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IMPACT ASSESSMENT

Accompanying the document

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

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1. INTRODUCTION

1.1. The scope of the initiative

The freedom of movement for workers is one of the four freedoms on which the Single Market is based, along with the free movement of goods, services and capital. It is enshrined in article 45 TFEU.

This provision has been developed in secondary law through Regulation 492/2011[1] (former Regulation 1612/68[2]). Other legislative acts having an impact on the free movement of workers have been adopted at EU level, such as the residence directive[3], the directive on the recognition of professional qualifications[4], the provisions on social security[5] or the directive on supplementary pension rights[6]. However, these provisions concern not only workers, but also other categories of mobile citizens. The present initiative focuses on the enforcement of Regulation 492/2011, as it is the only legal instrument in force at EU level which exclusively concerns EU migrant workers and members of their family.

This initiative does not concern posted workers, as different a legal basis applies. Article 45 TFEU grants EU citizens the right to freely work in another country as an individual right to the workers. The situation of posted workers is linked to the freedom to provide services (article 56 TFEU) which includes the right for a service provider established in a Member State to temporarily post its workers to another Member State in order to provide a service there. Both are essential elements of the internal market and as such core values of the European Union. However, there is a major difference between the two situations: posted workers do not directly enter the labour market of a Member State while migrant workers do.

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1 Regulation (UE) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (codified version)

2 Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community

3 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

4 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications

5 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004

6 Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

The freedom of movement for workers entails the right of EU citizens who move to another Member State for employment purposes not to be discriminated against on the basis of their nationality as regards[7]:

- access to employment (with very limited exceptions, including restrictions transitionally imposed on citizens from new Member States as is currently the case with Bulgaria and Romania);

- conditions of employment;

- access to social and tax advantages (for instance, minimum subsistence payments, study grants, transport fares reductions, etc);

- membership of trade unions;

- access to training;

- access to housing;

- access to education for children.

EU rules on free movement of workers prohibit not only overt discriminations by reason of nationality but also all covert forms of discrimination which may lead to the same result. Conditions imposed by national law must be regarded as indirectly discriminatory if they affect migrant workers more than national workers and if there is a risk that they will place the former at a disadvantage. Examples of indirect discriminations are: residence conditions, refusal to take into consideration periods of employment in the public service of other Member States. Indirect discriminations may only be accepted if they are justified by objective considerations, independent of the nationality of the worker, and if they are proportionate to the aim pursued.

This initiative does not intend to create new rights for EU migrant workers, but to introduce mechanisms to make the current rights more effective in practice.

This initiative concerns exclusively the rights of EU migrant workers when moving within the European Union[8] and the members of their families. It does not concern issues related to migration of third-country nationals into the European Union or their mobility within the European Union.

1.2. Policy context

The Single Market is a cornerstone of Europe's integration and a key element to attain sustainable growth. Still, it has not yet fulfilled all its potential. Achieving a fully-fledged Single Market is one of the current priorities for the Commission.

The 2010 Monti Report to President Barroso "A new strategy for the Single Market" draws a map of the main challenges facing a relaunch of the Single Market. As far as workers are concerned, the report underlines that while freedom of movement of workers is overall a success from a legal point of view, from an economic and political angle it is fraught by two paradoxes. First, it is the most contested and at the same time the least used of the four freedoms. Second, freedom of movement of workers faces a lower number of legal obstacles than the other three economic freedoms, but these obstacles are the hardest to overcome.

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7 For a more detailed description of the rules on free movement of workers, see annex 2

8 The expressions 'EU migrant workers' and 'mobile workers' used along this text must be understood as being synonym and as referring only to EU citizens

President Barroso's Political guidelines for the 2010-2014 Commission stress the need to ensure that the rights of European citizens are real; citizens should not find that they still face obstacles when they move across borders within the European Union[9]. In 2010 the Commission adopted a first EU Citizenship Report identifying obstacles to the full enjoyment by citizens of their rights and proposing 25 actions to remove them[10]. The gap between the rights that EU citizens have in theory and what happens in practice has been also underlined in several reports from other institutions and, increasingly, there is a call upon the European Union to act in this regard[11]. The year 2013 has been chosen to be the European Year of Citizens. It will focus on citizens' rights and on EU action ensuring that these rights are effectively enforced for the benefit of citizens and the EU as a whole.

The objective of the Europe 2020 strategy is to attain a smart, sustainable and inclusive growth. This calls for the European Union to facilitate and promote intra-EU labour mobility and to encourage more use of free movement rights. Workers' mobility is considered to be an important way to address unemployment and imbalances across labour markets. Free movement brings benefits to both individuals and receiving countries: according to recent research[12] for instance, mobility of EU-12 workers seem to have played a positive role in the economy of receiving countries, contributing to the skill mix, and working in sectors and occupations where job shortages needed to be filled.

The Commission announced in its Communication “Reaffirming the free movement of workers: rights and major developments” of 2010[13] that it would explore how to promote and enhance mechanisms for the effective implementation of the principle of equal treatment for EU workers and members of their families exercising their right to free movement. In the recently adopted communication "Towards a job-rich recovery", the Commission underlined the need to support a better functioning of the EU labour market and announced the presentation of a legislative proposal by the end of 2012 in order to support mobile workers in the exercise of rights derived from the Treaty and Regulation 492/2011[14].

The present initiative responds to these concerns and policy recommendations. It intends to bring a strong contribution to making the rights of migrant workers a reality.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. The Impact Assessment Steering Committee

An Impact Assessment Steering Committee was set up, including representatives of the following Commission’s services: Legal Service, Secretariat General, Internal Market and

9 http://ec.europa.eu/commission_2010-2014/president/pdf/press_20090903_en.pdf

10 EU Citizenship Report 2010: Dismantling obstacles to EU citizens' rights, COM(2010) 603 final

11 Draft report from the European Parliament on the single Market through the lens of the people: a snapshot of citizens' and businesses' 20 main concerns, of February 20112; report from the European Parliament on promoting workers' mobility within the European Union, of July 2011; opinion of the European Economic and Social Committee on the identification of outstanding barriers to mobility in the internal labour market of March 2009; conclusions of the EPSCO Council of March 2009 on professional and geographical mobility of the workplace and the free movement of workers within the European Union; report from MEP A. Lamassoure "The citizen and the application of Community law" of June 2008

12 Report from the Commission to the Council on the functioning of the Transitional Arrangements on Free Movement of Workers from Bulgaria and Romania – COM(2011)729 final of 11.11.2011

13 COM(2010)373

14 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on Regions "Toward a job-rich recovery", COM(2012) 173 final of 18.4.2012

Services, Education and Culture, Taxation and Customs, Enterprises, Health and Consumers, Communication, Justice and Research and Innovation DGs.

The IASG met five times between May 2011 and April 2012.

2.2. Advice from independent experts

A study was launched with the purpose of supporting the Impact Assessment. It was concluded in April 2012[15].

The network of independent experts in the field of free movement of workers that supports the activities of DG Employment, Social Affairs and Inclusion annually reports on the legal situation related to free movement of workers in the European Union[16]. Beyond this regular reporting, the network has provided two specific reports on the application of EU rules in the field. The first report[17], finalised in January 2011, focused on the existing legal framework in each Member State as regards the right to free movement of workers and the guarantees and supporting measures they offer to EU workers to exercise their rights. The second one[18], submitted in October 2011, presented an overview of the main problems related to the application of the rules on free movement of workers that had been identified in each Member State.

2.3. Public consultation

A public consultation (see annex 6 and 7) was carried out from June to August 2011. Citizens, national authorities, labour unions, employers' organisations, and associations (NGOs, associations of independent professionals, etc.) gave their views on the main problems related to the application of the rules on free movement of workers, on the current level of protection of workers and on the need for the EU to act in order to help workers fully enjoy their rights.

A total of 243 replies were received, of which 169 were from citizens and 74 from organisations, including national authorities. Among organisations, trade unions were the most active in providing contributions (27% of the respondents), followed by NGOs (17%), national authorities (15%) and employers' organisations (12%).

The majority of respondents agreed that EU workers should be better protected against discrimination on the grounds of nationality. However, views differed considerably as regards the way to achieve a strengthened protection. Adoption of EU legislation was stated as the most important action among the respondents from trade unions, NGOs, private companies, regional and local authorities and citizens. National authorities seemed to be divided in their views, while employers clearly indicated that awareness-raising would be more important than adopting new legislation. Setting up contact points or structures in the Member States was seen as an important measure by all respondents except employers' organisations. Exchanges of practice between EU countries was also considered an important tool, while

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15 Study to analyse and assess the impact of possible EU initiatives in the area of freedom of movement for workers, in particular with regard to the enforcement of current provisions, by Ramboll, annexed to this report; not yet published

16 The Annual European Reports provided by the network since 2006 are available at the following link: http://ec.europa.eu/social/keyDocuments.jsp?type=0&policyArea=25&subCategory=475&country=0&year=0&advSearchKey=consolidated+report&mode=advancedSubmit&langId=en
They are based on annual national reports for each Member State, available at http://ec.europa.eu/social/keyDocuments.jsp?type=0&policyArea=25&subCategory=475&country=0&year=0&advSearchKey=%22national+report%22&mode=advancedSubmit&langId=en

17 Thematic report "Application of Regulation 1612/68", January 2011 http://ec.europa.eu/social/main.jsp?catId=475&langId=en

18 This report has not yet been published

supporting actions by organisations was upheld by non-profit organisations, labour unions, private companies and regional authorities.

A summary of the responses received is included in annexes 7 and 8.

2.4. Discussion within the committees on free movement of workers

In accordance with the provisions on Regulation 492/2011, there are currently two committees that deal with questions related to the free movement of workers, the Technical committee and the Advisory committee. The Technical committee is composed of representatives of Member States. The Advisory committee is composed of representatives of Member States and representatives of social partners both at national and at European level.

Barriers to free movement of workers, problems of discrimination on the grounds of nationality and the need to better enforce the current EU rules were discussed at four meetings of the Advisory committee between October 2010 and March 2012. The members of the Advisory committee were further asked to reply to a questionnaire established by the Commission on the actions undertaken at national level in order to inform, assist, support and protect EU workers, on the main problems related to the implementation of Regulation 492/2011 and on the need to take further action at EU level[19].

The members of the committee acknowledged the importance of the real and effective application of existing rights .Views diverge however as to the possible answers and remedies to this need, from awareness raising activities to stronger enforcement of the rules and better access to information for EU migrant workers.

3. PROBLEM DEFINITION

3.1. The state of play

3.1.1. EU-level legislation and protection

The freedom of movement for workers has existed for more than 40 years. It provides for a set of important and strong rights conferred to EU citizens and members of their families who move to another Member State to work or to search work (see section 1.1.).

The Court of Justice has provided important guidance on the interpretation of the provisions on free movement of workers, in particular on general concepts such as 'migrant worker', 'social advantages', 'indirect discrimination' or 'obstacles to free movement'. While the constant evolution of the Court of Justice's interpretative case-law has helped define these concepts, it has resulted in an abundance of case-law. Jurisprudence is not always followed in all Member States either because the cases are not known or not well understood (e.g. because they refer to a specific case that concerns the legislation of one Member State only), or simply because that Member State does not apply them. This leads to clear limitations in the rights conferred to EU migrant workers.

Regulation 492/2011 is directly applicable, which means that Member States do not need to transpose its provisions into national legislation. National legislation and practices of Member States have to comply with the provisions of the Regulation. To ensure this, the Commission can initiate infringement procedures against Member States for non-compliance of their legislation or general administrative practices with EU law on the basis of article 258 TFEU.

[19] A summary of the replies received is included in the second report form the network of independent experts on free movement of workers on the enforcement of Regulation 492/2011, not yet published.

Successful infringement proceedings will lead to the amendment of the contested legislation or general administrative practices.

Article 19 TEU establishes the obligation for Member States to provide for effective legal protection of the citizens in the fields covered by EU law. In the field of free movement of workers, this protection is reinforced by the fact that Regulation 492/2011 has direct effect, which means that any citizen may rely on its provisions directly to challenge a decision by national authorities or by employers (whether public or private) before national courts.

The Commission has also set up problem-solving mechanisms to assist citizens with their rights under EU law. General information on EU issues is provided by the Europe Direct Contact Centre, whereas citizens can refer to Your Europe Advice for tailored legal advice on a specific situation involving EU law. Finally, the Commission coordinates the SOLVIT network of Member States' representatives which citizens can contact to solve, without legal proceedings, problems caused by the misapplication of Internal Market law, including free movement of workers, by public authorities.

3.1.2. EU- level legislation in related fields

EU directives implementing the principle of equal treatment on other grounds such as race, age or gender, include specific measures for the information and support of EU citizens. For example, Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin requires Member States to ensure that judicial and/or administrative procedures, including conciliation procedures, are available to all persons who consider themselves discriminated against on such grounds. In addition, specific associations, organisations or other legal entities may engage, either on behalf or in support of the complainant in any judicial and/or administrative procedure provided for the enforcement of obligations under the Directive.

Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation requires Member States to designate a body, or bodies, for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. The Directive also lists the competences of these bodies, which include: providing independent assistance to victims of discrimination in pursuing their complaints; conducting independent surveys; publishing independent reports and making recommendations.

In a different manner, Directive 2006/123/EC on services in the internal Market requires Member States to establish Points of Single Contact (PSCs) to provide information and assist service providers in completing the procedures and formalities needed to access and exercise service activities in another Member State. The PSCs are e-government portals for entrepreneurs active in the service sector[20].

3.1.3. The measures in place in the Member States

As there are no EU rules on the guarantees, assistance and protection that should be afforded to EU migrant workers when they face problems of discrimination on grounds of nationality, each Member State decides what kind of support and protection to provide to EU migrant workers according to their own legal system.

[20] The e-government portals are part of the EUGO network and are listed at http://ec.europa.eu/internal_market/eu-go/index_en.htm

Reports from experts in the field of free movement[21] show that protection against discrimination on the grounds of nationality and support offered to workers varies from one Member State to another. They suggest that in countries where nationality is explicitly included as one of the grounds of discrimination that are prohibited, protection of EU citizens is stronger. In countries where this is not the case, protection against discrimination on the basis of nationality will depend on generous interpretations of national law, assimilating discrimination on the basis of nationality to other grounds protected by law such as racial or ethnical discrimination. Insofar as nationality is not explicitly addressed, there is no legal certainty that nationality will be covered.

The situation described in the experts' reports is as follows:

– in all Member States means of redress are generally available to EU migrant workers. However, some representatives of trade unions underlined that there are information gaps about how to challenge decisions taken by employers;

– bodies responsible for the promotion of non-discrimination exist in all Member States. As the table below shows, discrimination on grounds of nationality is not always part of their assignment;

– the legislation of Sweden and Slovenia contains a specific obligation for employers to prevent discrimination on the grounds of nationality;

Table 1: Summary of current national practices[22]

MS	Discrimination on grounds of nationality prohibited in MS legislation	Support bodies including nationality	Role of associations[5]	Victimisation[6]	Reversed burden of proof[7]	Sanctions[8]	Awareness-raising[9]
AT	Potentially[4]	Yes	Yes	Yes	No	Yes	
BE	Jurisdiction	Yes	Yes	Yes	Yes	Yes	
BG	Yes	Yes	Yes	Yes	No	Yes	Public authority
CY		Yes	Yes	Yes	No	Yes	
CZ	Yes[1]	Yes	Yes	No	No	Yes	
DE	Yes[2]	No	No	Yes	No	No	Trade Union
DK	Yes[2]	Yes (under ethnic origin)	Yes	No	No	No	
EE	Potentially[3]	Yes (under ethnic origin)	No	No	Yes	Yes	Public authority

21 Thematic report from the European network on free movement of workers "Application of Regulation 1612/68" integrated with information from two reports on Equality Bodies gathered by the legal experts' networks on gender equality and antidiscrimination.

22 Source: thematic report from the European network on free movement of workers "Application of Regulation 1612/68" integrated with information from two reports on Equality Bodies gathered by the networks of legal experts on gender equality and antidiscrimination.

EL	Yes[2]	No	Yes	No	No	No	
ES	Yes	No	Yes	Yes	No	Yes	
FI	Yes	Yes	Yes	Yes	Yes	Yes	Trade Union
FR	Yes	Yes	Yes	Yes	No	Yes	Trade Union
HU	Jurisdiction	Yes	Yes	No	No	Yes	Trade Union
IE	Yes	Yes	Yes	No	No	Yes	Trade Union
IT	Yes	Yes	Yes	Yes	No	Yes	Trade Union
LT	Yes	Yes	Yes	Yes	No	Yes	Public authority
LU	Potentially[4]	No	Yes	No	No	Yes	
LV	Potentially[3]	Yes	Yes	Yes	Yes	Yes	Public authority
MT		No	No	No	No	No	
NL	Yes	Yes	Yes	Yes	No	Yes	
PL	Yes	Yes	Yes	Yes	Yes	Yes	
PT	Yes	Yes	Yes	Yes	Yes	Yes	
RO	Yes[2]	Yes	Yes	No	No	Yes	Public authority
SE	Yes[2]	Yes	Yes	Yes	Yes	Yes	
SL		Yes (under ethnic origin)	Yes	Yes	No	Yes	Public authority
SK	Yes[1]	Yes	Yes	No	No	Yes	
UK	Yes[2]	Yes	Yes	Yes	No	Yes	

Key to table 1
1 The term 'nationality' seems to refer to ethnic origin.
2 Nationality can be covered discrimination on other grounds (such as race or ethnic origin)
3 Non exhaustive list of grounds of discrimination: it is possible to include nationality-based discrimination.
4 It is not forbidden by law, but considered an offence.
5 For example, trade unions can provide administrative or judicial support to workers.
6 Victims of discrimination are protected against any reversed treatment following a complaint..
7 It is up to the employer to prove that he is not guilty of discrimination on the basis of nationality.
8 It is possible for courts or other bodies to award compensation to victims and/or impose fines on those who discriminate (not always directly linked to discrimination on the basis of nationality).
9 In six Member States, public authorities actively develop information activities and in six other Member States, trade unions are very active providing information and advice in this field.

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Over recent years some Member States have carried out reforms in order to ensure compliance of their legislation with Article 45 TFEU and Regulation 492/2011. However, it should be underlined that in a majority of cases, the reforms were the result of infringement procedures initiated by the Commission or judgements of the Court (on the basis of

proceedings initiated by the Commission or on the basis or preliminary rulings initiated by national courts).

Moreover, the economic crisis has influenced the migration policy of governments of Member States, some of which have proposed and adopted reforms which even restrict the rights conferred by EU law on free movement of workers (e.g. Netherlands, Hungary, and Luxembourg).

The experts in the field of free movement came to the conclusion that EU migrant workers are still perceived in most of the EU as holding a status closer to that of third-country nationals than to that of national workers.

The evidence at the disposal of the Commission depicts a situation in which there is no coherent EU-wide strategy or approach in the fight against discrimination based on nationality. This leads to many uncertainties for workers exercising their rights as well as a low public awareness of one of the most fundamental rights of EU citizens.

3.1.4. Statistics on mobility

Geographical mobility between EU Member States has remained at a low level: according to the EU-Labour force survey, in 2011, only 2.9% of the working-age European citizens (15-64) lived in another EU Member State than their own[23].

However, available data sources tend to underestimate the number of EU mobile citizens living/working in other EU Member States, either because EU citizens do not register when living in other Member States or because existing surveys mainly cover persons who are 'usually resident' in a country and not the short-term mobile workers (e.g. staying only a few months). According to the 2009 Eurobarometer on geographical and labour mobility[24], around 10 % of EU citizens declared that they had already worked and lived in another country at some time, with 51 % of them having worked for less than two years, and 38 % for less than one year.

International comparisons[25] indicate that cross border mobility between EU Member States is limited compared to other regions (such as United States, Canada and Australia). Mobility between EU27 countries is 0.35% per year – this compares to a 1% mobility across big economic regions in the same country. The border impact, the result of current obstacles to mobility, is therefore significant (0.65%).

These considerations suggest that higher geographical mobility should be possible in the EU. Moreover, the massive gaps currently existing between EU countries and regions in terms of unemployment rates and job vacancy rates are another sign that the potential of geographical labour mobility is insufficiently tapped[26]. With the economic crisis, the potential for mobility appears to be increasing: according to the June 2012 "EU Employment and Social situation quarterly review" carried out by the European Commission[27] 53 % of young people are willing to work in another EU country; this share is even higher than 2/3 in Nordic Member States, Bulgaria, Romania, Spain and Ireland.

Prospects for better career opportunities, working conditions and quality of life are in fact the most important drivers of mobility.

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23 Eurostat, EU-Labour force survey

24 Eurobarometer n° 337 "Geographical and labour market mobility" http://ec.europa.eu/public_opinion/archives/ebs/ebs_337_en.pdf

25 See for instance OECD, *Economic survey of the EU*, 2012

26 http://ec.europa.eu/social/main.jsp?langId=en&catId=113&newsId=1389&furtherNews=yes

27 http://ec.europa.eu/social/main.jsp?langId=en&catId=113&newsId=1389&furtherNews=yes

Mobility is encouraged through different initiatives at EU level, such as 'Your first EURES job', 'An agenda for new skills and jobs', etc. The present initiative can play a certain role in encouraging and facilitating mobility, as fighting against discrimination on the grounds of nationality will contribute to sending a positive signal to those who intend to work in another Member State and will reduce discouragement towards mobility because of bad experiences or because of expectations to find problems.

The number of EU migrant workers in the Member States can be used as an indicator of the potential target group for nationality-based discrimination. Nevertheless, a high number of EU migrant workers in a particular Member State does not mean that nationality-based discrimination is more prevalent there than in countries with less migrant workers.

Table 2: Number and share of EU migrant workers in 2011[28]

Member State	EU migrant workers (in thousand)	Share among total employment (in %)
Austria	203.3	4.9
Belgium	300.9	6.7
Bulgaria	N/A	N/A
Cyprus	48.5	12.9
Czech Republic	36.0	0.7
Denmark	70.0	2.6
Estonia	N/A	N/A
Finland	24.9	1.0
France	637.3	2.5
Germany	1,528.8	3.8
Greece	71.1	1.7
Hungary	21.5	0.6
Ireland	160.8	8.9
Italy	740.5	3.2
Latvia	N/A	N/A
Lithuania	N/A	N/A
Luxembourg	100.6	44.8
Malta	1.9	1.1
Netherlands	149.7	1.8
Poland	8.9	0.1
Portugal	27.8	0.6
Romania	N/A	N/A
Slovakia	2.9	0.1
Slovenia	N/A	N/A
Spain	768.8	4.2
Sweden	118.3	2.5

[28] Source : Eurostat, EU-LFS, annual data

United Kingdom	1,328.9	4.6
EU-27	**6,357.7**	**2.9**

In addition to EU migrant workers who live and work in another EU country (than their own), around 0.5% of the workers in the EU are cross-border commuters (according to the EU-LFS in 2010) defined as persons employed in one Member State but residing in another Member State. This category represents around 1.2 million workers in the EU.

Furthermore, discrimination on grounds of nationality may affect people who have not yet moved but who might do so in the future. According to the 2009 Eurobarometer on geographical and labour mobility, 17% of European citizens envisage working abroad[29] close to three quarters do not plan to do so and 10% of European citizens are unsure[30].

3.2. The problems

While the rights on free movement of workers are strong, a number of indicators show that discrimination on the grounds of nationality takes place and that it is therefore difficult for workers to exercise their rights in practice.

In addition to the statistical data showing relatively low intra-EU mobility, discrimination indicators allow to measure the gap between the rights given to EU migrant workers by the Treaty and secondary legislation and the reality they experience.

Over 2010 and 2011, the Commission services received around 400 complaints and information requests through the Commission's complaint handling system CHAP, which represent around 60% of the total number of cases attributed to DG Employment. In 2011 alone, the Europe Direct Contact Centre received around 1,500 enquiries related to free movement of workers. These cases suggested that EU workers were discriminated against on the basis of their nationality or were lacking information on their rights (see table 3).

During the same two-year period, the Commission dealt with 15 petitions and has launched 80 infringement procedures in this same field. Nearly half of the latter concern Italy (36 cases), other countries concerned are Greece (10 cases), Spain and the United Kingdom (6 cases), Luxembourg and France (4 cases), Malta, Belgium and the Netherlands (3 cases), Sweden (2 cases), Cyprus, Slovenia and Portugal (1 case).

Furthermore, more than 20% of the preliminary rulings referred to the Court of Justice are linked to the rules on free movement of workers and social security coordination. This shows that there are still questions on the compatibility of national law and practices with EU law.

Table 3: Cases regarding the application of EU rules on free movement of workers by the European Commission and its problem-solving networks[31]

Country	**CHAP[32]**	**Infringements**	**Europe Direct**

29 See tables 2 and 3 included in annex 1

30 In 2011 another Eurobarometer survey launched by DG MARKT recorded a higher rate of potential mobility in the future (28% at EU level). The difference is mainly due to the fact that the question asked was less specific ("Would you consider working in another EU Member State than (OUR COUNTRY)?" *versus* "Do you envisage to work in a country outside (OUR COUNTRY) at some time in the future?" in the 2009 Eurobarometer).

31 Source: European Commission

32 Total of cases received through the Commission's complaint handling system, CHAP, assigned to Unit EMPL B4, covering both free movement of workers and the coordination of social security schemes.

Year	2010	2011	2010	2011	2010	2011
Austria	13	3	0	0	48	40
Belgium	8	3	2	1	66	63
Bulgaria	4	2	0	0	72	63
Cyprus	5	3	1	0	4	12
Czech Republic	0	1	0	0	16	23
Denmark	5	6	0	0	14	12
Estonia	0	0	0	0	1	8
Finland	3	4	0	0	6	8
France	17	19	2	2	176	288
Germany	30	17	0	0	306	233
Greece	4	8	4	6	37	39
Hungary	2	0	0	0	36	30
Ireland	5	2	0	0	17	10
Italy	37	22	18	18	106	59
Latvia	2	0	0	0	9	5
Lithuania	1	0	0	0	11	10
Luxembourg	10	5	3	1	4	4
Malta	1	3	1	2	3	3
Netherlands	7	15	1	2	55	52
Poland	5	6	0	0	20	27
Portugal	4	2	1	0	34	24
Romania	1	2	0	0	83	48
Slovakia	0	3	0	0	11	10
Slovenia	1	0	0	1	4	5
Spain	19	9	3	3	206	161
Sweden	5	6	1	1	14	11
United Kingdom	47	18	3	3	95	78
Non-EU	0	0	0	0	60	39
Un-specified	0	0	0	0	124	132
Total	236	159	40	40	1638	1497

The problematic situation is confirmed by reports of the network of experts, which show that neither EU rules nor preliminary ruling cases of the Court of Justice are systematically applied in the Member States.

At national level, an increase in cases related to discrimination has been detected in some Member States. For instance, research conducted by experts indicate that in Finland the cases of discrimination in the workplace reported to the Regional State Administrative Agency of Southern Finland have risen since 2004 (from 8 cases reported in 2004 to 21 in 2010). In France, the number of complaints dealt with by the former HALDE (French Equal opportunities and Anti-Discrimination Commission) increased from 540 in 2005 to 3,009 in 2009.

Still, the precise size of the problem remains unknown as awareness of specific problems depends on various factors such as the willingness and ability of citizens to complain about a problem and raise the issue before the appropriate instances. Furthermore, complaints received by the Commission services are extremely varied and are not always attributable to a specific profession, sector or type of enterprise. It is therefore not possible to clearly delimit the impact of the problems to certain sectors or categories of workers.

A high share of the citizens that replied to the public consultation (63%) felt discriminated when working in another Member State[33] (see annex 6). Discrimination seems to take place in particular when applying for a job (47% of the situations reported by respondents to the public consultation) and with respect to working conditions (31%). The third most common situation where respondents have been discriminated against (16%) is when applying for social benefits[34]. This trend is confirmed when examining the complaints and requests of information received by the Commission services. Cases of indirect discrimination are most frequently reported, although there are still situations in which EU citizens are directly discriminated because of their nationality.

These figures are confirmed by a survey carried out by the contractor, according to which 44% of the respondents who had lived and/or worked in another Member State identified difficult access to employment as the most important barrier, followed by lack of access to financial support (39%), unfavourable working conditions (38%) and lack of assistance from employment offices (38%).

Problems or difficulties in the implementation of rights may discourage mobility. The Eurobarometer of 2009 showed that while 60% of European citizens considered free movement of workers a good thing for European integration, only 48% thought it was a good thing for individuals. Furthermore, according to the results of a more recent Eurobarometer (September 2011)[35], 15% of European citizens would not consider working in another Member State because they perceive there are too many obstacles. Language barriers, difficulties in finding an appropriate job, the bureaucracy involved and the worry that professional and academic qualifications will not be recognised are mentioned among the major concerns.

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33 Thereby over a third of the respondents to the public consultation were nationals of Bulgaria and Romania. This overrepresentation can be explained by the approaching end of the second phase of the transitional arrangements applying to nationals of these Member States and a consequent specific awareness of these populations.

34 Data from the public consultation. See annex 7

35 Eurobarometer 363 "Internal Market: Awareness, Perceptions and Impacts", September 2011 http://ec.europa.eu/public_opinion/archives/ebs/ebs_363_en.pdf

The Eurobarometer Qualitative Study "Obstacles citizens face in the Internal Market" of September 2011[36] provides further examples of problems and barriers mentioned by citizens, such as the fact that local labour force will be given preference over other EU nationals, the distrust of qualifications from certain Member States, being paid less than locals, the attitude of the country in question towards foreign workers or the request to have an address and a bank account in the host country before being able to start working or having an address there in order to look for a job.

Indeed, a comparison of the occupational distribution of recently established EU migrant workers compared to their levels of education suggests a significant over-qualification. Indeed in 2010, around one quarter (24.4%) of the EU migrant workers (having established less than seven years ago) worked in occupations requiring less than their educational level[37]. This compares to less than one out of ten (9.9%) among the 'nationals' (workers having the citizenship of the country in which they reside).

Unfavourable attitudes towards EU nationals in particular as regards doctors and hairdressers are also quoted in the Eurobarometer of 2011. While 15% of EU citizens declared not knowing whether doctors and nurses from other EU Member States can work in different EU countries than the ones in which they qualified, 17% of people consider that a doctor's qualification should come from specific Member States only and 6% think that a hairdresser should have gained professional experience in a specific Member States only.

In the context of the enlargements of 2004 and 2007, some Member States have mentioned the risk of social dumping due to the fact that workers from those new Member States could accept to work under inferior working conditions than nationals. This has also been reported by trade unions' representatives in the framework of discussions within the Advisory Committee on free movement of workers.

According to the Eurobarometer of 2009 on discrimination in the EU, discrimination on ethnic grounds is considered to be the most widespread form of discrimination in the EU (61%). While ethnic origin does not necessarily involve nationality, it is sometimes difficult to draw a clear distinction line between both grounds of discrimination.

According to the same Eurobarometer, 38% of citizens consider that the candidate's ethnic origin puts him or her at a disadvantage when applying for a job, while 30% think that the candidate's way of speaking, his or her accent (which may denote a different ethnic or national origin) can play a role. 13% consider the candidate's name can be a disadvantage. These features can as well apply to candidates from another Member State.

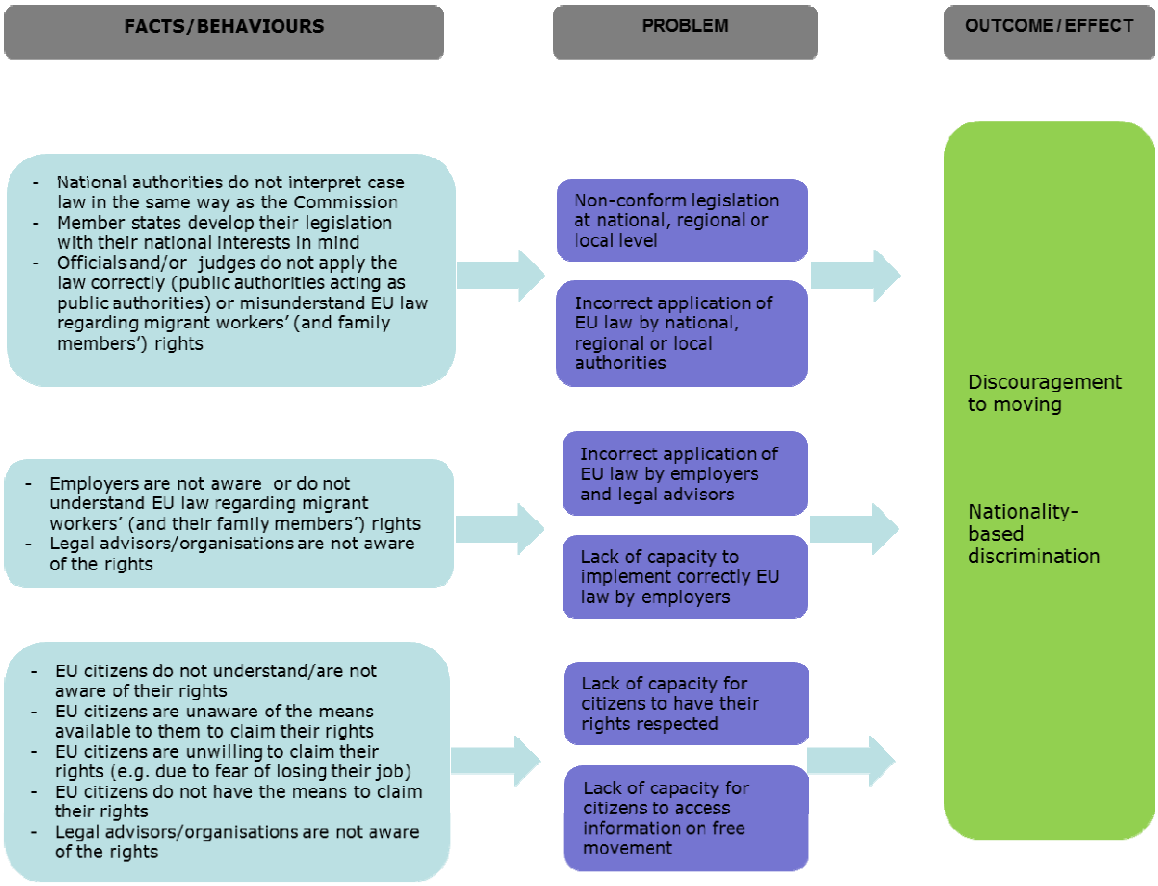
The specific problems related to discrimination on grounds of nationality and the main reasons behind are depicted in figure 1 below.

