

## **FREEDOM OF MOVEMENT OF WORKERS BETWEEN OLD AND NEW MEMBER STATES OF THE EU**

**Dr. Barbara Mielink**

Chair of Public International and European Law  
Faculty of Law, Administration and Economy  
University of Wrocław  
Ul. Uniwersytecka 22/26, 50-145 Wrocław, Poland

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### **S u m m a r y**

This article was presented during the conference organized by Mykolas Romeris University in November 25–26, 2004. This paper analyses some legal questions on the free movement of workers in the EU after the enlargement. The presentation consists of two parts. The first one provides short description of the situation which exists in the old Member States of the EU. The second part presents the position of citizens of the new Member States in the area of free movement of workers and describes the mechanism connected with transitional periods and introduces some general remarks on the situation in the labour market of the EU.

### **Introduction**

On the 1st of May 2004 10 new countries joined the European Union. Since that day those “New Members” have received rights and duties guaranteed by the community law and their citizens became citizens of the European Union which means that they are subjects of this specific legal system. Citizens of the EU have got a special status in the whole legal order of the EU which grants them some political and economical rights. The basic rule of the whole community law is freedom of movement of persons, established as a fundamental right of all citizens of the Member States.

### **Situation in the old Member States**

Originally freedom of movement was focused on workers, because one of the Communities’ aim was and still is economic integration of Member States. Now the freedom of movement applies also to persons whose income achieves a certain level, students and the retired (Directive 90/364/EEC OJ 1990 L 180/26, Directive 90/365/EEC OJ 1990 L 180/28, Directive 93/96/EEC OJ 1993 L 317/59).

For European integration the mobility of labour force was very important as an element which constituted the common and later internal market. The right of individuals was originally connected with economic integration and covered three main areas: freedom of movement of workers (art.39-42 of the EC Treaty), freedom to provide services (art. 43-48 of the EC Treaty) and freedom of establishment (art.49-55 of the EC Treaty). One of the most important from the point of view of New Member States is this first right and all consequences connected with it, because just the freedom of movement of workers was a subject of a very long negotiations and is now the source of many misunderstanding.

Freedom of movement of workers is regulated by the articles 39-42 of the EC Treaty and Regulation 1612/68( Regulation 1612/68/EEC OJ 1968 L 257/2) and Directive 68/360 (Directive

68/360/EEC OJ 1968 L 257/13). Those rules apply to persons who look for job and are employed in another Member State. General idea is that they have the same rights on the labour market as the citizens of the host Member State. From the beginning there have been some limitation in access to labour market in special areas as: public administration and military sector. Dimension of those regulations have changed and now rules introduced by those acts are supplemented by other provisions of the EC Treaties and by the Part Two on European Union Citizenship as well as general principles of EC law. The interpretation of them have also evolved thanks to the Court of Justice that always treated those rules as a fundament of the Community. We have got to have in mind that all those rules apply to citizens of the EU, who work in another Member State. The basic condition for this right is to move to another country. On its territory the worker enjoys the rights and duties as the citizens of this host state in economic area. The worker and his family have become the subject to rights connected with his job, especially: right to reside, right to social insurance and if it is necessary social aid. His family, and dependent persons even if they are not the citizens of the EU enjoy rights guaranteed by the Treaty and other acts (Case C-332/90 Volker Steen v. Deutsche Bundespost [1992] ECR I-342, para 9).

These rules (having in focus the improvement of the mobility of well educated labour force) are directed to workers from another Member States, which means that those workers who have never worked in another Member State cannot exercise rights guaranteed by the EC legal order. Sometimes this situation is called reverse discrimination, because even if the worker returns to his country of origin he will suffer from having fewer rights than abroad. This situation has been thoroughly criticised, because theoretically and sometimes in practice, the situation of citizens could be worst, or less favourable than that of a foreign worker. There is a directive which will have been implemented in two years period by Member States, and which is focused on the abolition of former regulation in this sector (Directive 2004/38 OJ 2004 L 158/77).

Nevertheless the situation after 1 May has not changed anything between the old Member States. All rules apply to citizens of these countries in the same dimension as it has been before. The situation of new Members and especially their interrelation with old Members on the legal ground connected with freedom of movement of workers is radically different. This was caused by the fear for eventual social costs which would have to be pay by the old Member States.

This area as a mechanism of the protection of internal labour market was a very gentle subject of negotiation during the preparation period. Old Member States fear for the cheap labour force from new Member States and their position is justified if we consider differences in the level of life and high unemployment between old and new States. We can also add that even old Members have some internal problems on the labour market. Final part of regulation relating to the freedom of movement for workers is included by transitional periods established by the Treaties of Accession. New States which are covered by those periods are: Chechy, Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia and Hungary. Cyprus and Malta have been treated as "the old Member States". On the base of the rule mutuality the citizens of old Member States are treated in the same way in those countries. That means that they have the same limitation in New States as those established by their countries. We have to have in mind that we as the new States are not exceptionally. Such transitional periods are nothing new to the Community and were used in the case of Greece, Spain and Portugal some time ago.

