

Opinion of the European Economic and Social Committee on 'Fairer labour mobility within the EU'**(exploratory opinion)**

(2016/C 264/02)

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In a letter dated 16 December 2015, the Ministry of Social Affairs and Employment asked the European Economic and Social Committee, on behalf of the Netherlands presidency of the Council and under Article 304 of the Treaty on the Functioning of the European Union, to draw up an exploratory opinion on:

Fairer labour mobility within the EU

(exploratory opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for the Committee's work on the subject, adopted its opinion on 4 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 232 votes to 2 with 5 abstentions.

1. Conclusions and recommendations

1.1. The EESC considers that, in the current political context, both the Commission and the Member States must make a special effort to guarantee and promote the free movement of workers in the EU abolishing any discrimination based on nationality, avoiding unjustified restrictions for both workers and businesses, given that they are fundamental freedoms enshrined in the TFEU and one of the most highly-valued achievements of the European integration process. The EESC support initiatives which can encourage and promote fair labour mobility within the EU, as expressed also by the Dutch presidency and the Commissions aim to promote mobility.

1.2. Labour mobility, when conducted under fair conditions and when it offers a positive option, can be enriching and beneficial for workers, employers and society as a whole. Labour mobility is a cornerstone of the internal market and can help to bring employment opportunities and prosperity to European citizens and companies. It can be an important element in achieving the objectives of economic growth and employment in the EU, helping to balance out the different employment levels in Member States, providing labour and talent where there is a shortage, can help ensure a more effective use of human resources and can also promote the transfer of knowledge, innovation and skills development, which is essential in a world undergoing technological change. Labour mobility can also help offset the effects of the ageing of the workforce in the country of destination.

1.3. It can, however, in some cases and in certain sectors, lead to what is called 'brain drain', where in particular young people from certain countries with high rates of unemployment, move in search of a job or better opportunities for work. At the same time the positive value of free movement of labour must not be weakened or questioned by any unsubstantiated fear of all kind of abuses.

1.4. In order to avoid such situations, the EESC urges the Commission and the Member States to promote economic policies aimed at boosting growth and productivity and creating high-quality jobs in every Member State with a view to improving the living conditions of all European citizens.

1.5. Fair mobility requires ensuring compliance with the principles of equal treatment and non-discrimination on the grounds of nationality in accordance with the European *acquis* for European mobile workers exercising the right of freedom of movement, who are subject to the working conditions and wage-setting rules of the host country, in full respect of national systems for collective bargaining and industrial relations.

1.6. The EESC urges the Commission to address, in consultation with the social partners, all necessary issues regarding posted workers to address unfair practices that lead to social dumping. Similarly, any new measures at European level must respect national competences for collective bargaining and the different systems of industrial relations.

1.7. Concerning cross-border/frontier workers, the EESC considers that it is necessary to monitor the situation and collect data at EU level, in order to remove possible obstacles and ensure free and fair mobility of these workers.

1.8. The EESC calls on the Commission, in line with its stated desire to end social dumping and abuses, not to allow other internal market initiatives to facilitate these practices (incl. the planned service passport).

1.9. Labour inspection is required to play a key role in guaranteeing fair mobility. For this to be possible, the EESC calls on the Member States to provide sufficient competencies, staff and resources for national inspectorates and labour-market monitoring authorities, while supporting the improvement of European cross-border labour-market inspection tools Incl. improvement in cross-border enforcement of penalties.

1.10. The EESC supports streamlining the rules on the coordination of social security systems and cooperation among the Member States for their implementation and underlines the need for any revision of Regulation (EC) No 883/2004 ⁽¹⁾ to show due regard for the principle of equal treatment of mobile workers to ensure they do not lose acquired rights or find that they have no rights as a result of moving to another Member State in order to work.

2. Introduction

2.1. The EESC is drawing up this exploratory opinion on fairer labour mobility in the EU at the request of the Dutch Presidency, which states in its priorities that 'worker mobility can boost economic growth and employment, but the downside has to be addressed to increase public support for the free movement of workers'.