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36 Eurobarometer qualitative Studies. "Obstacles citizens face in the Internal Market – Aggregate Report", September 2011 http://ec.europa.eu/public_opinion/archives/quali/ql_obstacles_en.pdf

37 This rate of over-qualification is measured by adding up the workers being in occupations that require a lower educational attainment than the one they currently have (i.e. high-skilled working in intermediary and low-skilled occupations and medium-skilled working in low-skilled occupations). This is based on a classification of ISCO occupations in three groups: those requiring high skills (ISCO 1-3), those requiring intermediate skills (ISCO 4-8) and the low-skilled occupations (ISCO 9). The share of each group of occupations is compared to the distribution of the educational level: high skilled (ISCED 5-6), medium (ISCED 3-4) and low (ISCED 0-2).

Figure 1: Summary of the problems related to discrimination on grounds of nationality



The left column summarises the main observable behaviours among actors directly concerned by the implementation of EU rules on free movement of workers (citizens, national authorities, employers, legal professionals and other advisors) that raise difficulties in the application of the rules and therefore in the exercise of the concerned rights. The central column explains the specific problems stemming from those behaviours, while the column on the right presents the consequences of those problems.

The problems affecting the exercise of rights by EU migrant workers are further described below.

3.2.1. Non-compliance of public authorities with EU law (non-conform legislation or incorrect application) and their effects on EU migrant workers

In spite of the long history of the rules on free movement of workers and of the important interpretation made by the Court of Justice, problems of compliance of national legislation and general practices still persist in the Member States and continue to be reported to the Commission through different means.

In some cases, legislation at national, regional or local level is not in conformity with EU law. It other cases, national legislation is in conformity, but the application in practice by national, regional or local authorities is not. It may also occur that a specific situation is not in itself addressed at legislative level (for instance, when legislation does not mention whether professional experience acquired in other Member States has to be taken into account when applying for a post in the public sector but does not exclude it explicitly either), and that the rules applied in practice by authorities are not in compliance with EU law.

These problems have strong and unfair consequences on EU citizens, e.g.:

– access to a job is denied due to the different treatment granted to EU citizens compared to nationals;

Examples:

Legislation in Italy provides that candidates to posts as teachers who obtained their professional qualifications in other Member States will not be awarded the same points as those who hold professional qualifications obtained in Italy; this results in a preference in access to those posts to citizens holding Italian qualifications. In many cases, EU migrant workers hold qualifications obtained in another country and they will be therefore treated differently.

In some Spanish regions, in competitions for access to posts in the public sector previous professional experience acquired in other Member States is not awarded the same value as a similar experience in the region. Therefore, the EU migrant worker is penalised as compared to a national who has never left his country of origin. In Italy similar rules existed. They were reformed and the rules are now in conformity with EU law, but problems of application in practice have been reported to the Commission.

In Sweden, national authorities refused granting security clearance to an EU national who worked in a private enterprise where army equipment was developed, on the basis that he was not a Swedish national. The citizen was therefore dismissed.

– EU migrant workers are subject to different working conditions, including salary, grade and promotion;

Examples:

General practice in Greece does not allow for taking into consideration post-graduate degrees obtained abroad for promotion purposes, while comparable degrees obtained in Greece are.

In the Netherlands, a case was reported by the Equal Treatment Commission where Polish seasonal workers, doing the same job as their Dutch colleagues, received a lower salary.

– access to financial and non-financial benefits for EU migrant workers and their dependent family members is denied because of nationality requirements or is hindered because subject to residence criteria which are more difficult to fulfil for them than for nationals. This is especially important in countries with a high number of cross-border workers working in the host country but residing in another one;

Examples:

Legislation in Slovenia requires Slovenian nationality for access to certain study grants. This results in excluding EU migrant workers and member of their family.

Legislation in several Member States (Netherlands, Luxembourg, Denmark, Sweden, Belgium, Germany, etc.) makes access to certain study grants conditional upon fulfilment of a residence condition.

A Portuguese citizen working and living in France was refused access to financial aid to

support her low income by local authorities, on the grounds that she was not French.

All the implementation problems of EU rules on free movement of workers have direct negative consequences on citizens, and affect their life both at professional and personal levels. In some cases, EU migrant workers will suffer from the effects of this non-compliance all along their professional life in the concerned Member State (e.g. when the previous professional experience gained in other Member States is not taken into account for determining the grade, which has further consequences on promotion and salary). They also affect the integration of EU citizens in the labour market and in the society of the host country. EU workers concerned by implementation problems sometimes spend a major part of their professional lives fighting against the discrimination they suffer without any success in practice. As mentioned above, while these problems may be addressed at EU level through infringement procedures, this instrument will not have a direct effect on the individuals.

Infringement procedures, although successful in many cases, have not had an 'expanding effect' in bringing compliance of rules on a voluntary basis. National authorities normally focus on bringing the specific piece of legislation or administrative practice concerned by the infringement in conformity with EU law, without automatically reviewing other potentially discriminatory pieces of legislation and practices. Even after the adoption of the necessary changes, cases have been reported where practice is still not in full compliance (see example on the recognition of professional experience mentioned above).

The infringements launched by the Commission show that these problems persist over time. Most of the infringements currently pending (18 out of 20) are indeed related to legislation and practices by national authorities, whether at national or regional level, which are not in conformity with EU law. Problems of compatibility of legislation are also mentioned in the annual reports of the network of independent experts on free movement of workers. The most frequent cases of non-conformity are related to indirect discriminations, which are more difficult to detect by non-experts in the field and which are therefore more difficult to fight by citizens.

As regards misapplication of rules through general practices, the information available indicates that this problem is less recurrent than problems in legislation (3 of the 18 infringement procedures mentioned above may be considered to concern general practices). However, it is extremely difficult to detect if the rules which are applied in practice are not made public. Awareness of the existence of such practices will depend on whether citizens affected raise the case to the attention of the concerned bodies and organisations and/or introduce a claim. It therefore cannot be excluded that the size of the problem is bigger than the evidence collected. The number of citizens affected by this problem will also depend on whether the incorrect application concerns just one individual or whether, on the contrary, there is an established general administrative practice which can then affect an indefinite number of persons.

Reasons for this problem can be both a lack of awareness and a lack of understanding of the applicable rules by national authorities, but also an unwillingness to comply due to different factors, e.g. because national authorities find it difficult or politically inopportune to change their legislation, or because they want to protect national interests. Lack of understanding, including different interpretations of the rules, and unwillingness seem to be more recurrent than the lack of awareness of EU law. On the other hand, individual situations of

misapplication of EU law may be due to just a mistake in the application of the rules by the authorities concerned.

3.2.2. Non-compliance by employers and legal advisors with EU law (unable or unwilling to apply EU law correctly) and their effects on EU migrant workers

Cases have been reported where public and private employers do not respect the EU rules, regardless of whether legislation at national level is in compliance with EU law or not.

Examples:

In Greece, a French national who applied for a job in a national museum was required to show a residence card and a work permit.

In Hungary, a company refused to hire non-nationals. Following a general complaint to the Hungarian Ombudsman, the company agreed to apologise for its actions on its website and to treat applicants equally, regardless of nationality, in the future.

Different job advertisements by private companies for English teachers in several Member States (Spain, Czech Republic, Italy) require applicants to be native speakers. Candidates having a sufficient knowledge of English to exercise the job are not accepted.

A job advertisement by a private company in the United Kingdom required applicants, among other conditions, to be resident in the UK. The applicant was residing abroad and his application was not considered.

Information collected by experts and by the Commission suggests that this problem is recurrent, although awareness of the existence of such problems depends very much on the level of publicity given to the cases by those who are affected. Therefore, it cannot be excluded that a higher number of cases than those which have been reported so far do exist in practice.

Problems of action by private employers cannot be addressed at EU level through the infringement procedure tool. Therefore, citizens who have suffered from discrimination may only rely on the mechanisms and means available at the national level.

Actions of employers have direct and heavy consequences on the personal situation of the workers concerned, as they can hinder their employment chances and/or affect their working conditions.

Unawareness of the rules and lack of understanding seem to be the main reasons for this problem, especially when it comes to action by private employers. However, misapplication may also be due to a lack of willingness to comply, e.g. when employers prefer to hire nationals than non-nationals and therefore dismiss applications from EU citizens or make such applications subject to discriminatory conditions in order to make it impossible for them to obtain the job or even to apply.

3.2.3. EU migrant workers not having access to information or the means to ensure their rights

Citizens point to the fear of losing their jobs or being subject to unfavourable treatment if they introduce claims at national level. They also complain that they do not have other instruments to seek repair than taking legal action, which is lengthy, costly and burdensome and discourage them from introducing any claim.

Of the 74 respondents to the public consultation that declared having been discriminated against while working in another Member State, only 10.8% (8 respondents) affirmed that they were able to seek recourse under national law. Although the reasons for this lack of action were not stated by the respondents, the figure shows that there are difficulties and discouragement for introducing claims in case of problems. Only two of them were supported in their actions by an organisation.

A Eurobarometer[38] asked citizens to name the main sources of help they would use if they faced problems concerning their EU rights. 16% did not know where they would turn first. 16% said they would seek help from a representative organisation, while 15% said they would turn first to the court system in the host country. That country's national ombudsman would be the first port of call for 15% of EU citizens, with the same percentage saying they would contact the national administration of the country they were in. 14% said that EU institutions would be their first choice.

As regards in particular the sources of help that people living and working in another EU country would use if they believed that their EU rights were breached *by employers*, the Eurobarometer Qualitative Study of 2011 on Obstacles citizens face in the Internal Market show that the Embassy of the country of nationality in the host Member State was mentioned as the preferred source of assistance, followed by labour inspection authorities, labour unions, attorneys, specialised websites, colleagues, job centres etc.

These results indicate that there is not a clear point of reference for EU citizens where to go in case of problems. When talking of discrimination on the grounds of nationality, the actual ability of EU workers to make use of the sources mentioned by citizens will depend on whether they are indeed available and whether they cover issues related to that ground of discrimination.

Another common issue that stems from the correspondence that the Commission services receive is the fact that EU migrant workers simply do not know what rights they enjoy and therefore they do not exercise them. According to the Eurobarometer of 2011, there is a clear lack of clarity about the best place to obtain information about EU rights. 21% of EU citizens would use friends, family or colleagues as a source of information, compared with 17% who say they would use the EU website, and 17% who would opt for their home country's national assistance service. 10% do not know where they would go to find this information.

When looking at the results of the public consultation, 65.8% of the respondents who had worked in another Member State stated that they had not been informed about their rights. Of the 34.2% of respondents that had received such information, 7.7% were informed by the national authorities, 2.6% by trade unions and 5.1% by employers. 18.8% were informed through other sources, such as friends, universities or by searching on the Internet.

Experts in the free movement of workers area also pointed to the current lack of help to EU migrant workers to understand how their rights work in practice. They stressed the importance of providing tools for support and assistance to individuals.

The different level of protection awarded and of supporting measures available to EU migrant workers in each Member State also plays a role in the ability of citizens to exercise their rights fully, as citizens who move do not know whether the host country will apply the same protection as they would have in their own country. It is also difficult for migrants, due to a number of factors (such as not knowing the procedures, not knowing the national system, lack

[38] Eurobarometer 363 "Internal Market: Awareness, Perceptions and Impacts", September 2011 http://ec.europa.eu/public_opinion/archives/ebs/ebs_363_en.pdf

of linguistic abilities), to make use of the means of protection available if they do not have any kind of support in the host country. This is confirmed by the results of the public consultation, where a majority of the citizens that responded stated that the level of protection awarded to workers in other countries would affect strongly their decision to go to work there.

A report of 2012 from the European Union Agency for fundamental rights on the application of the Racial Equality directive[39] also indicates that reluctance to report discrimination is an important factor. 63% of people interviewed stated that nothing would happen or change, while 26% were concerned about negative consequences. 21% of respondents who had been discriminated against stated that their reason for not reporting the incident was due to the fact that procedures were too cumbersome or time consuming. This report relates to discrimination on race or ethnic origin, however, in some countries nationality is considered to be part of that ground and therefore the results may be also transferred to a certain extent to discrimination on the basis of nationality.

3.3. Causes and drivers

There are four main roots of the problem of discrimination on the basis of nationality.

3.3.1. Unawareness

– There is a lack of awareness of the rights of EU mobile workers under EU-law. This unawareness exists at different levels: it is not only citizens themselves who ignore what specific rights they have under EU law when they want to move or when they actually have moved to another Member States for employment purposes (including for searching for a job), but also legal practitioners and advisors, employers (whether public or private), social partners and other organisations, employment services and in some cases national authorities, including at regional and local level.

– There is a lack of awareness of the means of redress available, including general unawareness that EU provisions are directly applicable[40].

This general unawareness was often pointed out in the public consultation as one of the causes of lack of or incorrect enforcement of EU law on free movement of workers. The lack of information on migrant workers' rights was also mentioned both by Member States and by social partners in the consultation conducted within the Advisory Committee on free movement of workers as one of the most common problems.

3.3.2. Lack of understanding of EU law and lack of legal certainty

– There are divergences in the interpretation of EU rules, including the case-law of the Court of Justice, between national authorities in different Member States and between Member States and the Commission; there may be for instance a different understanding of the concept of worker, the concept of discrimination, the exceptions that can be accepted or the restrictions that can be put in place.

– There is uncertainty due to the complexity of the legislation, especially the combination of Article 45 TFEU and Regulation (EU) 492/2011 with all the other secondary legislation within the area of free movement. For example, the relevant authorities do not always understand the scope of the concept of 'social advantages' as provided in Regulation (EU) 492/2011 and how it relates to other regulations on social benefits.

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39 "The Racial Equality Directive: application and challenges", 2012. FRA - European Union Agency for Fundamental Rights

40 See section 3.1.1

– National courts may apply national legislation without even considering whether it is in accordance to EU law or not: this occurs for example when a court only applies and interprets national law in the framework of the applicable national rules (e.g. the Constitution), without examining its compatibility with EU law.

– Citizens, the legal profession and different associations that can assist EU migrant workers may not fully understand the scope of the rights they have.

3.3.3. Insufficient support to EU migrant workers to exercise their rights

– The only practical solution for EU workers is to go to court to fight for their rights or lodge a complaint before the European Commission.

– Legal support and advice from third parties such as labour unions, NGOs, other organisations or associations may not always be available.

– There is a lack of specialised entities that can provide assistance.

– Means of redress may be available but there may be not enough awareness that they exist or on how to use them.

– Existing means of redress may be complicated, time-consuming and costly.

– Claimants may be deterred from bringing actions and exercising their rights as they consider the risk/reward balance to be negative (e.g. fear of losing their job or of costly and lengthy procedures).

3.3.4. Protectionism and unwillingness to comply

– Member States may develop their own legislation without duly considering its conformity with EU law; national interests therefore prevail over EU rules (e.g. trying to avoid brain-drain through legislation which discourages nationals from moving to another Member State).

– National authorities may be well aware that their legislation and practices are not fully in compliance with EU law but lack of pressure to change the legislation or practices, they do not consider the matter be urgent enough to act.

3.4. Who is affected and how

The problems identified may affect EU citizens who move to another Member State for employment purposes, including jobseekers. They also affect citizens who have moved to another Member State (for instance, to work or to obtain their professional qualifications there) and then return to their country of origin in order to work. The statistics provided in section 3.1.3 in combination with annex 1, provide a quantitative indication of the potential proportion of European citizens concerned.

Looking at the population of migrants by labour status, it can be observed that, on average, 67.9% of the EU working-age (15-64) citizens living in another Member State are in employment and 9.1% are unemployed (i.e. jobseekers)[41]. Citizens who intend to move at some time in the future (17%) may be also affected. The problem potentially cuts across all occupations and sectors of activity[42]. Furthermore, family members of such EU citizens are also concerned, as they have certain rights under the EU provisions on free movement of workers (e.g. they have the right to social advantages and the right to education).

[41] Eurostat, EU-LFS, see table 4 in annex 1

[42] See table 5 in annex 1

Employers and national authorities may be affected. Better enforcement of migrant workers' rights might generate costs, but it will also provide them with the advantage of more and better motivated migrant workers. According to the March 2012 OECD Economic Survey on the European Union[43], with demographic changes underway, most EU countries expect growing shortages of skilled labour. It suggests that "mobility within the EU can in principle help to fill labour market shortages".

3.5. Baseline scenario and the need for intervention

The problems identified in section 3.2 are not new. After more than 40 years of free movement of workers, it could have been expected that problems would have naturally decreased. On the contrary, the number of complaints and enquiries that the Commission receives continues to be high. Although not all complaints lead to infringements by the Commission, the latter have not decreased. This shows that problems of implementation of the rules are still part of the daily lives of citizens. There is no sign that they will decrease in the short, medium or long term.

Moreover, in the current economic and social context, further limitations on the rights of EU migrant workers cannot be excluded. According to some NGOs, migrants across Europe are today among the most vulnerable groups in society and are often socially excluded through lack of access to rights, employment, education and social services[44]. There is a clearly rising intolerance towards EU migrant workers, as shown by several surveys[45] and by specific actions identified across Europe[46], which may translate in discriminatory practices against those workers. These actions constitute a major step back in EU integration.

The enlargements of 2004 and 2007 have also led to a certain distrust towards migrants from those countries and a fear of possible negative consequences of their access to other EU labour markets. In many Member States, this new mobility raises problems of application of EU law as regards the free movement of workers. The enlarged EU, but also the increased protectionism subsequent to the economic crisis, requires a reinforced pedagogical approach in this field

The European Commission may carry out information and awareness-raising activities through the specific pages on free movement for workers on the website of the Directorate-General for Employment, Social Affairs and Inclusion[47], through EURES and other Commission information tools such as the Your Europe Portal, Your Europe Advice and EURAXESS[48]. A more specialised audience can be reached through the activities and publications of the network of independent experts on free movement of workers[49] and

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43 http://www.oecd.org/economy/economicsurveysandcountrysurveillance/49950244.pdf

44 Policy paper on Social services and migration from the NGO Eurodiaconia

45 The special Eurobarometer 317 on Discrimination in the EU in 2009, of November 2009, shows that discrimination on the grounds of ethnic origin is seen by the majority of Europeans as widespread

46 See, for instance, the Internet site set up by of a political party in the Netherlands encouraging people to report complaints arising from the 'massive labour migration' of 'Central or Eastern European citizens', and asking, in particular, whether they have lost their jobs to one of those citizens;

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

48 The Your Europe Portal offers information and advice on EU rights for EU nationals and businesses (http://europa.eu/youreurope/index.htm). Your Europe Advice is an EU advice service for the public currently provided by independent legal experts on rights awarded to individuals under EU law, including rights related to free movement of workers. EURAXESS is an European initiative providing access to a complete range of information and support services for European (and non-European) researchers wishing to pursue research careers in Europe.

49 http://ec.europa.eu/social/main.jsp?catId=475&langId=en

reports published by other experts with the support of the Commission[50]. Events and campaigns organised and launched by different services of the Commission, such as the European Year of citizens in 2013 will also be used as an opportunity to reach out to a wider audience. Information and problem-solving tools like Europe Direct, Your Europe advice and SOLVIT are also available to citizens.

Dialogue between stakeholders (labour unions, employers and national authorities) takes place through the Technical and the Advisory Committees on free movement of workers that meet twice a year (see 2.4). While the Technical Committee allows for an exchange of practices between Member States and with the Commission on different issues related to the free movement of workers, including legal issues, the Advisory Committee allows for the consultation of and discussions with the social partners.

Discrimination on the grounds of nationality may be tackled at EU level through infringement procedures and other problem-solving mechanisms (Europe Direct, Your Europe Advice, SOLVIT). However, these tools are limited in their scope and in their effects on citizens, and are burdensome.

Successful infringement procedures will lead to a change in the legislation or general national practices, but their effects are limited as regards individual citizens. Citizens will still have to make use of the means of redress available at national level and the specific effects for them will have to be established by national courts. Furthermore, infringement procedures may be lengthy, depending on the willingness of Member States to take the necessary measures to comply with EU law. In case of non-compliance, the case will be referred to the Court of Justice and the rights of EU citizens will still be on hold. If, on the contrary, Member States are willing to change their rules, the reform may take some time, notably when a legislative process is needed. This means that until the issue is finally solved, citizens will be denied their rights. And once the necessary changes are made, the actual effects on the citizens concerned will depend on the specific solution given by national courts and authorities, provided the citizen himself introduced a claim on time. Taking a case to court thereby involves heavy and costly procedures for the individuals, who do not always have the relevant knowledge of legislation and of the functioning of the system.

Moreover, the Commission cannot intervene in cases involving private entities, where no State liability can be established, and has limited powers to act in isolated cases of misapplication of the EU rules on free movement of workers.

When confronted to the problems that have been described above, EU migrant workers will have to rely on the protection and support afforded at national level, which differs from one Member State to another and which will in some cases depend on generous interpretations of the national provisions regarding discrimination on other grounds. Furthermore, in many cases the only practical solution that citizens have in order to ensure that their rights are implemented is going to court.

Prohibition of discrimination and equal treatment are conditions *sine qua non* for the realisation of the fundamental principle of free movement of workers. EU law should ensure that the rights it confers can be fully exercised in practice and guarantee EU migrant workers and members of their families a real status of equality.

[50] For instance, the report prepared by Professor J. Ziller "Free movement of European Union citizens and employment in the public sector" of 2010 http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=956&furtherNews=yes

3.6. The legal basis, subsidiarity, proportionality and fundamental rights

The principle of subsidiarity applies insofar as the proposal does not fall under the exclusive competence of the European Union. Article 46 TFEU establishes the Union's competence to issue directives or regulations setting out measures required to bring about freedom of movement for workers, as defined in article 45 TFEU.

The initiative leaves space to Member States to adopt appropriate measures to implement its goals thus respecting the principle of proportionality. Many Member States already have appropriate legal protection against discrimination on the grounds of nationality and will not need to make major changes to their own systems. Those who do not, will have to take the necessary legal actions to bring their national systems in line with EU law. The initiative would therefore contribute to overcome the current diversity in the way discrimination on the basis of nationality is tackled and fought against in each Member State increasing legal certainty for EU migrant workers.

Furthermore, the achievement of the objectives of this initiative would improve the respect of the Charter of fundamental Rights of the European Union, in particular:

– the freedom to choose an occupation and the right to engage in work ‘(article 15);

– the principle of non-discrimination (article 21);

– fair and just working conditions (Article 31);

– freedom of movement and residence (article 45);

– right to an effective remedy, to a fair trial and to legal aid (article 47).

4. POLICY OBJECTIVES

4.1. General, specific and operational objectives of the initiative

EU workers face discrimination on grounds of nationality in a variety of contexts. This inhibits cross-border mobility and the full achievement of the Single Market. It affects also the quality of life of EU workers and members of their family and their full participation in the labour market and in the society of the host Member State.

The present initiative responds to the **general objective of ensuring equal treatment between EU citizens.** It is one of the core values of the European Union and a major component of EU citizenship. It is a right and as such it must be complied with and respected in the whole EU.

Within this general framework, the following **specific objectives** have been identified:

– Reducing discrimination of EU migrant workers on the grounds of their nationality, thus contributing to the implementation of a fundamental right in practice and allowing for a full integration of workers in the host Member State.

– Reducing the gap between the rights on paper and their exercise in practice, thus helping achieving a full and correct implementation of the existing legislation and allowing for a better functioning of the internal market.

In order to meet these objectives, **operational objectives** have been identified:

– Increasing awareness among citizens, employers, public authorities and other stakeholders about the rights of EU migrant workers and their families.

– Improving legal certainty of the principle of non-discrimination and rights of EU migrant workers.

– Supporting EU workers to exercise their rights

For all the three operational objectives it has not been possible to define SMART objectives. There are a number of indicators, like court cases, number of infringement procedures and survey results which link to these objectives. However, interpretation of these data will depend on the specific context, for example, whether a reduction of court cases might be seen as an improvement, indicating less discrimination, or as a deterioration of the situation, pointing to people being less likely to enforce their rights.

4.2. Are these objectives consistent with other EU policies?

The objectives are consistent with the horizontal objectives of the European Union and in particular with the Europe 2020 strategy, whose aim is to attain a smart, sustainable and inclusive growth, and with the flagship initiative "An agenda for new skills and jobs", which seeks inter alia to respond to the need to facilitate and promote intra-EU labour mobility (see point 1.2.).

They are also consistent with the EU's fundamental rights strategy[51]: the objective of the Commission's policy following the entry into force of the Lisbon Treaty is to make the fundamental rights provided for in the Charter[52] as effective as possible.

They are in line with the strengthening of the Single Market and the citizens' rights strategy, in particular as regards the forthcoming 2013 European Year for Citizens.

5. DESCRIPTION OF POLICY OPTIONS

Five policy options have been identified and are presented in order of increasing level of requirements. Each of them will build on the baseline scenario (option 1) and the awareness-raising and monitoring activities of the Commission in its role of guardian of the Treaties. Option 2 suggests the drafting of common (non-binding) guidance documents by the Commission and the Member States to ensure a shared understanding and coherent application of the rules throughout the Union. Option 3 would require the Commission to adopt a formal recommendation to Member States to ensure correct implementation of EU law on free movement of workers and enhanced support to migrant workers. Option 4 involves the adoption of an enforcement directive ensuring enhanced support to migrant workers. Finally, option 5 would go a step beyond, adding an obligation for companies to actively prevent discrimination.

Policy option 2 (guidance documents) could be combined with options 3 – 5 in order to ensure a common understanding of how to apply the rules and involve Member States in the drafting of such common understanding. This would strengthen the ability of the other options to reach the objectives set and to tackle the problems and drivers identified.

5.1. Baseline scenario

Option 1: No further action at EU level

This option would mean a continuation of the current situation, where a number of activities are carried out at EU level (see point 3.1.1.)[53]. As regards enforcement and monitoring of EU

[51] Communication from the Commission "Strategy for the effective implementation of the Charter of fundamental rights by the European Union", COM(2010)573 final of 19 October 2010

[52] The specific provisions of the Charter concerned are mentioned in section 3.6

law, the Commission would continue to launch infringement procedures where appropriate, and use problem-solving mechanisms such as SOLVIT and EU-Pilot.

At national level, each Member State is obliged to comply with EU rules on free movement of workers. In option 1, specific measures intended to facilitate compliance and the exercise of rights by EU citizens (such as information activities and protection awarded to EU migrant workers) would be left to national authorities and relevant stakeholders on a voluntary basis.

5.2. Enhance the capacity of national institutions to apply EU law correctly

Option 2: Common guidance documents

The adoption of common guidelines by Member States and the Commission would contribute to ensuring a shared approach on the application and interpretation of EU rules on free movement of workers and the related case law of the Court of Justice, e.g. by agreeing that professional qualifications and experience gained in other Member States must be given the same value as comparable qualifications and experience obtained in the host Member State; by agreeing that a person who receives remuneration in kind is to be considered as a worker and should therefore enjoy all the rights linked to that status, etc.

Such guidelines could be adopted in the framework of the Technical committee on free movement of workers, which brings together representatives of all Member States. These measures would not be binding upon Member States but the process of their adoption itself would involve a certain engagement by national authorities to comply with them.

In the past a similar document was adopted to establish guidelines on the application of the transitional arrangements of the Accession Treaties for EU-10 and EU-2.

The shared guidelines would then be disseminated in each Member State to the national authorities and contribute to a more harmonised implementation of the rules.

During the consultation process prior to this impact assessment, employers' associations have shown that they would be in favour of the adoption of guidance documents. National authorities have not provided an opinion. However, taking into account the divergence of interpretation of rules between the Commission and the Member States on some specific issues (e.g. the application of the rules to EU frontier workers, the interpretation of indirect discriminations), the adoption of guidelines alone within the Technical committee might be a difficult and lengthy process.

Such common guidelines could in any case be complemented by guidelines and interpretative documents adopted by the Commission alone, such as the 2002 and 2010 communications mentioned in the baseline scenario (see point 3.5), and disseminated among stakeholders.

5.3. Increase the support provided to EU migrant workers

The Commission would make a proposal aiming at introducing measures intended to support EU migrant workers' when they face problems and difficulties and to enable them to be better informed about the rights they enjoy. This would also contribute to raise national authorities' interest and action through increased visibility on the issue.

Firstly, the proposal would invite Member States to introduce a legal obligation to provide EU migrant workers with means of redress at national level: any EU worker who believes to have been victim of discrimination on the grounds of nationality should be able to make use of

[53] For instance: Communication from the Commission "Reaffirming the free movement of workers: rights and major developments", of 13.07.2010 (COM(2010)373 final); Commission staff working document "Free movement of workers in the public sector" of 14.10.2010 (SEC(2010)1609 final)

administrative and/or judicial procedures to challenge the discriminatory behaviour at national level. Means of redress are generally available in all Member States, but the proposal would link them specifically to matters of discrimination on the grounds of nationality increasing legal certainty and possibly establishing a legal guarantee for victims at EU level;

Secondly, the proposal would invite Member States to set up structures or bodies at national level in support of EU migrant workers. The functions of these bodies would include:

– promoting rights linked to free movement of workers;

– providing/facilitating access to information to EU workers and relevant stakeholders;

– assisting EU migrant workers in pursuing their complaints;

– conducting surveys concerning discrimination and publishing reports and recommendations.

Such bodies would increase support for EU migrant workers and give more visibility to the fight against nationality-based discrimination at national level. It would be however for each Member State to decide whether to create a completely new structure or whether existing bodies could be assigned the functions described above;

Thirdly, the proposal would invite Member States to ensure that associations, organisations or legal entities (such as labour unions, NGOs or other organisations) with a legitimate interest in the promotion of the rights to free movement of workers may engage in any administrative or judicial procedure on behalf or in support of EU migrant workers in case of violations of their rights under Regulation 492/2011. It would be left to Member States' discretion to define the way this option should be implemented in practice, according to the national judicial systems and procedures.

Option 3: Commission's Recommendation to Member States

This proposal could take the form of a general recommendation by the Commission addressed at Member States in order to encourage them to take actions at national level. The Recommendation would not be binding and therefore each Member State would decide on the appropriate follow-up and implementation.

Social partners and national authorities are in favour of increasing awareness of rights and strengthening access of individuals to information. Trade unions also underlined the importance of their role in assisting workers. This policy option could therefore meet these expectations.

Option 4: Directive introducing support measures for EU migrant workers

The proposal could take the form of an enforcement directive which would be transposed in the national legislation of all Member States. The directive would be binding but each Member State would have a certain latitude to implement it in its existing national context, e.g. add competencies to an existing body.

Social partners and national authorities are in favour of increasing awareness of rights and strengthening access of individuals to information. Member States' views differ on the means which should be employed to reach this objective whereas the employers' organisations tend to think there is no need to adopt additional legislation.

5.4. Increase the support provided to EU migrant workers, including in the workplace

Option 5: Directive introducing an enhanced protection for EU migrant workers

This option would include the proposal described under option 4 complemented by further measures intended to reinforce the protection of workers. Unlike policy option 4, these additional measures are not directly aimed at strengthening the ability of EU migrant workers to act, but rather to create a protective environment for them. This option would aim at preventing discrimination within undertakings, outside the general framework in which the supporting bodies would operate.

The proposal would include an obligation for employers to prevent discrimination within their undertakings. This would include an obligation to provide information to workers about the specific rights related to discrimination on the grounds of nationality, but would also involve the adoption of active measures by employers in order to prevent such discrimination (e.g. by establishing a yearly plan on discrimination on the grounds of nationality, developing criteria for recruitment that would exclude expressly the nationality, by developing guidelines, etc.). Member States would have the latitude to decide the level and kind of actions that could be required from employers in order to implement such an obligation, as the specific actions needed would depend on variable factors such as the size of the undertaking.

Secondly, the directive would impose sanctions on employers that have discriminated EU migrant workers on the basis of their nationality, and/or provide compensation for EU migrant workers who have been victims of discrimination on the grounds of nationality. Sanctions would consist of a fine and/or other penalties. The exact amount of the fine or penalty or compensation would be at the discretion of the relevant bodies in the Member States according to their specific systems.

Finally, to prevent victims from being deterred from exercising their rights due to the risk of retaliation, the directive would introduce a legal provision aimed at protecting them from any adverse treatment (e.g. dismissal) further to a complaint or claim.

Both the outcomes of the public consultation and the discussions within the Advisory committee indicate that option 5 is likely to raise strong reservations from the business sector.

