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PROPOSAL

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Subject:	Proposal for a 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

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2013) 236 final



Brussels, 26.4.2013
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2013/0124 (COD)

Proposal for a

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**

(Text with EEA relevance)

{SWD(2013) 148 final}

{SWD(2013) 149 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

General context

Freedom of movement for workers is one of the four fundamental freedoms on which the Single Market is based. It is one of the core values of the European Union and a fundamental element of EU citizenship. Article 45 TFEU enshrines the right of EU citizens to move to another Member State for work purposes. It specifically includes the right not to be discriminated against on the grounds of nationality as regards access to employment, remuneration and other conditions of work. It also includes the removal of unjustified obstacles to the freedom of movement of workers within the European Union. The Charter of Fundamental Rights of the European Union confirms in Article 15(2) that every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

Regulation (EU) No 492/2011¹ details the rights derived from the freedom of movement of workers, and defines the specific areas where discrimination on the grounds of nationality is prohibited, in particular as regards²:

- access to employment
- working conditions
- social and tax advantages
- access to training
- membership of trade unions
- housing
- access to education for children

Article 45 TFEU and Regulation (EU) No 492/2011 are directly applicable in all Member States. This means that there is no need to adopt national legislation to transpose those provisions. Any national authority at any level and any employer, whether public or private, must apply and respect the rights stemming from those provisions.

In spite of this, EU citizens who want to move or who actually move from one Member State to another for work purposes continue to face problems in exercising their rights. The difficulties they face go some way to explaining why geographical mobility between EU Member States has remained at a relatively low level: according to the EU-Labour Force Survey, in 2011, only 3.1% of the working-age European citizens (15-64) lived in an EU Member State other than their own³.

¹ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ L 141, 27.5.2011, p. 1–12. This regulation codifies Regulation 1612/68 and its successive amendments.

² For a full description of the rights stemming from article 45 TFEU and Regulation 492/2011, please consult the Communication of the Commission «Reaffirming the free movement of workers : rights and major developments» COM(2010) 373 final of 13 July 2010, supplemented by the Commission Staff Working Document.

³ Eurostat, EU-Labour Force Survey 2011. However, it should be noted that available data sources tend to underestimate the number of mobile EU citizens living/working in other EU Member States, either because those citizens do not register when living in other Member States or because existing surveys

A Eurobarometer survey in 2009 showed that while 60% of European citizens considered free movement of workers to be a good thing for European integration, only 48% thought it was positive for individuals. Moreover, according to the results of a more recent Eurobarometer (September 2011)⁴, 15% of European citizens would not consider working in another Member State because they feel there are too many obstacles.

Similarly, the European Parliament's report on 'Problems and prospects concerning European citizenship' of 20 March 2009 detailed persisting obstacles to the cross-border enjoyment of rights. It called on the Commission to produce a list of obstacles to the exercise of EU citizens' rights, based on the results of a public consultation, and make specific proposals to address those obstacles.

More recently the European Parliament by its Resolution on promoting workers' mobility within the European Union of 25 October 2011 calls on the Commission and Member States to take measures in order to *"to guarantee...the correct implementation of the existing legislation on non-discrimination, to take practical measures to enforce the principle of equal treatment of mobile workers..."*⁵

In its Conclusions of EPSCO Council of March 2009 on Professional and geographical mobility of the workforce and the free movement of workers within the European Union, the Council invited the Commission and the Member States 'to promote measures supporting labour and social mobility as well as the equal treatment and non-discrimination of migrant workers in line with the *acquis*' and to 'further develop appropriate strategies and tools for the identification and analysis of barriers to geographical and professional worker mobility and to effectively contribute to the removal of existing barriers, in accordance with the Treaties'.

The report delivered by Mr Monti on 9 May 2010 ('A new Strategy for the Single Market') underlines the fact that the overall freedom of movement of workers is a success from a legal point of view, but it is the least used of the four freedoms of the Single Market. The report points out that the majority of Europeans see too many obstacles to working elsewhere in the EU and a number of legal and administrative barriers still remain in the field of free movement of workers. According to the report, obstacles in this area are the hardest to overcome.

In July 2010, in its Communication on "Reaffirming the free movement of workers: rights and major developments"⁶ the Commission pointed out that it will explore ways of tackling the new needs and challenges (in particular in the light of new patterns of mobility) facing EU migrant workers and their family members, and in the context of the new strategy for the single market will consider 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.

This objective was reinforced in the 2010 EU Citizenship Report "Dismantling the obstacles to EU citizens rights"⁷ of 27 October 2010. The Commission identified the divergent and

mainly cover persons who are 'usually resident' in a country and not the short-term mobile workers (e.g. staying only a few months).

⁴ Eurobarometer 363 "Internal Market: Awareness, Perceptions and Impacts", September 2011 http://ec.europa.eu/public_opinion/archives/ebs/ebs_363_en.pdf

⁵ [http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2011/10-25/0455/P7_TA-PROV\(2011\)0455_EN.pdf](http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2011/10-25/0455/P7_TA-PROV(2011)0455_EN.pdf)

⁶ COM(2010) 373 final of 13 July 2010

⁷ COM(2010)603

incorrect application of EU law on the right to free movement as one of the main obstacles that EU citizens are confronted with in the effective exercise of their rights under EU law. Accordingly, the Commission announced its intention to take action to 'facilitate free movement of EU citizens and their third-country national family members by enforcing EU rules strictly, including on non-discrimination, by promoting good practices and increased knowledge of EU rules on the ground and by stepping up the dissemination of information to EU citizens about their free movement rights'⁸.

In its Employment package of 18 April 2012 (Communication from the Commission "Towards a job-rich recovery")⁹, the Commission announced its intention to "present a legislative proposal (information and advice) in order to support mobile workers in the exercise of rights derived from the Treaty and Regulation 492/2011 on freedom of movement for workers within the Union".

President Barroso (Political guidelines for the 2010-2014 Commission) has also underlined the gap between theory and practice and has called for the principle of free movement and equal treatment to become a reality in peoples' everyday lives. In his State of the Union address on 12 September 2012, President Barroso underlined the need to create a European labour market, and make it as easy for people to work in another country as it is at home¹⁰.

The gap between the rights that EU citizens have in theory and what happens in practice has also been underlined in several reports from institutions and, increasingly, the European Union is being called upon to act in this regard¹¹. 2013 has been designated as the European Year of Citizens¹². 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.