2.2. The free movement of workers is a basic freedom of the internal market and one of the pillars of the European integration process. It is furthermore one of the achievements most highly valued by the people of Europe. Developed on the basis of freedom of movement, the internal market has contributed to economic growth, employment and opportunities for citizens, workers and businesses. Labour mobility carried out under fair conditions can be beneficial to workers, businesses and society as a whole. It should therefore be facilitated by eliminating obstacles to it insofar as possible. Unfair competition or discrimination against workers should not be tolerated in the internal market.

⁽¹⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

2.3. Labour mobility can also entail a number of disadvantages that need to be addressed in order to reduce their risks and to enable both workers and businesses to benefit fully from the opportunities it offers.

2.4. The EU is working to increase fair labour mobility in Europe by removing barriers that hinder it. In its 2016 work programme, the European Commission announced that it would put forward labour mobility proposals containing measures 'to tackle abuse by means of better enforcement and coordination of social security systems and [...] present a targeted revision of the Posting of Workers Directive ⁽²⁾ to address unfair practices leading to social dumping and brain drain by ensuring that the same work in the same place is rewarded by the same pay', and to promote labour mobility in the EU.

2.5. The purpose of this opinion is to address the various aspects of labour mobility at a time when labour markets still suffer high levels of unemployment and are undergoing major upheaval, against a backdrop of globalisation, societal change and technological innovation.

2.6. Following decades of very low intra-community mobility, EU enlargement, the 2008 crisis and rising unemployment have increased the migration of workers. In 2014, there were some 15 million mobile workers in the EU, compared with just under 12 million in 2006 ⁽³⁾. In the same year, there were 8,3 million mobile workers of working age living and working in another Member State, equivalent to 3,4 % of the entire workforce, in addition to the 1,6 million people living in one country but working in another (cross-border workers) ⁽⁴⁾.

2.7. However, various factors mean that the free movement of citizens and workers in the EU is currently in doubt. The EESC is concerned about this development. The restrictions being imposed in the Schengen area by some Member States as a result of the influx of refugees ⁽⁵⁾ as well as exceptions to the equal treatment of intra-EU mobile workers agreed with the United Kingdom at the meeting of the European Council of 18 and 19 February 2016 ⁽⁶⁾ could affect one of the most highly-valued achievements of the European integration process.

2.8. Free movement of workers and the abolition of any discrimination based on nationality are fundamental principles enshrined in the Treaty on the Functioning of the European Union (TFEU), which should be guaranteed and promoted. Furthermore, Schengen is central to European integration and the proper functioning of its economy. It should be a priority and an obligation for the EU and its Member States to ensure that the borders remain open and that citizens have an equal right to move freely and reside and work in any Member State.

2.9. Since this impacts on workers and businesses in particular, the Commission must consult the social partners, both at sectoral and inter-sectoral level, about the need for any initiative in this area and its possible content. Similarly, any new measures at European level must respect national competences for collective bargaining and the different systems of industrial relations.

⁽²⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

⁽³⁾ European Commission, *Employment and Social Developments in Europe 2015*, p. 33.

⁽⁴⁾ European Commission, *Speech by Commissioner Marianne Thyssen on Europe's vision for fair labour mobility*, Dublin, 13 November 2015.

⁽⁵⁾ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/index_en.htm

⁽⁶⁾ The Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union and notably its section D on social benefits and free movement.

3. General comments

3.1. The freedom of movement of workers is governed by Article 3.2 of the Treaty on European Union and Articles 4.2, a, 20, 26 and 45 to 48 of the Treaty on the Functioning of the European Union (TFEU). It entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration, and other conditions of work and employment. It allows access to the rights of mobility and residence as well as to economic and social rights, the basic rules governing which are set out in Directive 2004/38/EC on freedom of movement and residence in the EU⁽⁷⁾ and Directive 2014/54/EU on measures facilitating the right to work in another Member State⁽⁸⁾.

3.2. The freedom of movement of workers establishes the right to move freely as well as the right to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action. This therefore comprises freedom of movement itself and the right to equal treatment in employment, social services, education and training, among other things.

3.3. Labour mobility, when conducted under fair conditions, can be beneficial for workers, businesses and society as a whole. It can represent a major opportunity for the personal, economic and social development of citizens and workers and must therefore be facilitated.