5.5. Discarded options

The introduction of a definition of discrimination on the grounds of nationality (direct and indirect) in a new legal instrument was foreseen as one of the elements that could help reinforce legal certainty about EU migrant workers' rights, as such concept has been developed by the case-law of the Court of Justice and may therefore be unknown to EU migrant workers and other relevant stakeholders. However, even if introduced in EU legislation such concept would still be subject to different interpretations and therefore the practical effects of this option in terms of legal certainty would be limited.

The adoption of EU legislation integrating the main case-law of the Court of Justice was also discarded for the same reason at an early stage. A revision of current Regulation 492/2011 was also excluded at an early stage as the objective is not to modify the rights conferred by that Regulation or create new ones, but rather to enforce the existing rights.

The possibility of introducing a reversal of the burden of proof was also considered as an element that could encourage and facilitate lodging of claims by EU migrant workers. However, research conducted by experts has shown that such provisions have not led to any particular positive effect in the countries where they exist. Individuals still have to bring a case before the court, which is costly and lengthy. It is also seen by employers as an element that can be open to abuse by individuals, who may threaten employers with false claims and obtain favourable decisions because employers feel they would be unable to rebut a presumption of discrimination.

As regards the choice of the legal instrument, both regulation and directive were considered. A regulation would impose uniform obligations in all Member States. The use of such an instrument to achieve the objectives set was evaluated as disproportionate, as the measures considered would by their own nature very much depend on the legal and administrative framework of each Member State, which should be respected. A directive, which allows for some flexibility as to the means each Member State considers appropriate to ensure their obligations taking into account the national context, seems to be a more appropriate instrument. It would also be in line with the approach followed as regards similar obligations in the field of discrimination on other grounds (race, religion, sex, etc.).

6. ANALYSIS OF IMPACTS

This section summarises the economic and social impacts, including the impact on fundamental rights, of each policy option. No significant environmental impacts have been identified in any of the options.

Direct economic impacts will consist of the implementation costs incurred by national authorities and enterprises. The benefits of the initiatives are mainly a result of the social impacts.

Reducing discrimination in access to employment, working conditions, access to social benefits or housing might have a positive impact on a citizen's decision to move to another country for work purposes. It could make intra-EU labour mobility more attractive. While the increase on mobility may not be substantial, as discrimination is only one of many factors that influence the decision to move, its effects on the functioning of the Single Market could be positive, as mobility can ensure a better functioning of labour markets. While some negative side-effects may not be fully excluded (e.g. increase in cases before the court, affecting the functioning of the national judicial system), the global economic impacts appear to be positive.

6.1. Policy option 1: No further action at EU level

Social impact

The baseline would mean that the identified problems and drivers remain unaddressed. It would involve no significant change in national authorities and employers' behaviour. There would be no substantial impacts on awareness of rights and legal certainty.

Leaving the status quo would furthermore mean that there would be no minimum consolidated support and protection of EU migrant workers at EU level. Therefore, it would continue to negatively affect individuals that move for employment purposes from one Member State to another and would perpetuate the limited ability of EU migrant workers to participate fully in the labour market and society of the host Member State.

Fundamental rights

The baseline option would have no impact on any of the fundamental rights mentioned in section 3.6.

Economic impact

No additional implementation costs have been identified for national authorities and enterprises.

6.2. Policy option 2: Common guidance documents

Social impact

Impact on legal certainty

The adoption of guidance would entail a common interpretation of the current EU rules in view of their application by national administrations. It would thus contribute to increasing legal certainty and reducing the implementation gaps.

Through this increased legal certainty, guidance may also lead to a reduced level of discrimination, as the national authorities who up to now were using discriminatory procedures will have to change them. For instance, by agreeing that professional qualifications or professional experience gained in other Member States must be given the same value as comparable qualifications and experience obtained in the host Member State. Where discretionary decisions can be taken, there will be now more clarity on the principles that have to be applied (e.g. when deciding which posts in the public sector can be reserved to their own nationals).

Impact on awareness of rights

The guidance would also help raising awareness among national authorities at all levels on the rights linked to free movement of workers. However, awareness-raising among other stakeholders and citizens would depend on the publicity and dissemination given in each Member State.

Impact on stakeholders

The guidance would focus on questions of interpretation of EU law and would be aimed at reaching national administration and services in charge of implementing EU law. It would not contain any specific measure providing assistance, support and protection to workers. Although guidance can induce workers to use their rights more because of more legal certainty, it will not help them enforce those rights in case of problems. Problem 3, i.e. migrant workers not having access to information or the means to ensure their rights, would therefore not be directly addressed through this option.

Its overall social impact would be positive but only to a certain extent. The quality of life of migrant workers might improve, as they would in principle face less obstacles, but there would be no substantial change for them if they do face problems in practice.

This option would therefore have a low added value compared to the baseline scenario.

Fundamental rights

This option would have a positive impact on fundamental rights, if the guidelines are applied effectively.

Economic impact

National authorities

1) Cost of implementation

This option would involve limited implementation costs linked to the dissemination and publication of the guidance documents by Member States, including translation costs, if they are made available to the general public. Costs will depend on the specific efforts made by Member States to ensure dissemination and publicity.

2) Cost of legal action

This option is focused on national administrations and services. It could reduce the level of misapplication of EU law linked to insufficient capacity of the administrations, but it may not

reach a wider range of stakeholders and it may have a limited impact on the number of complaints and court procedures.

Enterprises

No implementation costs for enterprises were identified.

6.3. Policy option 3: Commission's Recommendation to Member States

Impacts of this policy option might be potentially the same as in policy option 4, as they will address the same issues. The difference lies in the binding or non-binding nature of the initiative.

Social impact

Impact on legal certainty

The Recommendation would not help to provide the same level of legal certainty across the EU as it cannot be known in advance to what extent or over what timescale the Member States would give effect to the goals set out in the recommendation.

Impact on awareness of rights

The adoption of a recommendation to Member States would give the issue a certain visibility which could improve the awareness of rights among citizens, relevant stakeholders and national authorities

Impact on respect of individual rights/compliance with EU law

The recommendation could increase involvement of the national authorities in reducing implementation gaps. It could also help strengthen the supporting and help mechanisms available to EU migrant workers at national level.

The recommendation would not impose any obligation on Member States to adopt specific measures. Taking into account the different sensitiveness of Member States both in terms of perception and actions in the field of free movement for workers' rights, there is a risk of increased diversity in the way these problems are addressed in each Member State, thus making it even more difficult for EU migrant workers to have a clear overview of what their rights and the means at their disposal to exercise them are.

The social impact could therefore be positive but it will depend on the degree of implementation in each Member state.

Fundamental rights

This option would have a positive impact on fundamental rights, if the recommended actions are effectively taken up at national level.

Economic impact

Impacts will depend on the specific actions taken by Member States to give an appropriate follow-up to the recommendation. Potentially, financial impacts could be the same as those identified under the policy option 4 which consists in adopting legal action. However, it is not possible to determine in advance to what extent Member States will implement the recommendation.

6.4. Policy option 4: Directive introducing support measures for EU migrant workers

Social impact

Impact on legal certainty

Providing a clear remedy for victims of discrimination is a basic principle of law. While means of redress are generally available in all Member States, linking them specifically to matters of discrimination on the grounds of nationality would increase the level of legal certainty, as citizens would be sure that specific procedures for introducing claims are available to them.

Addressing nationality specifically as a ground of discrimination through specialised bodies, without making protection against this kind of discrimination dependent on generous interpretations of the law applicable in other fields, would also increase legal certainty. Citizens would become more certain that they have the right not to be treated differently because of their nationality.

Impact on awareness of rights

Through their tasks as public information centres, the specialised bodies would contribute to increase awareness of rights and information among citizens and relevant stakeholders. A case-study on a supporting body established in Ireland in 1999, the Equality Authority, indeed shows that unawareness of rights among non-Irish nationals dropped from 38% in 2004 to 27% in 2010[54].

All Member States have structures or bodies that deal with discrimination on other grounds[55]. Enlarging their scope of action in the eight Member States[56] where nationality is currently not part of their mandate and ensuring that nationality is indeed included in those countries where the situation is not clear (e.g. where until now it could be included under other grounds of discrimination) would increase awareness and encourage migrant workers to use their rights. Additionally, it would give a strong signal to society that discrimination on grounds of nationality is also forbidden.

Impact on respect of individual rights/compliance with EU law

Enforcing the obligation to have clear remedies in all Member States would provide EU citizens with certitude that they will be able to challenge discriminatory practices no matter which Member State they decide to move to and work in.

Visibility of the issue would be further increased through the surveys and reports that these bodies would carry out. The supporting bodies would also contribute to identifying legislation and practices in the Member States that are not in conformity with EU law. These activities would increase pressure on national authorities to put an end to discriminatory laws and practices and would contribute to reducing compliance problems and unfair treatment by employers. In the Irish case, the percentage of non-Irish nationals that reported having experienced discrimination either when looking for work or at the workplace dropped from 13% in 2004 to 12% in 2010.

This result may also be achieved when assisting EU citizens. For instance, in the first example mentioned in section 3.2.1, the supporting body would assist a German citizen who applies for a post as teacher in Italy and whose German professional qualification is awarded only 6 points, while a fellow candidate with an Italian qualification is awarded 24 points. The supporting body would then report the case to the national authorities concerned. The latter

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54 See annex 6

55 Equality bodies linked to transposition of EU Directives covering discrimination on the basis of race, ethnicity, gender (Directives 2000/43/EC and 2006/54/EC)

56 Germany, Estonia, Greece, Spain, Luxembourg, Malta, Slovenia, the Netherlands

may consider reviewing the rules following the opinion of that body. If the case is given publicity through the reports carried out by the body, this may encourage other citizens to introduce claims and make the national authorities change the legislation or practice.

Another example of how an action can have impacts wider than the single case is provided by a number of existing equality bodies. Although many bodies can initiate court proceedings, few (in particular Belgium, Ireland, Sweden, and the United Kingdom) have developed detailed criteria for deciding which cases to take to court. Among these criteria are:

– interpretation of current legislation;

– reinforcement of legislation and strengthening of equality rights both with a beneficial impact on future victims of discrimination;

– the interests of the respective victim and the potential impact on his/her situation;

– the balance between the different grounds of discrimination and resources available to the body.

These criteria try to balance the benefits for the individual victim, such as compensation payments gained by taking his/her case to court, with the general public interest in improving legal certainty and establishing discrimination in an area prone to violations by many actors. Such cases play an important role in enforcing legislation, bringing about real changes in discriminatory practices and raising awareness of the seriousness of legal violations in regard to discrimination. It is precisely the bodies that have developed criteria for selecting cases that involve themselves in strategic litigation.

The same result can be achieved as regards action by employers, as shown in the second example mentioned in section 3.2.2 concerning Hungary: following the intervention of the Ombudsman, the employer changed his discriminatory practice.

As the support bodies would also offer EU migrant workers advice and assistance when they feel discriminated, they can be expected to encourage migrant workers to claim their rights. These bodies would furthermore have positive impact on the protection of EU migrants, who would be able to rely on the support of independent third parties. Moreover, setting up similar bodies in all the European Union would ensure that citizens have access to their support and information in every Member State. In France, for instance, the former HALDE did not represent the victims in court, but could provide analysis and recommendations on a case brought to court. This was considered to be very useful: the analysis and recommendations were followed by courts in approximately 80% of cases, and some judges went directly to HALDE to ask for an analysis of the situation.

Legal action by associations and organisations which are already active in the field may help reducing the financial and personal burden on individual citizens, giving them greater access to justice. For the EU migrant workers it would be another incentive to claim their rights as they would not be obliged to look for a specialised lawyer, etc. They would also feel stronger and more likely to win their cases when being backed by an organisation.

The results of the activities of the supporting bodies could also be transmitted to the Commission, enabling it to launch infringement procedures if appropriate.

Impact on stakeholders

The supporting bodies will have the possibility of assisting enterprises when they need advice on specific questions related to free movements of workers' rights or when they need assistance on how to establish an equality policy or equality rules within their own

undertakings. This function will be especially at the benefit of SMEs, which do not normally have access to his kind of expertise. Furthermore, the supporting bodies will also be able to provide advice to trade unions, e.g. in view of the adoption of collective agreements and their impact on EU workers.

Providing the possibility for associations and organisations to take legal action on behalf or in support of EU migrant workers in the three Member States where this is not yet done[57] would increase the number of stakeholders involved in the fight against the discrimination. Although the organisations may not have the financial means to take on all of the cases, the accessibility of local bureaus will increase access to legal representation. The role of trade unions and other organisations in assisting EU workers would be strengthened, thus giving them more visibility and providing the same possibilities in all Member States, as currently the role they can play depends very much on the national context (i.e. in some countries, these organisations are stronger than in others).

Overall the social impact would be positive. Discrimination on the basis of nationality should be reduced leading to equal working conditions, easier access to employment, equal access to social benefits, thus better quality of life for migrant workers and members of their family and a full participation in the society and the labour market of the host Member State.

Fundamental rights

Legally binding instruments aimed at improving the enforcement of rights as well as providing for information and assistance to EU workers would positively affect fundamental rights such as the freedom to choose an occupation and the right to engage in work (article 15), non-discrimination (article 21), fair and just working conditions (article 31) and freedom of movement (article 45).

Providing means of redress and enabling third parties to intervene in support to EU workers would positively affect the right to an effective remedy and to a fair trial (article 47).

Economic impact

National authorities

1) *Cost of implementation*

The setting up of supporting bodies or structures for EU migrant workers would involve implementation costs for national authorities. However, as identifying the body that will be assigned the new functions will be left to Member States, the actual costs will vary according to whether a whole new structure is created or whether existing bodies (e.g. the equality bodies or other bodies responsible for discrimination on other grounds) are conferred the responsibilities set up by the directive. All 27 Member States have currently specific structures that deal with discrimination on several grounds. If Member States decide to confer them the tasks of fighting against discrimination on the grounds of nationality, the implementation costs would be limited to the extension of their role in the eight Member states where nationality is clearly not part of their responsibilities and ensuring that this ground is indeed covered in the 14 Member States where up to now nationality could be included under other grounds. The implementation costs will also depend on the comprehensiveness of the services provided (e.g. would SME get standardised or tailor-made advice or not be addressed at all; how extensive eventual awareness raising campaigns would be), and the labour costs in each Member State.

[57] Germany, Estonia, Malta

Ireland is one of the cases where discrimination on the grounds of nationality is part of the activities carried out by the Equality Body. The research conducted shows that recurring administrative costs associated with the obligation to provide information amounted to around EUR 340,000 in 2010[58]. However, it has to be kept in mind that this amount relates to the obligation to provide information on equality in general, therefore including not only nationality but also race, religion, sex, etc. Of the enquiries received by this Equality authority, around 1% are linked to nationality. annex 5 contains a detailed description of the means (including staff) available and of the actions developed by the Equality Body in Ireland and their related costs.

In Sweden, in the first half of 2011, around one third of the cases (341 out of 969 complaints) handled by the Equality Ombudsman concerned ethnic discrimination. Based on this, it could be assumed that one-third of the organisation's budget was spent on complaints related to ethnicity (with no distinction made between EU or non-EU migrants). In 2010, out of 152 enquiries received by the Regional State administrative Agency for Southern Finland, around 11% were linked to nationality or ethnic origin.

From these diverse national experiences, it is difficult to single out the costs directly and only related to the rights of EU migrant workers. Based on the experience in countries which have already established bodies dealing with discrimination based on nationality, the increase in workload (and connected human resources) for the Member States which will have to extend the scope of activity of their existing structures can be estimated at no more than 5 to 10%[59].

2) *Cost of legal action*

In the medium term this option might lead to an increase in the number of court cases. It is however difficult to predict the extent of this development: following the increased awareness and support, citizens might become more sensitive and go to court more often. This could have a further positive impact on employers' awareness that discrimination of migrant workers is not only unfair but will also be prosecuted and therefore incur costs. The impact on the number of court cases will vary from Member State to Member State depending on national procedural rules and fees as well as on the number of cases solved through mediation. It is not expected that this will create a strong pressure on the judicial systems, as such an increase was not noted in the Member States where the measures are already in place.

In the long term however, the measures proposed in the directive are expected to have a preventive effect and reduce costs linked to legal action. This seems to be the case in countries where supporting bodies covering discrimination on the basis of nationality already exist: on average, the eight Member States where such bodies are not yet in place are each concerned by 2.75 current active infringement cases launched by the Commission, while countries where bodies exist have 1.5.

Enterprises

No implementation costs have been identified for enterprises under this policy option. However, the increased support to workers may lead to an increase of court cases and therefore costs for companies that discriminate.

No impacts on sector competitiveness have been identified because of the broad distribution of mobile workers across economic sectors (see annex 1, tables 1.5 and 1.6).

Other stakeholders

[58] See description of main activities and related costs in annex 6

[59] See annex 9

This option will involve some costs for associations and organisations that will be given the possibility to take legal action on behalf or in support of workers, as they will have to bear some costs related to the legal procedures (costs for filing a case before courts, costs of legal representation, costs linked to the possible needs in terms of human resources for those organisations).

On the other hand, this option will allow these organisations to have a more visible and active role in defending workers' interests and rights.

6.5. Policy option 5: Directive introducing an enhanced protection for EU migrant workers

The provisions that would be adopted under this policy option, in addition to those foreseen under option 4, would extend the scope of the obligatory measures to be adapted by the Member states and would impose also some obligations on employers.

Social impact

Impact on legal certainty

The information obligation and/or active measures to prevent nationality-based discrimination would be directly applicable in the workplace. This would ensure that the information is easily available to employed migrant workers. Job-seekers could benefit from more transparent recruitment processes if companies adopt specific criteria and guidelines. The exact impacts will depend on the scope of the national obligations transposing the EU directive as well on the pressure trade unions and public opinion exert on the companies to comply with them. It might take some time for the impact of these provisions to become visible.

Active measures could provide, for instance, that enterprises establish a list of criteria that should be excluded when interviewing candidates for a post (such as requiring the candidate to be a native speaker, having the nationality of the host country or being already resident in that country). This would allow EU candidates to not be excluded from consideration because of discriminatory criteria.

A legal obligation on employers to take active measures to prevent discrimination currently exists in two Member States[60]. In Sweden, experts consulted expressed the view that such measures are important and effective: if a company is found to not comply with equal treatment rules, this constitutes bad publicity for the company and this risk motivates companies to work actively on anti-discrimination issues. However, the impacts are very much linked to the specific Swedish context, where pressure from society regarding equality issues in general and the strong role of trade unions have enabled such active measures to be effective. This might not be the case in other countries.

Sanctions and compensations to victims would also increase legal certainty, as a set of rights for workers and obligations for employers would be created.

Impact on awareness of rights

The information obligation and/or active measures to prevent nationality-based discrimination would make equal treatment of EU migrant workers a part of companies' human resources policy, raise awareness of their rights among "national" workers and entrepreneurs and raise sensitivity to this issue. It must be highlighted that non-discrimination is to a large extent a culture that needs to be encouraged.

[60] Sweden and Slovenia

Impact on respect of individual rights/compliance with EU law

Measures on prevention of discrimination are by nature intended to decrease discriminatory practices. The possibility to impose sanctions may act as a deterrent for employers to discriminate. It could be also expected that even when the discrimination has taken place and the worker decided to take the case to the court, the employer will be more willing to cooperate and resolve the case by mediation. The preventive effect of these measures should appear in the medium term.

There are currently 23 Member States[61] that impose sanctions and/or compensations for victims of discrimination, although they vary greatly from one Member State to another. In France, experts consulted consider that these provisions have made people more aware of the possibilities to report discrimination. However, research in France indicates that the possibility of imposing sanctions/compensation has not been very often used in practice.

Introducing provisions on victimisation would reinforce the individual situation of workers when claiming their rights. The employer will be prevented from retaliating against a worker lodging a claim (dismissal, etc.). This increased protection of workers could reduce the unwillingness to claim their rights in case of discrimination on the basis of nationality in the ten Member States where the provisions do not yet exist[62].

The provisions of this policy option would help reduce discrimination on the basis of nationality by a combined approach of incentivising workers to use their rights (option 4) and introducing the prevention of discrimination by employers. The positive social impacts described under option 4 could be therefore achieved, probably with a smaller number of court cases as employers would have stronger disincentives to discriminate.

The measures foreseen under this policy option are theoretically positive and convey an important message to society to fight against discrimination. However, it has not been possible to show whether they have a significant effect on individuals. For instance, there is no substantial risk attached to non-compliance with measures to prevent discrimination and therefore its effectiveness is doubtful. As regards victimisation, the individual will still need to prove that dismissal or any other negative treatment has been indeed the consequence of his introducing a claim. Regarding sanctions, they are not considered as a sufficient disincentive to discriminate, for instance if the chances of the discrimination being challenged and reported are low or if the employer can afford paying the sanction. On the other hand, discriminatory attitudes may be concealed behind other motives, non-discriminatory, and therefore no sanction would be imposed because no discriminatory treatment would appear.

Fundamental rights

By providing for specific obligations on employers to ensure respect of EU workers' rights, this option would have a positive impact on the freedom to choose an occupation and the right to engage in work (article 15), non-discrimination (article 21), fair and just conditions (article 31) and freedom of movement (article 45). In so far as preventive measures may also involve information activities, it would have a positive impact on the workers' right to information within the undertaking (article 27).

Economic impact

National authorities

[61] All except Denmark, Germany, Greece and Malta

[62] Czech Republic, Denmark, Greece, Hungary, Ireland, Luxembourg, Malta, Estonia, Romania, Slovakia

No implementation costs for national authorities have been identified in this policy option, further to the ones already described in policy option 4 and possibly training costs for judges in so far as new measures linked to judicial procedures would be introduced. If the measures considered under this policy option were to result in an increase of the number of court cases, they could have some impact on the functioning of the judicial system. However, research conducted in the Member States where these elements are already in force has shown that this has not been the case. Given the uncertainties around the impacts on the juridical system they have not been assessed further.

Enterprises

This policy option consists in adopting active measures to prevent discrimination and would target all employers, i.e. businesses, public authorities, third sector organisations. This results in compliance costs for them. These costs would mainly consist of man-hour costs associated with the different active measures, as well as potential equipment and outsourcing costs, e.g. for training facilities and activities.

It is difficult to provide exact estimates of such costs as they vary according to the actions that are taken by employers in order to comply with the obligations. Based on research carried out in Sweden, employers spent an average of € 88 per employee per year on complying with all active measures-obligations included in the Discrimination Act, which include not only ethnicity but also other grounds of discrimination (sex, religion). With regard to the provisions related to discrimination on the basis of ethnicity, the most costly activity is taking measures to prevent employees from being subjected to harassment or reprisals; this cost is assessed at € 19 per employee per year. The costs of compliance of other measures (such as: conducting goal-oriented work to actively promote equal rights and opportunities; implementing measures to ensure that working conditions are suitable for all employers; working to ensure that people have the opportunity to apply for vacant positions) amount to € 15 per employee per year, on average[63].

It should be however stressed that there are some fixed costs linked to the obligations which will have to be covered by every employer irrespective of the number of employees. It implies that the burden put on SMEs would be relatively heavier. Even if they were to benefit from a regime with reduced obligations, the effort they will have to provide in terms of looking for expertise, time invested, etc. will be higher than for bigger companies that already have some kind of human resources policy.

Implementation costs will also arise from the provisions of sanctions and/or compensations. The initiative would leave a margin of manoeuvre for Member States to set up the sanctions and the amount of compensation to be awarded to workers who have been discriminated on the grounds of nationality. The specific economic and financial impacts would therefore depend on each Member State.

France was used as a case-study, as national legislation provides for sanctions in case of discrimination on the grounds of nationality. It may be punished as a criminal offence with a fine of € 45,000 (e.g. refusal to hire a person, subjecting an offer of employment to one of the grounds covered by the anti-discrimination legislation). According to the national labour code, when a court has decided in favour of an employee claiming discrimination and when the employee refuses to continue his/her contract of employment, compensation may be allocated according to the following guidelines: not less than the salary of the past six months and a severance pay fixed in the applicable collective agreement or employment contract.

[63] See examples of active measures taken by Swedish employers in annex 6

Furthermore, the French Equal opportunities and Anti-Discrimination Commission may intervene when no public action has been undertaken regarding the discriminating activities and can impose a transactional fine to the offender going from € 3,000 for an individual to € 15,000 for a legal entity.

7. COMPARISON OF OPTIONS

The options have been compared with regard to their effectiveness in achieving the specific objectives of the initiative, their efficiency (cost-effectiveness), coherence with the general objectives of the EU and their impacts on stakeholders. Tables 1 and 2 give an overview of the comparison.

Table 4: Evaluation criteria

	Option 1 No action	**Option 2 Guidance**	**Option 3 Recommendation**	**Option 4 Directive**	**Option 5 Directive**
Effectiveness	**0**	+	+	++	+++
Efficiency	**0**	++	+	+++	-
Coherence with general objectives	**0**	+++	+++	+++	+/-
+++very high; ++ high; + moderate; 0 neutral; - negative;					

Table 5: Benefits and costs for stakeholders

	Option 1 No action	**Option 2 Guidance**	**Option 3 Recommendation**	**Option 4 Directive**	**Option 5 Directive**
EU migrant workers	No change	Small and uncertain improvement	Small and uncertain improvement	Medium size improvement	Potentially* big improvement
Public authorities	No change	Potentially* medium size benefits through more clarity	Potential benefits through more clarity and costs of actual implementation	Benefits of increased clarity and certainty, costs of implementation and use of rights	Benefits of clarity and certainty, costs of implementation and use of rights
Enterprises /SMEs	No change	No significant impact	Potentially minor impacts on costs and benefits for	Contact point provides	Contact point provides

			enterprises (linked to employees actually using their rights)	support to enterprises, costs linked to employees actually using their rights	support to enterprises, costs of implementation (relatively higher for SME), direct costs are higher than direct benefits.
Other stakeholders (trade unions, NGOs, etc.)	No change	Potentially their role is strengthened	Their role is strengthened, which provides them with the possibility to intervene - this will incur costs.	Their role is strengthened, which provides them with the possibility to intervene - using this will incur costs.	Their role is strengthened, which provides them with the possibility to intervene. Nevertheless this positive effect is likely to be smaller than in options 3 & 4. Using this will incur costs.
*** potentially indicates that the effects are particularly uncertain**					

7.1. Option 1: No further action at EU level

Option 1 will not fulfil all the operational objectives set in section 4.1. While awareness-raising can be maintained or even increased under the baseline, protection of EU migrant workers will not be strengthened and legal certainty will not be increased without additional action of the EU. The option is therefore not effective.

Option 1 does not involve additional costs but, as the objectives are not achieved, it is not efficient either. This option does not appear coherent with the general objectives of contributing to a better functioning of the Single Market and a decrease in discrimination on the grounds of nationality.

EU migrant workers will not have the certainty that in whichever Member State they work, a minimum level of support will be guaranteed in case of problems. Public authorities will not be obliged to make additional efforts to reduce discrimination based on nationality. They will also continue to face difficulties in applying EU law correctly. Enterprises which discriminate EU migrant workers, either intentionally or because of a lack of awareness, will not have any

additional incentive to put an end to discrimination. Organisations in Member States where the law does not foresee their support to EU workers when they claim their rights will not be able to help the workers effectively.

7.2. Option 2: Common guidance documents

Option 2 will contribute to awareness-raising, as it will help increase the knowledge level of EU rules by national authorities. Option 2 could therefore fulfil the objectives of reducing the implementation gap and reducing discrimination in so far as compliance by national authorities is concerned. However, guidance will not be binding and therefore the effects will depend on their application in practice and on the degree of commitment of national authorities to ensure such application. It will not directly lead to a reduction of non-compliance cases by employers, as the main addressees of the guidance will be national authorities. Their effects on discrimination by employers will depend on the dissemination given to the adopted guidance.

The option is moderately efficient. While not involving any direct implementation costs, it contributes to a certain extent to achievement of the specific objectives.

The option is coherent with the general objectives of the EU of contributing to a better functioning of the Single Market and a decrease in discrimination on the grounds of nationality.

7.3. Option 3: Commission's recommendation to Member States

If the recommendation is followed by the Member States it should be effective in raising awareness and enhancing support for the EU migrant workers. Its major flaw however, is its non-binding nature which will not help increase legal certainty. Furthermore, it is uncertain that Member States will follow the recommendation, especially in light of the unfavourable trends described in the baseline scenario. As a result, this option may not fulfil the objectives of reducing discrimination and reducing the implementation gap in a satisfactory way.

For the public authorities there might be costs linked to the implementation and potentially increased numbers of court cases. Enterprises, most of all SMEs, will benefit from the advice offered by the supporting body. But the enterprises might also incur costs for the additional court cases generated by the initiative and costs for upgrading the working conditions of workers previously discriminated. The other stakeholders' benefit will be their increasing role and visibility and the effect will be stronger than under option 5 where some of the obligations put on employers might reduce the need for assistance from the trade unions. The organisations will have to be prepared to cover the costs of assistance offered to EU migrant workers.

The efficiency of this option will be lower than for option 4 as the costs would be the same (in case all Member States follow it) but the legal certainty would be lower. The fewer Member States follow the recommendation the lower the implementation costs but also the effectiveness of the initiative.

The option is coherent with the general objectives of the EU of contributing to a better functioning of the Single Market and a decrease in discrimination on the grounds of nationality.

7.4. Option 4: Directive introducing support measures for EU migrant workers

Option 4 will improve legal certainty, as it will allow for explicit protection and awareness on nationality-based discrimination as a separate ground.

It will provide a significant contribution to raising awareness, as it will impose an obligation on Member States to disseminate information on EU free movement rights. It will furthermore allow for the identification of a specific body responsible for this task, therefore facilitating access to information for all relevant stakeholders. EU migrant workers will be facilitated in the exercise of their rights and receive better assistance through the establishment of a specific support body, the provision of specific defence rights and the possibility for third parties to intervene on their behalf.

Option 4 will therefore be able to fulfil the objectives of reducing discrimination and closing the gap between formal rights and their exercise in practice. It will also contribute to creating a favourable atmosphere for encouraging mobility, thus fulfilling the objectives of the Europe 2020 strategy.

Option 4 is the most efficient because it achieves the objectives while keeping the costs relatively limited. It involves costs for national authorities and for stakeholders. Their magnitude will depend on the current situation in each Member State: they will be higher for Member States that do not have similar provisions in their national legislation[64].

The directive would produce the same benefits and costs for stakeholders as the recommendation (option 3), if followed by all the Member States, but without the incertitude linked to the implementation of the recommendation. For workers the benefits will be even higher as only a legal instrument can guarantee that the same minimum level of support in all Member States.

The option is coherent with the general objectives of the EU of contributing to a better functioning of the Single Market and a decrease in discrimination on the grounds of nationality.

7.5. Option 5: Directive introducing an enhanced protection for EU workers

Option 5 would have the same effects as option 4 as regards awareness and legal certainty. On the other hand, it would provide for an increased protection of EU migrant workers, as further measures would be introduced with this aim. They would not only enjoy the possibility of assistance and support when facing a problem, but they could expect less discrimination from the outset as a result of the preventive measures. For the moment, there is however no evidence of the effectiveness of these additional measures in the Member States that have introduced them.

This option would fulfil the two specific objectives of reducing discrimination and gaps between rights and practice and could be potentially more effective than option 4.

Any additional positive effects would be however reached at a relatively high cost. Imposing an obligation on employers to take active measures to prevent discrimination may be well appropriate for companies that hire a significant number of EU workers, but disproportionate for those that do not. Prevention of discrimination within undertakings seems more fitted to fight against discrimination on other grounds (race, religion, sex), which can generally affect a larger number of workers.

Contrary to the other options, option 5 does not respect the Commission's commitment to reduce administrative burden for small businesses, therefore cannot be considered as fully coherent with the EU's general objectives. Option 5 will impose administrative burden on enterprises, including SMEs, as there is no justification to exempt them from the obligations

[64] See table in annex 5

imposed by this policy option: discrimination issues may concern all EU workers in all enterprises and sectors of activity, independently of their size.

The costs for public authorities could be slightly higher than in option 4 because they might have to organise trainings on the new legal provisions and also devise and implement activities monitoring companies' compliance with the information obligations.

For enterprises, the costs strongly outweigh the benefits. They would still be able to benefit from the advice from the supporting bodies but this would probably only allow minor economies on the expenditure necessary to fulfil the information obligation.

As mentioned under option 4, the role of other stakeholders would be less important with this preventive approach.

7.6. The preferred option

It stems from the analysis and impact assessment that the preferred option is a combination of options 2 and 4. They score slightly lower than option 5 on the effectiveness criterion but are the most efficient. Together they provide a comprehensive solution for all the problems identified, without involving excessive compliance costs. They are more coherent with the general objectives than option 5 which puts disproportionate costs on companies and especially on SMEs. They are also the options involving least uncertainty with regard to their effects.

The preferred option will be complemented by activities of the Commission such as awareness-raising, adoption of interpretative documents and enforcement through monitoring and infringement procedures.

8. MONITORING AND EVALUATION

Monitoring

Several indicators both quantitative (e.g. the number of complaints) and qualitative (e.g. the reports of the network of experts) will be used for monitoring purposes:

– impact at EU level: number of complaints received by the Commission and number of infringement procedures initiated;

– activity at national level: activity reports by the supporting bodies, report from the network of expert on free movement of workers;

– degree of awareness of EU workers on their rights: evolution of the perception of obstacles to free movement (Eurobarometers)

The supporting bodies set up according to the initiative will also have a monitoring function and will be able to provide more qualitative data on discrimination on the grounds of nationality. The existing bodies in the field of anti-discrimination (race, religion, sex) already provide this kind of report, therefore including nationality in the monitoring should not involve major difficulties.

