

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

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To (by email) European Parliament
Employment and Social Affairs Committee
60 Rue Wiertz
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Reference CM1316
Regarding Commission Proposal for a Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (COM(2013) 236 final)

Date 2 October 2013

Dear Members of the Employment and Social Affairs Committee,

The Meijers Committee welcomes the proposal for a Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (COM(2013) 236 final). Freedom of movement for workers is one of the four fundamental freedoms on which the Single Market is based and this freedom could only be fully achieved when discrimination on the grounds of nationality is forbidden (Article 21 (2) EU Charter of Fundamental Rights (CFR)).

Due to the economic crises there is a tendency among some EU Member States to protect their own labour market against nationals from the new Member States. The European Commission has recognised this threat for the free movement of workers in the proposed directive. The proposed Directive aims at improving the legal and practical situation of workers who exercise their right to free movement within the Union in accordance with Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011. The Directive introduces measures to ascertain that these workers have access to legal redress, that organisations and associations may engage in procedures on their behalf, that a national structure to promote the rights of these workers is established, and that information on their rights is made available.

The Meijers Committee supports these objectives in general. Nevertheless, the text of the proposal prompted us to draw your attention to some issues of concern and we would like to suggest certain amendments that in our view would ameliorate the current proposal.

Effective legal protection

As far as national restrictions on labour migration exceed the measures allowed by the Treaty on Functioning of the European Union, not only the ban on discrimination on the grounds of nationality should be stressed, but also effective legal protection against infringements should be provided pursuant to article 47 CFR.

The rights conferred on workers resemble to a great extent the rights of EU citizens of equal treatment on grounds of race or ethnic origin, gender, sexual orientation, age, religion or belief and disability. The right to equal treatment on these grounds has been codified in a number of Directives, such as the Recast Directive (2006/54), the Racial Equality Directive (2000/43) and the Framework Employment Directive (2000/78).

In these Directives, much emphasis is placed on enforcement and the defence of rights. Now that the objective of the proposed Directive is similar to that of the afore mentioned Directives, the

Meijers Committee advises the Parliament to bring enforcement and defence of rights of the proposal at par with existing Directives. This would also be in line with the requirement in Article 47 of the Charter of Fundamental Rights of the European Union, which comprises the right to an effective remedy before an independent tribunal.

The Meijers Committee notes that the proposal currently does not mention the burden of proof. We advise the Parliament to include a shift in the burden of proof, in order to bring the procedural position of claimant and employer more in balance. Moreover, we propose the introduction of a provision concerning protection against repercussions, in the event that a worker complains about an infringement of his or her rights.

Definitional issues

A final issue is the scope of the proposed Directive. Although the text of Article 2 refers to employment, it is not clear that employment also includes access to employment in the public sector and in public bodies. Also, as far as 'training' in Article 2 (e) is concerned, the Directive does not mention access to vocational training.

Amendments

In view of the above, the Meijers Committee proposes the following amendments to the text of the Directive, with the proposed changes in bold italics:

Article 2

Scope

This Directive applies to the following matters in the area of freedom of movement for workers:

- a) access to employment ***as regards both the public and private sectors, including public bodies;***
- b) conditions of employment and work, in particular as regards remuneration and dismissal;
- c) access to social and tax advantages;
- d) membership of trade unions;
- e) access to ***all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;***
- f) social protection, including social security and healthcare;
- g) access to housing;
- h) access to education for workers' children.

Article 3

Defence of rights - Means of redress - Time limits

1. Member States shall ensure that ***effective*** judicial and/or administrative procedures, including where they deem it appropriate, conciliation procedures, for the enforcement of the obligations under Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011, are available to all workers and members of their families who consider they have suffered or are suffering from unjustified restrictions to their right to free movement or consider themselves wronged by failure to apply the principle of equal

treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

Article 4

Action of associations, organisations or other legal entities

[additional paragraphs:]

3. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because their rights under Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011 have not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been an infringement of these rights, it shall be for the respondent to prove that there has been no breach of the of rights under Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011.

4. Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with this Directive, Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011.

5. Paragraph 3 shall not apply in criminal procedures

The above amendments to Article 4 of the proposal have been drafted on the basis of similar provisions in Article 8(1) and (3) and Article 9 of Directive 2000/43, in Article 10(1) and (3) and Article 11 of Directive 2000/78 and in Article 19(1) and (5) and Article 24 of Directive 2006/54.

We hope you will find these comments useful. Should any questions arise, the Meijers Committee is prepared to provide you with further information on this subject.

Yours sincerely,



Prof. Kees Groenendijk
Chairman