobility by removing continuing obstacles. The proposed directive will require the Member States to adapt their laws and institutions, which the EESC supports. The Committee does not want unnecessary red tape to be generated for businesses.

3.10 National authorities and support and supervisory bodies will exercise particular vigilance in ensuring equal treatment of EU migrant workers with disabilities.

⁽²⁾ OJ C 48, 15.2.2011, pp. 6–13.

⁽³⁾ OJ C 228, 22.9.2009, pp. 14–23.

⁽⁴⁾ OJ C 68, 6.3.2012, pp. 11–14, OJ C 191, 29.6.2012, pp. 103–107.

⁽⁵⁾ OJ C 204, 18.7.2000, pp. 82–90, OJ C 155, 29.5.2001, pp. 65–71, OJ C 77, 31.3.2009, pp. 102–108.

⁽⁶⁾ OJ C 351, 15.11.2012, pp. 61–64.

4. Specific comments and recommendations

4.1 Although Article 45 of the Treaty and Regulation (EU) No 492/2011 guarantee equal treatment for EU migrants in the framework of free movement, if correctly applied in the Member States, many problems of practical application persist. The Committee therefore considers that the proposal for a directive is the appropriate legal instrument to facilitate exercise of the rights conferred on workers, since it will enable the objectives set to be attained in a uniform way when incorporated into national legislation. The Committee calls on the Parliament and Council also to support the proposal for a directive.

4.2 The EESC considers that protecting the rights arising from free movement of European workers, by guaranteeing equal treatment, will facilitate mobility and strengthen the single market. European workers and businesses will enjoy new opportunities, making full use of the potential of the European labour market.

4.3 By the same token, the EESC considers that equal treatment and non-discrimination will facilitate the integration of migrant workers and their families.

4.4 Both the European Trade Union Confederation and BUSINESSEUROPE have, within the Advisory Committee on Free Movement of Workers ⁽⁷⁾, voiced their support for a proposal for a directive. The EESC welcomes the joint efforts by the European social partners to back fair mobility and economic migration within the EU ⁽⁸⁾.

4.5 The Technical Committee ⁽⁹⁾ on free movement of workers will also have to adopt new guidelines to improve labour mobility.

4.6 In order to further reduce the existing barriers to mobility, additional measures should be adopted to make easily understandable information on labour and social law available to mobile workers in their respective national languages. Workers should also have a specific right to advice. The relevant advice facilities should work closely with the social partners and EURES, ensuring that mobile workers are informed about social and legal conditions in the host countries before they leave their countries of origin.

4.7 The directive, once properly transposed into national legislation, will require public authorities to guarantee compliance with European law on free movement. It will also facilitate the work of employers and legal advisors, who at

present are unfamiliar with European legislation. Similarly, workers and their families will have greater access to information and to protection of their rights.

4.8 The EESC backs the four objectives set out by the Commission:

- lessening discrimination against EU migrant workers on grounds of nationality;
- closing the gap between EU migrant workers' rights on paper and their exercise in practice by facilitating the correct implementation of legislation;
- reducing the incidence of unfair practices against EU migrant workers;
- empowering EU migrant workers to ensure their rights are respected.

4.9 The Committee fully agrees with the objective of the directive (Article 1) of ensuring uniform application and enforcement of the rights conferred by Article 45 TFEU and Articles 1 to 10 of Regulation (EU) No 492/2011, and fully endorses the scope of the directive (Article 2), which covers the areas relating to the freedom of movement of workers which are also included in the regulation.

4.10 The EESC considers that the regulation and the directive protect the rights of cross-border workers who are also European workers exercising their right to freedom of movement.

4.11 The Committee also agrees that a guarantee of defence of the right to equal treatment, means of redress and time limits should be incorporated into the administrative and judicial systems and procedures of each Member State (Article 3). However, it recommends to the Member States that administrative and legal procedures be kept to a minimum in order to make them manageable for workers and members of their families.

4.12 The EESC also considers appropriate the text of Article 4: "Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this directive are complied with, may engage, either on behalf of or in support of the worker and members of his/her family, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of rights under Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011". This is without prejudice to national procedures for representation and defence before the courts. In this respect, the role granted by national laws to the trade unions is crucial, and the directive must take account of this.

⁽⁷⁾ Meeting of 30 October 2012.

⁽⁸⁾ Joint Work Programme of the European Social Partners 2012-2014: mobility, economic migration and the integration of migrant workers in the labour market.

⁽⁹⁾ As planned in Regulation 492/2011.

4.13 The Committee supports Article 5 which requires Member States to designate structures and bodies for the promotion, analysis, supervision and support of equal treatment. The EESC agrees that these practical tasks may, depending on national conditions, be assigned either to newly established bodies or to existing national agencies that have similar objectives regarding equal treatment and non-discrimination. In the framework of the national systems, it should be obligatory for the national social partners to be involved in this decision. In both cases the bodies and agencies should clearly include this new mandate among their responsibilities and receive the human and financial resources necessary to perform the new tasks. The Committee proposes that these agencies and bodies be fully independent of governments. The national and regional-level social partners must be effectively involved in these bodies, within the framework of the national systems.

4.14 The directive makes no mention of the role of the labour inspectorates and authorities which, when the directive is transposed, will have to ensure compliance with equal treatment provisions in employment contracts, collective agreements and social protection systems. The Committee proposes that the directive address this issue.

4.15 The EESC supports the four competences to be invested in these bodies (Article 5(2)), i.e. legal and/or other assistance, surveys, reports and information.

4.15.1 The system of "points of single contact" can be very important for facilitating information and guidance to migrant workers on how to live and work in each Member State. The social partners must be closely involved in this. But they must cooperate with existing information and assistance centres and further education centres at regional, national and European level. The essential role of the EURES portal should be maintained and supported, as it is an important EU instrument

focusing both on worker mobility and a better match between skills and labour market needs. Here too the involvement of the social partners must be improved and further guaranteed.

4.16 The EESC considers that social dialogue between the labour market partners and the tripartite dialogue between government, trade unions and employers' organisations, alongside dialogue with civil society⁽¹⁰⁾, are powerful tools for public policy, and have a positive impact on citizens. It therefore supports Article 6 on social dialogue in accordance with national law.

4.17 The dissemination of information in the Member States (Article 7) is very important in ensuring that migration of workers within the EU takes place satisfactorily. It is crucial for workers and employers to have access to information: in this way, the internal market and the European labour market can operate properly. Accurate and accessible information can limit abuses by employers and the passive acceptance of discrimination by workers.

4.18 The EESC urges migrant workers and their families also to make use of existing information outlets such as Your Europe and EURES.

4.19 The EESC welcomes the fact that the European social partners are dealing with the question of internal mobility in the EU and economic migration from non-EU countries in their current 2012-2014 joint work programme and proposes that the European Commission launch new programmes in cooperation with the European Trade Union Confederation and BUSINESSEUROPE to improve information flows between trade unions and employers at national level, in order to facilitate fairer freedom of movement of European workers and their families and the protection of their rights.

Brussels, 19 September 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽¹⁰⁾ OJ C 181, 21.6.2012, pp. 137-142.