Indicators should be interpreted with caution. For instance, the incidence and extent of discrimination may be gauged from the number of complaints on the grounds of discrimination presented to national courts. But this figure may conceal the existence of victims who do not make complaints. Inversely, a sharp rise in the number of complaints brought before the courts, specialised bodies or NGOs may simply indicate that action to raise awareness of the issues has been effective.

Evaluation

The initiative will undergo a systematic and regular evaluation within the Advisory Committee on free movement of workers.

Secondly, five years after the deadline for transposition, an evaluation will be carried out by the Commission with the assistance of external experts.

The evaluation will:

– assess awareness among citizens and relevant stakeholders about the existence of supporting bodies, means of redress and possibility of organisations to intervene in their support;

– assess the activities developed by the supporting bodies;

– assess the role of the organisations;

– assess the characteristics of cases of nationality based discrimination most commonly dealt with;

– assess whether the initiative has led to positive change;

– identify the difficulties faced by supporting bodies and organisations.

ANNEXES:

Annex 1: Statistical data on intra-EU mobility

Annex 2: EU provisions on free movement of workers

Annex 3: Summary of case-law on free movement of workers

Annex 4: Examples of cases of problems found with the application of free movement of workers' rights

Annex 5: Implementation of policy options – State of play

Annex 6: Summary of case studies

Annex 7: summary of responses to the public consultation among citizens

Annex 8: summary of responses to the public consultation among organisations

ANNEX 1 – STATISTICAL DATA ON INTRA-EU MOBILITY

Table 1.1: Number of working-age (15-64) citizens residing in another Member State, by country of origin and share in the origin country working-age population (in %), in 2010

Nationality	Total	Since less than 7 years	
	in thousand	in thousand	in % of origin country working-age pop.
AT	187	44	0.8
BE	154	53	0.7
BG	348	187	3.7
CY	33	19	3.5
CZ	94	45	0.6
DE	505	201	0.4
DK	77	27	0.8
EE	35	21	2.3
ES	271	68	0.2
FI	86	21	0.6
FR	439	179	0.4
EL	334	40	0.6
HU	122	70	1.0
IE	253	51	1.7
IT	915	154	0.4
LT	166	121	5.3
LU	21	11	3.3
LV	78	60	3.9
MT	8	:	:
NL	318	130	1.2
PL	1182	782	2.9
PT	764	166	2.3
RO	1709	994	6.6
SE	78	32	0.5
SI	30	:	:
SK	136	87	2.2
UK	513	172	0.4

Source : Eurostat, EU-LFS, annual data

Table 1.2: Share of those that envisage to work abroad in the future (and among them, share of those who would do it during the next year), 2009 (in % of population 15-64).

Nationality	Share of those envisaging to work abroad at some time in the future	*among those interested to move to work abroad*, share of those who would do it in the next 12 months
AT	8	10
BE	18	7
BG	16	31
CY	10	2
CZ	11	8
DE	11	8
DK	51	7
EE	38	21
ES	12	15
FI	35	6
FR	25	13
EL	8	7
HU	29	5
IE	22	15
IT	4	14
LT	35	28
LU	16	15
LV	36	38
MT	20	12
NL	22	8
PL	23	15
PT	21	16
RO	16	36
SE	37	11
SI	30	8
SK	23	11
UK	26	9
EU-27	**17**	**12**

Source: Eurobarometer on geographical and labour mobility, 2009

Table 1.3: Breakdown by citizenship of EU working-age (15-64) citizens in the EU Member States having the largest stock of EU citizens, 2010 (%)

	DE		**UK**		**ES**		**IT**		**FR**		**BE**		**IE**		**AT**	
1	IT	23	PL	29	RO	44	RO	74	PT	45	IT	25	PL	35	DE	41
2	PL	16	IE	14	UK	11	PL	9	UK	10	FR	21	UK	25	PL	12
3	EL	13	DE	6	BG	10	BG	3	IT	9	NL	15	LT	11	RO	12
4	AT	8	LT	6	IT	8	DE	3	BE	7	ES	7	LV	6	SK	7
5	NL	6	PT	6	PT	7	FR	2	DE	6	PL	7	RO	4	HU	6
6	PT	5	FR	5	DE	6	UK	2	ES	6	DE	5	SK	3	IT	5
7	FR	5	IT	5	FR	5	ES	1	RO	5	RO	4	DE	3	CZ	3
8	ES	4	RO	4	PL	4	HU	1	PL	4	PT	4	FR	3	SI	3
9	UK	4	ES	3	NL	2	EL	1	NL	3	UK	3	ES	2	BG	2
10	RO	3	LV	3	BE	1	NL	1	BG	1	BG	2	IT	2	UK	2
Other EU	14		20		4		3		3		7		7		7	

Source : Eurostat, EU-LFS, annual data

Note: the graph can be read as follows: Germany was the country having the largest number of working-age (non-national) EU citizens in 2010 (23% are Italian, 16% Polish, etc). The UK was the country having the second largest number of working-age (non-national) EU citizen (29% are Polish, 14% Irish, etc).

Table 1.4: Labour market status of working-age (15-64) EU citizens living in another Member State, in %, 2011, in EU-27

Status	Employed	Unemployed	Inactive
Share (in %)	67.9	9.1	23.0

Source : Eurostat, EU-LFS, annual data

Table 1.5: Distribution of EU migrant workers by economic sector and comparison to the average, in %, 2010, in EU-27

Sectors (NACE rev.2)	EU migrant workers	All citizenships
Manufacturing	15.4	15.8
Construction	12.3	7.7
Wholesale and retail trade; repair of motor vehicles and motorcycles	11.5	14.1
Accommodation and food service activities	10.8	4.4
Human health and social work activities	8.1	10.3
Administrative and support service activities	6.0	3.9
Activities of households as employers,…	5.4	1.2
Education	4.8	7.4
Transportation and storage	4.6	5.1
Professional, scientific and technical activities	4.6	5.0
Information and communication	3.1	2.9
Other service activities	2.5	2.5
Agriculture, forestry and fishing	2.4	5.2
Financial and insurance activities	2.2	3.0
Arts, entertainment and recreation	1.8	1.6
Public administration and defence; compulsory social security	1.8	7.2
Activities of extraterritorial organisations and bodies	0.9	0.1
Real estate activities	0.8	0.8
Water supply; sewerage, waste management,…	0.5	0.7
Electricity, gas,…	0.3	0.8
Mining and quarrying	0.2	0.4

Source : Eurostat, EU-LFS, annual data

Note: 'All citizenships' refers to the sectoral distribution of all workers in the EU (nationals, other EU-nationals and non-EU nationals).

Table 1.6: Distribution of EU migrant workers by group of occupation (ISCO) and comparison to the average, in %, 2010, in EU-27

	EU migrant workers	All citizenships
Elementary occupations	19.9	9.8
Craft and related trades workers	16.2	13.0
Service workers and shop and market sales workers	15.1	14.2
Professionals	13.3	14.7
Technicians and associate professionals	11.0	16.7
Plant and machine operators and assemblers	8.4	8.1
Legislators senior officials and managers	8.1	8.4
Clerks	6.5	10.7
Skilled agricultural and fishery workers	1.5	4.3

Source : Eurostat, EU-LFS, annual data

Note: 'All citizenships' refers to the occupational distribution of all workers in the EU (nationals, other EU-nationals and non-EU nationals).

ANNEX 2 - THE EU PROVISIONS ON FREE MOVEMENT OF WORKERS

The current EU provisions on free movement of workers entail the right for EU citizens to be treated as national workers in respect to:

Access to employment	Includes:	**Exceptions**
	Right to work without work permit	
	No quotas or percentages may be applied to recruitment of EU nationals	**Transitional arrangements for nationals from new Member States (currently Bulgaria and Romania)**
	Same assistance from employment offices	
	Same recruitment procedures and criteria as nationals	
		Language knowledge (but only a level which is reasonable and necessary for the job)
	No nationality requirement for access to jobs may be imposed	**Access to posts in the public sector (but only those that involve direct to indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities)**
	Eligibility for employment may not be subject to conditions of registration with employment offices for people who do not reside in	

	the territory of the Member State concerned Access to financial benefits intended to facilitate access to employment, if the jobseeker has a genuine link with the labour market of the Member State concerned	

Conditions of employment	Including:	
	Remuneration Promotion Other conditions of work (e.g. holidays, work patterns) Dismissal Reinstatement Training	

Access to social and tax advantages	Examples	
Beneficiaries: EU workers and dependent family members	**Income support, study grants, public transport fares reductions, etc**	

Other issues		**Exceptions**
	Membership of trade unions **Matters of housing**	**Taking part in the management of bodies governed by public law and holding an office governed by public law**

Other issues	Access to education	
Beneficiaries: children of EU workers	**Access to the general educational system under the same conditions as nationals**	

Who can rely on EU rules on free movement of workers?

Who can rely on EU provisions on free movement of workers?		
EU migrant workers: citizens who undertake genuine and effective work in another Member State under the direction of someone else, for which they are paid	Includes: part-time workers, trainees, professional sportsmen	**Excludes ancillary and marginal activities**
Nationals of a Member State	Example: an Italian citizen	**Excludes people who**

who have used their right to work or to study in another Member state and come back to their Member State of origin	who has acquired his/he professional qualifications in Germany and comes back to Italy for work purposes A Spanish citizen who has worked for a given period of time in Portugal and comes back to Spain to work	**have never left their country of origin, e.g. an Italian national living and working in Italy, who has never exercised his right to free movement**
People retaining the status of worker in the Member State of employment	– People in involuntary unemployment, under certain conditions – Workers embarked in vocational training – Workers who are unable to work due to illness or accident	
Jobseekers	But they do not enjoy the whole range of rights as workers do	
Family members, irrespective of their nationality	**They have the right to equal treatment as regards social advantages and access to education (children)**	

EU law prohibits:

– **Direct discriminations:** those based on nationality
Example: when nationals from other Member States are excluded from the possibility of applying to a given job

– **Indirect discriminations**: those which are based on criteria other than nationality but which lead to the same result. Even if they apply irrespective of nationality, they are liable to affect migrant workers more than national workers and risk placing the former at a disadvantage.
Example: a residence condition imposed in order to have access to certain benefits. Although applied both to national and non national workers, it is likely to affect more non nationals. It will affect in particular cross-border workers who work in a given Member State but reside in a different one.
Exceptions: if the criteria used are justified and are proportionate to the aim pursued

– **Obstacles**: those measures which deter or preclude citizens from leaving their Member State in order to take up employment in a different Member State, even if they apply without regard to nationality.
Example: transfer fees in sports
Exceptions: when measures are justified by a legitimate objective, are appropriate to attain that objective and are proportionate. Example: a transfer fee that intends to cover the training invested by the club of origin in a player

ANNEX 3 – SUMMARY OF THE JURISPRUDENCE OF THE COURT OF JUSTICE AS REGARDS THE FREE MOVEMENT FOR WORKERS – CONCEPTS AND DEFINITIONS[65]

Concept of worker

The term 'worker' in article 45 TFEU may not be interpreted differently according to the law of each Member State, but has a Community meaning. That concept must be interpreted broadly (case 66/85, Lawrie-Blum).

The essential feature of an employment relationship is that for a certain period of time a person pursues an activity for and under the direction of another person in return for which he receives remuneration (case 66/85, Lawrie-Blum).

Rules o free movement of workers cover only the pursuit of effective and genuine activities to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary (case 53/81, Levin).

Short duration of employment, limited working hours, low productivity (C-344/87 Bettray), the fact that the salary the person concerned receives is lower than the minimum level set in the host Member State for subsistence (139/85 Kempf) or the fact that he receives remuneration in kind (C-196/87 Steymann) cannot prevent an EU citizen from being considered a worker.

For example, part-time workers (C-53/81, Levin), trainees (C-27/91 Le Manoir), au-pairs (C-294/06 Payir), on-call workers (C-357/89 Raulin) fall within the EU definition if their activity is effective and genuine.

Workers of an international organization (389/87 and 390/87 Echternach e.a.), civil servants, (C-71/93 Van Poucke), public sector employees (152/73 Sotgiu) and professional and semi-professional sportsmen (13/76 Donà v. Mantero, C-415/93 Bosman) are also covered by the definition of worker.

Beneficiaries of free movement of workers rules

The Court of Justice has confirmed that the rules on free movement apply to:

- a person who works in one Member State and resides in another one (frontier workers, C-57/96 Meints);

- a person who works in his or her country of origin but resides in another one (C-212/05 Hartmann);

- an EU citizen who has exercised the rights of free movement and has been employed in another Member State and then returns to his/her country of origin (18/95 Terhoeve; C-370/90 Singh);

- an EU citizen who has exercised his right of free movement in order to acquire vocational or academic qualifications in another Member state (C-115/78 Knoors; 19/92 Kraus)

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[65] More detailed and comprehensive information about the case-law of the Court in this field can be found in the following documents:
- Communication from the Commission "Free movement of workers –achieving the full benefits and potential", COM(2002) 694 final, of 11.12.2002
- Communication form the Commission "reaffirming the free movement of workers: rights and major developments", COM(2010)73 final, of 13.7.2010
- Commission staff working document: Free movement of workers in the public sector, SEC(2010)1609 final

- EU citizens who carry out professional activities outside EU territory if the legal relationship is located within the territory of a Member State or retains a sufficiently closely link with that territory (C-214/94 Boukhalfa; C-9/88 Lopes da Veiga);

- people retaining the status of worker; for instance, a person who after having engaged in an occupational activity in the host Member State, undertakes studies in that Member State leading to a professional qualification; provided there is a link between the previous occupational activity and the studies in question (C-357/89 Raulin; C-39/86 Lair) .

Equal treatment

– **Jobseekers:** access to benefits of a financial nature intended to facilitate access to employment on the labour market of the host Member State, provided there is a genuine link between the jobseeker and the employment market in question (C-22/08 Vatsouras)

– **Access to employment - exception: language requirements**

A certain level of language knowledge may be required for access to a post, but the level required must be reasonable and necessary for the job in question and cannot constitute grounds fro excluding workers from other Member States (C-379/87 Groener).

Employers cannot require only a specific qualification or certificate obtained exclusively in the host Member State as proof of language knowledge (C-281/98 Angonese)

– **Access to employment – exception: nationality condition for posts in the public sector**

Article 45(4) TFEU makes an exception to the general right of free movement of workers as regards access to the public sector, which can be reserved to the nationals of the host Member State. However, this exception covers posts which involve direct or indirect participation on the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities (149/79, Commission v. Belgium).

Criteria must be assessed on a case-by-case basis with regard to the nature of the tasks and responsibilities involved (152/73 Sotgiu).

Examples: jobs such as postal or railway workers, plumbers, gardeners or electricians, teachers, nurses and civil researchers are not covered by this exception and therefore may not be reserved for nationals of the host Member State.

Once a public-sector post is open to EU citizens, equal treatment as regards other aspects of recruitment must be guaranteed, for instance, previous professional experience acquired in the public sector of another Member State must be taken into account in the same ways as professional experience acquired within the system of the host Member State (C-419/92 Scholz).

– **Access to employment in the private sector**

The exception of article 45(4) TFEU cannot be applied to private sector posts (case C-283/99 Commission v Italy).

However, for private sector posts to which the State assigns public authority functions, posts may be reserved to nationals only if the rights under powers

conferred by public law are actually exercised on a regular basis and do not represent a very minor part of their activities (e.g. case-law on the nationality condition applied to captains and chief mates on board vessels flying the Member State's flag C-405/01 Colegio de Oficiales de la Marina Mercante Española and C-47/02 Anker).

– **Sport**

The principle of equal treatment applies to clauses contained in the regulations of sporting associations which limit the number of EU players that can be fielded in official matches; The fact that those clauses do not concern the employment of those players, on which there is no restriction, is irrelevant; In so far as participation in such matches is the essential purpose of a professional player's activity, a rule which restricts such participation also restricts the chances of the player of being employed (C-415/93 Bosman).

– **Working conditions**

Professional experience may play a role when determining working conditions (grade, salary) in the public sector of the host Member state. In that case, periods of comparable employment of the EU migrant worker in other Member states must be taken into account in the same way (152/73 Sotgiu; C-15/96 Schöning).

– **Social advantages**

Social advantages are all advantages, whether or not linked to a contract of employment, that are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, and the extension of which to workers who are nationals of other Member states seems likely to facilitate their mobility within the EU (C-85/96 Martinez Sala).

The concept of social advantages covers financial benefits (e.g. minimum subsistence payments (249/83 Hoeckx), child-raising allowances (C-111/91 Commission v. Luxembourg), fare reductions in public transport (C-32/75 Cristini), study grants (39/86 Lair), funeral payments (C-237/94 O'Flynn) and non-financial benefits (e.g. the right to require that legal poroceedings take place in a specific language (C-137/84 Mutsch); the possibility for a migrant worker to obtain permission for his unmarried partner to reside with him C-59/85 Reed).

Frontier workers are entitled to social advantages in the Member State of employment (C-57/96 Meints).

Dependent family members of EU migrant workers have, irrespective of their nationality, the right to access to social advantages (261/83 Castelli, C-337/97 Meeusen).

Indirect discriminations

EU rules on free movement of workers prohibit not only overt discriminations by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result (C-419/92 Scholz).

Conditions imposed by national law must be regarded as indirectly discriminatory if they are intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that they will place the former at a disadvantage (case C-237/94 O'Flynn).

Examples of indirect discriminations are: residence conditions (C-111/91 Commission v. Luxembourg; C-57/96 Meints), refusal to take into consideration periods of employment in the public service of other Member States (C-419/92 Scholz).

Indirect discriminations may be accepted if justified by objective considerations independent of the nationality of the workers concerned and if they are proportionate to the legitimate aim pursued.

Obstacles to free movement

Nationals of Member States have the right to leave their country of origin to enter the territory of another Member State and reside there in order to pursue an economic activity there. Provision which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned.

Obstacles can be accepted if they pursue a legitimate aim compatible with the Treaty and are justified by pressing reasons of public interest. In addition, the rules concerned must be suitable to attain that aim and not go beyond what is necessary for that purpose (C-415/93 Bosman).

ANNEX 4 - EXAMPLES OF CASES OF PROBLEMS WITH THE APPLICATION OF EU RULES ON FREE MOVEMENT OF WORKERS

Austria	– Access to student grants to study abroad is subject to a condition of prior residence of 5 years in Austria – A Hungarian football referee was denied access to employment on the grounds that he did not reside in the country
Belgium	– Linguistic knowledge in order to work in the local public sector can be proved only through a specific certificate delivered in Belgium, to the exclusion of other means of proof – A private company rejected the application made by an EU citizen for a job as sales assistant on the basis that he was not British or speak English with a British accent
Bulgaria	– All posts in the Ministry of the Interior are reserved for Bulgarian citizens, and it might be questionable whether all the positions fall within the exception of article 45(4) TFEU – There are minimum quotas for Bulgarian seafarers
Czech Republic	– Public service posts are still governed by old rules, which limit the hiring of EU workers – One in six published job advertisements contained non proportionate requirements to master the Czech language in a way that went beyond the requirements for the job, according to the Ombudsman
Cyprus	– There have been complaints about the level of linguistic knowledge required for nursing professions and building contractors. – There have been also complaints about treatment reserved to EU trainees in the hotel and tourism sectors, as they seem not to be considered as workers
Denmark	– In the public sector, seniority is calculated from the date of first employment in the Danish system for the purpose of calculating certain benefits – Access to study grants to study abroad is subject to a condition of having lived or worked in Denmark for at least two years out of the past 10
Estonia	– Residence requirements for access to study loans

Finland	– A British national complained that he was unable to get her fixed-term contract converted into open-ended one (according to Finnish law) because she was unable to speak Finnish; however, this did not stop her employer from renewing her contract
France	– A person working in the French national railway company had problems in getting his previous professional experience gained in the Belgian railway company taken into account for the calculation of seniority – Some local authorities still required Polish workers to obtain a work permit after the expiration of the transitional arrangements
Germany	– A Bulgarian student was denied access to a job as night guard in a public hospital on grounds that a German national could work in that position – German employment services were reported to deny assistance to a Lithuanian citizen because they would not grant him a work permit in any case
Greece	– In order to prove that a candidate to a post in the public sector possesses the necessary language skills it is often required to produce proof from a Greek secondary school or a Greek language centre; other means of proof are not accepted – Post-graduate diplomas obtained in other Member States are not taken into consideration when working in Greece (for example, for promotion purposes), while similar diplomas obtained in Greece are taken into account
Hungary	– A private company refused to hire non-nationals and the case was brought before the Ombudsman – An announcement (2010-2014) for the submission of an application to the Office for Employment and Social affairs required the candidate to be Hungarian, while there were doubts hat the job n question would be covered by the exception of article 45(4) TFEU
Ireland	– Irish employers often request a residence card or registration as a condition for employment – Citizens have reported that it is admitted public policy of the local employment services to give preference to the employment of Irish nationals

Italy	– A Romanian citizen reported that his professional experience gained in Romania as a teacher was not taken into account when applying for inclusion in the reserve lists as teachers in Italy. The same problem was faced by an Italian paediatrician who had been working for a number of years in Belgium – Professional qualifications as teachers obtained in other Member States are awarded less points that comparable qualifications obtained in Italy for the purpose of inclusion on the reserve lists as teachers
Latvia	– Legislation restricts the means by which it is possible to prove sufficient knowledge of Latvian to specific diplomas – Previous professional experience is important with regard to the amount of remuneration. However, only professional experience in Latvian public institutions is taken into account
Lithuania	– Social scholarships are limited to people with permanent residence in Lithuania – Some educational establishments require previous work experience in the institution in order to accept applications for certain research or lecturing posts, without accepting similar experience gained abroad
Luxembourg	– Requirement of proficiency in the three languages of the country is often required in order to work in the public sector – Access to study grants is subject to a condition of residence in Luxembourg
Malta	– Professional experience acquired in other Member States is not taken into account when determining working conditions for teachers – Access to student grants is subject to a condition of prior residence of 5 years
Netherlands	– Access to student grants to study abroad is subject to a condition of prior-residence of at least three out of six years – The Equal Treatment commission published a decision on discrimination between EU citizens and own nationals in a case where Polish seasonal workers, doing the same job as their Dutch colleagues, received a lower salary

Poland	– Access to some social advantages and study grants is subject to residence criteria – Nationality condition is still required for access to different posts in the public sector (doubts that they are covered by the case-law of the Court of Justice)
Portugal	– Public sector posts other than in the health service are often advertised as only being available to Portuguese citizens – Some local authorities have applied old legislation only allowing Portuguese citizens to apply to be placed on the housing register
Romania	– Civil service seems to be reserved to Romanian citizens
Slovakia	– Some social assistance benefits are only awarded to those who hold permanent residence in Slovakia – Labour relationships of foreign seafarers, including EU nationals, are governed by conditions of their labour contract and not by the labour code (which applies to nationals)
Slovenia	– Access to some study grants is reserved to Slovenian citizens
Spain	– Recruitment procedures in the public sector often privilege candidates with experience in the national/regional public sector – Some job advertisements as English teachers require candidates to be English native speakers
Sweden	– Some citizens have complained that it is requested to speak Swedish in order to be included on job-seekers listings – Quotas on the basis of nationality are applied by some private companies
United Kingdom	– A German national fully qualified to work as a teacher and with professional experience gained in Germany was told that he should have proven experience of teaching in the UK in order to work there – Advertisements for private fellowships (research or training) are limited to UK, Irish and other Commonwealth citizens

ANNEX 5 - SUMMARY OF CASE STUDIES

Supporting bodies – case studies : Ireland

The Equality Authority was set up in 1999 as an independent authority. Among its functions, it has to provide information to the public on the equality legislation. Actions carried out in this regard include:

– Producing booklets with information on the relevant pieces of legislation. The booklets can be ordered in hard copy or downloaded through the Equality Authority's website, and are available in 14 different languages.

– Responding to queries from the general public through an information centre

– Providing briefings to employers, service providers and trade unions on case-law under equality legislation and on good practices.

– Conducting research and publishing casework reviews to communicate learning from the casework

– Contributing to raising public awareness on equality issues through promotional activities (stands, etc).

The Equality Authority performs its functions in conjunction with different stakeholders, including employers and trade unions.

The booklets summarise the equality rights outlined by the relevant legislation. The assumption was that EU citizens would be better able to exercise their rights if they were familiar with the content of those rights. All relevant stakeholders highlighted that access to information is one of the fundamental challenges for migrant workers. Thus, if the Equality Authority contributed to raising awareness of rights among migrant workers through its information activities, there were strong reasons to believe this would lead to improved conditions for this group.

Aspects of employment covered by the booklets and relevant to possible discrimination on the grounds of nationality include: equal pay, access to employment, vocational training and work experience, terms and conditions of employment, promotion or re-grading, classification of posts, dismissal and collective agreements.

Impacts on workers

A quantitative indication of the impact on EU workers can be found in the Quarterly National Household Survey produced by the Irish Statistics Office. In a June 2011 publication, the 2004 survey was compared to the 2010 survey. In 2004, 13% of non-Irish respondents reported that they had experienced work-related discrimination, either in "looking for work" or "in the workplace" in the previous two years. In 2010, the number had dropped to 12%. As regards awareness of rights, between 2004 and 2010 the percentage of non-Irish nationals that reported they had no understanding of their rights dropped from 38% to 27%.

It is not possible to link these positive developments directly to the work of the Equality authority. All interviewees however indicated that the work of the Equality authority was an important contribution. Indications of the Equality Authority's impact are summarised as follows:

– The Equality authority's booklets were used extensively by other organisations in their information work. The booklets were also distributed to libraries by the Irish Congress of Trade Unions (ICTU).

– The booklets were extensively downloaded from the Equality authority's homepage. It was projected that the information booklet would be downloaded 15.620 times in 2010.

– During 2010, the Equality Authority dealt with 8.345 enquiries from the public on the legislation under its remits. Out of these, 4.905 were related to equality legislation, including employment.

Impacts on employers and SMEs

One of the positive outcomes of the activities of the Equality Authority is the fact that it works closely with the Irish Business and Employers Confederation (IBEC) and conducts research used to inform employers on the benefits of the equality policies. Furthermore, through its Equality Mainstreaming Unit (EMU), the equality Authority operated a supporting scheme for SMEs that enabled them to develop equality policies and to establish an equality infrastructure. In 2010, the EMU also prepared a report on examples of good practice from SMEs.

Impacts on national authorities

The Equality Authority conducted research on equality issues, and as such was a contributor to policy development at the national level.

Impacts on other stakeholders

The Equality Authority worked closely with other stakeholders. Both IBEC and ICTU drew on research and information pieces made by the Authority, and the authority funded activities conducted by these and other organisations

Costs

The resulting administrative costs consisted of the one-off costs for setting up an information infrastructure (website, public information centre/phone hotline) and recurring/ongoing costs for information activities. The one-off costs, however, could also be regarded as implementation costs related to the establishment of the infrastructure at the Equality Authority, if not already in place.

The Irish Equality Authority carries out five different activities. The resulting recurring administrative costs consist of man-hour, equipment, outsourcing and other costs, as seen in the table below:

Activities	Administrative cost elements
(1) Creating and providing booklets with information on the relevant pieces of legislation	– Outsourcing costs (external service provider) for re-designing, updating and re-publishing the booklet due to changes in the legislation – Outsourcing costs for translating the booklet into 14 languages
(2) Responding to queries from the general public through a public information centre	– Man-hour costs of the staff for getting trained, providing information by phone, eventually processing a query into a potential case, following up on phone calls by sending written information/material, and documenting the calls; – Equipment/supplies costs for phone bills
(3) Briefings to employers, service	– Man-hour costs for preparing the trainings/presentations logistically and content-

	providers, and trade unions – presentations and trainings	wise, and conducting the trainings/holding the presentations – Other costs: man-hour costs for travelling and travel costs
(4)	Conducting research and publishing casework	– Man-hour costs – Equipment/supplies or outsourcing costs for the publications
(5)	Promotional activities – information stands, events	– Man-hour costs for the staff attending the information stands/events – Equipment/supplies costs for the booth (technical equipment etc.)
(6)	Providing information through the website	– Man-hour costs of the staff uploading publications, press releases etc. – Equipment/supplies costs: basic maintenance of the website and additional security costs (for upgrades etc.) – Outsourcing costs: external IT support

It must be noted that the information activities of the Equality Authority are not limited to information regarding discrimination of EU migrant workers on the grounds of nationality. Rather, the authority disseminates information on equality legislation in general. It was not possible to single out the costs directly and only related to the rights of EU migrant workers.

This has to be kept in mind when looking at the figures provided in the table on the following page. In total, the Equality Authorities' recurring administrative costs associated with the functions of providing information on equality in general – and not only about rights of EU migrant workers and their families – amounted to around EUR 340,000 in 2010.

Measures	**Activities**	**Description employees**	**Employee type**	**Hourly wage** (in euro)	**Time spent per activity** (in hours)	**Internal costs** (in euro)	**Frequency**		**Total internal costs** (in euro)	**Material/ equipment costs** (in euro)	**Consul-tancy costs** (in euro)	**Other costs** (in euro)	**Total AC** (in euro)		**Comments**
1. Website	a) Setting up the website													**30.136**	Cannot be quantified as the website was set-up 12 years ago.
	b) Maintaining/updating the website	Clerical standard officer	4: Clerks	23	16	368	per week	52	19.136	11.000			30.136		The material costs consist of the basic maintanance costs and the additional security costs (for upgrading etc.). The IT-support costs (external costs) could not be quantified.
2. Phone hotline	a) Setting up the hotline														Cannot be quantified as the phone system already existed.
	b) Providing hotline services														
	Regular training of staff providing hotline services	4 clerical standard officers	4: Clerks	23	64	1.472	once a year	1	1.472				1.472	**213.856**	
		1 executive officer	3: Technicians	31	16	496	once a year	1	496				496		
		1 higher executive officer	2: Professionals	40	16	640	once a year	1	640				640		
	Advising/providing information, follow-up on phone calls/sending information/material, documenting calls by filling a form	3,5 clerical standard officers	4: Clerks	23	328,3	7.551	per month	12	90.611	4.000			94.611		
		1 executive officer	3: Technicians	31	93,8	2.908	per month	12	34.894				34.894		
		1 higher executive officer	2: Professionals	40	93,8	3.752	per month	12	45.024				45.024		
3. Promotional activities	a) Trainings/presentations to service providers, employers, trade unions, etc.	Head of Communications or Principal Officer	1: Managers	51	16	816	number per year	30	24.480			12.240	36.720		Other costs are travel costs.
	b) Information events/stands	1 clerical officer	4: Clerks	23	12	276	per occurence	11	3.036	9.075			12.111	**16.203**	Material costs are the costs for the booth.
		1 executive officer	3: Technicians	31	12	372	per occurence	11	4.092				4.092		
	c) Advertisement													**80.000**	
	Updating, redesigning and re-publishing a booklet due to changes in the legislation									50.000			50.000		Spent in 2010
	Public awareness campaign for the updated publication/booklet										30.000		30.000		Spent in 2010
														340.195	

Prevention of discrimination –case study Sweden

The Swedish legislation (Discrimination Act) presents a list of so-called "active measures" which employers and employees are to cooperate on to bring about equal rights and opportunities in the working life to combat discrimination. The act encourages the two parties to work together, but the obligation lies solely on the employer to:

(a) conduct goal-oriented work to actively promote equal rights and opportunities in working life regardless of sex, ethnicity, religion or other belief;

(b) implement such measures as can be required in view of their resources and other circumstances to ensure that the working conditions are suitable for all employees regardless of sex, ethnicity, religion or other belief;

(c) take measures to prevent and hinder any employee being subjected to harassment or reprisals associated with sex, ethnicity, religion or other belief or to sexual harassment;

(d) work to ensure that people have the opportunity to apply for vacant positions regardless of sex, ethnicity, religion or other belief.

Some examples of concrete active measures adopted by Swedish employers are listed below:

Measures	Activities
Yearly equality plan[66]	– Discussion of (general) equality issues and objectives on a monthly basis in the group of managers or with the employees in monthly team meetings – Yearly general meeting of all managers and employees to discuss the achievement of the objectives of the equality plan
Yearly survey among employees on the level of equality and discrimination issues	– Preparing the questionnaire and handouts, launching the survey – sending out the questionnaires, receiving and analysing the filled questionnaires, summarising the results in a report - HR department; – Presentation and discussion of results – managers and employees
Guidelines	– Developing guidelines (HR department, working group) – Publishing guidelines on the website
Criteria list to be used	– Developing a criteria list which helps focusing on

[66] The general aim of the equality plans is equal treatment of men and women; however, they are often affirming equal treatment of employees regardless of matters such as gender, religion, sexuality and ethnicity. The nature and content of equality plans vary according to how developed they are. Some plans are pure equality statements not linked to any specific actions. Other, more developed plans might include *special actions* targeted at defined areas or limited groups of employees. Plans embedded in an employer's general human resources/personnel policy are likely to be even more developed. In such cases, the equality plans concerned are applied to all employees and all sections of the organisations concerned. Businesses with less than 10 employees (micros) are excluded from the obligation to set up an equality plan; see http://www.eurofound.europa.eu/eiro/2004/02/study/tn0402101s.htm

in recruiting/application procedures	the abilities of the applicant rather than his/her nationality, skin colour etc. by HR department
Publication of job offers in English (besides the national language)	– Translation of job offers
Educational activities/trainings on equality matters	– General trainings or trainings on specific discrimination issues determined on the basis of the outcome of the yearly survey – Targeted at managers and/or employees – Organised by the HR department – Prepared and provided by external trainers
Language courses for foreign employees	– Provided by external trainer (targeted at all foreign employees, not only to EU migrant workers)

A study on the effects and costs of provisions concerning active measures in Sweden's Discrimination Act carried out by the Swedish Agency for Public Management on behalf of the Government body Statskontoret[67], came to the conclusion that it is difficult to provide exact estimates of the compliance costs associated with the 'active measures'. The study included a questionnaire survey of 220 employers[68] and 17 education and training providers. The study found that Swedish employers on average spent around 800 SEK (~ EUR 88) per employee per year on complying with all active measures-obligations included in the Discrimination Act. The largest sums go towards work on gender-related issues. Of the provisions related to discrimination on the basis of ethnicity (including nationality), the most costly is section 6 of chapter 3: taking measures to prevent harassment or reprisals, which is assessed at 170 SEK (~ EUR 19) per employee per year. Taking aside the measures related to section 8 (education and training on gender equality), section 6 (preventing harassment), section 1 (cooperation between employees and employers) and section 5 (combining work life and parenthood), the costs of compliance with all the remaining obligations (including, among others, sections 3, 4 and 7 which relate to ethnicity) amount to only 130 SEK (~ EUR 15) per employee per year, on average.

