



# Free Movement of Persons, Free Movement of Workers, Prohibition of Discrimination based on Nationality in Employment and Occupation



# Programme

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2. Free movement of persons, the citizenship of the Union,
3. Legal regulation of free movement of persons,
4. Free movement of workers, legal regulation of free movement of workers,
5. Personal scope of application of free movement of workers,
6. Limitations to free movement of workers



# Internal market - one of the objectives of the Union

The internal market is based on **four freedoms**:

- Freedom of movement of goods
- Freedom of movement of workers
- Freedom of movement of services
- Freedom of movement of capital



# Historical Background

- After establishment of the European Economic Community only persons performing an economic activity were entitled to the freedom of movement of persons. Economic activity
  - as employee
  - as self-employed
- At the beginning of 1990s free movement was enlarged to other groups of persons (students, persons after finishing the gainful activity...)
- 1992 the Treaty of Maastricht - the citizenship of the EU - enlargement to all citizens of the Union and their family members.



# Legal Regulation of Free Movement of Persons

## ■ Primary law:

- Treaty on the Functioning of the EU
- Prohibition of Discrimination and Citizenship of the Union - Article 18 (former Article 12 of the Treaty Establishing the European Community) lays down prohibition of discrimination based on nationality.
- Article 20 (former Article 17) - free movement for citizens of the Union

- Secondary law - Directive of the European Parliament and of the Council 2004/38 of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside within the territory of the Member States, replaced legislation from 1960s



# Personal Scope of Application of Freedom of Movement for Persons

- Citizens of the Union
- Their family members
  1. Spouse
  2. The partner with whom the Union citizen has contracted a registered partnership on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnership as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State
  3. The direct descendants who are under the age of 21 or are dependants and those of the spouse or partner
  4. The dependant direct relatives in the ascending line and those of the spouse and partner



# Free movement of persons includes:

- Right to leave the territory of the Member State
- Right to entry on the territory of another Member State
- Right to move within the territory of another Member State
- Right to stay within the territory of another Member State



# Right to stay on the territory of another Member State

- A period up to three months - without any conditions or formalities (only valid identity card or valid passport)
- The right to residence for a period longer than three months applies to:
  - Workers or self-employed
  - Persons who have sufficient resource for themselves and their families,
  - Students
  - Family member accompanying or joining a Union citizen
- EU nationals of their family members shall not become a burden for a system of social assistance of the host Member State





# Free Movement of Workers

**Primary law** - art. 45 of the Treaty on Functioning of the EU

## **Secondary Law:**

Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, replaced Regulation of the Council 1612/68 of 15 October 1968 of free movement of workers within the Community

Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers



## Article 45

1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
  - (a) to accept offers of employment actually made;
  - (b) to move freely within the territory of Member States for this purpose;
  - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
  - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.



# Notion of worker for the purpose of free movement of workers

- The term worker is not defined by primary and secondary legislation
- Interpretation by the ECJ, case Deborah Lawrie-Blum v Land Baden-Württemberg (C - 66/85), 3 characteristic features of worker:
  1. provision of services for certain period of time,
  2. under direction of another person,
  3. remuneration (wage, salary),

The gainful activity must be effective and genuine - case **Bettray v Staatssecretaris van Justitie** (C - 344/87)



# Limitations to Free Movement of persons

## Public Policy

- Public Security
- Public Health

## Limitations to free movement of workers

- Public Policy
- Public Security
- Public Health
- Employment in public service
- Limitation for citizens of new Member States - laid down by Treaties on Accession



## Protection of Public Security and Public Order

- Restriction on the right of entry or the right to residence
  - These grounds shall not be used for economic goals
  - Principle of proportionality
  - Based exclusively on the personal conduct of an individual concerned
  - Previous criminal convictions shall not in themselves constitute grounds for taking these measures



# Protection of Public Health

- Restriction on the right of entry or the right to residence
- These grounds shall not be used for economic goals
- Only diseases with epidemic potential as defined by instruments of WHO or other infectious diseases or contagious parasitic diseases if measures are applied to nationals of the host Member State
- Diseases occurring after a period of three months from the date of arrival shall not constitute a reason for expulsion from the territory of host Member State



# Employment in Public Service

- A Member State may reserve posts to own nationals
- Applies only to workers
- May be applied only with respect to access to employment not after the establishment of employment relationship
- The ECJ interprets this exception to free movement of workers very restrictively
- Posts - direct or indirect participation in the exercise of public power



# Accession of New Member States

- Treaties on accession of new Member States - source of EU primary law
- Purpose of limitation - protection of labour market of the Members States
- Member States have no obligation to open their labour markets in the moment of accession of new Member State (e. g. Austria and Germany opened their labour markets to the Czech national in 2011)
- Limitations may be adopted later (a. g. Spain adopted limitations with respect to Rumanian nationals in 2011)