3.4. Mobility is a key factor of employability and developing talent and can be a way to address the differences between Member States' employment rates by offsetting labour shortages wherever they arise and making better use of workers' skills. It provides greater job opportunities for workers and offers employers greater scope in their search for talent. Mobility can consequently be a major element in achieving the Europe 2020 objectives for employment and economic growth.

3.5. Labour mobility can also help promote knowledge transfer, innovation and the development of human capital, which is essential at a time of globalisation and rapid technological change. In the right conditions, fair labour mobility should encourage interaction between Europeans and should improve mutual knowledge and acceptance, thereby contributing to a more tolerant and inclusive society.

3.6. But nor can we ignore the fact that labour mobility also entails a number of disadvantages. Europeans working in another Member State are sometimes, and for a variety of reasons, more vulnerable to abuse and discrimination with respect to social security, working conditions and wages, access to social benefits and education, taxation, etc. These factors can also distort competition between businesses, especially in labour-intensive sectors such as construction, which has a high concentration of very small businesses. Mobility can moreover result in family separation and difficulties in integrating into another country, due to linguistic, cultural and other barriers. The EESC has drawn up a number of opinions on the importance of supporting mobility within the EU and removing these barriers⁽⁹⁾.

3.7. The ongoing poor economic outlook, high unemployment and lack of job prospects in some EU countries are leading a number of workers, particularly young people, to look for a job or better wages and working conditions in other countries. This may have a positive side, insofar as it enables young people to work abroad, gaining experience and developing their skills, instead of being unemployed in their country of origin. What is more, once they return, the experience they have gained will benefit their country. On the other hand, this mobility can create the problem known as 'brain drain' and can exacerbate the impact of the ageing of the population in the countries of origin.

⁽⁷⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

⁽⁸⁾ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014, on measures facilitating the exercise of rights conferred on workers in the context of the freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

⁽⁹⁾ OJ C 424, 26.11.2014, p. 27; OJ C 18, 19.1.2011, p. 74; OJ C 228, 22.9.2009, p. 14.

3.8. In addition, a high level of mobility can lead to major challenges and spark tensions in the labour market of the countries of destination, particularly if the economic situation does not ensure an adequate level of growth and job creation to avoid increased unemployment.

3.9. One prerequisite for maximising the benefits of labour mobility within the EU, whilst at the same time reducing the risks it poses and enabling both workers and businesses to fully benefit from the opportunities it affords, is to promote an economic policy to boost growth, productivity and job creation, enabling living conditions to rise in all countries.

3.10. The public perception in some countries that labour mobility may entail social and wage dumping, combined with the unfounded belief that mobile workers exploit social and public services — so-called ‘benefit tourism’ —, helps to fuel hostility towards labour mobility. In response to these perceptions, various studies have found no evidence that higher social benefits in countries other than the country of origin constitute a significant reason for labour mobility. This is confirmed by the lower take-up of these benefits by intra-EU mobile workers compared with nationals. When mobile workers make more intensive use of certain benefits, this is due to specific socioeconomic circumstances⁽¹⁰⁾. Studies show that the link between mobility and social benefits is minimal, with the country’s unemployment rate and salary levels playing a much bigger role⁽¹¹⁾.

4. Specific comments

4.1. Fairer labour mobility

Fair labour mobility means ensuring that mobile workers exercising their right to free movement in accordance with the EU *acquis* are being treated in accordance with the principles of equal treatment and non-discrimination. To that end, it is essential for Member States to guarantee that existing legislation in the field of social rights and of working and wage conditions is applied and fully enforced for mobile workers, so as to avoid the risk of social and wage dumping and unfair competition among businesses. This also has a positive value for the internal market.

4.1.1. Similarly, the institutional, administrative and linguistic barriers that continue to hamper labour mobility must be overcome, taking concrete measures such as the provision of information and advice to mobile workers, in collaboration with the EURES network and the European Union network of public employment services, measures to improve language skills, the recognition of vocational qualifications, etc. in line with proposals set out in previous EESC opinions⁽¹²⁾.