Over the years, the Commission has received a lot of complaints from citizens who want to move, or who have actually moved to another EU country for work purposes, and whose rights are not respected. Citizens feel unprotected in the host Member State and unable to overcome the obstacles they face.

The Problem

There are many different examples of obstacles and problems:

(a) Public authorities not complying with EU law (non-conforming legislation or incorrect application) and the effect on EU migrant workers

Problems with compliance of national legislation and general practices still persist in Member States and continue to be reported to the Commission. These include:

- different conditions applied for recruitment of EU nationals;

⁸ Action 15 of the 2010 EU Citizenship Report

⁹ COM(2012) 173 final of 18 April 2012

¹⁰ <http://ec.europa.eu/soteu2012/>

¹¹ Report by 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.

¹² Decision 1093/2012/EU of the European Parliament and of the Council of 21 November 2012 on the European Year of Citizens (2013), OJ L 325, 23.11.2012, p. 1

- nationality conditions for access to posts which are not covered by the exception in Article 45(4) TFEU;
- introduction of nationality quotas for EU citizens (e.g. in the field of sport at professional level);
- different working conditions for EU nationals (remuneration, career prospects, grade, etc.);
- access to social advantages made subject to conditions which are more easily met by nationals than by EU citizens (e.g. a residence condition);
- professional qualifications and experience acquired in other Member States are not taken into account or they are taken into account in a different way than those obtained in the host Member State for the purpose of access to employment (e.g. additional points are awarded to the latter);
- residence condition required by national legislations for access to study grants for EU migrant workers and members of their families despite well-established case law of the CJ in this area;
- discrimination against frontier workers.

(b) Employers and legal advisors not complying with EU law

Information collected by experts and by the Commission¹³ suggests that there is a recurrent problem with public and private employers' awareness of EU rules, regardless of whether the legislation at national level is compliant or not. Being unaware of the rules and lack of understanding seem to be the main reasons for this problem, especially when it comes to private employers (e.g. only residents for a certain period can apply for a job vacancy, no recognition of previous professional experience or professional qualifications acquired in another Member State, excessive language requirements etc.).

Legal advisors are also not always aware or familiar with Union law on free movement of workers.

(c) EU migrant workers not having access to information or the means to ensure their rights

In several surveys¹⁴, citizens have mentioned that they do not know where to turn to when faced with problems concerning their EU rights. There is also evidence that migrants find it difficult to access the protection available to them, for example, they are not aware of national procedures and systems, they lack the linguistic ability to access services or the cost of legal advice and assistance is too high.

The problems identified affect EU citizens who move to another Member State for employment purposes and come back to their Member State of origin in order to work.

Objectives

In order to tackle these problems specific objectives have been identified:

- lessening discrimination against EU migrant workers on the grounds of nationality;
- closing the gap between EU migrant workers' rights on paper and their exercise in practice by facilitating the correct implementation of existing legislation;

¹³ See below under point 2.

¹⁴ Eurobarometer 363 "Internal Market: Awareness, Perceptions and Impacts", September 2011 http://ec.europa.eu/public_opinion/archives/ebs/ebs_363_en.pdf

- reducing the incidence of unfair practices against EU migrant workers;
- and empowering EU migrant workers to ensure their rights are respected.

2. RESULTS OF CONSULTATION WITH INTERESTED PARTIES AND OF IMPACT ASSESSMENT

2.1. Consultation with interested parties

(a) Network of experts on free movement of workers

The network of legal experts in the field of free movement of workers reports annually on the legal situation pertaining in the European Union¹⁵.

The first report¹⁶, finalised in January 2011, focused on the enforceability of the right to equal treatment on the basis of nationality as regards EU migrant workers and on the existing legal framework in each Member State. The report came to the conclusion that this right is rarely given the same level of protection and guarantees as the right to equal treatment on other grounds (such as race, age and sex). EU migrant workers are still perceived in most of the EU countries as holding a status closer to that of third-country national workers than to that of national workers. Many EU migrant workers facing discrimination based on their nationality have to rely on a generous interpretation of national law adopted to implement the EU equality Directives combating discrimination on other grounds.

The second report, submitted in October 2011, presented an overview of the main problems surrounding application of the rules on free movement of workers identified in each Member State. There are some problems, apparently of a systemic nature in some Member States, which simply constitute unlawful discrimination. Most of the problems stem from indirect discrimination or unjustified restrictions on the exercise of workers' right to free movement. For example, residence criteria governing eligibility for certain social and tax advantages, excessive language requirements, or Member States failing to take into account years worked in a similar post in other EU Member States for the purpose of calculating a public-sector employee's seniority and associated advantages.

(b) Discussion within the Advisory Committee on free movement of workers

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 a series of meetings of the Advisory Committee on Free Movement of Workers between October 2010 and October 2012. The members of the Advisory committee, made up of representatives of Member States and Social Partners represented at European and national level, were also asked to reply to a questionnaire issued by the Commission. The questionnaire was designed

¹⁵ 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>

¹⁶ Thematic report "Application of Regulation 1612/68", January 2011 <http://ec.europa.eu/social/main.jsp?catId=475&langId=en>

to identify what action is being taken at national level to inform, assist, support and protect EU workers in relation to the implementation of Regulation (EU) No 492/2011.

The members of the Committee acknowledged the importance of the real and effective application of existing rights. Suggested responses to this need ranged from awareness raising activities to stronger enforcement of the rules and better access to information and support for EU migrant workers. During the meeting of the Advisory Committee on free movement of workers of 30th October 2012, Social partners, both ETUC and Business Europe, expressed broadly favourable positions to the proposal of a Directive.

(c) Public consultation

The Commission carried out a public consultation between June and August 2011. Citizens, national authorities, labour unions, employers' organisations, and associations (NGOs, associations of independent professionals, etc.) gave their views on the main problems workers face when exercising their right to free movement, on the current level of workers' protection 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 were from organisations, including national authorities. Among the responses from 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. Adoption of EU legislation was the most important course of action suggested by trade unions, NGOs, private companies, regional and local authorities and citizens. National authorities were divided. Employers clearly indicated that awareness-raising is very important. Setting up contact points or structures in the Member States was seen as an important measure by the majority of respondents. Exchanges of practice between EU countries was also considered an important tool, while non-profit organisations, trade unions, private companies and regional authorities¹⁷ saw supporting organisations as important.