What is interesting the Union has not taken a common position on this matter and European Commission left it to the Member States. Those States having in mind their internal situation have considered it and have or have not established different transitional periods for workers from the New Members without any common decisions taken. Germany and Austria have introduced the longest periods and even made some reservation in the area of freedom to provide services (all this reservation are focus on the protection of services in the area of construction and building). Ireland, Great Britain and Sweden have regarded that such limitation is not necessary and opened their markets from 1 May. Information coming from the old Members of the EU is such that they consider to shorten transitional periods because of the good experience of those country which have not established them at all. First of all there has not been any front attack from the workers of new States. Until now Poland have discussed limitation or even abolition of transitional periods with France and Italy. There is a special Polish – French Working Group which analyse this subject.

In practice the situation between old and new Member States is rather complicated. Between old 15 all regulations are in force, between the old and the new countries we have different transitional periods, as some States have decided to established them, some haven't, and the new Members between themselves have decided to behave as old Members and accept all rules applied to workers. The result of this is that there are no general rules applied to workers in Common Market until the transitional period will be over. Even the Court of Justice will have to remember that during a couple of years in this very important area of the European integration there will be no identical solutions. If we shortly analyse the practice of the Court during those former transitional periods we would see that the

Court has always taken the position that such situations are exceptional and must be interpreted narrowly (Case 77/82 Peskeloglou [1983] ECR 1085, para 12 and Case C-3/87 Agegate, [1989] ECR 4459, para 38). There is no reason to interpret it differently in actual situation.

### **General rules apply to workers from old and new countries.**

As it has already been stated there are some limitation on free movement of workers between the old and the new Members. Generally workers from new Member States cannot move freely looking for a job and being employed on the territory of the old Members. Still they need a special permission if they want to work abroad. Nevertheless such a worker is treated more favourably than a foreigner, because his application will be considered right after the application of old Member States' citizen. These rules could be modified at any time. So it is not impossible to work in the old Member State on the same conditions as a person from the old 15.

If a worker from a new Member State finds a legal job then will be treated as a subject of Community law, and all rules which regulate the position of a foreign worker will apply to him and his family as well. He or she is secured by the rule forbidding any form of discrimination. To achieve such a status the fact that the diploma and other documents which confirm the qualification of a worker are accepted by the all Member States could be very helpful. As in the European Union there is no common educational system, on the basis of mutual trust Member States recognize their educational documents. In this area there are no transitional periods. What is very important – this rule governs not only confirmation of qualification which has been addressed to citizens after the accession to the European Union but also before that time.

As the accession of 10 States at once was very difficult and what is obvious the old Members could not have foreseen all consequences of the opening the labour market in those States, the Treaty of Accession established mechanism of gradual annulment of restriction connected with the entrance to labour markets. Maximal transitional period could last only 7 years and is divided in accordance with the general formula 2+3+2. The same solution was accepted when Greece, Portugal and Spain joined the EEC.

The rules of employment will be not applied in the old Member States to the workers from new Members during the first period. That means that they will be treated as a “secondary class of citizens”, and they application for a job could be accepted only in accidental circumstances. Citizens from new Members cannot move freely on the territory of the old Members, they are still asked for giving the reason of their visit or even for the evidence that they are not looking for job. After this period of two years States have an obligation to notify the European Commission if they resign from limitation or not. There are some voices that it will happen in almost all Member States, maybe except Germany and Austria. But even in the east part of Germany there are many voices against the solution accepted by the Federal Government. This is the result of a great disproportion in economy of West and East part of Germany. Some proposals focused on limitations of transitionals periods were already discussed between Poland and Italy as well as between Poland and France.

During the next three years period the old Member States will have a right to keep in force their regulation or gradually abolish them. Everything depends on their economic situation and the situation in the new Members. During the third period internal regulation could be in force only if the old Member States will be able to prove that the resignation of this restriction will be the reason of serious disorder in their internal labour market. So the Commission will have to compare the situation in State which wants to sustain the restriction and the State in which those limitations have been abolished. Of course the argument of a common border and actual problems could be very important.

In Member States which have decided from 1 of May to abolish the restrictions in freedom of movement of workers there is a possibility for protection of internal market by re-establishing the limitations. This situation could happen if there is a serious disorder in their internal labour market connected with the entrance of labour force from the new Member State. This rule has been established as a kind of security measures and also as a kind of encouragement for the old Members to open their markets.