4.1.2. Fair labour mobility should also be accompanied by measures to ensure growth and job creation in all EU countries, in order to avoid the differences between them deepening and to ensure that everyone benefits from this mobility.

4.1.3. Only under these conditions can fair labour mobility be guaranteed as a positive option for workers, and not as a choice they feel forced to make.

⁽¹⁰⁾ European Commission, *A fact finding analysis on the impact on the Member States social security systems of the entitlements of non active intra-EU migrants to special no contributory cash benefits and healthcare granted on the basis of residence*

⁽¹¹⁾ Giuletti Corrado, IZA-World of Labor, *The welfare magnet hypothesis and the welfare take-up of migrants*, p. 5.

⁽¹²⁾ OJ C 327, 12.11.2013, p. 65, OJ C 424, 26.11.2014, p. 27; OJ C 18, 19.1.2011, p. 74 and OJ C 228, 22.9.2009, p. 14.

4.2. Posting of workers

4.2.1. Posted workers have a different legal regime insofar as they do not make use of their right to free movement. It is the employer who benefits from the freedom to provide services by posting workers temporarily to another country. Employers and workers both benefit from not having to change the place of work stipulated in the contract and can keep up social security contributions in the country of origin.

4.2.2. The legal regime applicable to posted workers is governed by Directive 96/71/EC⁽¹³⁾ and its Implementing Directive 2014/67/EU⁽¹⁴⁾, adopted in May 2014.

4.2.3. Although there are no official statistics on the wages of posted workers, one report commissioned by the EC⁽¹⁵⁾ notes that in the construction and transport sectors their wages can be up to 50 % lower than those of local workers. These differences can be explained by the incorrect application of minimum wages and other reasons such as the tendency to classify posted workers at a low level in the conventional classification scale. Though smaller, differences also exist in other productive sectors which vary from country to country. It is important to highlight the variety of information sources: labour inspections, reports by trade unions and employer organisations, the media⁽¹⁶⁾.

4.2.4. The Court of Justice of the European Union (CJEU) has also addressed the issue of the wage applied to posted workers, with the result that its case law has generated a great deal of controversy. This situation led the Commission to propose Directive 2014/67/EU⁽¹⁷⁾ in order to improve measures to tackle fraud and abuse relating to the posting of workers. Member States have until 18 June 2016 to transpose the Implementing Directive. The EESC has already argued that this Directive, though a step towards strengthening the social dimension of the internal market, is not enough to satisfy the Committee's requirements⁽¹⁸⁾.

4.2.5. In the context of the labour mobility package, the Commission announced a targeted revision of the Posting of Workers Directive 'to address unfair practices leading to social dumping and brain drain by ensuring that the same work in the same place is rewarded by the same pay'⁽¹⁹⁾. On 8 March, it published its legislative proposal for the revision of the Directive⁽²⁰⁾, prior to the presentation of the labour mobility package and before the deadline for transposing the implementing directive. The EESC will deal with all issues relating to it in a separate opinion on the Commission proposal.

4.2.6. In any event, the EESC notes with interest the European Commission's stated intention to put an end to social dumping. The EESC reiterates what has been said in the opinion SOC/460, 'stressing the importance of guaranteeing the protection of posted workers, respecting the various labour market models in the Member States and discouraging social dumping and unfair competition'. It is important — also in the future — to strike the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers. The EESC will come back on this.

4.2.7. The EESC calls on the Commission, in line with its stated desire to end social dumping and abuses, not to allow other internal market initiatives to facilitate these practices (incl. the planned service passport).

⁽¹³⁾ Op. cit.

⁽¹⁴⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

⁽¹⁵⁾ European Commission, *Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors. Final Report.*

⁽¹⁶⁾ *Ibid.*, pp. 18-20.

⁽¹⁷⁾ Op. cit.

⁽¹⁸⁾ OJ C 351, 15.11.2012, p. 61.

⁽¹⁹⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2016 COM(2015) 610 final.

⁽²⁰⁾ Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, COM/2016/0128 final.