2.2. Impact assessment

In line with its policy on better regulation, the Commission conducted an impact assessment of policy alternatives, based on an external study¹⁸, which concluded in April 2012.¹⁹

The different policy alternatives contain a range of options representing different degrees of EU intervention: maintaining the status quo, effecting change without regulation, or regulating. With respect to the latter, the options provide differentiated scenarios ranging from soft intervention (non-binding legal instrument such as a Recommendation) to maximum intervention in the form of a binding legal instrument such as a Directive.

¹⁷ A summary of the responses received is included in annexes 7 and 8 of the Commission Staff working document annexed to this proposal "Initiative to support EU migrant workers in the exercise of their rights to free movement".

¹⁸ Multiple Framework Contract VT 2011/012, Study to analyse and assess the socio-economic and environmental impact of possible EU initiatives in the area of freedom of movement of workers, in particular with regard to the enforcement of the current EU provisions (VC/2011/0476).

¹⁹ 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, <http://ec.europa.eu/social/main.jsp?catId=474&langId=en>

All these options were analysed against the general objectives.

The Impact Assessment demonstrated that a binding legislative initiative would impact tangibly on the exercise of free movement rights. A binding legal instrument imposing obligations on Member States to adopt appropriate measures to ensure that there are effective mechanisms for the dissemination of information and advice to citizens is an effective and efficient way of achieving the stated objectives.

The preferred option is a Directive combined with other initiatives, such as common guidelines on specific subjects to be adopted by the Technical Committee²⁰ on free movement of workers. A Common Guidance document would address the specific issue of the application of EU law in the field of the free movement of workers.

A Directive introducing measures intended to support EU migrant workers confronted with problems of free movement would aim to raise national authorities' awareness of the issue and increase their action against discrimination on the grounds of nationality. Through increased visibility of the issue, citizens would become more informed about their rights and public and private sector employers and other stakeholders' (NGOs, Social Partners...) would also become more aware. Moreover, without creating additional burdens on employers, a Directive would significantly contribute to better understanding and enforcement of EU law by specifically requiring Member States to ensure that stakeholders are better informed. Additionally, by providing a specific means of redress against any breach of rights under Article 45 TFEU and allowing third parties to intervene on behalf of EU migrant workers, it will become easier for citizens to exercise their rights and receive support in doing so.

The draft impact assessment was endorsed by the Impact Assessment Board ('IAB') in July 2012. The opinion of the IAB as well as the final Impact Assessment and its executive summary are published together with this proposal.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. General context — summary of the proposed action

The present proposal for a Directive aims to improve and reinforce the way in which Article 45 TFEU and Regulation (EU) No 492/2011 are applied in practice across the European Union by establishing a general common framework of appropriate provisions and measures for facilitating a better and more uniform application of rights conferred by EU law on workers and members of their families exercising their right to free movement.

The proposal for a Directive introduces, in particular, legal obligations in order to:

- guarantee EU migrant workers an appropriate means of redress at national level. Any EU worker who believes that he/she has been the victim of discrimination on the grounds of nationality should be able to make use of appropriate administrative and/or judicial procedures to challenge the discriminatory behaviour;
- further protect workers by ensuring that associations, organisations or other legal entities with a legitimate interest in the promotion of the rights to free movement of workers may

²⁰ Technical Committee foreseen by Regulation 492/2011 is composed by representatives of Member States.

engage in any administrative or judicial procedure on behalf or in support of EU migrant workers where there has been a violation of their rights;

- set up structures or bodies at a national level which will promote the exercise of the right to free movement by providing information and supporting and assisting EU migrant workers who suffer from nationality based -discrimination;

- raise awareness by providing employers, workers, and any other interested parties with easily accessible relevant information;

- promote dialogue with appropriate non-governmental organisations and the social partners.

3.2. Legal basis

This proposal is based on Article 46 TFEU, the same legal base as Regulation (EU) No 492/2011, which allows for the adoption of Regulations or Directives under the ordinary legislative procedure.

3.3. Subsidiarity and proportionality principles

The problems identified with respect to the application and enforcement of EU Law on the free movement of workers, and in particular of Regulation (EU) No 492/2011, are linked to the objectives set out in Article 3(3) TEU, under which the European Union established an internal market based on a highly competitive social market economy, aimed at full employment and social progress, and in Articles 45 (freedom of movement and non-discrimination on the grounds of nationality for EU workers) and 18 TFEU (non-discrimination on the grounds of nationality for EU citizens).

The applicable EU rules need to be applied appropriately and effectively. Differences and disparities in the way Regulation (EU) No 492/2011 is applied and enforced in the different Member States are detrimental to the proper functioning of free movement as a fundamental freedom. There is evidence to suggest it is very difficult to create the required level playing field for workers exercising their right to free movement throughout the EU. Under these circumstances, the necessary legal clarity and certainty can only be achieved at EU level.

The objectives of the proposal cannot be sufficiently achieved by Member States and action at EU level is therefore required.

In line with the principle of proportionality, this Directive does not go beyond what is necessary in order to achieve the objectives. In order to improve the application and enforcement of Regulation (EU) No 492/2011 in practice, it proposes preventive measures, such as the guarantee of appropriate means of redress and the provision of information support and advice in accordance with national traditions and practices.

Bearing in mind the nature of the proposed measures, it will give Member States the freedom to choose the implementing measures best suited to their national judicial systems and procedures.

3.4. Detailed explanation of the proposal

3.4.1. CHAPTER I GENERAL PROVISIONS

3.4.1.1. Article 1 - Subject matter

Article 45 TFEU is a provision of EU law which is directly applicable in the national judicial order of Member States and which directly confers on European citizens the right to move to another Member State for work purposes and to accept offers of employment, to work there without needing a work permit, to reside there for that purpose and to stay there even after employment has finished. It also confers the right to enjoy equal treatment with nationals as regards access to employment, remuneration and other conditions of work and employment. Thus it implies the abolition of any discrimination (direct or indirect) based on nationality in the exercise of these rights as well as of any unjustified obstacle which impedes the exercise of the right to free movement²¹.

Regulation (EU) No 492/2011 is also a legal instrument which by its nature is directly applicable and Member States do not have to take implementing measures in order for their citizens to be able to rely on the rights conferred by that Regulation.