During this transitional period the rights of citizens legally residing on the territory of the old Member States are stronger than before. All persons legally employed in the old Member States for the period not shorter than 12 months, join the labour market of that country. But they have no right to look for a job or to be employed in another Member State. These rights would be lost if a citizen voluntary left the State in which he is employed. If a person is legally employed in the old Member State he or she is protected by the rule of non-discrimination also in the area of all job's conditions, e.g. promotion,

awards, vocational training, and social care. Having the same rights as citizens of another Member States means that with them rights guaranteed by the EC law could be exercised by their families.

## Conclusion

According to a study conducted by the European Commission and the European Foundation for the Improvement of Living and Working Conditions, on the basis of a Eurobarometer survey, it would seem that the fear of a massive arrival of workers from the new Member States is unfounded. From the Polish point of view many of those who wanted to work in the EC are already there. Apparently, the number of people with the firm intention of taking advantage of the mobility after the enlargement of 1 of May 2004 accounts for just 1% of the population of working age of the new Member States (official information of the European Commission). This study provides results in the line with those of other similar studies carried out for the European Commission or other independent bodies.

Moreover, this study also states that the citizens concerned are typically young, highly skilled and qualified, single people, many of whom are women. The danger is in fact more likely to be an exodus of young people and a general brain drain from the new Member States, which would be detrimental to them. In Polish case this could be observed in the area of medicine and information science. New Member States are not able to offer better or even equal conditions of employment, so they have to create new instruments which would prevent this uncontrolled movement of well educated labour force.

This is true that unconditional freedom of movement for workers could offer high-quality labour and promote economic growth and cohesion between the regions of the European Union. Past experience has shown that emigration tends to fall rather than rise after the enlargement. The stronger economic growth is in the new Member States, the less their workers are tempted to look for work in the other Member States of the European Union. Anyway we have to wait for the first economic results a few months or even a couple of years. Accordingly, at the time of the accession of Spain and Portugal, the transitional periods, which was initially foreseen for seven years, was subsequently shortened.



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*Laisvas darbuotojų judėjimas tarp senųjų ir naujųjų Europos Sąjungos valstybių narių*

*Dr. Barbara Mielnik  
Vroclavo universitetas*

*Pagrindinės sąvokos: laisvas darbuotojų judėjimas, Europos Sąjunga, Europos Sąjungos plėtra.*

## SANTRAUKA

*Straipsnyje analizuojami laisvo darbuotojų judėjimo pokyčiai ir narystės Europos Sąjungoje poveikis naujai įstojušią į Europos Sąjungą šalių piliečiams. Europos Sąjungos laisvas asmenų judėjimas pirmiausia reiškia laisvą darbuotojų judėjimą, kuris suponuoja ir didesnę ekonominę integraciją tarp valstybių narių.*

*Europos Sąjungos narėmis 2005 m. gegužės 1 d. tapo dar dešimt naujų valstybių. Stojimo sutartyse numatyti pereinamieji laikotarpiai siekiant įsidarbinti senosiose Europos Sąjungos valstybėse narėse. Laisvo darbuotojų judėjimo klausimu Europos Sąjunga nepriėmė jokios bendros pozicijos – jį paliko spręsti valstybėms narėms. Šalys, atsižvelgdamos į savo vidaus padėtį ir ją įvertinusios, savo ruožtu sprendė, ar numatyti pereinamuosius laikotarpius. ES narėmis tapus iš karto 10 naujų valstybių, senosioms valstybėms sunku numatyti padarinius ir įtaką darbo rinkai, todėl stojimo sutartyse numatytas ne ilgesnis nei septynerių metų pereinamasis laikotarpis. Jis paskirstomas pagal formulę 2+3+2. Toks pat sprendimas buvo priimtas stojant į EEB Graikijai, Portugalijai ir Ispanijai.*

*Darbuotojai iš naujų valstybių narių negali laisvai judėti ieškodami darbo ir siekti įsidarbinti senosiose valstybėse narėse – norint dirbti užsienyje reikia specialaus leidimo. Nepaisant to, toks darbuotojas yra vertinamas labiau nei norintis įsidarbinti asmuo iš trečiosios šalies. Pereinamuoju laikotarpiu piliečiai iš naujųjų valstybių, legaliai gyvenantys senųjų valstybių narių teritorijoje, gali tikėtis detalesnio teisių užtikrinimo. Tačiau, kita vertus, dėl laisvo darbuotojų judėjimo senųjų Europos Sąjungos valstybių teritorijoje kyla kita – protų nutekėjimo problema, nes šalį palieka jauni ir labai kvalifikuoti žmonės.*