As the Active Measures related to ethnicity are less specific than the obligations related to gender issues, they provide more flexibility for employers to choose different measures in their work to prevent discrimination, and compliance costs are similarly bound to be varying. This also means that smaller companies, on which compliance costs would normally way more heavily, are freer to adjust their efforts according to means and

[67] Statskontoret: "Aktiva åtgärder mot diskriminering – effekter och kostnader"; 2011:4. http://www.statskontoret.se/upload/Publikationer/2011/201104.pdf

[68] The employers were selected from a list of 569 employers provided by the Equality Ombudsman comprising the companies which had taken part in the so called „Miljongranskning" – a supervision exercise carried out by the Ombudsman a few years earlier. The study report does not provide information on the size of the surveyed companies or cost estimations divided by different sizes of companies.

resources. Equally, the compliance costs would depend on the scope of the measures taken by each employer, i.e. the scope of yearly equality plan.

Sanctions and compensation – case study France

The case-study is based on the French case, where the existing discrimination legislation[69] was in principle considered to cover everyone, and the principle of equality applied to non-nationals "unless the legislator could justify a difference in treatment based on conditions of public interest".[70] More concretely, discrimination on the grounds of nationality is forbidden in the French Labour Code and Penal Code. According to the Penal Code, "discrimination comprises any distinction applied between natural persons by reason of their origin […] their membership or non-membership, true or supposed, of a given ethnic group, nation, race or religion."[71] A similar distinction between people as belonging or not belonging to a nation is prohibited by the Labour Code[72]. This is considered to cover the concept of national origin.[73] The Penal Code, the Labour Code and the Equal Opportunities Law 2006-396 of 31 March 2006[74] specified the sanctions and compensation that apply in the cases of discrimination on the grounds of nationality. An overview of the current legislation is provided below.

Overview of the French legislation on sanctions and compensation

Legislation	More specific description
Penal Code, **Article 225-2**	Discrimination (including based on nationality) is punished by three years of imprisonment and a fine of €45,000 where it consists: 1° of the refusal to supply goods or services; 2° of obstructing the normal exercise of any given economic activity; 3° of the refusal to hire, to sanction or to dismiss a person; 4° of subjecting the supply of goods or services to a condition based on one of the factors referred to under Article 225-1; 5° of subjecting an offer of employment, an application for a course or a training period to a condition based on one of the factors referred to under Article 225-1; 6 ° of refusing to accept a person onto one of the courses referred to under 2 ° of Article L.412-8 of the Social Security Code. Where the discriminatory refusal […] is committed in a public place or in order to bar the access to this place, the penalties are increased to five years' imprisonment and to a fine of €75,000.
Labour Code, **Article L1134-4 and L1134-5**	Where a court has decided in the favour of an employee claiming discrimination, and where the employee refuses to continue his/her contract of employment, the industrial tribunal allocates compensation corresponding to: 1° Compensation corresponding to not less than the salary of six months; 2° Compensation corresponding to the severance pay provided for in Article L.1234-9 [of the Labour code] or in the applicable collective agreement, or employment contract.
Equal	The French Equal Opportunities and Anti-Discrimination Commission HALDE may, in

69 In private law, the general legal regime relating to discrimination is to be found in codified law i.e. the Labour Code (LC), the Penal Code (PC) and the Civil Code (CC), the Law no 2004-1486 of 30 December, 2004 creating the High Authority against discrimination and for Equality (HALDE) and the Law no 2008-496 of 16 May, 2008 implementing community law in the fight against discrimination (hereafter Law no 2008-496). See: Latraverse, Sophie: Report On Measures To Combat Discrimination. Directives 2000/43/EC and 2000/78/EC. Country report France, 2009. European network of experts in the non-discrimination field, p. 4.

70 Latraverse, Sophie: Report On Measures To Combat Discrimination. Directives 2000/43/EC and 2000/78/EC. Country report France, 2009. European network of experts in the non-discrimination field, p. 79.

71 French Penal Code, Article 225-1.

72 French Labour Code, Article L1134-4.

73 European network on free movement of workers, *Thematic Report: Application of Regulation 1612/68, 2011*, p. 5.

74 Loi No 2006-396 du 31 mars 2006 pour l'égalité des chances.

Opportunities Act 2006-396 of 31 March 2006, **Article 41**	case it identifies discrimination as defined in the Penal Code and the Labour Code, and in case no public action has been set in motion due to the discriminating activities, assign to the offender "a penal transaction" involving the payment of a transactional fine which cannot exceed € 3,000 in the case of an individual and € 15 000 if it is a legal entity. It is also possible for HALDE to assign compensation for damages experienced by the victim. The amount of the fine is set according to the seriousness of the act and the resources of the person in question. The proposal has to be validated by the prosecutor.[75] (The former) HALDE[76] proposes a penal transaction to both parties, and in case they both agree, a case is closed directly. In case the parties do not agree, the case is forwarded to a judge, but no judicial proceedings are necessary.

In France, the policy option has not led to any implementation costs. However, applying the provisions on sanctions and compensation would lead to financial costs on employers (or other parties) for paying the fine or compensation in the case that a court considered them guilty of discrimination (provision in Penal Code). These financial costs do, however, not directly result from the legal provision but from the court decision.

Additionally, the provision in the Penal Code would lead to enforcement costs on the side of the criminal court mainly consisting of man-hour costs for running the proceedings. The Labour Code provision would not result in any other costs as it represents a cost rule that does not provide for an obligation. The provision in the Equal Opportunities Act would lead to enforcement costs at the equality authority when going through cases on nationality-based discrimination and when proposing transactional fines. Similar costs would also take place within the judicial system, where the prosecutor would approve the proposals, when the parties would disagree, or when a judge would take a decision. These costs would be additional and would not replace costs for judicial cases, as the equality authority would normally take up cases that had not been brought to court.

Stakeholders interviewed agreed that the existence of the legal framework is an important tool to raise awareness about discrimination on the grounds of nationality. It was not possible to show concrete impacts in quantitative terms of the existence of legislation.

Statistics provided by the former HALDE show that there has been an increase in the number of complaints concerning discrimination on the grounds of origin. The number increased from 540 annual complaints in 2005 to 3,009 annual complaints in 2009. The share of complaints due to this decreased from 38% in 2005 to 28.5% in 2009[77]. However, this category covers all types of discrimination on the grounds of origin, not only that related to nationality, it is not possible to give a concrete picture about discrimination on the grounds of nationality in France. The representative of the Defender of Rights pointed out that where cases related to EU workers do exist, they are usually related to unemployed EU workers and their access to social benefits.

Nevertheless, the legislation is not being used. This could indicate that either there is no need for it (i.e. discrimination on the grounds of nationality towards EU workers is not happening), or EU workers are not sufficiently aware of their rights and possibilities to complain about cases of discrimination on the grounds of nationality. The lack of relevant statistics makes it difficult to assess which one of the above is more likely. Moreover, in many cases the EU workers are not members of unions in France, so the unions do not

75 An interview with a representative of le Défenseur des Droits reveals that prosecutors approve of (former) HALDE's decision in most cases.

76 On 1 May 2011 the HALDE was merged together with three other anti-discrimination organisation and is now called the Defender of Rights (Défenseur des Droits).

77 HALDE Annual Report 2009, p. 16.

become aware of the situation of these workers. It seems fair to assume that the policy option has little impact on potential 'dark numbers' such as these.

The legislation has not led to an increased frequency of legal action against nationality-based discrimination. In fact, HALDE has, according to an interviewee, never used the right to impose fines or compensation for discrimination of an EU worker on the grounds of nationality. The other interviewees confirm this finding. The representative of CFTD did not know of any cases where nationality-based discrimination towards EU citizens resulted in court cases, sanctions or compensation. The Information and Support Organisation for Foreigners (GISTI) and a confederation of employees (CGT) did not have knowledge of such cases either.

Legal representatives – case study Sweden

According to Chapter 6, Section 2 of the Discrimination Act, both employees' organisations, the Equality Ombudsman and non-profit organisations can represent an individual in court in cases concerning the Discrimination Act. Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act stipulates that employees' organisations may represent their members in labour disputes where the employment relation is bound by a collective bargaining agreement concluded by that organisation. In cases where an employees' organisation has the right to represent the individual, the Ombudsman or a non-profit organisation may only bring an action on behalf of an individual if the employees' organisation does not do so[78].

A non-profit organisation "whose statues state that it is to look after the interests of its members "may bring an action on behalf of an individual who consents to this. Meanwhile, the association must be "suited to represent the individual in the case, taking account of its activities and its interest in the matter, its financial ability to bring an action and other circumstances"[79].

The possibility to use legal representatives in discrimination cases may not have had any measurable impact, e.g. in terms of an increased number of cases taken to court on behalf of EU migrant workers in Sweden by labour unions, the Equality Ombudsman or non-profit organisations. Nevertheless, all interviewed stakeholders agreed that this is an important measure in terms of providing equal opportunities. Taking a discrimination or reprisal complaint all the way to court requires mental strength and financial means that many "regular" people do not possess. The Swedish legislation provided for the abovementioned organisations to not only *represent* a person at court but to actually bring the case to court on behalf of the individual (with his/her consent) in the organisation's own name. Hence, any costs related to the case that may be induced on the plaintiff would be borne by the representing organisation, not the alleged discrimination victim.

Some of the non-profit organisations, such as the Swedish anti-discrimination bureaus, were locally present in different parts of the country. This means that the bureaus were physically more accessible to many people. The bureaus mostly attempted to solve the issues without taking the cases to court, which could be another reason why the impact of this measure is not visible through statistics on court cases.

The anti-discrimination bureaus did take on smaller cases with requests for less than 20,000 SEK, as the plaintiff was only obligated to pay their own costs in cases of loss in such cases. The organisations cooperated closely with the Equality Ombudsman, who could take on the

[78] Swedish Code of Statutes: Discrimination Act (2008:567); published 25 June 2008; Chapter 6, Section 2

[79] Ibid.

larger cases. Meanwhile, only a few cases actually went to court, as the bureaus often found alternative solutions to the conflicts.

It has not been possible to assess the specific costs of the work in relation to nationality-discrimination of these organisations. Considering that very few cases actually became court cases brought by the bureaus, costs related to legal representation could be considered insignificant.

Victimisation – case study Sweden

Chapter 2, Sections 18 and 19 of the Discrimination Act prohibit reprisals. An employer or a person alleged to have acted contrary to the provisions of Chapter 2 (Sections 5, 7, 9-17) or 3 (Sections 15-16) is prohibited from subjecting an employee (including work applicants, persons in training, temporary or borrowed labour) or individual to reprisals because he/she has i) reported an employer/person for acting contrary to the Act; ii) participated in an investigation under the Act, or iii) rejected or given in to harassment or sexual harassment on the part of the employer/the person alleged of discrimination[80]. Employees subjected to reprisals in violation of Section 18 may try the case at Labour court. For violations of Section 19, the case can be tried at a general court (cf. above)[81].

The provisions on the prohibition of reprisals are even more difficult to assess the impact of. Again, according to interviewees, there were very few (if any) cases being raised on this issue. However, this does not mean that the provisions are unimportant. Several interviewees found that the legal prohibition of discrimination and reprisals sends an important signal about the attitude of the Swedish society on these issues, which may have a preventive effect even though the impact is not directly measurable.

The retaliation measures of the Discrimination Act mainly have had an impact on employers in terms of presenting them with a risk of sanctions if they discriminate against employees or job seekers, or if they impose reprisals on anyone claiming discrimination. If a case on nationality-based discrimination was taken to court, a concrete impact on the employer found guilty of discrimination could be a **financial penalty** and the **costs** of the trial. One might consider that the latter would have a relatively bigger impact on smaller companies with fewer (financial and human) resources, as there are no special conditions or exemptions for SMEs in relation to these provisions.

Reversal of the burden of proof – case study Finland

Introducing provisions on the reversal of the burden of proof is meant to make it easier for EU migrant workers to file complaints of discrimination.

To assess the impacts of this policy option, Finland was chosen as a case study. In Finland, the provision on the reversal of the burden of proof has been in place since 2004. Reversal of the burden of proof is applicable to all cases of discrimination as long as the case fits in the scope of the law on equality (yhdenvertaisuuslaki), which covers nationality as a ground for discrimination (see policy option 3a). The reversal of the burden of proof is not applicable to criminal cases in Finland. [82]

In the case study interviews, the reversal of burden of proof was identified as an important provision to address nationality-based discrimination. The reversal of burden of proof truly transforms the burden of proof in discrimination cases (though it is not applied in criminal

[80] Swedish Code of Statutes: Discrimination Act (2008:567); published 25 June 2008; Chapter 2, Sections 18-19

[81] Swedish Code of Statutes: Discrimination Act (2008:567); published 25 June 2008; Chapter 6, Section 1

[82] Yhdenvertaisuuslaki 20.1.2004 § 17; http://www.finlex.fi/fi/laki/ajantasa/2004/20040021

law) from the worker to the employer. This is a significant change because the employer usually has the relevant information on the accusation. This means that employers cannot remain passive and are instead forced to present arguments and proof that they have not discriminated against the individual in question.

It is important to note, however, that there must still be some clear evidence of the alleged discrimination. A worker cannot accuse the employer of discrimination without giving some support for the case. If alleged discrimination has been established, it is then up to the employer to show that the difference in treatment can be explained by acceptable reasons. Thus, even with the reversal of burden of proof, the accuser has clear legal responsibility.

The interviewees identified some challenges that arose when the policy option was implemented in Finland. The interpretation of the law was not straightforward when it came to establishing what is sufficient in terms of presuppositions of discrimination to establish alleged discrimination. Furthermore, the reversal of burden of proof increased legal obligations of employers, and this raised some debate.

The interviewees agreed that in theory the reversal of burden of proof helped job-seekers and workers file complaints on discrimination. The reduction of the burden of the claimant was significant and made it easier to press discrimination cases.

In practice, however, the provision on the reversal of the burden of proof did not significantly increase the number of legal actions. It did make it easier for the discriminated person to be compensated if they were ready to take a case to court, but going to court was still a big strain on many people. It required both time and money, and most of the discrimination happened in relation to short-term employment. Therefore, in most cases people could not see the benefit of taking legal action.

The interviewees were not able to estimate the awareness of job-seekers and workers of the existence of the reversal of burden of proof. In general, the concept of the reversal of burden of proof was not very well-known and the employees did not know their rights. This was said to especially be the case with non-national workers, causing a big barrier to the increase in the number of legal cases.

The reversal of burden of proof may increase the burden for employers in discrimination cases. However, as there was not a significant increase in the number of cases, the practical impacts of the reversal of burden of proof are not clear. Interviewees stated that the need to provide evidence of the alleged discrimination before a case could be established made it hard for people to accuse their employers without solid grounds.

Should the number of legal cases increase, the impact on employers could prove to be significant, as they would be obligated to carry the burden of proof. One interviewed expert explained that employers who would otherwise remain passive would be required to act and provide information and proof that the possible discriminatory decision could be explained by objective criteria. If the employer was to remain passive, there would be strong reasons to believe that the behaviour was in fact discriminatory.

The common view among the interviewed stakeholders was that larger companies were generally more aware of the issue and more able to act accordingly. This could result in better documentation of the decision made in a recruitment process, making it possible to show the logic behind the decisions if the employer is accused of discrimination. There could be costs related to such adjustments of procedures to adapt to the situation, but there have not been any estimations of how much or in what way they would materialise. The ex-ante intervention logic suggests that the potential direct costs caused by an increased

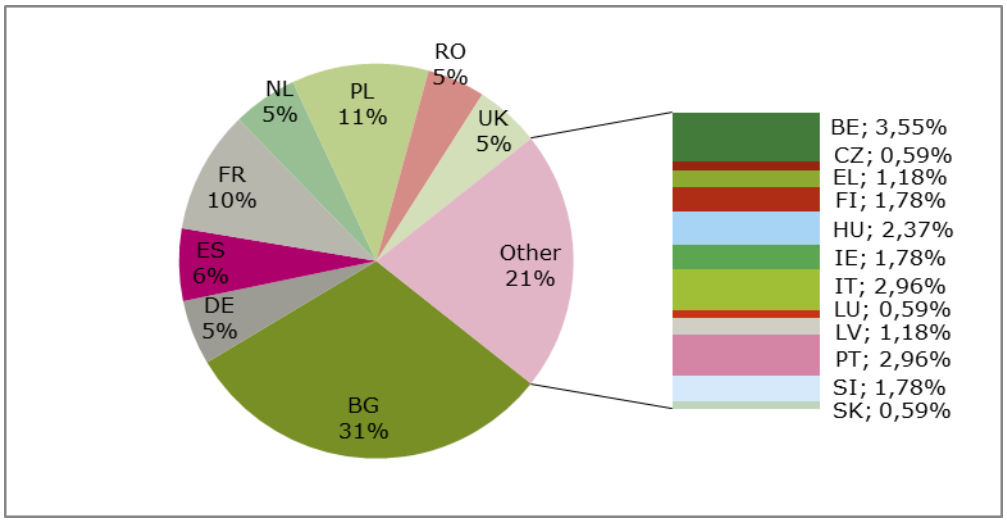
number of discrimination cases can have more significant financial impacts for the employers. Meanwhile, in the long term, the reversal of burden of proof, together with other anti-discrimination measures, could reduce the level of discrimination altogether, and this would in turn also reduce the costs imposed by the court cases.

Introduction

In total, **169 EU citizens** responded to the public consultation on *EU initiatives for the enforcement of EU rules on the freedom of movement of workers.* Respondents were from all Member States except Austria, Cyprus, Denmark, Estonia, Lithuania, Malta and Sweden.

Figure 1 shows the percentage dispersion of nationalities among the respondents. Approximately one-third (31%) of the respondents were Bulgarian, 11% were Polish, and 10% were French. In other words, more than 50% of the respondents were one of these three nationalities. The *Other* category includes the remaining 12 Member States, each of which with a share of less than 5% of the respondents. The seven Member States not represented among the respondents are not included in the figure.

Figure 1: What is your country of nationality? (n=169)



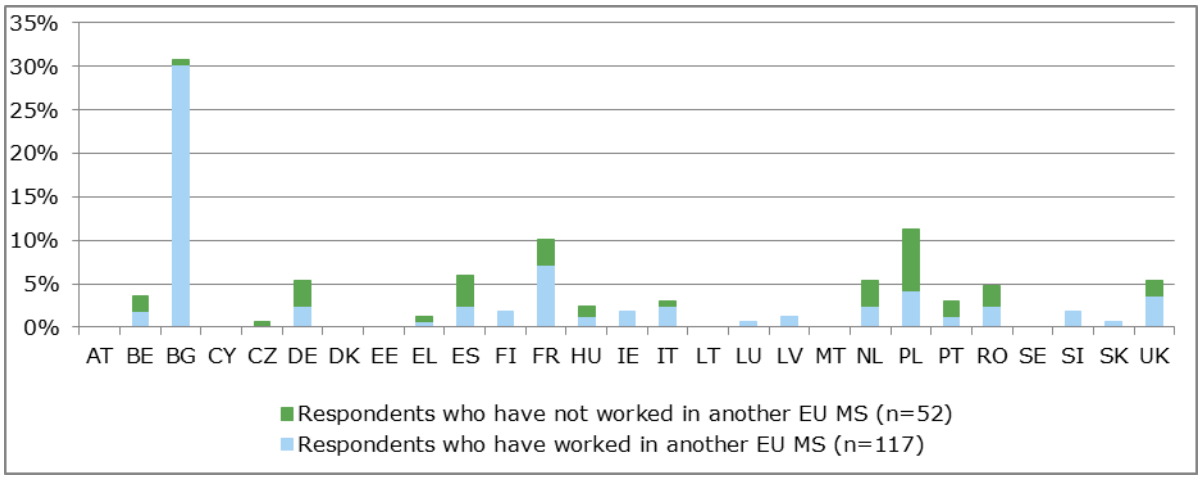
69% (117) of the respondents worked in an EU Member State other than the one of their nationality. Of these, 28 respondents worked in two or more Member States[83].

Figure 2[84] specifies the division of respondents by nationality according to whether they have worked in another EU Member State or not.

[83] 21 respondents have worked in two Member States; 5 respondents have worked in three Member States; 1 respondent has worked in seven Member States; 1 respondent has worked in 20 Member States. Added to the 89 respondents who have worked in one other Member State, this gives a total number of 173 occurrences.

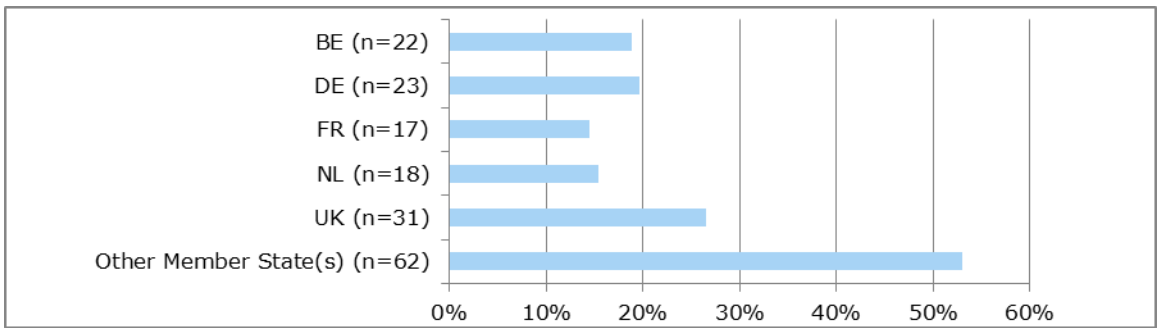
[84] The reason why Romania does not equal 5%, as in **Figure 1**, is that the pie chart does not include decimals and the Romanian share has thus been rounded up from 4.73% to 5%.

Figure 2: By nationality: Have you ever worked in another EU Member State than the one of which you are a national? (n=169)



Based on the survey responses, the most popular destinations among EU workers are western European Member States. The UK is the most popular destination; 27% of the respondents not of UK nationality have worked in the UK. Other Member States where the respondents have worked are Germany (20%), Belgium (19%), France (15%), and the Netherlands (15%) (see **Figure** 3).

Figure 3: In which Member State(s) have you worked? (n=117)[85]



Working in another EU country

Approximately two-thirds (65.8%) of the 117 respondents who have worked in another EU Member State were not informed about their rights under European law when they moved to the country. Of the 34.2% of respondents who were informed about their rights, 7.7% were informed by the national authorities, 2.6% were informed by a labour union, and 5.1% were informed by their employers. 18.8% of the respondents were informed through other sources, mainly friends, universities, or by searching on the internet, e.g. five respondents found information on EU web pages (see **Table** *1*).

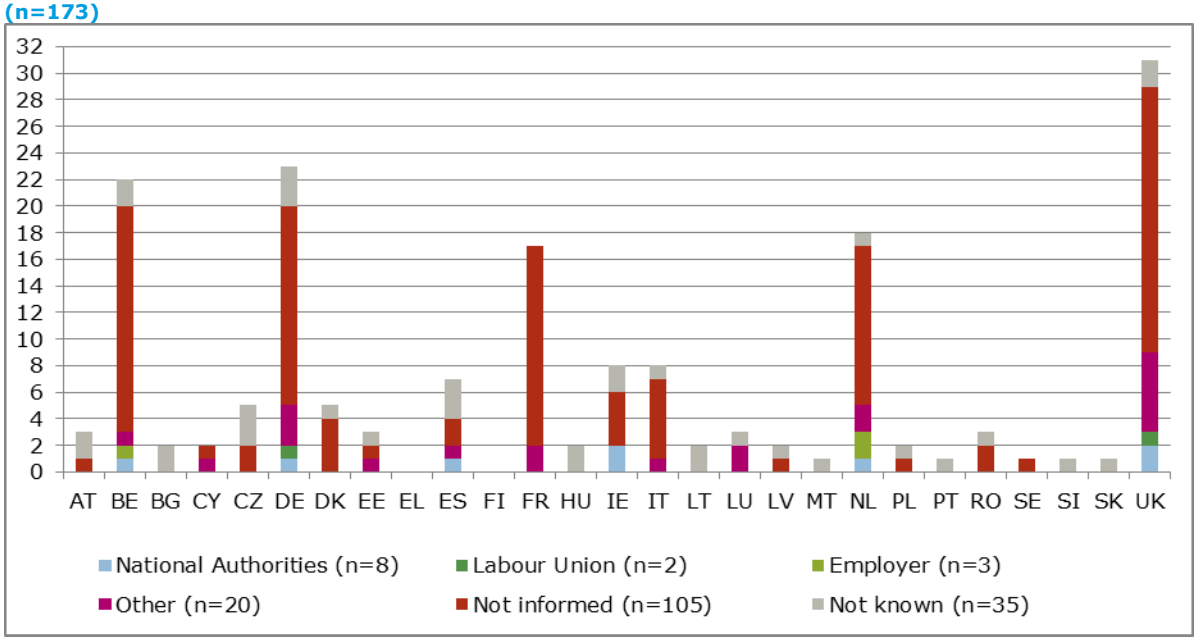
Table 1: When moving to another EU country for work, by whom were you informed of your rights under European law? (n=117)

National authorities	9	7.7%
Labour union	3	2.6%
Employer	6	5.1%
Other	22	18.8%
Total informed	40	34.2%
Not informed	77	65.8%
Total	117	100%

[85] The total percentage is higher than 100% because some of the respondents have worked in more than one Member State

12 respondents were informed about their rights without having worked in another Member State. Eight were informed by national authorities, two were informed by employers, one respondent was informed by a labour union, and another respondent found information on the internet. It is noticeable that national authorities informed 66.7% of the respondents informed in their own country, while only 22.5% of the respondents informed while working in another Member State were informed by national authorities in the host country. This might indicate that the respondents chose different information sources depending on whether they were in their own country or in another Member State. **Figure** 4 specifies how respondents were informed in different Member States. As mentioned in **Table** , 40 of the respondents stated that they were informed about their EU rights.[86] The figure also shows the respondents who claimed that they were not informed and in which countries they worked.[87]

Figure 4: By host country: By whom were you informed of your rights under European law? (n=173)



Of the 40 respondents who received information, only two (5%) did not find the information in a language understandable to them. Even the respondents who have worked in multiple EU Member States did not seem to have had any issues with the language in which the information was provided.

Discrimination on the basis of nationality

Figure 5 shows that 63% of the 117 respondents who have worked in another EU Member State have felt discriminated against because of their nationality.

Figure 5: Have you ever felt discriminated against because of your nationality when working in another EU country? (n=117)

86 Seven of these respondents have worked in more than one Member State and we cannot see from the questionnaire in which of the countries they were informed. The responses of these seven respondents are categorized as "not known" in Figure .

87 The reason why *n*=105, and not 77 as in **Table** , is that some of the respondents have worked in more than one Member State. However, since they claim *not* to have been informed, we can assume that they have not been informed in any of the Member States, in which they have worked, and they can, thus, be included in the figure.

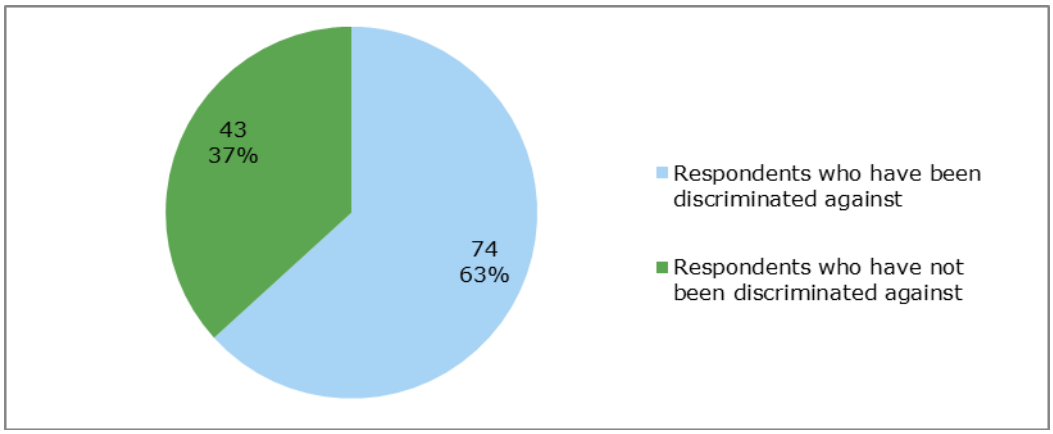


Figure 6 groups the respondents according to their nationality. The figure shows important variations between nationalities. For example, 84% of the Bulgarians who have worked in another Member State felt discriminated against because of their nationality at some point. This percentage is much higher than the one of the total number of respondents (63%), especially considering that the high number of Bulgarian respondents pulls the average up[88]. When looking at the other nationalities with a share equal to or higher than 5% of the respondents[89], it is seen that the percentage of respondents who have felt discriminated against is much below the average (63%). 25% of the French respondents, 43% of the Polish, and 33% of the UK respondents felt discriminated against while working in another EU Member State.

Figure 6: By nationality: Have you ever felt discriminated against because of your nationality when working in another EU country? (n= 117)

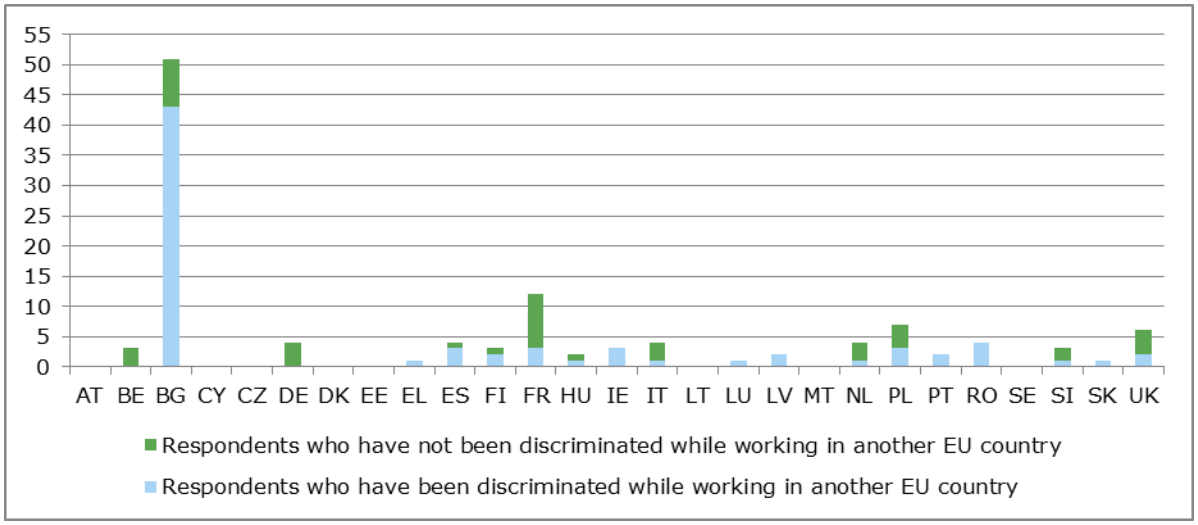
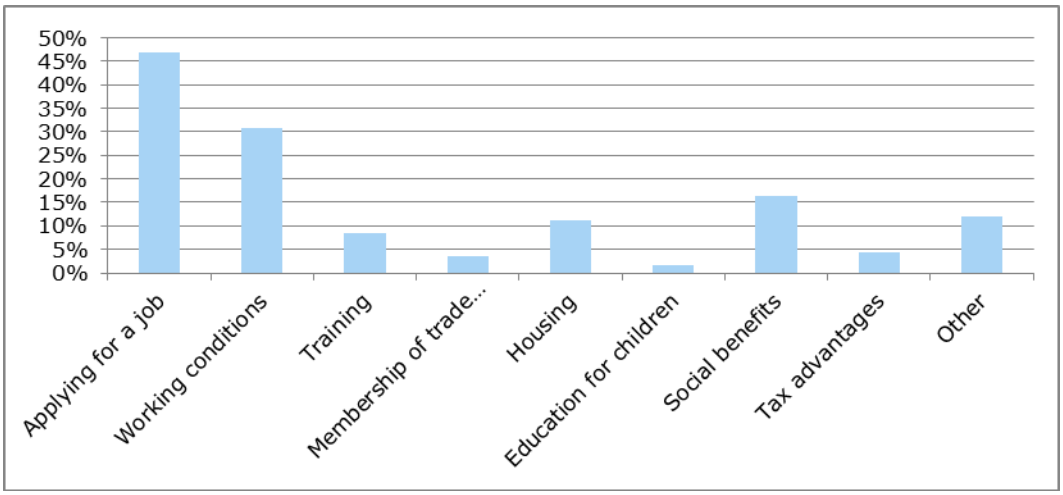


Figure 7 shows the situations in which respondents felt discriminated against. 47% of the respondents felt discriminated against when applying for a job in another Member State, while 31% of the respondents experienced discrimination in relation to their working conditions. The third most common situation where respondents were discriminated against was when applying for social benefits (16%). The respondents who felt discriminated against in other situations than the ones specified mentioned bank related issues, such as acquiring a national credit card in the host country or obtaining a loan. Other discrimination issues stated by respondents related to the acquisition of residence permits to third-country national family members.