The rights conferred by that Regulation on individuals, which will be easier to enforce under the present proposal, are those contained in Chapter I “Employment, Equal treatment and Workers’ families, in Articles 1 to 10. They concern in particular access to employment (Section 1, Eligibility to employment, Articles 1 to 6), equal treatment in relation to employment and working conditions (Section 2, Employment and equality of treatment, Articles 7 to 9) and the family members of the worker (Section 3, Workers’ families, article 10).

The present proposal for a Directive does not concern Chapter II of Regulation (EU) No 492/2011, *Clearance of vacancies and applications for employment* (Articles 11 to 20), Chapter III, *Committees for ensuring close cooperation between the Member States in matters concerning the freedom of movement of workers and their employment* (Articles 20 to 34) or Chapter IV, *Final provisions* (Articles 35 to 42).

3.4.1.2. Article 2-Scope

The proposal does not modify the scope of application of the Regulation (EU) No 492/2011. It only applies in cases of discrimination on the grounds of nationality in relation to the matters covered by that Regulation, by introducing the provisions of protection, information and support, in accordance with Articles 3 to 7 of the present proposal for a Directive. It underpins the guarantee of equal treatment and reinforces remedies in cases of unjustified obstacles in relation to eligibility and access to employment for workers exercising their right to free movement within the European Union.

In this context the proposal for a Directive covers the following matters:

- access to employment;
- conditions of employment and work in particular as regards remuneration and dismissal

²¹ See in particular in Case C-325/08: Judgment of the Court of 16 March 2010, *Olympique Lyonnais SASP v Olivier Bernard, Newcastle United FC*, ECR 2010, p.I-2177.

- access to social and tax advantages;
- membership of trade unions;
- access to training;
- access to housing;
- access to education for workers' children.

3.4.2. CHAPTER II - ENFORCEMENT

3.4.2.1. Article 3- Defence of rights - Means of redress - Time limits

This Article imposes a legal obligation on Member States to provide EU migrant workers with appropriate means of redress at national level. It also relates to the enforcement and defence of rights, which in itself concerns a fundamental right. The Charter of Fundamental Rights of the European Union confirms the right to an effective remedy for everyone whose rights and freedoms guaranteed by the law of the European Union are violated or not respected. The proposal covers both judicial and extra-judicial means of redress, including alternative dispute settlement mechanisms such as conciliation and mediation. Ombudsmen and equality bodies or other similar structures may also provide an alternative to the general courts. In accordance with Article 47 of the Charter of Fundamental Rights of the European Union this Article provides that, in case where Member States only provide for administrative procedures, they shall ensure that any administrative decision may be challenged before a tribunal.

In conformity with the case-law of the CJ²², paragraph 2 of this Article specifies that the previous paragraph is without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment, provided that these time limits are such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of rights conferred by Union law on free movement of workers.

3.4.2.2. Article 4 - Action of associations, organisations or other legal entities

This Article introduces an obligation for Member States to ensure that associations, organisations or legal entities (such as trade unions, NGOs or other organisations) may engage in any administrative or judicial procedure on behalf or in support of EU migrant workers in the event of violations of their rights under either the Directive or under Regulation (EU) No 492/2011. It would be left to Member States' discretion to define the way this provision should be implemented in practice, according to the national judicial systems and procedures.

Associations, organisations or other legal entities can play a significant role in the defence of rights on behalf of or in support of a worker and members of his/her family²³. The assistance could be different from one Member State to another according to their judicial system, procedures, traditions and practices (e.g. the trade unions could intervene, or bear the costs or assisting victims of discrimination).

Mirroring Article 3 the second paragraph of Article 4 specifies that the first paragraph is without prejudice to national rules relating to time limits for bringing actions.

²² Judgement of 16th May 2000 in case C-78/98 Preston ECR 2000 p. I-03201.

²³ At present, this right under different forms exist in the majority of Member States except Germany, Estonia and Malta.

3.4.3. *CHAPTER III - PROMOTION OF EQUAL TREATMENT - CONTACT POINTS, STRUCTURES OR BODIES - DIALOGUE*

3.4.3.1. Article 5 – Contact points, structures or bodies.

This Article provides for structures on information, promotion and support or for bodies to be established at national level to support EU migrant workers and promote, analyse and monitor the rights conferred on them and the members of their families by EU law. These functions may, however, also be exercised by existing bodies already established by Member States to fight discrimination on other grounds in the context of the implementation of EU legislation, or agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights. In this case Member State must ensure allocation of sufficient resources to the existing body for the performance of additional tasks. To this end the training of experts could be eligible under the European Social Fund.

The tasks of these structures or bodies should include:

- (a) Providing information to all relevant stakeholders and increasing support for EU migrant workers; providing advice and assistance to alleged victims of discrimination pursuing their complaints, without prejudice to the rights of the legal entities referred to in Article 4. Whilst in some countries equality bodies established under EU Directives fighting discrimination on other grounds have legal standing and can bring a case to court, in others, they can only provide assistance to the claimant, or provide observations to the court.
- (b) Conducting independent surveys concerning discrimination on the basis of nationality;
- (c) Publishing independent reports and making recommendations in relation to equality of treatment and the fight against nationality based discrimination.
- (d) Publishing information on any issue relating to the application at national level of EU rules on free movement of workers.

It would be left to each Member State to decide whether creating a completely new structure is necessary, or whether existing bodies can be assigned the tasks described above for the promotion of non-discrimination exist in all Member States. At present 'nationality' could be covered by the competence of existing Equality bodies in 19 Member States²⁴.

Moreover, this Article provides for synergies between existing or new structures or bodies with other information, promotion and support tools at EU level, such as Your Europe, SOLVIT, EURES, Enterprise Europe Network and the Points of Single Contact.

Building on existing structures has the advantage of benefiting of the existing knowledge and experience. It also increases simplicity and accessibility since it avoids the risk of creating confusion and uncertainty as to where to turn in case of problems.

²⁴ AT, BE, BG, EE, FI, FR, HU, IE, IT, LT, LV, NL, PL, PT, RO, SE, SL, SK, UK. For more information please refer to the Commission Staff working document annexed to this proposal "Initiative to support EU migrant workers in the exercise of their rights to free movement", point 3.1.3.

3.4.3.2. Article 6 - Dialogue

This Article requires Member States, in accordance with national traditions and practices, to take adequate measures to encourage and promote dialogue with social partners and non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of nationality.

