

FREEDOM OF MOVEMENT IN THE EXERCISE OF THE RIGHT TO WORK WITHIN THE EUROPEAN UNION

The freedom of movement for workers within the European Union is a fundamental principle enshrined in the Treaty on the Functioning of the European Union.

The European Union facilitates the citizens of Member States in starting work in another EU Member State without the need for a special work permit. EU citizens may work in the EU Member State of their residence or carry out remote jobs in other Member States. Citizens of EU Member States may reside in the country where they worked even after the termination of their employment relationships provided that they meet the relevant conditions.

The EU membership guarantees equal treatment of workers with the citizens of the host Member State in relation to the working conditions, the access to employment, and social and tax services. Furthermore, EU citizens are entitled to transfer some types of health insurance and social security to the host EU Member State.

By way of derogation from the general rule of free movement for workers within the European Union with regard to some positions in the public sector of the relevant State, there are cases in which only a national of the relevant State is eligible for the specific position that is typically related to the exercise of state power. A case-by-case assessment is made for this purpose.

The free movement of workers is restricted for nationals of new Member States until the end of the seven year period following the date of their accession. Currently, Croatia has such status in view of its accession to the EU in 2013. During the first two years following the date of the accession of a country to the EU, the national measures and policies of the host Member State regulate the access to their labour markets for workers from the relevant country and therefore these workers need work permits. If a Member State wishes to continue to apply these restrictions for another three years, this Member State has to notify the European Commission prior to the expiration of the first two years period.

The freedom of movement applies to the cases in which a worker takes a job with an employer in another Member State but it does not cover the cases in which a worker keeps his or her job with the current employer but is posted to temporarily perform his or her duties within the territory of another Member State. Here the question is how the rights of such workers are regulated and whether they are guaranteed the same standards as the other workers employed in the host Member State.

The objective of the Posted Workers Directive which was adopted in June 2018 is to ensure the applicability of most rules concerning EU citizens who start working in a Member State

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other than their own also to posted workers to whom the labour laws of their country of origin apply.

The Directive facilitates the cross-border provision of services, while preventing unfair competition or abuse of the rights of workers hired in a Member State and posted temporarily to another Member State.

The Directive guarantees fair pay and equal conditions for the posted workers and the workers in the host country without prejudice to the principle of the free movement of services.

The Directive introduces equal rules concerning the pay of posted workers and workers in the host Member State and the requirement for temporary-work agencies to monitor the observance of these rules. It introduces also long-term postings, where the workers have the option to be posted for periods longer than 12 months with an initial extension of the posting by six months. After the expiration of this period, the labour law of the host country becomes applicable to the posted EU nationals.

The deadline for the transposition and application of the Directive is two years after its entry into force.