Figure 7: In which situations did you feel discriminated against? (n=74)

[88] If all Bulgarian respondents were excluded from the questionnaire, the share of respondents who have been discriminated against would be 48%

[89] FR, PL, and the UK (cf. **Error! Reference source not found.**)



A high percentage of the Bulgarian respondents felt discriminated against because of their nationality when working in another EU country. Compared to the average (47%), the number of Bulgarians discriminated against when applying for a job (78%) is very high. Some of the Bulgarian respondents mentioned the transition schemes as a factor, which complicated the procedure of applying for a job because EU2 citizens were required to have a working permit when they applied for a job in another EU Member State. According to the Bulgarian respondents, employers often found too many bureaucratic obstacles when they wished to employ a EU2 citizen, and therefore they often gave the job to a person of another European nationality. For this reason, it seemed nearly impossible to Bulgarian and Romanian respondents to find a job in other Member States, and some of them found it necessary to work in the informal sector. They, therefore, sometimes felt treated like third-country nationals, or worse. For example, one Bulgarian respondent referred to a fine of GBP 1,000, applicable only to Romanians and Bulgarians caught working without a work permit. Other situations where many of the Bulgarian respondents felt discriminated against were with respect to working conditions (39%), social benefits (29%), and housing (20%). In most of the situations, the number of Bulgarian respondents discriminated against was above average. The only situations in which the number of Bulgarian respondents was equal to or below the average were access to training, education for children, and the "other" category.

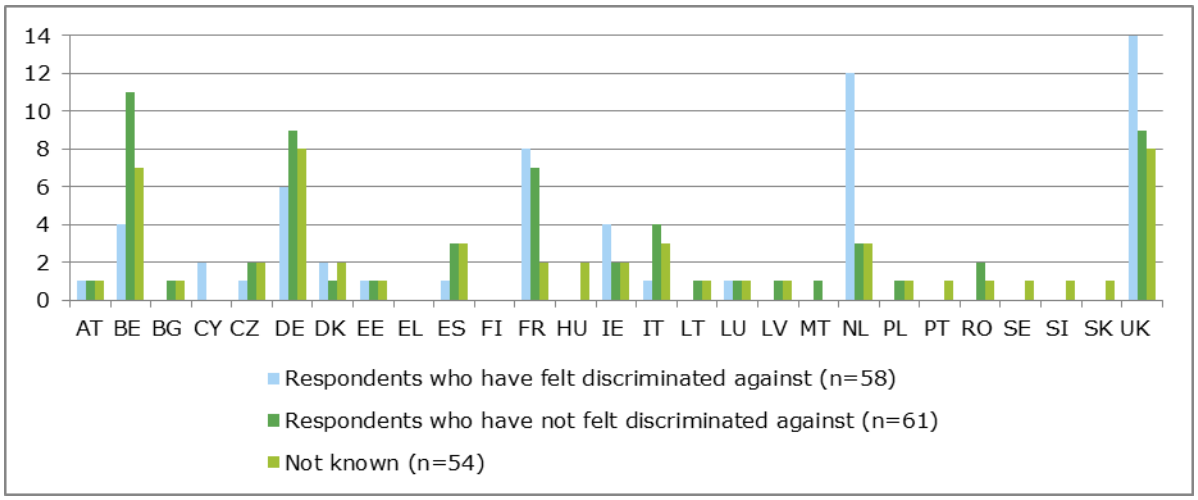
Relatively few French and UK respondents have felt discriminated against. The few who claimed to have been discriminated against mostly dealt with issues related to working conditions, bureaucratic procedures related to social benefits, or other issues, e.g. third-country national family members who were not always treated according to EU law.

Three out of seven Polish respondents have been discriminated against, mainly when applying for a job or with respect to working conditions. The Polish respondents stated that Polish workers were often paid a lower salary than nationals of the host country. Furthermore, they found that there was sometimes a discriminative attitude towards Polish workers.

Figure 8 shows the Member States where the respondents were discriminated against. Of the five most popular Member States for EU migrant workers (among the respondents), the Netherlands is the country with the highest percentage of nationality based discrimination. 66.7% of the respondents who have worked in the Netherlands felt discriminated against, while only 16.7% have not[90]. In the UK, the corresponding figure is 45%, in France 47%, in Germany 26%, and in Belgium 18%. These shares may seem small compared to the total percentage of respondents who have been discriminated against (see **Figure**). However, the amount of respondents in the "not known" category is relatively high, so the true percentage of respondents who have been discriminated against may be higher for some Member States.

[90] The remaining 16.7% are respondents who have been discriminated against but who have worked in other countries, besides the Netherlands.

Figure 8: By host country: Have you ever been discriminated against because of your nationality when working in another EU country? (n=173)[91]



The respondents who experienced discrimination in Belgium mentioned the special need of a working permit as their biggest obstacle. Other respondents mentioned unjustified, bureaucratic obstacles when trying to create a bank account, as well as problems with the Belgian system of calculating vacation days.

In Germany, 17% of the respondents felt discriminated against when applying for a job, and 13% with respect to working conditions. The discrimination issues (which are not related to transition schemes) included the need for university studies from another Member State to be approved, as well as lower salaries and worse working conditions for migrant workers (including EU migrant workers) compared to the German employees.

In France, EU2 nationals also experienced discrimination issues related to the transition schemes. One Bulgarian respondent had to find a job as a posted worker. However, posted workers do not work under the same regulations as national workers, and the respondent claimed that the salary and working conditions were not as good as the ones for French nationals.

12 out of 14 of the respondents who worked in the Netherlands were of Bulgarian or Romanian nationality. Thus, the main issues regarding discrimination were the transition scheme and the bureaucratic obstacles when applying for the required work permit. This might explain why the Netherlands was the Member State with the highest share of respondents discriminated against (67%[92]).

In the UK, EU2 nationals also felt discriminated against because of the transition scheme. Apart from these issues, an Irish respondent was discriminated against when requesting holiday pay, and in another occasion was rejected access to training even though she had the rights to training according to EU law.

Recourse against discrimination

Of the 74 respondents discriminated against while working in another EU Member State, only 10.8% (8 respondents) were able to seek recourse under national law. One respondent obtained a successful response, while five did not. The respondents were also asked whether national authorities applied European law (Regulation 1612/68 on freedom of movement for workers) when the respondents challenged the discrimination at the national level. Two respondents answered "yes" while three answered "no", and three respondents left the question unanswered.

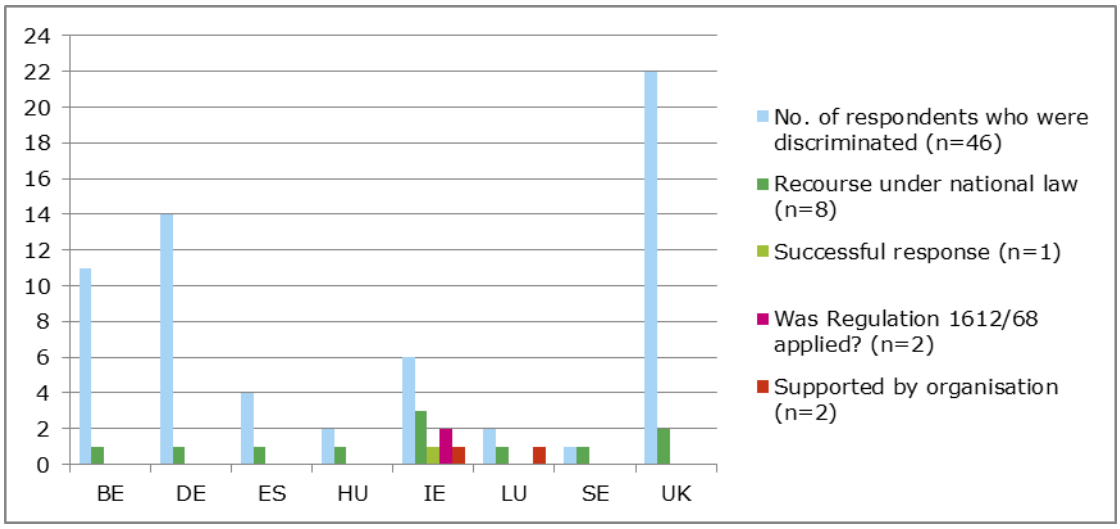
91 "Respondents who have felt discriminated against" only includes respondents who have worked in one single Member State. "Respondents who have not felt discriminated against" includes all respondents who have worked in another Member State "Not known" includes respondents who have worked in multiple Member States and felt discriminated against in one or more of the host countries. However, we cannot see from the questionnaire, in which country/countries they were discriminated against.

92 The true percentage is possibly higher since some of the respondents categorised as "not known" may have been discriminated in the Netherlands

Two of the eight respondents stated that they were supported by an organisation. However, none of them specified what kind of organisation they were supported by.

Figure 99 illustrates the eight Member States where respondents were able to seek recourse under national law (BE, DE, ES, HU, IE, LU, SE, UK)[93]. The figure also shows the number of respondents who were discriminated against in these Member States. In four of the eight Member States (BE, DE, ES and UK), the number of discriminated respondents is significantly higher than the number of respondents who were able to seek recourse. This could indicate that many of the respondents discriminated against have not taken the case any further, e.g. by reporting the act of discrimination.

Figure 9: Were you able to seek recourse under national law (n=46)



93 Based on the Member States where respondents, who have been able to seek recourse under national law, have worked. NB: Two of the respondents have worked in more than one Member State

Removing obstacles to free movement of workers

The questionnaire turned to possible solutions for removing obstacles to the free movement of workers. In general, the respondents were not satisfied with the level of protection against nationality-based discrimination in their host countries, even though many respondents stated that they consider the level of protection to be an important factor when making the decision on whether or not to go to another EU Member State for work (see **Table 2**).

Table 2: Removing obstacles to free movement of workers (n=117)

	No.	%	No.	%	No.	%	No.	%	No.	%
Does your host country protect workers?	6	5%	30	26%	16	14%	40	34%	25	21%
Does this influence your decision?	49	42%	36	31%	9	8%	18	15%	5	4%
Should workers be better protected?	78	67%	30	26%	2	2%	6	5%	1	1%

According to most of the 117 respondents who have worked in another EU Member State, the host country where they worked did not adequately protect EU migrant workers (see 2 and 10). Only about one-third (31%) of the respondents were satisfied with the level of protection of workers from other EU Member States, while 55% *disagreed* or *strongly disagreed* with this. Furthermore, many respondents (73%) either *agreed* or *strongly agreed* that the level of protection against discrimination on the grounds of nationality influenced their decision to go and work in another EU Member State. Almost all of the respondents (93%) believed that more should be done to protect workers in another EU Member State.

Figure 10: Removing obstacles to free movement of workers (n=117)

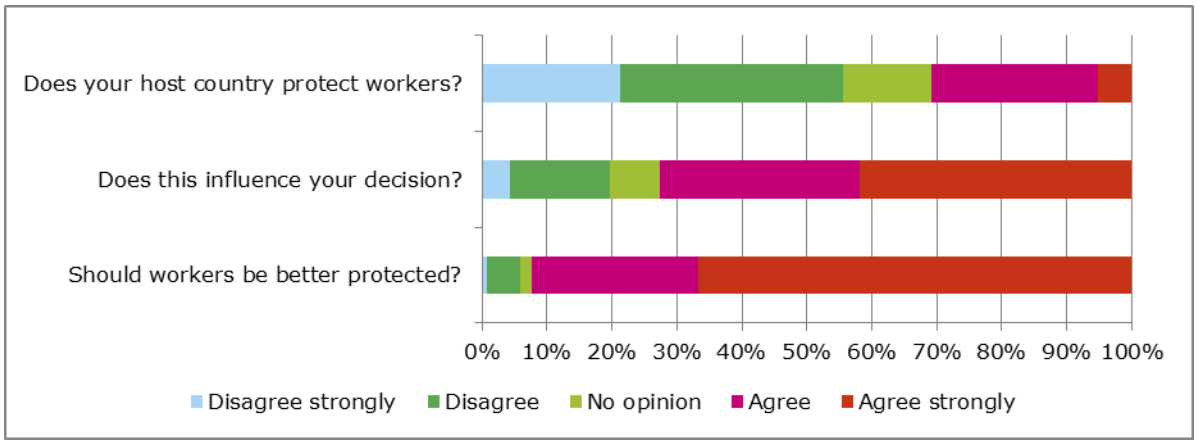


Figure 111 shows how the respondents perceived the level of protection of workers according to their nationality. The figure gives an assessment of whether, i.e., better protection of EU workers against nationality-based discrimination is more important to some nationalities than others. There is a clear tendency that many respondents were dissatisfied, regardless of their nationality. Close to two-thirds of the Bulgarian respondents (62%) were dissatisfied with the level of protection. Likewise, five out of six UK respondents did not believe that workers were adequately protected in the EU Member States where they have worked. The figure corresponds to the conclusions presented above in **Figure** , which showed that 84% of the Bulgarian respondents have been discriminated against while working in another EU Member State. This matches the relatively high percentage of Bulgarian respondents who were dissatisfied with the level of protection in their host country.

Figure 11: By nationality: Does the host country adequately protect workers against discrimination on grounds of nationality? (n=117)

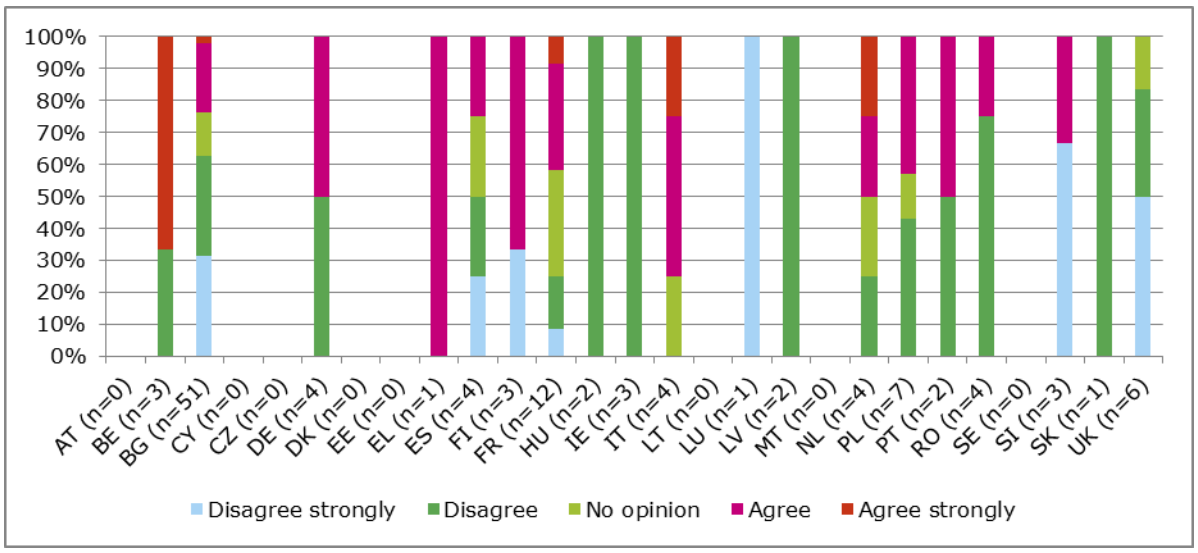


Figure 12 shows the level of satisfaction related to the protection against nationality-based discrimination in the EU Member States where respondents have worked. When looking at the five most frequent countries – BE, DE, FR, NL, and UK (see **Figure**) – it can be seen that most of the respondents who have worked in one or more of these countries were not satisfied with the level of protection. 70% of the respondents who have worked in Belgium either *disagreed* or *disagreed strongly* with the statement that the level of protection was adequate. The situation was clearly better in France, where only 27% of the respondents were dissatisfied, while in the Netherlands the corresponding figure was 86%, and in the UK 70%. Added to this, some of the respondents were neutral on these matters, therefore they stated that they did not have an opinion on the level of protection of workers.

Figure 12: By host country: Does the host country adequately protect workers against discrimination on grounds of nationality? (n=89)

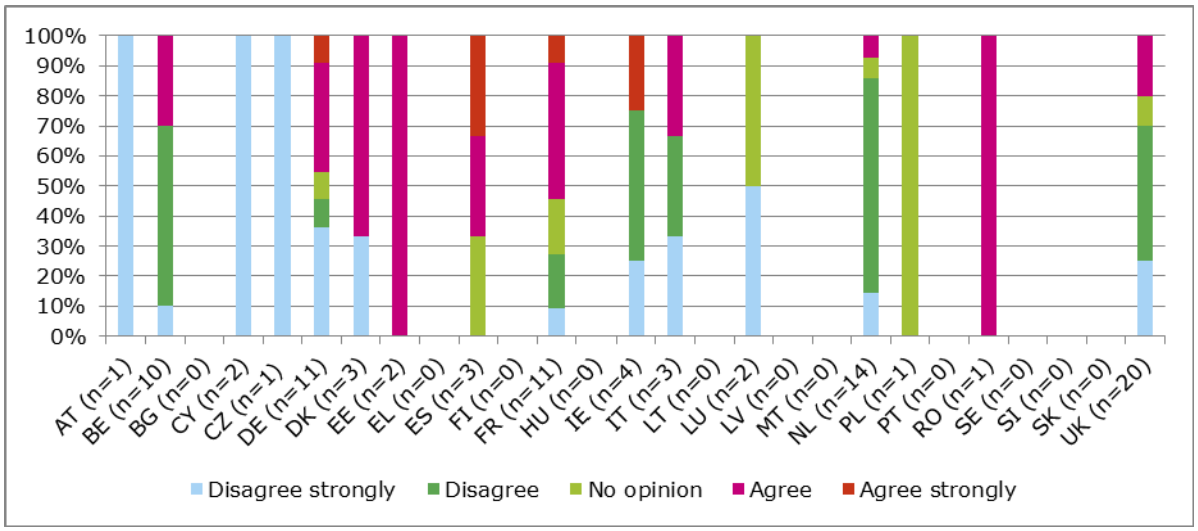
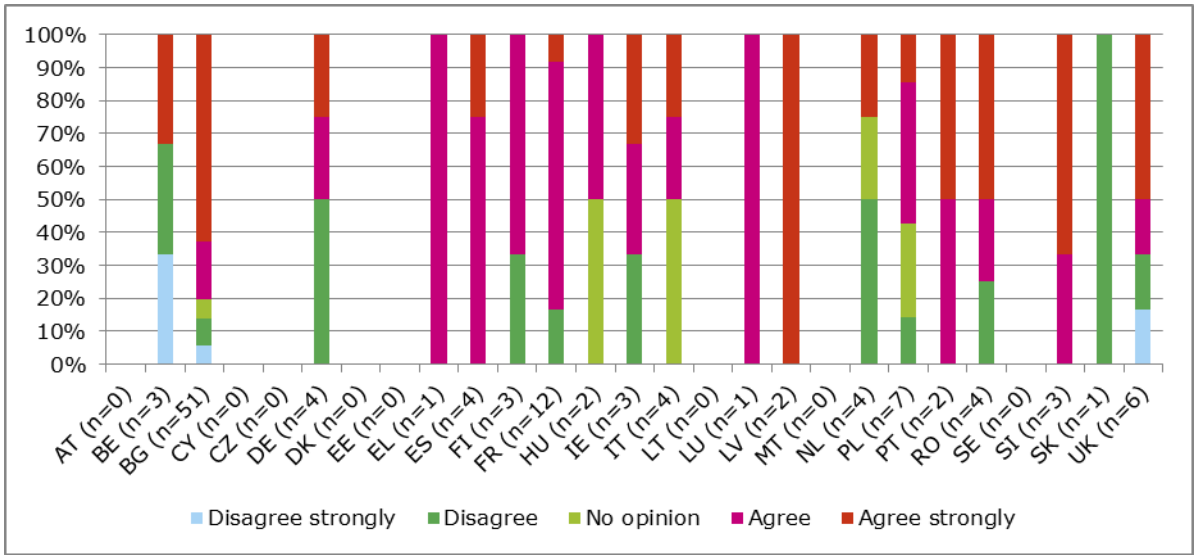


Figure illustrates, based on the nationality of the respondent, whether the level of protection of workers would influence the respondents' decision to go to another EU Member State to work. In general, the respondents valued the protection of workers and found that the level of protection affected their decision to go to another Member State to work. The four most frequent nationalities were BG, FR, PL and the UK. 80% of the Bulgarian respondents *agreed* or *agreed strongly* that their decision to go to another EU Member State to work would be affected by the level of protection in the given Member State. The figure is even higher for the French respondents (83%), while it is considerably lower for the respondents from Poland (57%), and the UK (67%).

Figure 13: By nationality: Would the level of protection of workers influence your decision to go to another EU Member State to work? (n=117)



Turning to the most frequent host countries, many of the respondents who have worked in these countries considered the level of protection of workers important when deciding to go to another EU Member State to work (see **Figure**). The percentages of respondents who either *agreed* or *strongly agreed* that the level of protection influenced their decision show no clear differences between the countries, as all are somewhere between 60-82%. The percentages, to some degree, match the ones in *Figure 15*. This might be because of the respondents' experiences with the level of protection of workers when working in the respective countries, and, therefore, they believed that the level of protection would influence their decision when going to other EU Member States to work.

Figure 15: By host country: Would the level of protection of workers influence your decision to go to another EU Member State to work? (n=89)

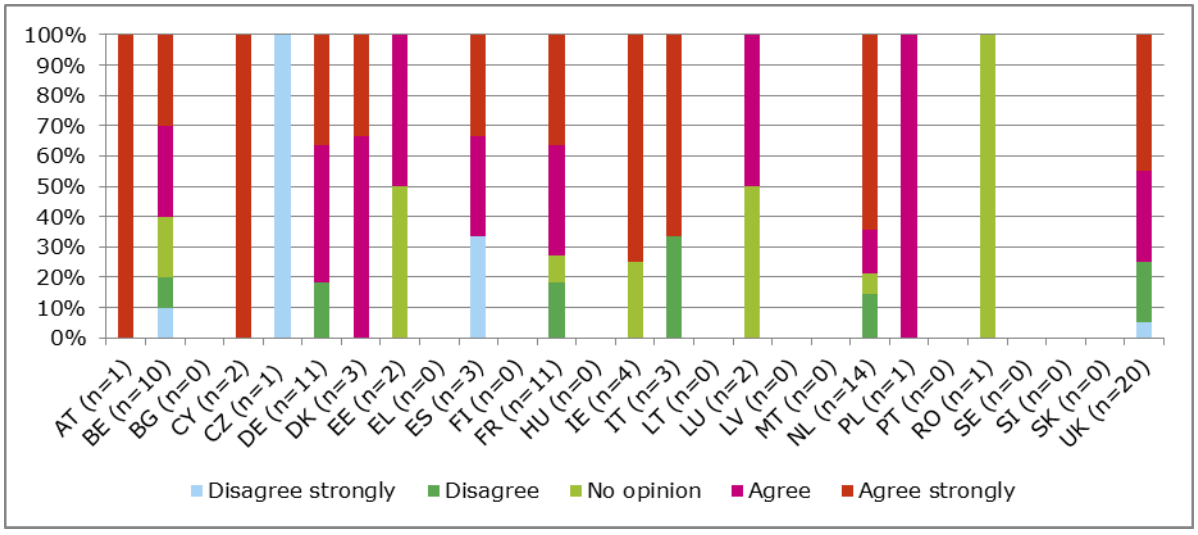


Figure 35 shows, according to the nationality of the respondents, whether the respondents believed that workers should be better protected when working in another EU Member State. 93% of the respondents either *agreed* or *strongly agreed* with this. Only seven (out of 117) respondents *disagreed* or *strongly disagreed* that workers should be better protected. Although there are significant percentage variations, some of the nationalities were represented by very few respondents and it is, therefore, not possible to make any valid conclusions on whether the way in which respondents have answered the question can be related to the nationality of the respondents. However, the high percentage of respondents who believed that workers should be better protected when working in another EU Member State is a strong indication of the existence of hindering factors for the free movement of EU workers.

Figure 3: By nationality: Should workers be better protected when working in another EU Member State? (n=117)

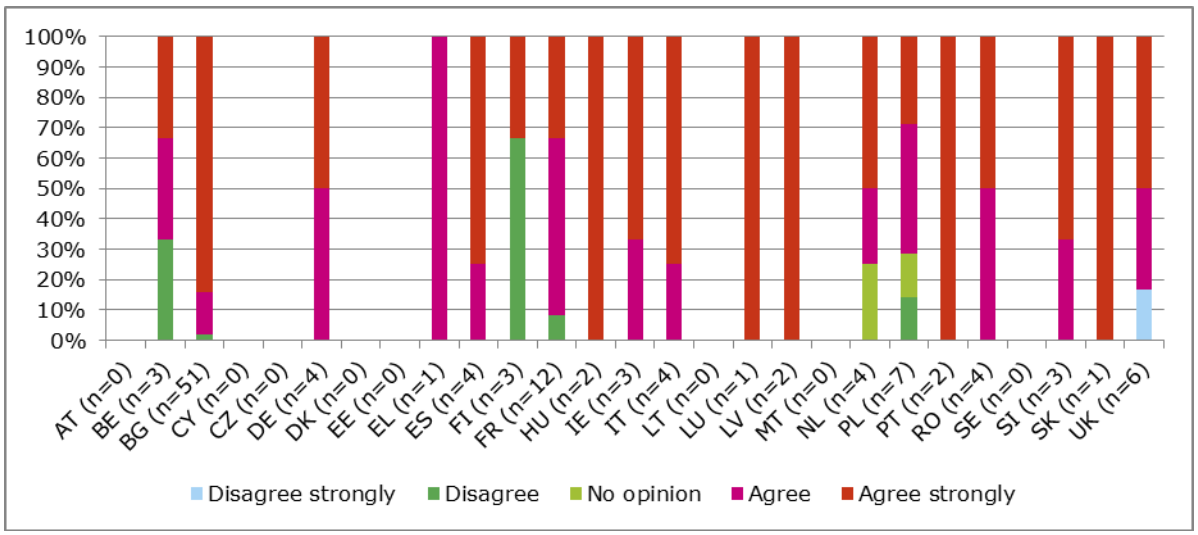
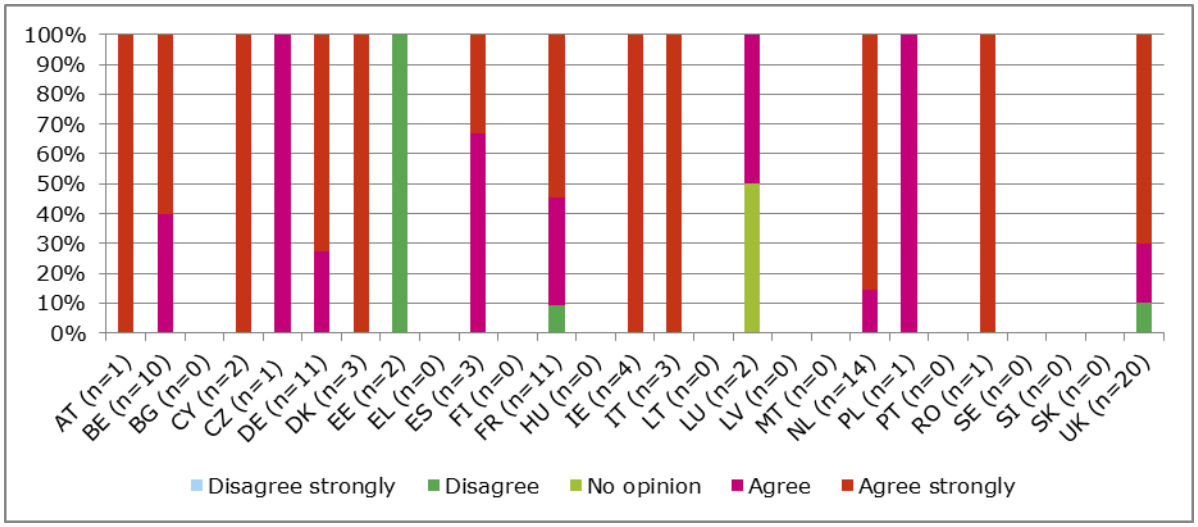


Figure 4 is based on the Member States where respondents have worked. It clearly shows that a high share of the respondents believed that the protection of workers in other EU Member States should be improved. In most of the host countries[94], all of the respondents *agreed* or *agreed strongly* that there was a need to improve the protection of EU migrant workers.

Figure 4: By host country: Should workers be better protected when working in another EU Member State? (n=89)



The above analysis clearly indicates that the respondents believed more should be done to protect workers when they work in another EU Member State. All respondents were likewise requested to comment on possible measures, as well as their importance, they thought could be taken in order to improve the protection against nationality based discrimination.

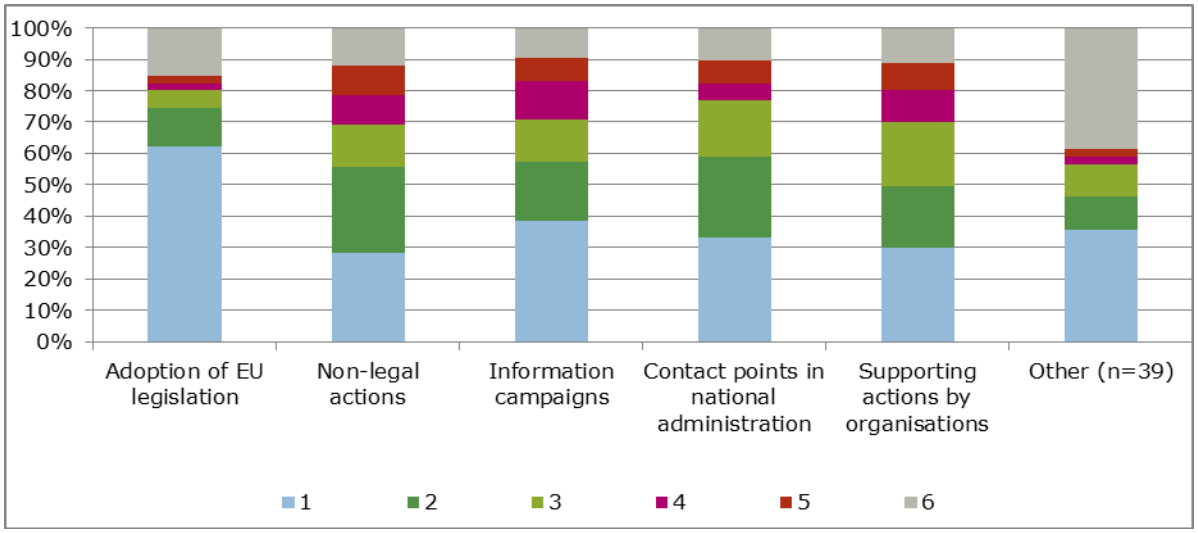
According to the respondents, the best way to achieve better protection of workers was by the *adoption of EU legislation* that reinforces the rights of EU migrant workers (see **Figure 5**). 62% of the respondents gave this measure first priority. This is clearly higher than the remaining measures, which are all supported by approximately one-third of the respondents[95]. The *other* category contains various suggestions, e.g. some Bulgarian and Romanian respondents suggested that the transition scheme be removed so that EU2 nationals could have the same rights as all other EU nationals. One respondent suggested that registration of EU nationals and their family member be made optional, as has been done in the UK. Others believed that the whole legislation should be changed and/or that strong action should be taken against countries

94 With the exception of EE, FR, LU, and the UK.

95 The percentages do not add to 100% because some of the respondents have considered more than one measure as first priority.

who fail to transpose EU law. Another suggestion was to make a personal EU registration number for all citizens in order to ease administrative matters concerning EU migrant workers. Furthermore, one of the respondents believed that contact points in national authorities should speak at least one of the official EU languages.

