



15 March 2011

RESPONSE TO THE COMMISSION CONSULTATION ENFORCEMENT OF REGULATION 1612/68

I. Introduction

On the 17 January 2011, the European Commission launched a consultation on the need for enforcement of Regulation (EEC) no. 1612/68 on freedom of movement for workers within the Community. As the questions from the Commission deal with the transposition of regulation 1612/68 and therefore demand responses from the national level, BUSINESSEUROPE will not answer specific questions directly. However, in this contribution, we provide a general assessment of the need for enforcement of the regulation on the basis of the individual responses from BUSINESSEUROPE's members.

The focus of the Commission's consultation lies with the issue of whether workers' rights need to be strengthened, mainly in the context of possibilities to take legal action in cases of discrimination against non-nationals. It also deals with how to raise awareness of the rights of migrant workers. In addition to these matters, BUSINESSEUROPE also puts forward some key elements of how to improve geographical mobility within the EU.

II. The importance of free movement of workers

BUSINESSEUROPE is a firm believer in the value that the right to free movement of workers brings to the EU and its citizens; to employers, to the migrant worker as well as to the European economy at large.

From the perspective of the employer, such mobility will lead to a greater pool of workers to recruit from, while the individual worker can benefit from a greater range of job opportunities. Adding to this, it will enable workers to get to know new working methods and lead to an exchange of knowledge, languages, and techniques within the EU.

The free movement of workers can improve the way in which European labour markets function by easing the effects of structural weaknesses. This concerns in particular malfunctions like the labour shortages and structural mismatches that are longstanding features of the EU. These are illustrated by the coexistence of high unemployment rates with an increasing number of vacancies, according to the 2010 Employment in Europe report. Companies across Europe are experiencing difficulties to hire employees with the right sets of skills and in some fields the shortages are acute, for instance within science, technology, engineering and mathematics.



However, the skills shortages that European companies are facing differ from one member state to another, as well as from one sector to another. With a greater occupational and geographical mobility, vacancies could more easily be filled and unemployment rates lowered.

It is therefore important to encourage the right of free movement of workers being used on a larger scale. Only around 2.4% of Europeans are currently living in another member state and 84% have no experience of living or working in another country, according to the July 2010 Eurobarometer. Nearly two-thirds do not envisage working in a member state other than their own. In this context, it should be noted that Europe also has low occupational mobility on an international comparison.

In conclusion, there is clearly a potential to increase mobility both within and between European labour markets.

III. Is there a need to enforce regulation 1612/68 on workers' rights?

BUSINESSEUROPE promotes and contributes to an adoption of policies and instruments conducive to a stronger and better functioning single market. We support the Commission's increasing focus on enforcement of the four freedoms of movement. Removal of remaining barriers to the free movement of workers is fundamental for the EU to take advantage of the full potential of the single market.

However, BUSINESSEUROPE consider that there is no need to revise regulation 1612/68 in order to strengthen the rights that are directly conferred upon EU migrant workers by the Treaty and by Regulation 1612/68. Discrimination on the grounds of nationality is tackled on legislative level already. Moreover, trade unions and/or other organisations with a legitimate interest to take action on behalf of migrant workers have the full right to do so.

We agree with the Commission in its 2010 communication on reaffirming the rights of free movement of workers in that "the legal framework for free movement of workers is substantial, detailed and well-developed". The report produced by the Legal network of experts as a basis for this consultation further concludes that "it is almost always possible for victims of discrimination to go before a court or a tribunal in order to obtain redress in Member States".

In line with this, our assessment is that the situation is good when it comes to possibilities for migrant workers to take legal action against cases of discrimination. Overall, regulation 1612/68 has been transposed in a satisfactory way when it comes to the rights of migrant workers.



It should be pointed out that the possibilities to file complaints are stronger than what is reflected in the report of the network. The descriptions are inconclusive, for instance in the cases of Italy and Denmark.

As an example, it appears in the report that individuals who have been discriminated against on grounds of nationality can only make claims if they can somehow show (directly or indirectly) that this constitutes discrimination based on grounds of race or ethnicity. However, this description does not take into account that it follows both from the principle on equal treatment in public administration and the obligation of courts to observe EU-law that any unequal treatment also due purely to nationality is unlawful.

In the case of Italy, the report contains a description of the national situation which is not fully updated as regards practical aspects of the implementation of the regulation. For instance, the report states that Italy is included among the countries that set no maximum or minimum for penalties in case of discrimination against workers. However, if violation of workers' rights would occur, an order will be issued by the juridical authority for the removal of the violation. If the judge's order is not respected, then criminal law sanctions shall apply, and the amount of the sanctions is provided by specific criminal law provisions.