3.4.4. *CHAPTER IV - ACCESS TO INFORMATION*

3.4.4.1. Article 7 - Dissemination of information

This Article provides for the appropriate dissemination of information about the rights of workers and members of their families in relation to equal treatment arising from the Directive and from Articles 1 to 10 of Regulations (EU) No 492/2011. The more effective the system of public information and prevention is, the less need there should be for individual remedies. The proposal for a Directive leaves the choice of information tools to the Member States, but on line or digital information with links to the existing information tools at EU level, Your Europe and EURES websites should be made compulsory.

However, this can be complemented by any other public information activities reflecting the best practices noted by the national experts and stakeholders such as awareness-raising campaigns or specific information. The active role of social partners, equality bodies, NGOs and other associations could also be very important in the dissemination of the information.

3.4.5. *CHAPTER V - FINAL PROVISIONS*

3.4.5.1. Article 8 - Minimum requirements

The first paragraph is a standard 'non-regression' provision which specifies that Member States may have, or may wish to adopt, legislation providing for a higher level of protection than that guaranteed by the proposed Directive.

The second paragraph expressly indicates that Member States have the discretion to extend the competencies of the bodies referred to in Article 5 to encompass also non-discrimination on grounds of nationality for all EU citizens and their family members exercising their right to free movement, as enshrined in Article 21 TFEU and 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 States²⁵.

The third paragraph provides that Member States should not lower any existing level of protection against discrimination when implementing this Directive.

3.4.5.2. Article 9 - Transposition

Member States are required to adopt the necessary implementing measures within a period of 2 years after the entry into force of the Directive, and to fulfil certain information requirements, such as communicating to the Commission how the Directive is transposed into national law and making reference to the Directive in any implementing measures.

In this context in accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, it would be appropriate that Member States accompany the notification of their transposition measures with one or more

²⁵ OJ L 158, 30.4.2004

documents explaining the relationship between the components of the present Directive and the corresponding parts of national transposition instruments. Bearing in mind that for some provisions of this Directive, such as those on structures or bodies foreseen in Article 5 several Member States dispose already legislation to fight discrimination on other grounds in the context of the implementation of EU legislation, or agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights, the explanatory documents would permit to better identify the specific measures adopted or already in place in order to fight discrimination on the basis of nationality.

3.4.5.3. Article 10 - Report

The Commission has to present a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive no later than two years after the expiry of the deadline for its transposition. It can also make appropriate proposals for further measures where necessary. Therefore, in the context of its implementation report and experience gained on the ground, the Commission will also monitor the way Member States opted to extend the competencies of the structures and bodies referred to in Article 5 to the right to equal treatment without discrimination on grounds of nationality of all Union citizens and their family members exercising their right to free movement under Union law.

3.4.5.4. Article 11 - Entry into force

This is a standard clause specifying that this Directive will enter into force on the day following that of its publication in the Official Journal of the European Union.

3.4.5.5. Article 12 - Addresses

This is a standard provision specifying that the Directive is addressed to the Member States.

4. BUDGETARY IMPLICATIONS

This proposal is expected to have limited implications on the Union budget. Expenses for an evaluation study in 2015 are estimated to not exceed 0,300 million EUR and will be covered by funds available from the budget line financing the free movement of workers, coordination of social security systems and measures for migrants, including migrants from third countries. Costs for human resources (0,131 million EUR p.a.) will be covered under heading 5 of the Multiannual Financial Framework. Details are given in the financial statement annexed to this proposal.

Proposal for a

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²⁶,

Having regard to the opinion of the Committee of the Regions²⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The free movement of workers is a fundamental freedom of EU citizens and one of the pillars of the internal market in the Union enshrined in Article 45 of the Treaty on the Functioning of the European Union. Its implementation is further developed by Union law aimed at guaranteeing the full exercise of rights conferred on Union citizens and the members of their families.
- (2) The free movement of workers is also a key element to the development of a genuine Union labour market, allowing workers to move from high unemployment areas to areas where there are labour shortages, helping more people find posts better suited to their skills and overcoming bottlenecks in the labour market.
- (3) The free movement of workers gives every citizen the right to move freely to another Member State to work and reside there for that purpose. It protects them against discrimination on the grounds of nationality as regards employment, remuneration and other working conditions by ensuring their equal treatment in comparison to nationals

²⁶ OJ C , , p. .

²⁷ OJ C , , p. .

of that Member State. It needs to be distinguished from the freedom to provide services, which includes the right of undertakings to provide services in another Member State, for which they may send ('post') their own workers to another Member State temporarily to carry out the work necessary to provide these services there.

- (4) With respect to workers and workers' families exercising their right to free movement, Article 45 of the Treaty confers substantial rights for the exercise of this fundamental freedom, specified in Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union²⁸.
- (5) However, the effective exercise of the freedom of movement of workers is still a major challenge and many workers are very often unaware of their rights to free movement. They still suffer from discrimination on the grounds of nationality when moving across European Union borders of the Member States. There is, therefore, a gap between the legislation and its application in practice that needs to be addressed.
- (6) In July 2010, in its Communication on "Reaffirming the free movement of workers: rights and major developments"²⁹ the Commission pointed out that it will explore ways of tackling the new needs and challenges (in particular in the light of new patterns of mobility) facing EU migrant workers and their family members, and in the context of the new strategy for the single market will consider 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.
- (7) In the 2010 EU Citizenship Report "Dismantling the obstacles to EU citizens rights" of 27 October 2010³⁰, the Commission identified the divergent and incorrect application of Union law on the right to free movement as one of the main obstacles that Union citizens are confronted with in the effective exercise of their rights under Union law. Accordingly, the Commission announced its intention to take action to "facilitate free movement of EU citizens and their third-country national family members by enforcing EU rules strictly, including on non-discrimination, by promoting good practices and increased knowledge of EU rules on the ground and by stepping up the dissemination of information to EU citizens about their free movement rights"(action 15 of the 2010 EU Citizenship Report).
- (8) In its Employment package of 18 April 2012 (Communication from the Commission "Towards a job-rich recovery")³¹, the Commission announced its intention to "present a legislative proposal (information and advice) in order to support mobile workers in the exercise of rights derived from the Treaty and Regulation 492/2011 on freedom of movement for workers within the Union".

²⁸ OJ L 141, 27.5.2011, p. 1.