Figure 5: How could workers be better protected when working in another EU Member State? (n=117) (1 = most important, 6 = least important)

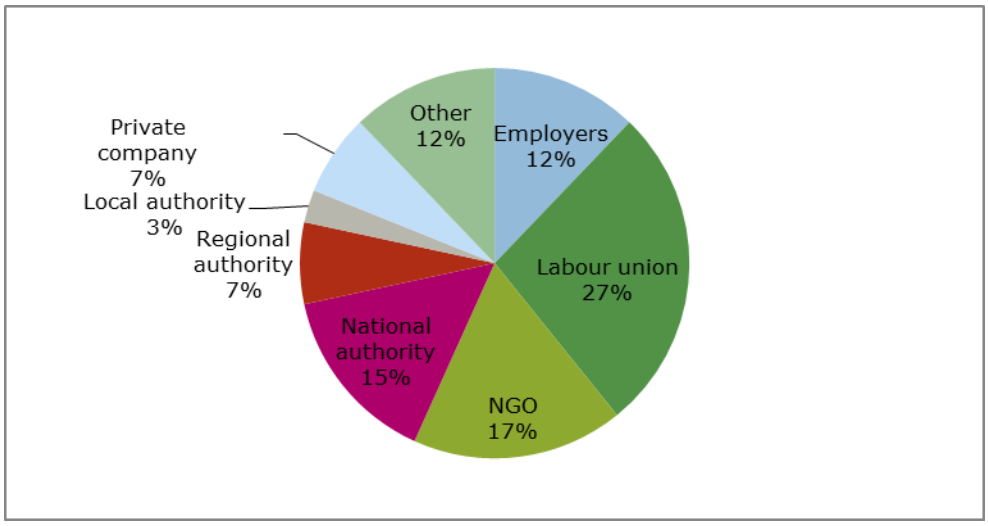


ANNEX 7- RESULTS OF THE PUBLIC CONSULTATION AMONG ORGANISATIONS

Introduction

In total, **74 organisations** responded to the public consultation on *EU initiatives for the enforcement of EU rules on freedom of movement for workers*. Figure 6 illustrates the share of the respondents by organisation type. Labour unions were the most active in contributing to the consultation and represent roughly one-fourth (27%) of the respondents, while NGOs (17%), national authorities (15%) and employer organisations[96] (12%) were also widely represented. Respondents also included private companies (7%) and regional and local authorities (7% and 3%, respectively). A large share of the respondents (12 %) belongs to other types of organisations than those mentioned above. These other organisations include non-profit organisations, an association representing independent professionals, a trade association and a national church[97].

Figure 6: What kind of organisation do you represent? (n=74)



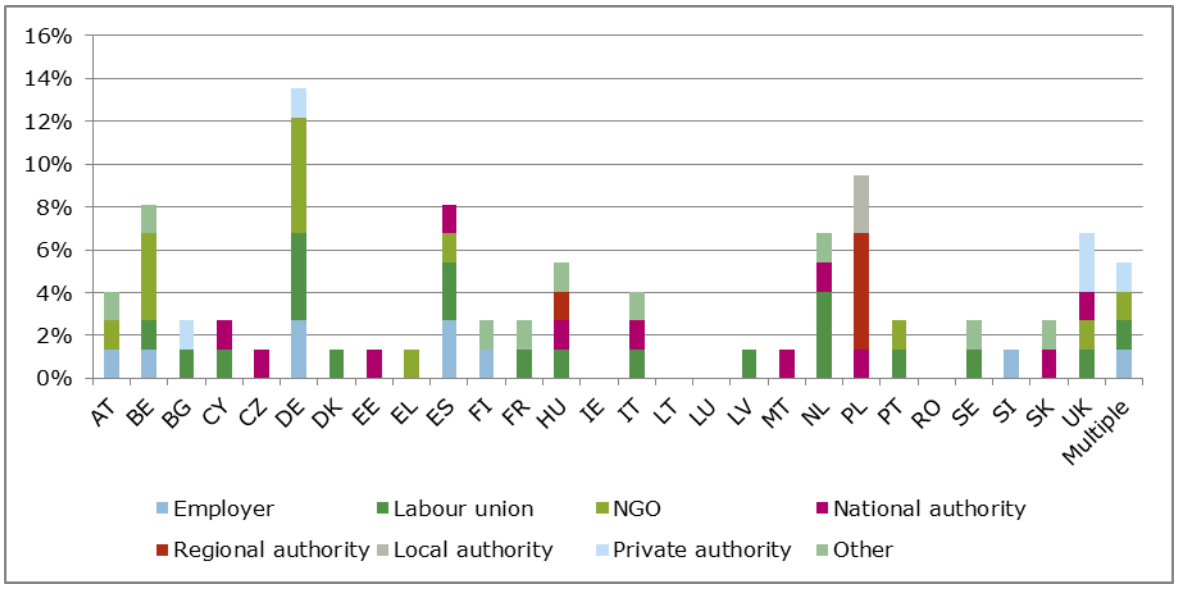
The organisations were based in 23 different Member States, excluding *Ireland*, *Lithuania*, *Luxembourg* and *Romania*.[98] Figure 7 shows that organisations from Germany (14%) represented a large share of the respondents. Other Member States with a minimum of five organisations contributing to the consultation were Poland (10%), Belgium (8%), Spain (8%), the Netherlands (7%) and United Kingdom (7%). When more than one organisation responded to the consultation from a Member State, the types of organisations varied in all the Member States. However, it is worth noting that all the organisations based in Poland represented the public sector.

Figure 7: In which country of the European Union is your organisation based? (n=74)

96 A private company, a state owned company and a hospital were removed to more suitable categories.

97 An employers' organisation, a national labour inspectorate and national employment offices were removed to more suitable categories.

98 One of the respondents is based in several Member States without further specifying the respective countries. Therefore this respondent is not included below in *figure 2* or other tables concerning respondents by country. Also three other organisations based in Belgium are clearly European/worldwide rather than national and therefore included in the category multiple countries



Awareness of the rights of free movement of workers

All 74 of the respondents were aware of workers' rights under European legislation when they move to another country of the European Union. **Table 2** shows that 70% of these organisations provided information to the EU workers about their free movement rights. Only one German labour union stated that it did not provide its information in a language understandable to the worker, while one of the organisations did not specify if the information it provided online could be understood by workers involved.

Table 2: Awareness of workers' rights and provided information

Question	No. of YES answers	% of respondents	No. of NO answers	% of respondents
Are you aware of workers' rights under European legislation when they move to another country of the European Union? (n=74)	74	100%	0	0%
Does your organisation provide information to EU workers about their free movement rights? (n=74)	52	70%	22	30%
Is this information understandable to the worker? (n=51)	50	98%	1	2%

The channels used to provide information to EU workers about their free movement rights are presented in Figure 8. Information was most commonly provided at the workplace (25%) and on the internet (23%). Brochures were disseminated in 10% of the organisations that provided information, and only 2% of respondents used the intranet for this purpose. In addition to the above-mentioned channels, a large share of information was provided by other means, such as telephone consultation, seminars, trainings, membership publications and personal meetings.

Figure 8: Please specify how your organisation provides information? (n=74)

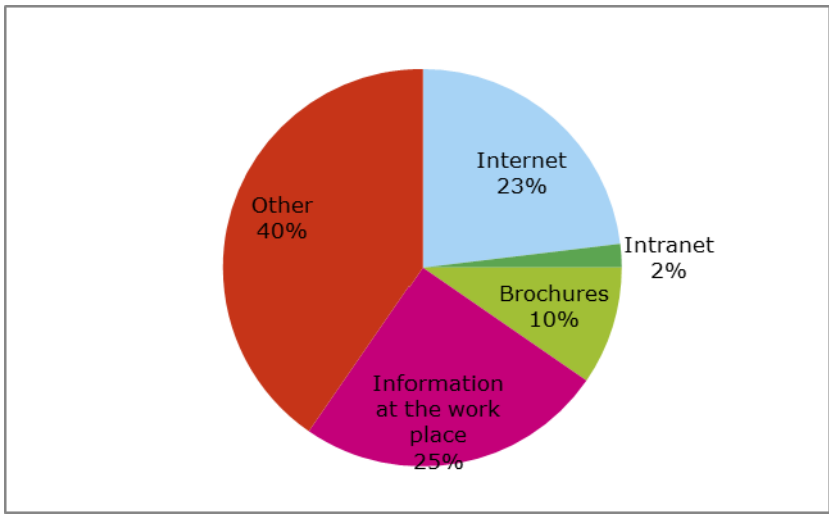
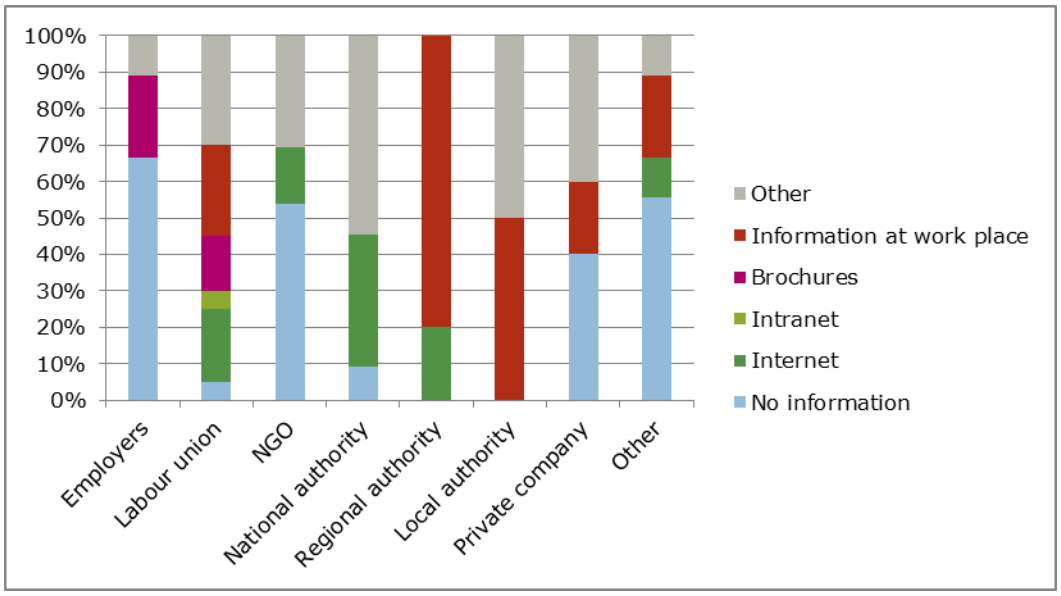


Figure 9 illustrates the differences between the organisation types who provided information. It can be noted that, while all the respondents from regional and local authorities provided information, 95% of labour unions[99] and 90% of national authorities also disseminated information to EU workers about their free movement rights. The channels used to provide information were the most diverse among labour union organisations. These organisations provided information at the workplace and through internet, brochures, and intranet, as well as by other means such as personal consultation, flyers, articles in newspapers and member publications. In addition to labour unions, information at the workplace was widely provided across other types of organisations, including regional and local authorities, private companies and other types of organisations (non-profit organisations, employment offices, a national church). However, respondents from employer organisations, NGOs and national authorities did not provide information at the workplace. Moreover, internet was indicated as a source of information by various types of organisations, including national and local authorities and NGOs. Employer organisations disseminated information the least (33%), and most of this information was provided by brochures. A large share of labour unions, NGOs, national and local authorities, as well as private companies used various other ways to provide information to EU workers. For example, many of the NGOs organised personal meetings where legal advice was provided.

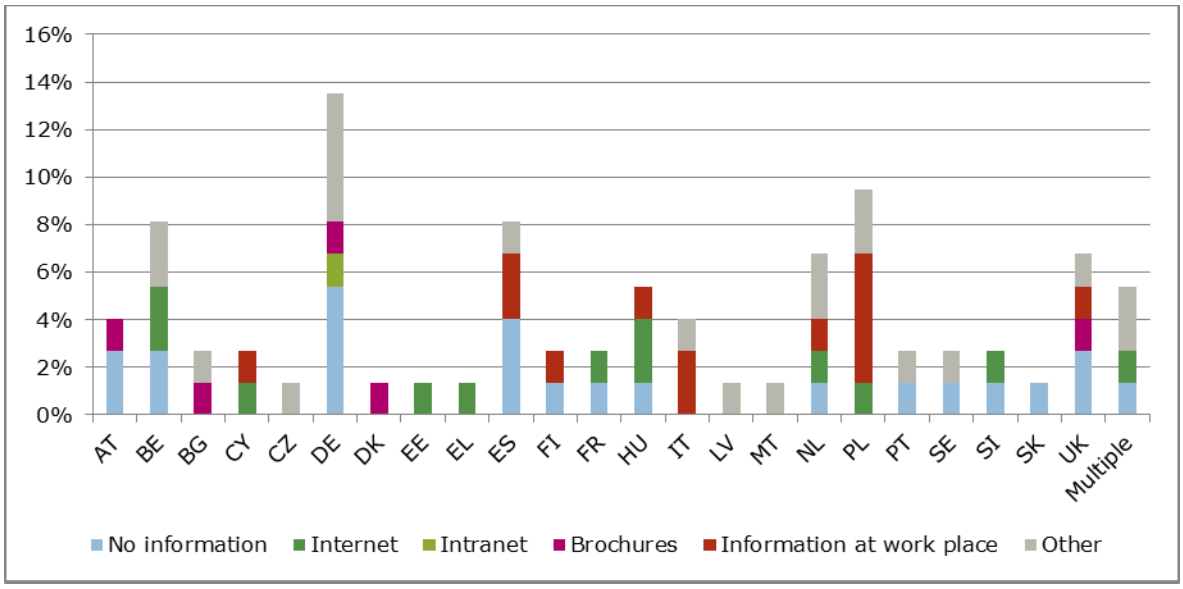
Figure 9: By organisation type: Please specify how your organisation provides information? (n=74)



[99] When we refer to a specific type of respondents, we always refer to the organisations who responded to the questionnaire.

Figure 10 concentrates on differences between the Member States who provided information. In ten Member States,[100] all of the respondent organisations provided information to EU workers on the free movement of rights. On the other hand, 50% or less of the organisations in seven Member States[101] provided information to the EU workers, although the amount of respondents was limited in most of these countries. Both Germany and Spain had a relatively high number of respondents. All of the labour unions provided information but none of the employer organisations did. In Germany, other respondents that provided information included a private company and a NGO. In Spain, a respondent from a NGO provided information, while a national authority did not.

Figure 10: By Member State: Please specify how your organisation provides information? (n=74)



Legal support to migrant workers

Table 3 and Figure 11 compare the answers regarding the possibility to take action on behalf of migrant workers in the country where the organisations were based, and the actual support that the organisations provided. It can be seen that more organisations provided legal advice to workers discriminated against on the grounds of their nationality (58%) than claimed to have the possibility to take action on behalf of migrant workers in the Member State where they were based (51%). Also, around half (51%) of the organisations provided other forms of support to EU workers discriminated against on the grounds of nationality.

Table 3: Legal/non-legal support to migrant workers

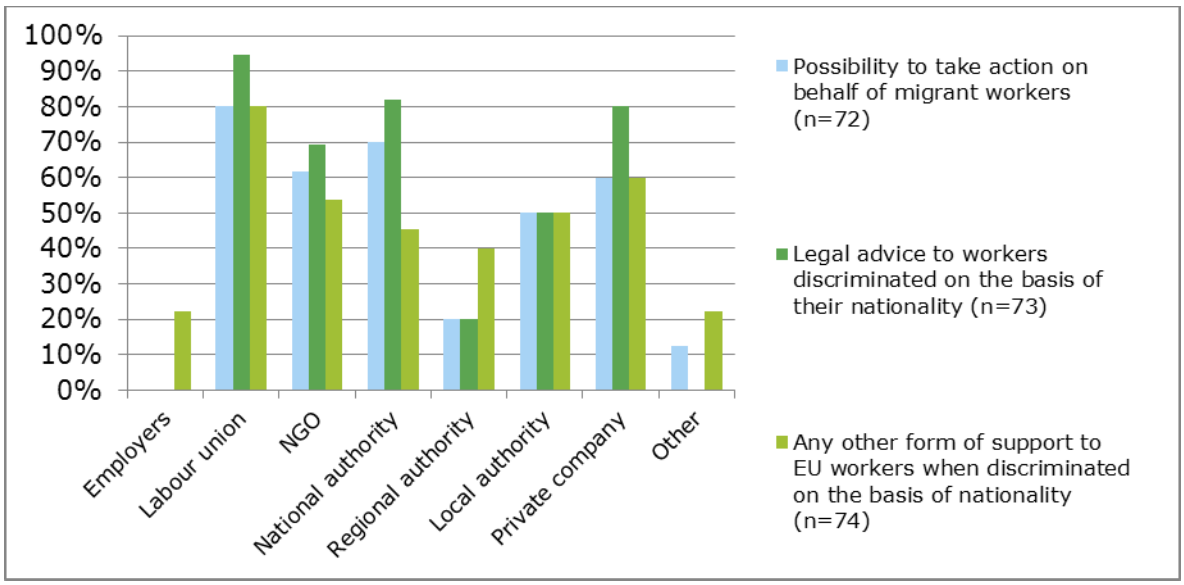
Support to migrants workers	Yes	No
Possibility to take action on behalf of migrant workers (n=72)	51%	49%
Legal advice to workers discriminated against on the basis of their nationality (n=73)	58%	42%
Any other form of support to EU workers when discriminated against on the basis of nationality (n=74)	51%	49%

Taking a closer look at the answers by different types of organisations presented in Figure 11, it can be seen that labour unions claimed the most often to have the possibility to take action on behalf of migrant workers in the country where they were based. These organisations also provided legal advice the most often, as well as other support to migrant workers. Moreover, around 80% of the national authorities and private companies and 70% of NGOs took action;

[100] BG, CY, CZ, DK, EE, EL, IT, LV, MT, PL.
[101] AT, ES, FI, FR, PT, SI, SK, SE.

even more of these organisations provided legal advice. Half of the local authorities had the possibility to take action, and these also provided legal and other support to workers. It should be noted that all of the employer organisations denied having a possibility to take an action on behalf of migrant workers, and only around 20% of the organisations provided any kind of support to EU workers discriminated against on the grounds of nationality.

Figure 11: Support to migrant workers by type of the organisation



The three questions presented above are analysed one by one in the following.

Does your organisation have the possibility to take an action on behalf of migrant workers in the country of the European Union where you are based? Please specify.

When looking at the corresponding figures in terms of Member States presented in Figure 12, it can be seen that in several Member States[102] the majority of the organisations had the possibility to take an action on behalf of migrant workers. However, this was not possible in the Czech Republic, Hungary or Slovenia.[103] Also, nine out of ten organisations denied having the possibility to take action in Germany[104], where labour unions have different views on the issue. Among other Member States with at least five respondents, less than half of the organisations were able to take an action in Poland and Spain, whereas half of the organisations had the possibility to act in Belgium[105]. As in Germany, some of the labour unions stated they had the possibility to take an action in Spain, whereas some did not. In the case of Poland, it clearly depended on the type of public authority on whether the organisation could take action.

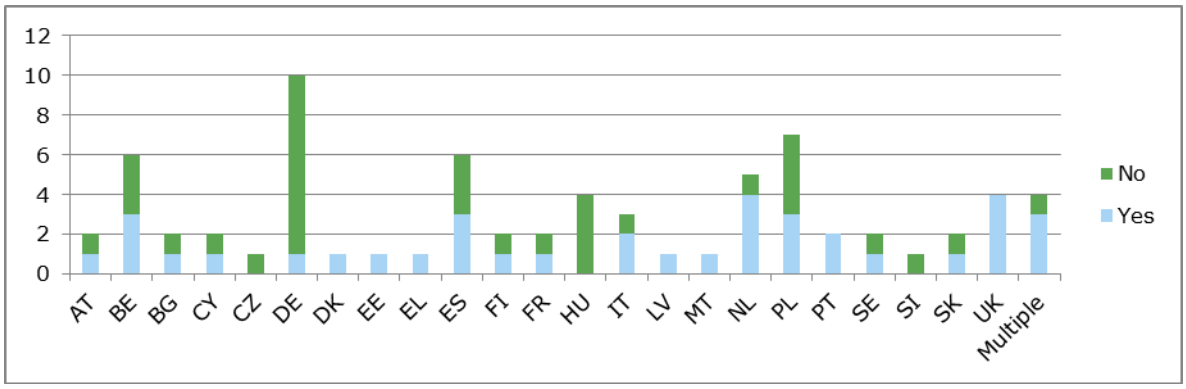
Figure 12: Possibility to take an action on behalf of migrant workers in the country of the European Union where you are based by Member State (n=72)

102 DK, EE, EL, IT, LV, MT, NL, PT, UK.

103 These organisations include national authority in Czech Republic; labour union, national authority, other organisation in Hungary; and employers' organisation in Slovenia.

104 Organisation not having the possibility to take action include: employers' organisations, labour unions, NGOs, a private company, while a labour union claims to have the possibility.

105 Organisations having the possibility to take action include: NGOs and a labour union, while an employers' organisation, a NGO and a non-profit organisation do not.



Actions the organisations could take included various measures, mainly dependent on the type of organisation. Legal advice was mentioned by 10[106] out of 14 labour unions. However, half of these organisations based in Germany, Latvia and the Netherlands specifically mentioned restrictions if workers were not members of these unions. Other commonly mentioned measures among labour unions included engaging in social dialogue, informing the national labour inspectorate, and providing other advice to migrant workers. National authorities that contributed to the consultation mentioned the possibility to raise infringement proceedings and make proposals for amending legislation. Five[107] out of seven NGOs specified that the organisations were able to provide legal advice. Another specified possibility among NGOs included advocacy work on providing help on issues concerning access to housing and access to emergency accommodation. Moreover, one of the NGOs explained that some of its member organisations set up transnational projects to assist migrant workers. As part of these projects, advice on general rights and labour laws and assistance in negotiating decent working contracts was provided prior to the departure. After arrival, a contact person was assigned to the migrant, and migrants also received practical assistance with tax issues and registration with the local authorities. In another example, the Finnish Evangelical Lutheran Church provided financial aid, legal and other consultation. Finally, a private company in the United Kingdom provided support by offering guidance on access to the labour market.

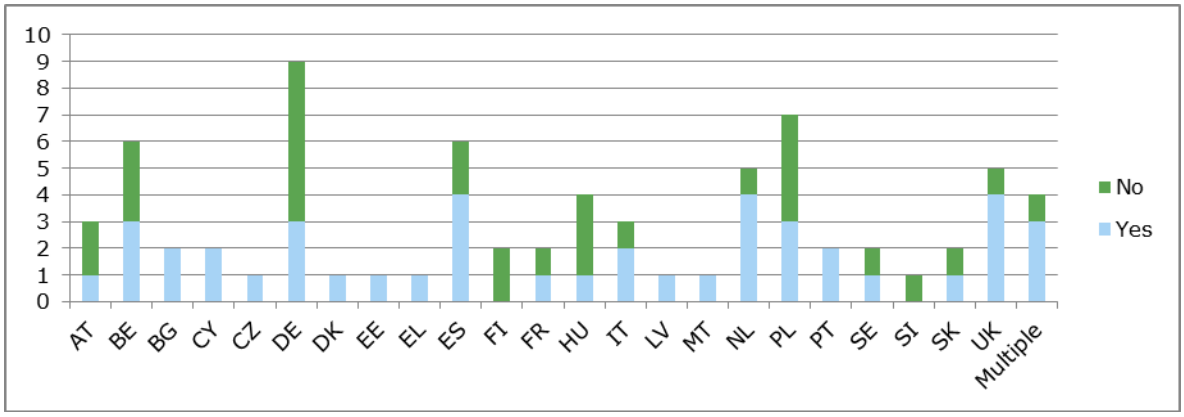
106 These organisations are based in BE, DE, ES, FR, LV, NL, UK.

107 These organisations are based in BE, AT, UK, PT.

Does your organisation provide legal advice to workers who have been discriminated against on the basis of their nationality?

As seen in Figure 13, the majority of the respondents provided legal advice in most of the Member States. However, in Finland and Slovenia, none of the organisations provided legal advice to workers who have been discriminated against on the basis of nationality.[108] Among Member States with at least five respondents, a clear majority of Spanish, Dutch and British organisations provided legal aid, while in Belgium[109] half of them did. In Germany and Poland, less than half of the organisations provided legal advice for those discriminated against[110].

Figure 13: Legal advice to workers who have been discriminated against on the basis of their nationality by Member State country (n=72)



Does your organisation provide any other form of support to EU workers when discriminated against on the basis of nationality?

In most Member States, other forms of support than legal advice were provided, as shown in Figure 14. There were, however, some Member States[111] where such support was not provided. Among those Member States where a minimum of five respondents were based (Germany, Poland, Spain, the Netherlands and United Kingdom), at least half of the organisations provided other forms of support, while in Belgium[112] only two out of six organisations claimed to do that.

Figure 14: Any other form of support to EU workers when discriminated against on the basis of nationality by Member State (n=73)

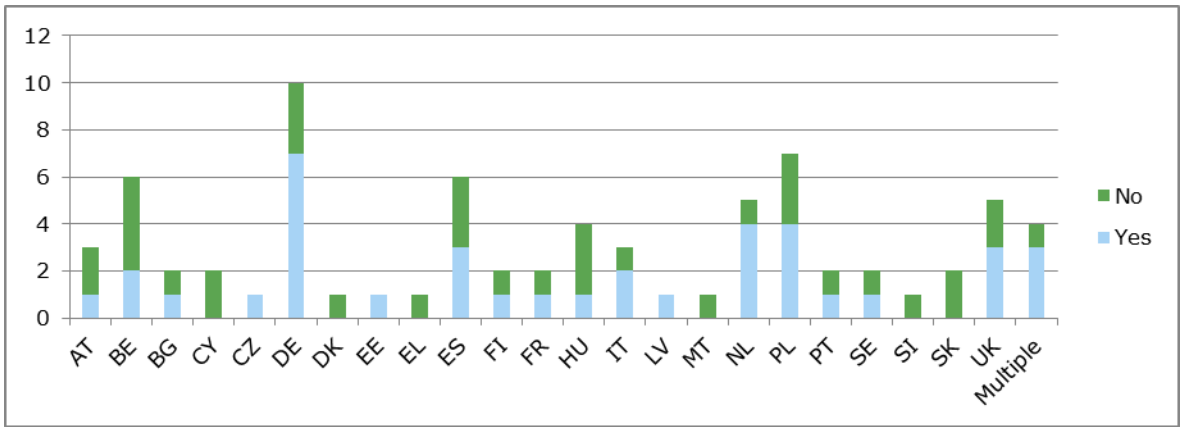
108 These organisations include employers' organisation and a national church in Finland and employers' organisation in Slovenia.

109 Organisations providing legal advice include: a labour union and most of NGOs, while an employers' organisation, a NGO and a non-profit organisation do not.

110 Organisations providing legal advice in Germany include: labour unions and a NGO, while employers' organisations, most of NGOs and a private company do not. In case of Poland it depends on the type of public authority.

111 CY, DK, EL, MT, SI, SK.

112 Organisation providing other form of support include: a labour union and a NGO, while employers' organisation, a NGO and a non-profit organisation do not.



In other cases, the nature of support varied according to the type of organisation rather than the country where respondents were based. For national authorities, other support included support from employment offices and labour inspectorates. Other organisations specified the provision of practical support and consulting as other support. The support and consulting usually consisted of providing information about the workers' rights, as well as advising what action could be taken in case of discrimination. In addition to providing practical support and consulting in a number of Member States[113], labour unions were involved with awareness-raising campaigns or similar activities[114], general advocacy work[115] and referring to an equality body[116]. NGOs were involved with general advocacy work[117] and referred to an equality body[118] in addition to practical support and consulting[119]. Employer organisations were involved in awareness-raising campaigns or similar activities on the rights of freedom of movement of workers[120] as well as in general advocacy work[121]. The national church in Finland was involved in general advocacy work in addition to providing practical support and consulting. General advocacy work mentioned above included producing reports, supporting collective agreements, public relations towards the media and lobbying. Awareness-raising campaigns consisted mainly of providing or supporting a website.

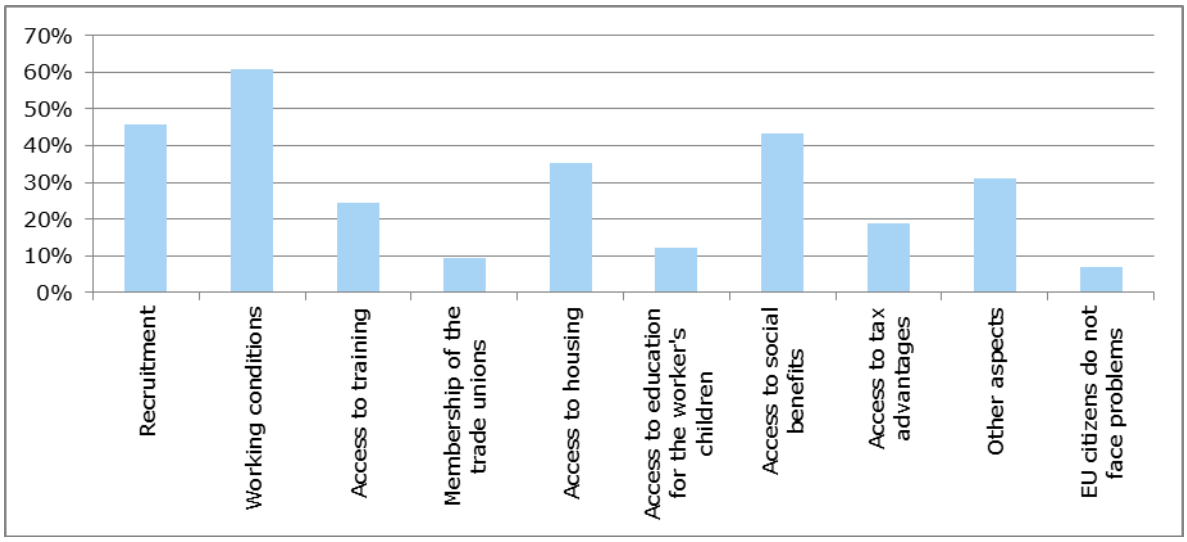
113 BG, DE, ES, IT, an European wide organisation.
114 DE, FR.
115 DE.
116 NL.
117 BE, DE, a worldwide organisation.
118 BE.
119 DE, ES, PL, UK, a worldwide organisation.
120 UK.
121 DE.

Removing obstacles to free movement of workers

According to your experience what are the main problems that EU citizens face when working in another country of the European Union?

As can be seen from Figure 15, the majority of the respondents (61%) considered working conditions (e.g. different pay, different career development) as one of the main problems EU citizens faced when working in another country of the European Union. This is clearly more than those who considered recruitment (e.g. different recruitment criteria) (46%) and access to social benefits (e.g. study grants, transport fare reductions, minimum subsistence payments) (43%) as main obstacles. Problems in terms of access to housing were recognised by 35% of the respondents, while 24% considered access to training and 19% access to tax advantages (e.g. non deductibility of living expenses incurred abroad, alimony payments or contributions to private medical insurance abroad, taxation on gross instead of net income or higher taxation of foreigners in the host Member State) among main problems. Problems regarding access to education for the workers' children in the educational system of the country where they work (12%) and membership of the trade unions (9%) were the least indicated obstacles. In addition to the above mentioned problems, other aspects included lack of adequate information and personal consultation, language barriers, time-consuming procedures and recognition of qualifications. The minority of 7% thought EU citizens do not face problems.

Figure 15: Main problems that EU citizens face when working in another country of the European Union (n=74)



When looking at the share of responses separately per each organisation type, it can be seen from **Table 4** that labour unions, as well as local, regional and national authorities, commonly considered working conditions as the main problem. In fact, all of the labour unions and local authorities considered this as one of the main problems, while a minimum 20% of all other types of organisations considered this a problem. Recruitment was also seen as an obstacle by all organisation types, but the local authorities (100%) experienced these types of problems the most. Respondents from NGOs most commonly considered recruitment as one of the main problems together with access to social benefits. 44% of respondents from private companies and 40% of private companies considered the same. In fact, with the exception of local authorities, access to social benefits was seen as an important problem regardless of the organisation type. Finally, 22% of the employer organisations and 20% of the private companies felt that EU citizens do not face problems. 9% of the national authorities and 8% of NGO shared this view s, but none of the labour unions, regional and local authorities agreed with it. Almost half of the NGOs saw other aspects as the main problems. These included lack of sufficient information concerning the workers' rights and differences between countries as regards e.g. taxes, health insurance costs, healthcare fees, provisions etc, lack of resources to personal consultation for border workers, lack of legal requirements in particular for posted workers, lack of information about vacancies, ineligibility for social and health insurances and unregulated working conditions.

Table 4: Main problems that EU workers face by organisation type (% of the total respondents in each organisation category)

Type of problem	Employers	Labour union	NGO	National	Regional	Local	Private	Other
Recruitment [122]	44%	55%	54%	18%	60%	100 %	40%	33%
Working conditions[123]	33%	100%	38%	55%	80%	100 %	20%	44%
Access to training	22%	40%	46%	9%	0%	0%	20%	0%
Membership of the trade unions	0%	25%	8%	9%	0%	0%	0%	0%
Access to housing	11%	50%	38%	36%	20%	0%	20%	44%
Access to education for the worker's children[124]	0%	15%	23%	0%	20%	0%	20%	11%
Access to social benefits[125]	44%	40%	54%	45%	40%	0%	40%	44%
Access to tax advantages [126]	22%	25%	23%	18%	0%	0%	0%	22%
Other aspects	33%	25%	46%	36%	0%	0%	40%	33%
EU citizens do not face problems	22%	0%	8%	9%	0%	0%	20%	0%
% of all answers	**10%**	**35%**	**21%**	**12%**	**5%**	**2%**	**5%**	**10%**

As presented in **Table 5**, the majority of the recurrent cases the organisations mentioned most dealt with working conditions. These include wage dumping and precarious working conditions without following collective agreements and legal minimum requirements. According to the respondents, migrant workers that come from Eastern European countries in particular received lower salary compared to nationals for the same positions, and also experienced more pressure to work unofficially without contributions to the social security by employers. Language problems were mentioned as one reason why these exploitative working conditions existed, as workers were not aware of their rights. Some organisations specifically mentioned home care workers and posted workers.

