

Free Movement of Persons, Prohibition of Discrimination based on Nationality in Employment

The internal market is based on **four freedoms**:

- Freedom of movement of goods
- Freedom of movement of persons
- Freedom of movement of services
- Freedom of movement of capital

At the beginning, only persons performing an economic activity were entitled to the freedom of movement of persons. Economic activity – as employee
- as self-employed

In 1990s on the basis of the Single European Act, free movement of persons was enlarged to students and persons after finishing the gainful activity.

In 1992 the Treaty of Maastricht introduced the citizenship of the EU. Free movement of persons was enlarged to all citizens of the Union and their family members. However, the free movement for workers remains the most important.

Sources:

Primary law

Treaty on functioning of the EU: Part II - Prohibition of Discrimination and citizenship of the Union.

Article 18 (former Article 12 of the Treaty establishing the European Community) prohibition of discrimination based on nationality.

Article 20 (former Article 17) - free movement for citizens of the Union

Article 45 (former Article 39) - free movement of workers.

Secondary Law:

- Directive of the European Parliament and of the Council 2004/38 of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside within the territory of the Member States, replaced legislation from 1960s
- Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, replaced Regulation of the Council 1612/68 of 15 October 1968 of free movement of workers within the Community
- Directive of the European Parliament and of the Council 2014/54/EU of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

Personal scope of application of freedom of movement:

Citizens of the Union

Their family members – Spouse

Partner

Direct descendants under the age of 21, or dependants

Dependent direct relatives in the ascending line

Free movement of persons includes:

- Right to leave
- Right to entry
- Right to move within the territory of another Member State
- Right to stay within the territory of another Member State

Limitations to free movement of persons

- Public Policy
- Public Security
- Public Health

The right to residence - up to three months only on the grounds of valid identity card or passport

longer period only stated categories of persons

(workers and self-employed, persons having sufficient resources and having sickness insurance, students.)

Specific provisions relating to workers:

Worker – term of EU law, no definition provided for by the Treaty or secondary legislation, interpreted by the ECJ. Characteristic features of an employment relationship:

- Performance of services of an economic value
- Relation of subordination
- Remuneration

Accession treaties with new Member States may lay down exception from free movement of workers by establishing transitional periods.