²⁹ COM(2010) 373 final of 13 July 2010

³⁰ COM(2010)603

³¹ COM(2012) 173 final of 18 April 2012

- (9) Adequate and effective application and enforcement are key elements in protecting the rights of workers, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area.
- (10) A more effective and uniform application of rights conferred by Union rules on free movement of workers is also necessary for the proper functioning of the internal market.
- (11) The application and monitoring of the Union rules on free movement should be improved to ensure workers are better informed about their rights, to assist and to protect them in the exercise of those rights, and to combat circumvention of these rules by public authorities and public or private employers.
- (12) In order to ensure the correct application of, and to monitor compliance with, the substantive rules concerning workers' rights to free movement for work purposes, Member States should take the appropriate measures to protect them against both discrimination on grounds of nationality and any unjustified obstacle to the exercise of that right.
- (13) To that end it is appropriate to provide specific rules for effective enforcement of the substantive rules governing the freedom of movement of workers, and to facilitate better and more uniform application of Article 45 of the Treaty and of Regulation (EU) No 492/2011.
- (14) In this context, workers who have been subject to discrimination on the grounds of nationality, or to any unjustified restriction in exercising their right to free movement, should have adequate and effective means of legal protection and redress. When Member States only provide for administrative procedures they shall ensure that any administrative decision may be challenged before a tribunal in the sense of Article 47 of the Charter.
- (15) To provide more effective levels of protection, associations and legal entities should also be empowered to engage, as the Member States determine, on behalf of or in support of any victim in proceedings, without prejudice to national rules of procedure concerning representation and defense before the courts.
- (16) In relation to time limits foreseen in Articles 3(2) and 4(2) and in accordance with the case law of the European Court of Justice³² these time limits should be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of rights conferred by Union law,
- (17) Protection against discrimination based on the grounds of nationality would itself be strengthened by the existence of organisations in each Member State with competence to promote equal treatment, to analyse the problems involved in citizen's cases, to study possible solutions and to provide specific assistance to Union workers exercising their right to free movement.

³² Judgement of 16th May 2000 in case C-78/98 Preston ECR 2000 p. I-03201.

- (18) It is up to each Member State to decide whether the tasks referred to in Article 5 of this Directive are attributed to an already existing body covering a wider range of discrimination grounds. In the case the tasks under Article 5 will be covered by expanding the mandate of an already existing body or structure, the Member State should ensure allocation of sufficient resources to the existing body for the performance of additional tasks in order to ensure that the performance of already existing tasks of these bodies will not suffer.
- (19) Member States should ensure the promotion of synergies with existing information and support tools at the Union level and to this end they should ensure that existing or newly created bodies are aware, make use of and co-operate with the existing information and assistance services, such as Your Europe, SOLVIT, EURES, Enterprise Europe Network and the Points of Single Contact.
- (20) Member States should promote dialogue with non-governmental organisations and between social partners to address and combat different forms of discrimination on the grounds of nationality.
- (21) Member States should make information about employment terms and conditions more widely available to workers from other Member States, to employers and to other interested parties.
- (22) Member States should establish how employers, workers and other people can be provided with easily accessible, relevant information on the provisions of this Directive and the relevant provisions of Regulation (EU) No 492/2011. This information should also be easily accessible through Your Europe and EURES.
- (23) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. Member States also have the possibility to extend the competencies of the organisations entrusted with tasks related to the protection of Union migrant workers against discrimination on grounds of nationality so as to cover the right to equal treatment without discrimination on grounds of nationality of all Union citizens and their family members exercising their right to free movement, as enshrined in Article 21 TFEU and 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 States³³. The implementation of the present Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (24) The effective implementation of the provisions of this Directive implies that Member States, when adopting the appropriate measures to comply with their obligations under this Directive, should provide a reference to this Directive or accompanied by such a reference on the occasion of the official publication of implementing measures.
- (25) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition

³³ OJ L 158, 30.4.2004

measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

- (26) After a sufficient time of implementation of the Directive has elapsed, the Commission should prepare a report on its implementation, evaluating in particular the opportunity to present any necessary proposal aiming to guarantee a better enforcement of the Union law on free movement.
- (27) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the freedom to choose an occupation and the right to engage in work (Article 15), the right to non-discrimination (Article 21 and in particular Paragraph 2 concerning non-discrimination on the grounds of nationality), the right to collective bargaining and action (Article 28), fair and just working conditions (Article 31), the right to freedom of movement and residence (Article 45) and the right to an effective remedy and a fair trial (Article 47). It has to be implemented in accordance with those rights and principles.
- (28) Since the objective of this Directive, namely to establish a general common framework of appropriate provisions, measures and mechanisms necessary for the better and more uniform application and enforcement in practice of rights conferred by the Treaty and Regulation (EU) No 492/2011, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effect of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I GENERAL PROVISIONS

Article 1 Subject matter

This Directive lays down provisions facilitating uniform application and enforcement in practice of rights conferred by Article 45 of the Treaty on the Functioning of the European Union (TFEU) and by provisions of Articles 1 to 10 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

Article 2 Scope

This Directive applies to the following matters in the area of freedom of movement for workers:

- (a) access to employment;
- (b) conditions of employment and work, in particular as regards remuneration and dismissal;
- (c) access to social and tax advantages;
- (d) membership of trade unions;
- (e) access to training;
- (f) access to housing;
- (g) access to education for workers' children.

CHAPTER II ENFORCEMENT

Article 3 Defence of rights - Means of redress - Time limits

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate, conciliation procedures, for the enforcement of the obligations under Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011, are available to all workers and members of their families who consider they have suffered or are suffering from unjustified restrictions to their right to free movement or consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Paragraph 1 shall apply without prejudice to national rules on time limits for enforcement of those rights. These time limits shall be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of rights conferred by Union law.

Article 4

Action of associations, organisations or other legal entities

1. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf of or in support of the worker and members of his/her family, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of rights under Article 45 of the Treaty and Articles 1 to 10 of Regulation (EU) No 492/2011.

2. Paragraph 1 shall apply without prejudice to national rules on time limits for enforcement of those rights. These time limits shall be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of rights conferred by Union law.