In the case of home care workers, the employees worked as "domestic helpers with additional maintenance tasks," resulting in a situation where they provided basic care. In many countries,

122 e.g. different recruitment criteria

123 e.g. different pay, different career development

124 in the educational system of the country where he works

125 e.g. study grants, transport fare reductions, minimum subsistence payments

126 e.g. non deductibility of living expenses incurred abroad, alimony payments or contributions to private medical insurance abroad, taxation on gross instead of net income or higher taxation of foreigners in the host State

these workers that came from new Member States were often not offered a work contract and therefore did not receive proper protection or working conditions, nor access to social security and training. Respondents stated that due to legal gaps, this undeclared employment was not perceived as an unlawful activity as domestic care work is not considered as "regular" work with all related workers' rights.

Problems with the situation of posted workers were mentioned by German and Swedish labour unions. For these workers, equal treatment regarding working conditions was only partially guaranteed. For example, even if posted workers were guaranteed a minimum salary, deductions (e.g. accommodation, transportation, meals, poor performance) often resulted in a low pay. At the same time, these workers needed to work more hours per week. German labour unions criticised the authorities in the country for not putting out enough effort to control and prevent this phenomenon. To mention a few more examples regarding working conditions, Dutch labour unions mentioned difficulties in appropriate working conditions and housing in the agriculture sector and among Polish workers. There was also discrimination in pay for seafarers embarked under a European flag different that of his/her residence.

Organisations also pointed out challenges regarding access to social benefits. This was often a result from situations where the workers were not properly reported to the authorities by their employer and adequate contributions were not made. There was also a lack of information about benefits and schemes that should be followed. Furthermore, there was a risk that migrant workers would fall between the social security schemes of different countries, or have too short periods of employment to be properly covered by the social security schemes. Organisations also mentioned recurrent cases in regards to recruitment. Problems mentioned dealt with the recognition of diplomas and experience, which also resulted in differing working conditions. For example, one of the Spanish employer organisations explained that because of language problems it was hard to certify and recognise the foreign drivers' licences and training needed to work as a professional driver. Bulgarians and Romanians encountered discrimination regarding recruitment because work permits were required. Problems regarding housing issues mostly dealt with the provision of bad and/or expensive housing by employers. Furthermore, a lack of information and knowledge of different procedures in different countries were often pointed out, along with the administrative burden that working in another Member State causes to employers and employees, particularly frontier workers and independents. In addition, other challenges mentioned dealt with access to services of employment offices, lack of information of job offers, lack of language skills and, more specifically in the case of Denmark, the Danish International Ship Register was not open for migrant workers.

Table 5: Recurrent cases

Problems	No. of cases
Recruitment	9
Working conditions	30
Access to training	3
Membership of trade unions	0
Access to housing	7
Access to education for the workers' children	2
Access to social benefits	11
Access to tax advantages	3
Other	12

Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality?

The majority of 61% either agreed or strongly agreed that the country where the organisation was based adequately protected workers against discrimination on the grounds of nationality, while 32% either disagreed or strongly disagreed. 7% of respondents did not have an opinion on this issue. **Table 6** below presents the respondents' answers more in detail.

Table 6: Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=74)

Opinion	No. of respondents	% of respondents
I agree strongly	9	12%
I agree	36	49%
Disagree	20	27%
Disagree strongly	4	5%
No opinion	5	7%

As seen in Figure 16, in 11 of the Member States,[127] all of the organisations based in these countries and expressing an opinion considered the country to adequately protect its workers. Organisations specified that relevant provisions ensuring equal rights existed in the national legislation in Austria and Poland. A labour union in Portugal mentioned the promising work of the national agency ACIDI, which worked with communities and social partners on immigrant/minority issues, as well as provided information and a wide range of services. The Czech national authority referred to the labour inspection and labour office, which monitored/controlled the observance of non-discrimination legislation regarding the access to employment in the labour market.

In six Member States (BG, CY, DK, EL, FR, SE), the situation was the opposite; none of the respondents based in these countries and expressing their opinion considered the protection as adequate. However, it should be noted that the number of respondents from these countries was very limited. Nevertheless, in Cyprus, a labour union specified that the implementation was failing even though the state provided adequate legal protection against discrimination based on ethnic origin. A Danish labour union provided an example of the Danish International Ship Register, which placed restrictions on non-domiciled workers. One French labour union explained that employees from other countries encountered less favourable working conditions than nationals. A Swedish labour union referred to the situation where trade unions did not always have a representative of the foreign company to negotiate working conditions with or practices in public procurement. This led to the possibility of dumping through the search for lower costs without taking into account the social aspects. In addition, a labour union that strongly disagreed with the fact that Italy adequately protects workers against discrimination stated that the Italian government does not provide enough information to immigrants regarding their rights. Rather, immigrants were considered more as a problem for national security than as EU citizens.

When looking at the situation in the Member States with a minimum of five respondents, it can be noted that the opinions are more diverse, with the exception of Poland[128]. In Germany, four[129] out of ten respondents agreed, while five disagreed. German organisations referred to the anti-discrimination legislation in the country, more specifically to the General Equal Treatment Act, while labour unions criticised the implementation of the legislation and an NGO called for further measures at the European level, such as introducing social progress clauses in the European Treaties and improving information practices. In Spain, where four out of six[130] respondents either agreed or strongly agreed, organisations also referred to the regulatory framework protecting organisations, but the implementation was similarly criticised because of lack of adequate mechanisms for compliance. Discrimination on the grounds of nationality or race was sanctioned in

127 AT, CZ, EE, FI, HU, LV, MT, PL, PT, SI, SK.

128 All the respondents represent public authorities.

129 Agree: employers' organisations, NGOs; disagree: labour unions, a NGO, a private company.

130 Strongly agree: a national authority; agree: employers' organisations, a labour union; disagree: a labour union, a NGO.

only a few cases. It was also reported that many services assisting migrants have been removed or their budgets reduced in Spain, meaning that charity organisations had to step in to provide these services. In the Netherlands, where three out of five[131] respondents either agreed or strongly agreed, a labour union that disagreed specified that despite the possibility to complain to the Equal Opportunities Commission or start court proceedings, migrant workers often found themselves in vulnerable positions due to language differences, temporary labour contracts and other issues. These workers did not even start proceedings before the Commission because they were afraid of losing their jobs.

Figure 16: Answers by Member State: Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=73)

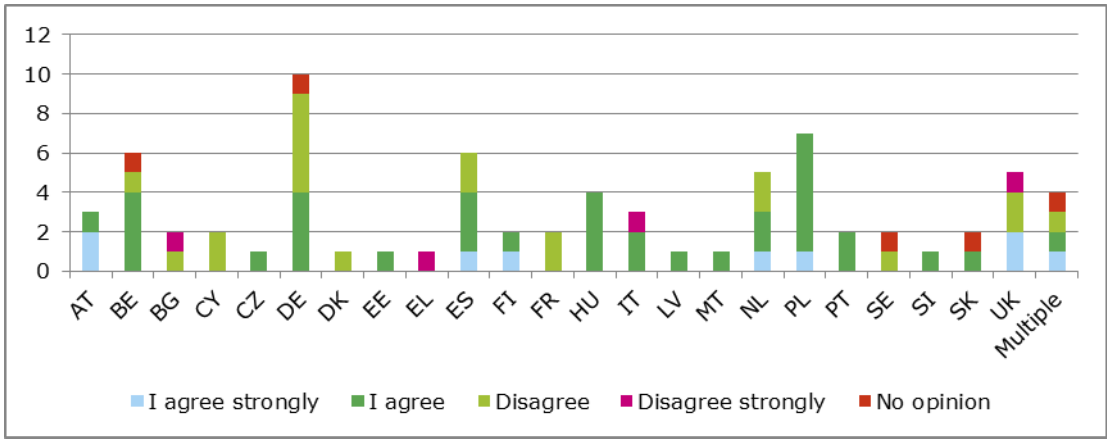
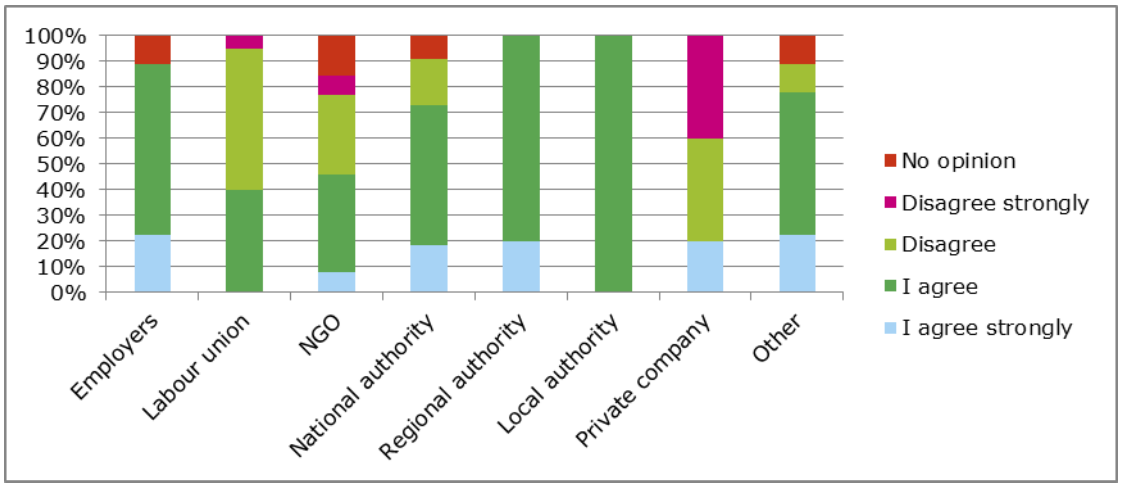


Figure 17 allows a closer look at whether different types of organisations share the same views regardless of the country they are based in. It seems to be clear that private companies, labour unions and NGOs were the most negative towards their countries' ability to protect migrant workers. More than 70% of other types of organisations considered the protection adequate, while all of the employer organisations and regional and local authorities expressing their opinion shared this view.

Figure 17: By organisation type: Do you think that the country your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=74)



Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of the European Union?

As **Table 7** presents, 80% of the respondents either agreed or strongly agreed that workers should be better protected from discrimination on grounds of nationality when working in a different

[131] Strongly agree: an employers' organisation; agree: a labour union; disagree: a labour union, a NGO.

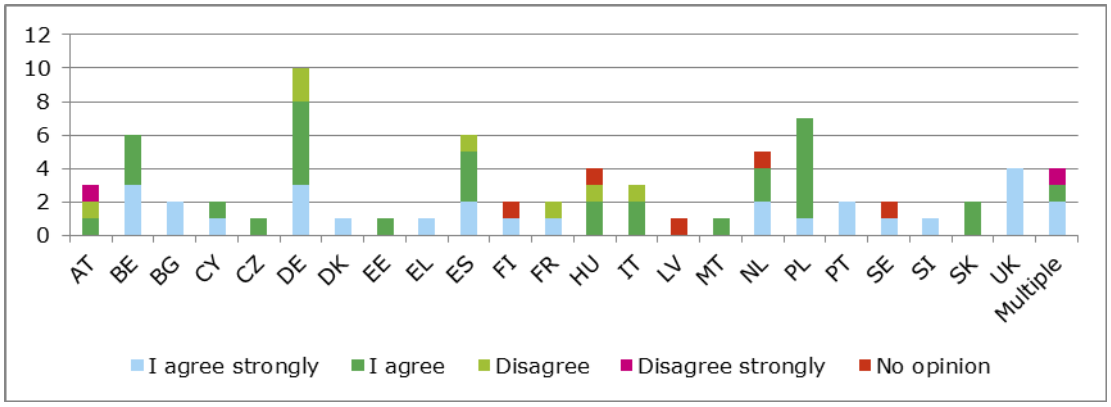
country of the European Union; 38% of respondents strongly agreed. Only 13% disagreed or strongly disagreed.

Table 7: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=73)

Opinion	No. of respondents	% of respondents
I agree strongly	28	38%
I agree	31	42%
Disagree	7	10%
Disagree strongly	2	3%
No opinion	5	7%

Figure 18 illustrates the situation according to the country the respondents were based. There are 13 Member States[132] where all organisations either agreed or strongly agreed that workers should be better protected. Austria is the only case where the majority of the respondents did not share this view.

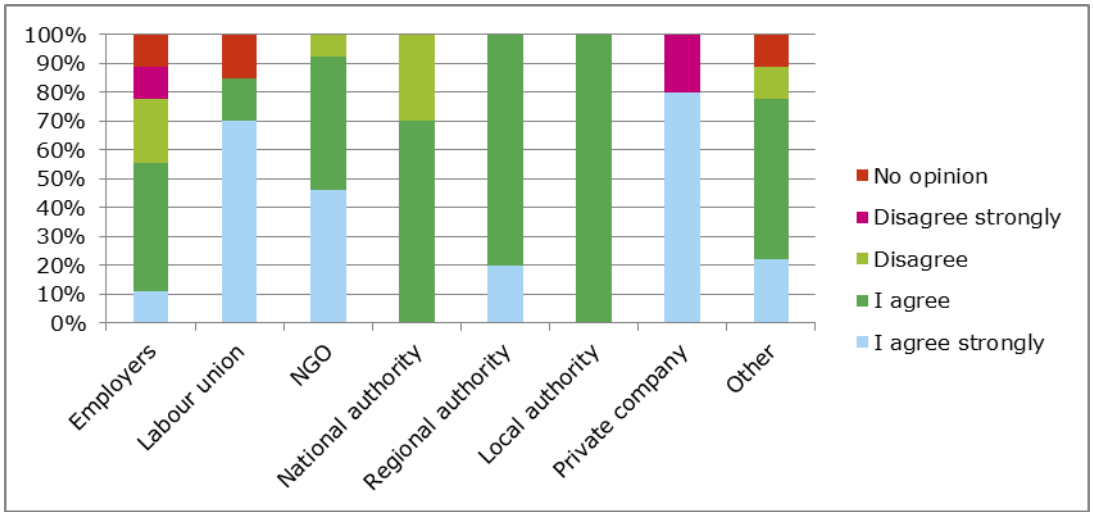
Figure 18: By Member State: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=72)



As Figure 19 illustrates, regardless of the organisation type, the majority of respondents either agreed or strongly agreed that workers should be better protected from discrimination on the grounds of nationality when working in a different Member State. All local and regional authorities agreed, and 70% of labour unions and 80% of private companies strongly agreed. Employer organisations (55%) agreed the least compared to other types of organisations.

Figure 19: By organisation type: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=73)

132 BE, BG, CY, CZ, DK, EE, EL, MT, PL, PT, SK, SL, UK



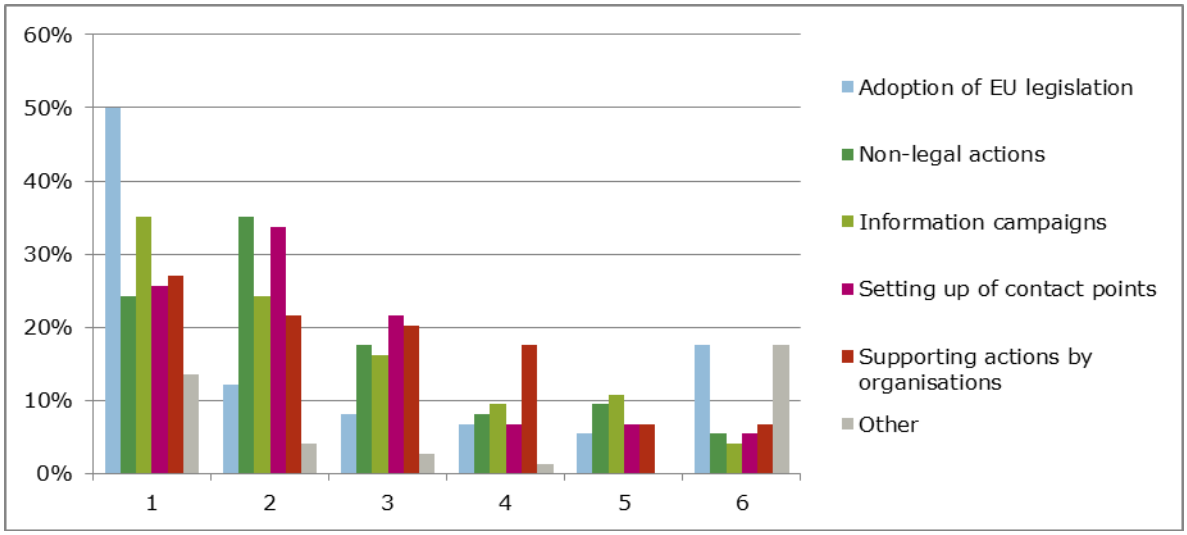
How do you think that it could be best achieved that workers could be better protected from discrimination on grounds of nationality when working in a different country of European Union?[133]

As Figure 20 illustrates, 50% of respondents indicated adoption of EU legislation that reinforces workers' rights as the most important measure to better protect workers from discrimination on the grounds of nationality when working in a different country of the EU. However, this question clearly divides opinions, as it was also rated as the least important option by 18% of the respondents. Information campaigns enjoyed the second strongest support, while 35% of the respondents chose it as the most important option. All of the other options (non-legal actions, e.g. exchange of good practices between EU countries, enterprises, labour unions; setting up of contact points in national administration and supporting actions by organisations with an interest in fighting against discrimination on grounds of nationality) were ranked highest by roughly 25% of the respondents. Non-legal actions and the establishment of a contact point were indicated as the second important action by approximately one-third of the respondents.

Other measures included EU level actions, such as establishing a clearing house to clarify the social status of EU citizens, and approving European regulations that ensure equality in the country of work, regardless of the country where the recruitment took place and whether the worker was temporarily displaced. At the same time, better implementation of existing legislation was seen as important. It was also stated that it was crucial for migrants to receive clear information about their rights, free legal advice and other support. Trade unions should also have access to work places and enhanced contacts between countries.

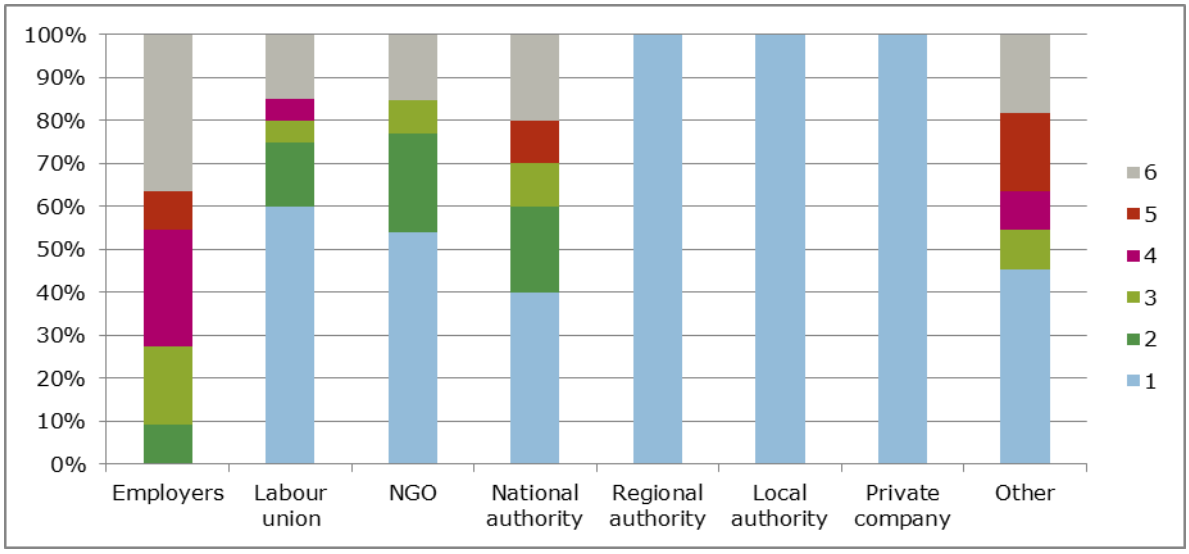
Figure 20: How do you think that it could be best achieved that workers could be better protected from discrimination on grounds of nationality when working in a different country of European Union? (1=most important, 6=least important) (n=74)

133 The respondents were asked to, in order of importance, rank the different options to better protect workers from discrimination on the grounds of nationality. Only 27 % of the respondents listed in order of importance the different options, while the rest placed several options in the same place. Nevertheless, all the answers are analysed and therefore answers rated from 1 to 6 do not equal to 100% in the figure 22.



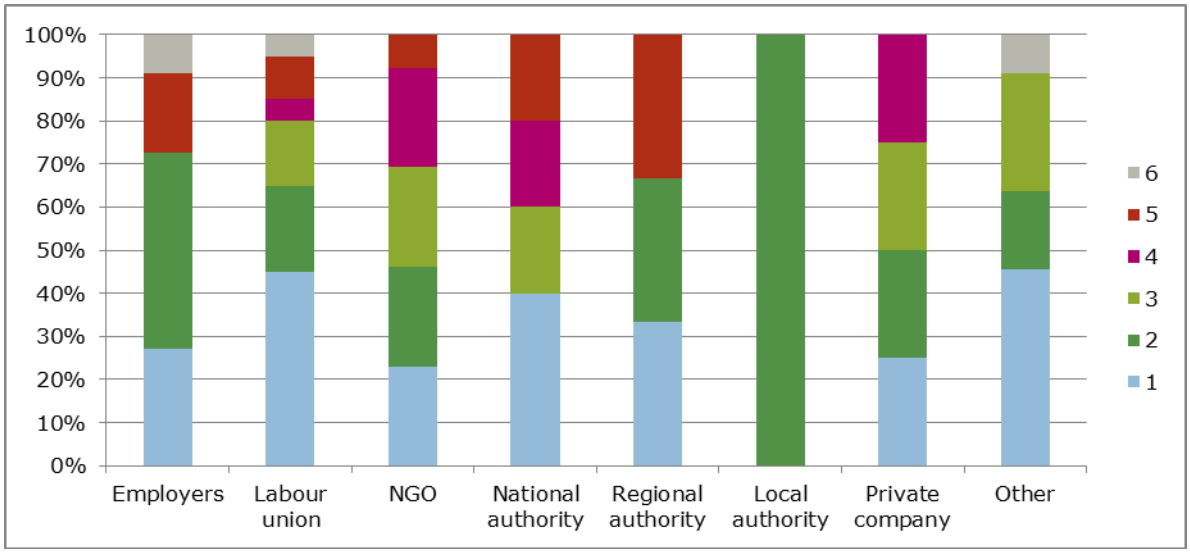
The following five figures (Figure 21, Figure 22, Figure 23, Figure 24, and **Figure 25**) look at the popularity of different options per organisation type. **Figure 21** shows that adoption of EU legislation reinforcing workers rights was stated as the most important action among all of the respondents from private companies, regional and local authorities. This view was shared by the majority of respondents from labour unions and NGOs. Among national authorities, 40% of the respondents considered it the most important, while 20% claimed it to be the least important action. It is clear that compared to other types of organisations, the respondents from employer organisations considered the action to be less important. In fact, 36% of employer organisations considered the action to be the least important, while none of the organisations considered it to be the most important.

Figure 21: Adoption of EU legislation reinforcing their rights (1=most important, 6=least important) (n=74)



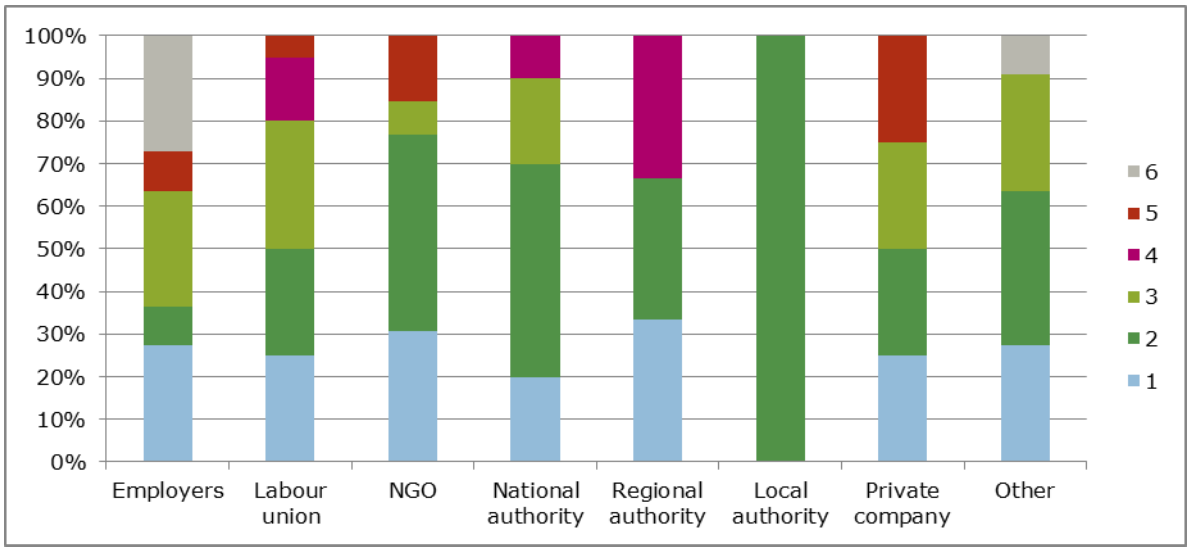
Information campaigns received fairly even support regardless of the organisation type. It can be seen that the respondents from employer organisations as a whole considered information campaigns more important than adoption of EU legislation.

Figure 22: Information campaigns (1=most important, 6=least important) (n=74)



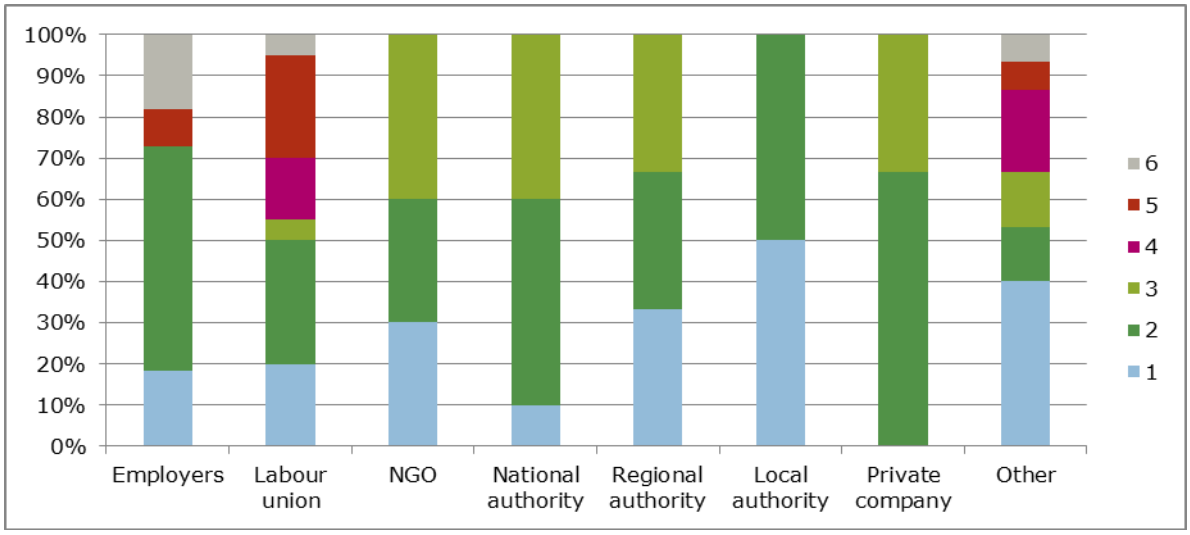
Similarly setting up contact points in national administration was considered important regardless of the organisation type. However, 27% of employer organisations considered this action the least important. Compared to information campaigns, NGOs and national authorities considered setting up contact points as more important.

Figure 23: Setting up of contact points in national administration (1=most important, 6=least important) (n=74)



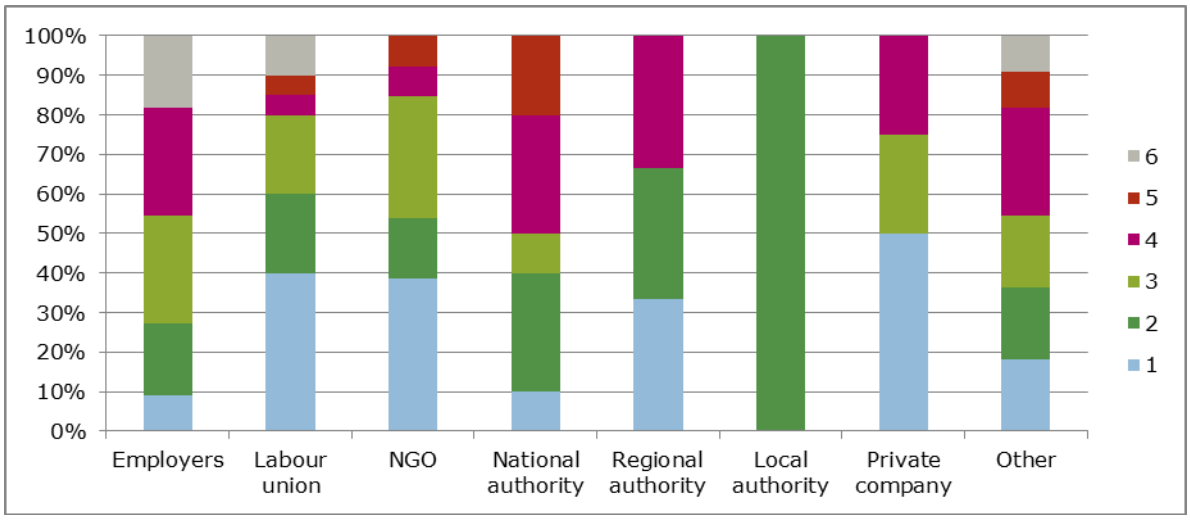
Non-legal actions were supported most by respondents from local authorities. Overall, employer organisations, NGOs, national and regional authorities and respondents from private companies considered non-legal actions more important than setting up contact points. Respondents from NGOs and regional authorities also clearly considered these actions as more important than information campaigns.

Figure 24: Non-legal actions (e.g. exchange of good practices between EU countries, enterprises, labour unions (1=most important, 6=least important) (n=74)



Finally, the support of actions by organisations with an interest in fighting against discrimination on grounds of nationality was considered among the respondents as the most important regardless of the type of organisation. The support was strongest among private companies, labour unions, NGOs and regional authorities.

Figure 25: Supporting actions by organisations with an interest in fighting against discrimination on grounds of nationality (n=74)



ANNEX 8 - RESOURCES OF EXISTING SUPPORT AND EQUALITY BODIES[134]

Member State	National body	Total N° of employees (full-time equivalent)	Total annual budget	Total number of cases in 2011 (all grounds of discrimination)	Part of activity devoted to discrimination based on nationality
Austria	Ombudsman for Equal Treatment	22.5	N/A	2,505	N/A
Belgium	Centre for Equal Opportunities and Opposition to Racism	100,9	8.9 M€	3718 “racial”	5 %
Bulgaria	Commission for Protection against Discrimination	77	1.2 M€	362	2.5%
Cyprus	Office of the Commissioner for Administration (Ombudsman)	9	0.5 M€	144 (complaints received by the Equality body alone - which operates within the Ombudsman's office)	26%
Czech Republic	Public Defender of Rights	113	3.8 M€	271	N/A
Germany	Federal anti-discrimination agency	25	2.6 M€	714	N/A
Denmark	Board of Equal Treatment	4	0.6 M€	190	23.5% (ethinc + national origin)
Estonia	The Gender Equality and Equal Treatment Commissioner	2	0.06 M€	47	4%
Greece	Obudsman	190	N/A	N/A	N/A
Spain	Council for the promotion of equal treatment	1	0.3 M€	N/A	N/A
Finland	Ombudsman for Minorities	11	0.8 M€	830	N/A
France	Defender of Rights	220	39,5 M€	8,183	2.5%
Hungary	Equal Treatment	22	0.4 M€	40	N/A

[134] Information from reports on Equality Bodies gathered by the legal experts' networks on gender equality and antidiscrimination.

	Authority				
Ireland	Equality Authority	33	3 M€	60	N/A
Italy	National Office against Racial Discrimination	18	2 M€	ethnic origin: 878	N/A
Lithuania	Office of the Equal Opportunities Ombudsperson	12	0.4 M€	170	9.5%
Luxembourg	Centre for Equal Treatment	2	0.08 M€	118	N/A
Latvia	National Equality Body	39	1 M€	43	2.5%
Malta	National Commission for the Promotion of Equality	15	0.25 M€	16	N/A
Netherlands	Equal Treatment Commission	70	0.6 M€	6,074	4%
Poland	Ombudsman	265	8,25 M€	1,033	4 %
Portugal	ACIDI – Alto Comissariado para a Imigração e Diálogo Intercultural	40	12,4 M€	N/A	N/A
Romania	National Council for Combating Discrimination	90	0.8 M€	465	7,09%
Sweden	Equality Ombudsman	85	10.6 M€	2,353	N/A
Slovenia	Advocate of the Principle of Equality	1	0.03 M€	33	N/A
Slovakia	Equality Body	13	0.5 M€	N/A	N/A
United Kingdom	Equality and Human Rights Commission	450 (2010) 180 (2015)	64.5 M€	66 strategic legal actions and interventions	N/A