Rather than turning to enforcement of regulation 1612/68 through additional legislation, more emphasis should be put on implementation of existing rules. This includes making sure that public authorities on a local level fully comply with national legislation. In addition, problem-solving mechanisms at EU level such as SOLVIT should be further promoted and used.

When it comes to workers rights, the most important measure is to ensure accurate and easily accessible information. Workers moving across borders need to be able to keep track of their rights as well as have easy access to basic information about the conditions of living and working in another EU member states for both themselves and their families.

As an example, it is crucial that workers that make use of the right of free movement can easily understand what pensions and savings they will have in retirement. The EU should encourage better disclosure of information at member state level and ensure that there is EU guidance on how to access national tracking services for reclaiming pension rights as they approach retirement.

To access basic information, the EU should encourage national 'one-stop-shop-centres' where migrant workers can acquire all needed information and guidance as to working and living in the relevant EU-country. These centres should provide information on for instance language training, info on jobs for



spouses, schooling for children, and they should make public forms and info available in several languages. In Denmark, such centres ('workindenmark'-centres) have been a success.

IV. How can the geographical mobility of workers be further raised?

The geographical mobility of workers could be promoted through a number of measures and labour market reforms that goes beyond the scope of regulation 1612/68.

Improving occupational mobility

A key element in promoting geographical mobility is to facilitate transitions on the labour market overall. If one does not even consider changing from one job to another on the national labour market, looking for a better matching job opportunity in another member state is even less of an option. The interconnectedness between geographical and occupational mobility means that we need to look at why Europeans are so reluctant to change jobs in the first place. Part of this explanation could be sought in the rigidities of our labour markets.

In order to promote mobility overall, the common flexicurity principles should be implemented by all member states. This will stimulate companies to hire, a precondition for creating job opportunities to move to in the first place. Flexicurity is also about the individual worker feeling security in his or her ability to find employment, and adapt to new situations like working abroad, rather than security linked to one particular job, at one particular location.

Transparency on job opportunities in the EU

Secondly, more information is needed about possibilities to work in another member state. Increased transparency and cooperation between public employment services in different member states is crucial. EURES is an important tool to this end, connecting job seekers and employers to public employment agencies in the entire EU. However, the services of EURES are currently underexploited by employers. In the EURES web portal, more than 432,000 CVs are currently registered but just over 21,000 employers.

The visibility of EURES should therefore be improved and the dialogue with employers on how to improve the attractiveness its services strengthened¹. Furthermore, the collaboration established between public employment agencies should be expanded to include also private agencies in the different countries. This will make the overall pool of vacancies in Europe more

¹ BUSINESSEUROPE recently contributed to the EURES handbook to employers aiming to inform about the benefits from an employer's perspective of making use of the EURES network.



accessible for job seekers and increase efficiency in the provision of job matching services, counselling and career guidance.

Cooperation between national education systems

Thirdly, increased collaboration and transparency is also needed between our education systems. Studies by the Commission show that formerly mobile students are more likely to pick up a job abroad. In addition, studying abroad has been shown to facilitate and speed up transitions into the labour market overall and leads to a higher degree of job satisfaction.

The Bologna and Copenhagen processes, aiming to raise transparency between national education systems, have advanced the work towards mobility of learners. However, in particular when it comes to higher education systems, we still have a long way to go in shifting the focus in national credit and qualifications systems to an outcome-based approach. Instead of building these upon input based measures like the number of hours of studies conducted, more emphasis should lie with output-based measures of what skills and competencies the learner acquires during these hours. Such a shift will facilitate for employers all across Europe to assess what the different qualifications and credit points acquired in foreign “unknown” education systems actually means in terms of what the individual is capable of doing.

Transparency on qualifications for jobseekers in general is also important to promote. There is a need for easier recognition of qualifications and practical competencies for both high and lower levels of education at national level. This will make it easier to match jobseekers and employers in all member states across the EU.

Fight protectionist attitudes towards migrant workers

In the wake of the crisis, protectionist tendencies towards foreign workers have increased on many European labour markets. This scepticism is often linked to fear that jobs would be lost. National governments, EU institutions as well as social partners share a responsibility to fight such protectionism and provide information on the need for migrant labour. The available evidence of countries that have not used transitional measures shows that the post-enlargement of free movement of workers has not led to serious disturbances on the labour markets. By contrast, it has had little or no negative impact on the wages and unemployment rates of local workers in the destination countries.