4.3. *Cross-border workers*

Cross-border workers are, according to Regulation (EC) No 883/04, covered by the social security system of the country where they work. However, in certain cases they might be subject to some forms of discrimination because of insufficient enforcement of the existing rules. It is therefore necessary to monitor the situation and collect data at European level, in order to remove possible obstacles to free movement to cross-border workers and ensure the proper application of EU and national law, in accordance with the principle of non-discrimination and equal treatment.

4.4. *The role of labour inspection*

4.4.1. The EESC considers that national labour inspection has to play a crucial role in fighting bogus businesses, underpayment and undeclared work by ensuring that the rights of mobile and posted workers are respected and enforced, and abuses prevented. This will also make it possible to prevent distortion of competition among businesses.

4.4.2. The absence of controls in some countries — due to the lack of an appropriate labour inspectorate, the adequate competencies, the relevant know-how or the necessary resources — facilitates abuse. Labour inspectorates and other labour market monitoring authorities can be effective only if they are adequately funded and have enough staff, with appropriate training. In this connection, rules at European level are required incl. improvement in cross-border enforcement of penalties, together with support for Member States experiencing difficulties in creating such infrastructure.

4.4.3. Combined with this, the improvement of European cross-border inspection tools, as suggested in the European Parliament resolution of 14 January 2014 ⁽²¹⁾, would help to identify and take steps against cases of social dumping, especially by identifying bogus businesses.

4.4.4. This would fit in entirely with the recently established EU platform against undeclared work.

4.5. *The portability of social rights and the protection of mobile workers*

4.5.1. The EESC supports streamlining the rules on the coordination of social security systems and cooperation among the Member States for their implementation and underlines the need for any revision of Regulation (EC) No 883/2004 to show due regard for the principle of equal treatment of mobile workers to ensure they do not lose acquired rights or find that they have no rights as a result of moving to another Member State in order to work.

4.5.2. Ensuring the portability of social rights for mobile workers is another key aspect of fair mobility, both for those who go to work in another country and those who return to their country of origin after having worked in another country.

4.5.3. In order to facilitate the free movement of people and promote labour mobility, the EU has pursued the approach of coordinating social security systems with a view to regulating relations between national systems, without altering the substance of their rules.

4.5.4. A number of developments in the treaties have led to rules being promoted on the coordination of social security systems. These include Regulation (EEC) No 1408/71 (Basic Regulation) and Regulation (EEC) No 574/72 (Implementing Regulation), replaced by Regulation (EC) No 883/2004 (Basic Regulation) and Regulation (EC) No 987/2009 ⁽²²⁾ (Implementing Regulation). Regulation (EC) No 883/2004 is currently under review.

⁽²¹⁾ European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe P7_TA(2014)0012.

⁽²²⁾ 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 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

4.5.5. The EESC intends to issue a detailed report as soon as the Commission has made available its proposal for the revision of Regulation (EC) No 883/2004. As already stated in an earlier opinion, the legislative framework must be adapted to the changing realities in the world of work, to new forms of employment and, above all, to new forms of mobility⁽²³⁾.

4.5.6. The EESC believes that the principles of equal treatment, aggregation of periods, exportability of benefits and the determination of the applicable legislation (unicity principle) are fundamental for free movement of labour and should be ensured in any future revision of Regulation (EC) No 883/2004.

4.5.7. Regarding the free movement of jobseekers in another country, the EESC notes Commissioner Thyssen's statement of 13 November 2015 in Dublin: 'The right to movement of jobseekers also needs to be upheld in our view — particularly in light of the highly diverging unemployment figures between Member States. It is essential, however, that this is not at the expense of the host country's social security system. With this in mind, we want to make it possible for someone who becomes unemployed to take his unemployment benefits to another country where he may have a better chance of finding a job. This is already possible today for a period of 3 months'. The Commission wants to prolong it to 6 months.

4.5.8. Regulation (EC) No 883/2004 is complex, and national authorities therefore need to cooperate closely in order to ensure that differences in national regulations do not hinder free movement, and information needs to be as clear as possible to ensure that benefit recipients and businesses understand their rights and obligations. In addition, the use of electronic means should be stepped up, as should cooperation between Member States in order to minimise the information requirements placed on workers and businesses.

Brussels, 27 April 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽²³⁾ OJ C 228, 22.9.2009, p. 14.