

FREE MOVEMENT OF WORKERS TO AND FROM THE NEW MEMBER STATES – HOW WILL IT WORK IN PRACTICE?

1. Introduction

Free movement of persons is one of the fundamental freedoms guaranteed by Community law and includes the right to live and work in another Member State. The right of free movement within the Community does not only concern workers, but also other categories of people such as students, pensioners and EU citizens in general. It is perhaps the most important right under Community law for individuals, and an essential element of both the Internal Market and of European citizenship.

Moving to another country is a major decision, and people need to have accurate information on their rights. This Guide explains how free movement of workers will apply to citizens of the new Member States after the enlargement of the European Union in 2004, based on the transitional arrangements set out in the Accession Treaty of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (although the Treaty with Cyprus contains *no* restrictions on free movement of workers), and with regard to Malta, there is only the possibility of invoking a safeguard clause (see paragraph 2(e) below). A list of sources of information in the area of free movement of workers and citizens' rights is also given. It is important to note that the transitional arrangements *only* apply to access to the labour market by **workers**.

2. Transitional Arrangements

a) Will I be able to work in a present Member State as from 1 May 2004?

For the first two years following the accession of the new Member States, access to the labour markets of the present Member States will depend on the national law and policy of those States, as well as the bilateral agreements they may have with the new Member States. Some Member States have indicated that they intend to fully open their labour markets to workers from all the new Member States. Other present Member States intend to allow more restrictive access, which will differ depending on the new Member State in question. In practical terms, this means that you are likely to need a work permit during the period the present Member States apply national measures.

b) What happens in 2006?

At the end of the first two years following accession, the Commission will draft a report, on the basis of which the Council will review the functioning of the transitional arrangements. In addition, each of the present Member States must make a formal notification to the Commission whether they intend to continue with national law measures for a maximum of three more years (in which case you will still need a work permit) or whether they will apply the Community law regime of full free movement of workers (meaning that you can go and work freely there).

c) When will I be able to work freely in the present Member States?

In principle, five years after the accession, the transitional arrangements should end. There is, however, a possibility for a present Member State to ask the Commission for authorisation to continue to apply national measures for a further two years but only if it experiences serious disturbances on its labour market (or the threat thereof). The transitional arrangements cannot extend beyond an absolute *maximum* of seven years.

d) Will I need a work permit once free movement applies?

Once national law restrictions are ended and free movement of workers applies, the present Member States are not allowed to require a work permit from you *as a condition of access* to the labour market. However, they may still issue work permits to workers from the new Member States, provided these are *only* for monitoring and statistical purposes.

e) Can the present Member States re-impose restrictions ("safeguard clause")?

If a present Member State has stopped applying national measures and full free movement of workers under Community law applies, it can ask to be authorised to re-impose restrictions, if it undergoes serious problems on its labour market, or there is a threat of this. The Commission must decide what sort of restrictions can be imposed, and for how long. Any Member State can then ask the Council to annul or amend the Commission's decisions, and this must be agreed by a qualified majority. Although "safeguard clauses" have featured in every accession Treaty, they have never been invoked.

f) Will I be discriminated against in the labour market?

Discrimination on grounds of nationality is *forbidden*. In terms of access to jobs, the Member States must give workers from the new Member States priority over workers from third countries. Some jobs in the public sector can be restricted to nationals of the host Member State.

g) If I am not a worker – do I also face restrictions?

It is important to note that these transitional arrangements *only* apply to *workers* – not to the free provision of services nor to the freedom of establishment, students, pensioners, tourists etc (with a limited exception for service providers which will be explained later). In addition, there are no transitional arrangements with respect to Cyprus and Malta, except for a safeguard clause for the latter.

3. What if I am already working in one of the present Member States?

If you are legally working in a present Member State at the date of accession and have a work permit or authorisation for 12 months or longer, you will have direct access to the labour market of that Member State, but not automatically to the labour markets of other present Member States which are applying national measures during the transitional arrangements. If you go to a present Member State after the date of accession and have permission to work there for 12 months or over you will have the same rights. But if you voluntarily leave the labour market of the host Member State, you will lose the right of access to the labour market of that State until the transitional arrangement has expired.

4. What about my family members?

Family members of a worker from a new Member State who at the date of accession was legally admitted to the labour market of a present Member State for 12 months or more, will have immediate access to the labour market of that Member State. If the family joins the worker after the date of accession, they will have access to the labour market of that Member State once they have been resident for 18 months or from the third year following the accession, whichever is earlier. "Family members" here means the spouse of the worker and their children who are under the age of 21, or are dependant.

5. What is the "standstill clause"?

This means that the present Member States cannot make access to their labour markets by workers from the new Member States more restrictive than it was at the date of signature of the accession Treaty, 16 April 2003. So if one of the present Member States has a quota of workers from one of the new Member States which is set out in a bilateral agreement dating from 2003 or earlier, then it cannot go below that quota.

6. Will I be able to go and work in one of the other new Member States?

If any one of the present Member States continues to apply national measures rather than free movement under Community law, then the new Member States may use the "safeguard clause" to impose restrictions on workers from other *new* Member States if they have disturbances on their labour market (see paragraph 2(e) above).

If you are a national of one of the present Member States, there are no automatic restrictions on your right to move to one of the new Member States to work. However, if your Member State imposes restrictions on the nationals of one of the new Member States, then that new Member State may impose equivalent restrictions on workers from your Member State.

7. What if I work for a company that provides services in Austria or Germany?

In relation to Austria and Germany, a specific "safeguard clause" exists under which they may limit the ability of companies based in the new Member States to provide services involving the temporary movement of workers. However, this only applies to a limited list of sectors, for example construction and industrial cleaning, and may only be invoked if there are serious disturbances in the service sectors in question, and only during the period when Austria and Germany apply national measures under the transitional arrangements. The procedure is the same as for the main safeguard clause explained in paragraph 2(e) above.

8. What social security rights will I have?

The Community system for co-ordination of social security schemes for people who move around the Community (contained in Regulations 1408/71 and 574/72) will apply from the date of accession. So none of your contributions should be lost, and you would normally be covered by the social security system of the Member State in which you work.

9. Conclusion

The transitional arrangements set out in the accession Treaty are complicated, but this is mainly because their application can be flexible. This makes it difficult to provide exact information, as each of the present Member States has to take a decision on access to its labour markets by citizens of each of the new Member States (apart from Cyprus. The Commission's EURES system website, which provides information on job vacancies in the Member States, is a good place to start. The right to work in another Member States provides great opportunities for all European citizens.

10. Sources of information

- <http://europa.eu.int/eures> (job searching)
- <http://citizens.eu.int> (information on moving to another Member State)
- http://europa.eu.int/comm/employment_social/soc-prot/schemes/index_en.htm (co-ordination of social security schemes)
- <http://europa.eu.int/comm/enlargement/index.htm> (general information on enlargement)
- http://europa.eu.int/europedirect/index_en.htm (general questions on the EU)
- http://europa.eu.int/comm/employment_social/legis_en.htm (Community legislation)
- http://europa.eu.int/abc/governments/index_en.html (national governments on line)
- http://europa.eu.int/comm/enlargement/negotiations/treaty_of_accession_2003/index.htm (text of Accession Treaty)
- http://europa.eu.int/comm/employment_social/news/2002/dec/com2002_694_en.html (2002 Commission Communication on Free Movement)