CHAPTER III

PROMOTION OF EQUAL TREATMENT-STRUCTURES, BODIES-DIALOGUE

Article 5

Structures - bodies

1. Member States shall designate a structure, a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all workers or members of their families without discrimination on grounds of nationality and make the necessary arrangements for functioning of such bodies. These bodies may form part of agencies at a national level with similar objectives but covering a wider range of discrimination grounds. In that case, the Member State shall ensure allocation of sufficient resources to the existing body for the performance of additional tasks in order to ensure that the performance of already existing tasks of these bodies will not suffer.

2. Member States shall ensure that the competences of these bodies include:

- (a) without prejudice to the right of workers or the members of their family and associations and organisations or other legal entities referred to in Article 4, the provision of independent legal and/or other assistance to workers or the members of their family in pursuing their complaints;
- (b) conducting independent surveys concerning discrimination on the basis of nationality;
- (c) publishing independent reports and making recommendations on any issue relating to such discrimination;

- (d) publishing information on any issue relating to the application at national level of EU rules on free movement of workers.

3. Member States shall ensure that existing or newly created bodies are aware, make use of and co-operate with the existing information and assistance services at Union level, such as Your Europe, SOLVIT, EURES, Enterprise Europe Network and the Points of Single Contact.

Article 6
Dialogue

Member States shall encourage dialogue with appropriate non-governmental organisations and the social partners which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of nationality with a view to promoting the principle of equal treatment.

CHAPTER IV
ACCESS TO INFORMATION

Article 7
Dissemination of information

1. Member States shall ensure that the provisions adopted pursuant to this Directive together with the relevant provisions already in force in Articles 1 to 10 of Regulation (EU) No 492/2011, are brought to the attention of the persons concerned by all appropriate means throughout their territory.

2. Member States shall provide clear, easily accessible, comprehensive and up-to-date information on the rights conferred by the Union law on free movement of workers. . This information should also be easily accessible through Your Europe and EURES.

CHAPTER V
FINAL PROVISIONS

Article 8
Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

2. Member States may provide that the competencies of the structures and bodies referred to in Article 5 for the promotion, analysis, monitoring and support of equal treatment of all workers or members of their families without discrimination on grounds of nationality, also cover the right to equal treatment without discrimination on grounds of nationality of all EU citizens and their family members exercising their right to free movement, as enshrined in Article 21 TFEU and 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.

3. Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

Article 9
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after its entry into force-specific date to be inserted by the OPOCE] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10
Report

No later than two years after the expiry of the deadline for transposition, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, with a view to proposing where appropriate, the necessary amendments.

Article 11
Entry into force

This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 12
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management method(s) envisaged

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control systems
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party participation in financing*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

- 1.2. **Proposal for a 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**
Policy area(s) concerned in the ABM/ABB structure³⁴

Employment, Social Dialogue

1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action³⁵**
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objectives

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Contributing to the European 2020 targets:
- Promote increased participation in the labour market
- Develop a safe, flexible and mobile European labour market
- Promote social and economic cohesion

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No.2 (EMPL):

Promote geographic and professional mobility of workers in Europe in order to overcome the obstacles of free movement and to contribute to the establishment of a real labour market at European level.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

³⁴ ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

³⁵ As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

The proposal aims at a better application and enforcement in practice of free movement rights, combating discrimination on the basis of nationality and reducing the obstacles migrant workers still face.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Several indicators, both quantitative (e.g.; the number of complaints or the degree of raise awareness) and qualitative (the reports on the application of the Directive and of free movement legislation) will be used for monitoring purposes. The supporting bodies set up according to this proposal for a Directive will also have a monitoring role and will be able to provide more qualitative data on discrimination on the grounds of nationality.

Moreover the Commission intends to evaluate the impact of this Directive with:

- a systematic evaluation by the Commission services with the involvement of the Advisory Committee on free movement of workers;
- the presentation of a report 2 years after the deadline of transposition;
- assess the activities developed by the supporting bodies and associations;
- assess whether the Directive has led to positive changes
- identify the difficulties faced by equality supporting bodies, associations and organisations.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

The proposal will aim at improving and reinforcing the, application and enforcement in practice of the EU rules on free movement of workers (Article 45 TFEU and Regulation (EU) No 492/2011 Articles 1 to 10 relating to access to employment and employment and working conditions). By providing specific tools and mechanisms of information and advice, it ensures at the same time guarantees for a more effective exercise in practice of these rights in order to reduce discriminations on the grounds of nationality and to contribute to the removal of unjustified obstacles to the freedom of movement of workers which is one of the principal components for the realisation of the Internal Market.

1.5.2. Added value of EU involvement

The problems identified are linked to the objectives set out by Article 3(3) TEU and Articles 45 TFEU. The existing legal framework, application and enforcement in practice as well as previous attempts to address existing problems by the way of non-binding measures have not been sufficient to solve the identified problems. Therefore, it is necessary to address the existing problems at EU level in order to better achieve the objectives of the Treaty.

1.5.3. Lessons learned from similar experiences in the past

Previous attempts to solve problems of implementation and enforcement in practice of the EU law on free movement of workers and in particular of Regulation (EU) No 492/2011 by non-legislative means have not reached their objectives. The issues have been addressed by interpretative Legal Commission's Communications in 2002 and in 2010. The respective Communications provided, in the

light of the case law of the CJ further clarifications for Member States. However, the monitoring exercise of application of EU law on free movement showed that there were always a number of deficiencies; Since October 2010, the Commission launched several ex-post evaluation studies of the problems faced by EU workers when exercising their right to free movement: (two independent reports of the Network of experts on free movement of workers discussed within the Advisory committee on free movement of workers which concluded that the right for an equal treatment on the basis of nationality is rarely offered the same level of protection and guarantees as the right on equal treatment on other grounds (race, sex...) in the Member States. EU workers are still considered in most Member states as holding a status closer to that of third country national and not to that of a national. Moreover, if sometimes they benefit, in cases of nationality based discrimination, from these guarantees and protection is due to a broader interpretation of national law which assimilates nationality to ethnic origin. Therefore there is a need for a stronger protection of nationality based discrimination.

In order to prepare the Impact Assessment an ex-ante evaluation study has been carried out by an external consultant in 2012.

1.5.4. *Coherence and possible synergy with other relevant instruments*

Fundamental rights: The proposal is consistent with the EU's fundamental rights strategy, COM(2010) 573 final.

Europe 2020 strategy: The initiative will contribute to the creation of employment within the strategy for smart, sustainable and socially inclusive growth (Europe 2020).

