



EUROPEAN COMMISSION - PRESS RELEASE

Free movement of workers: Commission requests Spain to end discrimination in access to public sector posts

Brussels, 24 November 2011 - The European Commission has requested Spain to take periods of comparable employment acquired previously in other Member States into account for workers applying for posts in the public sector and in determining their working conditions (e.g. salary, grade, career advancement). This also affects Spanish citizens who have worked in other Member States. The case concerns the provisions and their application in several Spanish regions, e.g. Andalucía, Galicia and Madrid, in particular in relation to teachers and healthcare workers.

According to EU law on free movement of workers, migrant workers have to be treated in the same way as national workers in relation to access to posts and to determining their working conditions. In line with the case law of the EU Court of Justice, the European Commission considers that comparable working periods acquired in other Member States should be taken into account in the same way as is applied to working periods acquired in the Spanish system.

The request takes the form of a 'reasoned opinion' under EU infringement procedures. Spain now has two months to inform the Commission of measures it has taken to bring its legislation into line with EU law. Otherwise, the Commission may decide to refer Spain to the EU's Court of Justice.

Background

In terms of abolishing discrimination based on nationality concerning the free movement of workers, contained in article 45 [TFEU](#), this covers not only overt discrimination on grounds of nationality, but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (see the case [C-237/94 O'Flynn](#)).

Unless objectively justified and proportionate to its aim, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a risk that it will place the former at disadvantage.

Further information

Free movement of workers:

<http://ec.europa.eu/social/main.jsp?catId=457&langId=en>

Employment in the public sector:

<http://ec.europa.eu/social/main.jsp?catId=465&langId=en>

Commission Staff Working Document "Free movement of workers in the public sector":

<http://ec.europa.eu/social/main.jsp?langId=en&catId=457&newsId=956&furtherNews=yes>

For more information on EU infringement procedures, see [MEMO/11/824](#)

http://ec.europa.eu/eu_law/infringements/infringements_en.htm

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