Single Market Act: The proposal will in particular facilitate the free movement of work force and will contribute to a better functioning of the Internal market. It will contribute to better match workers with jobs, allowing more persons to find jobs corresponding to their skills and overcoming bottlenecks in the European labour market.

1.6. **Duration and financial impact**

Proposal/initiative of **limited duration**

Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

Financial impact from 2013 to 2020

The implementation of the directive is of unlimited duration but will be reassessed after two years after the deadline for transposition has expired.

Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from 2013 to 2014,

– followed by full-scale operation

1.7. Management mode(s) envisaged³⁶

Centralised direct management by the Commission

Centralised indirect management with the delegation of implementation tasks to:

- executive agencies
- bodies set up by the Communities³⁷
- national public-sector bodies/bodies with public-service mission
- persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

Shared management with the Member States

Decentralised management with third countries

Joint management with international organisations (*to be specified*)

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Two years after the deadline for transposition there will be an on-going evaluation. The main focus of this evaluation will be to assess the initial effectiveness of the Directive. Emphasis will be placed on the improvement of enforcement and effectiveness of EU rules on free movement of workers after the adoption of implementing measures on information and advice provided by this Directive, This evaluation will be carried out by the Commission with the assistance of external experts. Terms of reference will be developed by Commission services. Stakeholders will be informed of and asked to comment on the draft evaluation through the Advisory Committee on free movement of workers and they will also be regularly informed of the progress of the evaluation and its findings. The findings will be made public.

³⁶ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

³⁷ As referred to in Article 185 of the Financial Regulation.

2.2. Management and control system

2.2.1. Risk(s) identified

Limited risks due to low financial impact.

2.2.2. Control method(s) envisaged

Standard risk-mitigating measures will be applied.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

Standard risk-mitigating measures will be applied.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	Diff./non-diff. (38)	from EFTA countries (39)	from candidate countries (40)	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1	– Free Movement of Workers, coordination of social security schemes	Diff	YES	No	No	NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation

³⁸ Diff. = Differentiated appropriations / Non-diff. = Non-Differentiated Appropriations

³⁹ EFTA: European Free Trade Association.

⁴⁰ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

	[XX.YY.YY.YY]		YES/N ○	YES/NO	YES/N ○	YES/NO
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3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:		1	Sustainable growth (from 2014 onwards: Smart and Inclusive Growth)								
			Year 2013 ⁴²	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
• Operational appropriations											
04.030500	Commitments	(1)	0	0	0,300	0	0	0	0	0	0,300
	Payments	(2)	0	0	0,150	0,150	0	0	0	0	0,300
Appropriations of an administrative nature financed from the envelope for specific programmes ⁴³											
TOTAL appropriations			0	0	0,300	0	0	0	0	0	0,300
		=1+1a +3									

⁴¹ For details on the general IMI funding see COM(2011) 522 final (proposal on the IMI Regulation).

⁴² Year N is the year in which implementation of the proposal/initiative starts.

⁴³ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

for DG EMPL		Payments	=2+2a +3	0	0	0,150	0,150	0	0	0	0	0	0	0	0,300
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• TOTAL operational appropriations	Commitments	(4)	0	0	0,300	0	0	0	0	0	0	0	0	0	0,300
	Payments	(5)	0	0	0,150	0,150	0	0	0	0	0	0	0	0	0,300
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)													
TOTAL appropriations under HEADING 1 of the multiannual financial framework	Commitments	=4+6	0	0	0,300	0	0	0	0	0	0	0	0	0	0,300
	Payments	=5+6	0	0	0,150	0,150	0	0	0	0	0	0	0	0	0,300

Heading of multiannual financial framework:	5	" Administrative expenditure "
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EUR million (to 3 decimal places)

DG: EMPL	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
• Human resources	0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048
• Other administrative expenditure									
TOTAL DG EMPL	0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
		0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048

EUR million (to 3 decimal places)

TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
		0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048
	Payments	0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

The proposal/initiative does not require the use of administrative appropriations

The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year 2013 ⁴⁶	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
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HEADING 5 of the multiannual financial framework									
Human resources	0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048
Other administrative expenditure									
Subtotal HEADING 5 of the multiannual financial framework	0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048

Outside HEADING 5⁴⁷ of the multiannual financial framework									
Human resources									
Other expenditure of an administrative nature									
Subtotal outside HEADING 5									

⁴⁶ Year N is the year in which implementation of the proposal/initiative starts.

⁴⁷ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

of the multiannual financial framework									
TOTAL	0,131	0,131	0,131	0,131	0,131	0,131	0,131	0,131	1,048

3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020
• Establishment plan posts (officials and temporary agents)								
XX 01 01 01 (Headquarters and Commission's Representation Offices) (1 AD)	131000	131000	131000	131000	131000	131000	131000	131000
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
• External personnel (in Full Time Equivalent unit: FTE)⁴⁸								
XX 01 02 01 (CA, INT, SNE from the "global envelope") (1 SNE)								
XX 01 02 01 (CA, INT, SNE from the "global envelope") (0,5 CA)								
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)								
XX 01 04 <i>yy</i> 49	- at Headquarters 50							
	- in delegations							
XX 01 05 02 (CA, INT, SNE - Indirect research)								
10 01 05 02 (CA, INT, SNE - Direct research)								
Other budget lines (specify)								
TOTAL	131000	131000	131000	131000	131000	131000	131000	131000

XX is the policy area or budget title concerned.

⁴⁸ CA= Contract Agent; INT= agency staff ("Intérimaire"); JED= "Jeune Expert en Délégation" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert;

⁴⁹ Under the ceiling for external personnel from operational appropriations (former "BA" lines).

⁵⁰ Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents (1 AD)	monitoring transposition, infringement procedures, coordination call for proposals/tenders, coordination administrative cooperation

3.2.4. Compatibility with the current multiannual financial framework

- Proposal/initiative is compatible with both MFF 2007-2013 and 2014-2020.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework⁵¹.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

- The proposal/initiative does not provide for co-financing by third parties
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations cofinanced								

⁵¹ See points 19 and 24 of the Inter-institutional Agreement.

3.3. Estimated impact on revenue

Proposal/initiative has no financial impact on revenue.

Proposal/initiative has the following financial impact:

- on own resources
- on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the on-going budget year	Impact of the proposal/initiative ⁵²					... insert as many columns as necessary in order to reflect the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article									

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

⁵² As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.