# Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 (Text with EEA relevance)

## REGULATION (EU) 2016/589 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 April 2016

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(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 Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The free movement of workers is a fundamental freedom of citizens of the Union and one of the pillars of the internal market, enshrined in Article 45 of the Treaty on the Functioning of the European Union (TFEU). Its implementation is further developed by Union law aiming to guarantee the full exercise of rights conferred on citizens of the Union and the members of their families.

(2) The free movement of workers is one of the key elements in the development of a more integrated Union labour market, including in cross-border regions, which allows higher worker mobility, thereby increasing diversity and contributing to Union-wide social inclusion and integration of persons excluded from the labour market. It also contributes to finding the right skills for vacant positions and overcoming bottlenecks in the labour market.

(3) Regulation (EU) No 492/2011 of the European Parliament and of the Council[(4)] established mechanisms for clearance and for information exchange, and Commission Implementing Decision 2012/733/EU[(5)] laid down provisions on the functioning of a network for European employment services (EURES network) in accordance with that Regulation. That regulatory framework needs to be revised to reflect new mobility

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patterns, enhanced requirements for mobility on a fair basis, changes in the technology for sharing job-vacancy data, the use of a variety of recruitment channels by workers and employers and the increasing role of other labour-market brokers next to the public employment services ('PES') in the provision of recruitment services.

(4) In order to help the workers who enjoy the right to work in another Member State to exercise that right effectively, assistance in accordance with this Regulation is open to all citizens of the Union who have a right to take up an activity as a worker and to the members of their families in accordance with Article 45 TFEU. Member States should give the same access to any third-country national benefiting, in accordance with Union or national law, from equal treatment with their own nationals in that field. This Regulation is without prejudice to the rules on the access of third-country nationals to national labour markets as set out in the relevant Union and national law.

(5) Growing interdependency among labour markets calls for reinforced cooperation between employment services, including those in cross-border regions, to bring about freedom of movement for all workers through voluntary labour mobility within the Union on a fair basis and in accordance with Union law and national law and practice pursuant to point (a) of Article 46 TFEU. A framework for cooperation on labour mobility within the Union should therefore be established between the Commission and the Member States. That framework should bring together job vacancies from across the Union and the possibility of applying for those job vacancies, set up arrangements for the provision of related support services to workers and employers and provide for a common approach for the sharing of the information necessary to facilitate such cooperation.

(6) The Court of Justice of the European Union (Court of Justice) has considered that the concept of 'worker' in Article 45 TFEU must be given a Union meaning and be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. In order to be treated as a worker, a person must pursue an activity which is genuine and effective, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary. The essential feature of an employment relationship has been considered to be that, for a certain period of time, a person performs services for and under the direction of another person in return for which remuneration is received[(6)]. The concept of 'worker' has been considered to include, in certain circumstances, persons undertaking an apprenticeship[(7)] or a traineeship[(8)].

(7) The Court of Justice has consistently held that freedom of movement for workers forms one of the foundations of the Union and, consequently, that the provisions laying down that freedom must be given a broad interpretation[(9)]. The Court of Justice has held that the freedom of movement of workers contained in Article 45 TFEU also entails certain rights for nationals of Member States moving within the Union for the purposes of seeking employment[(10)]. The concept of 'worker' should therefore, for the purposes of this Regulation, be understood to cover jobseekers, regardless of whether they are currently in an employment relationship.

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(8) In order to facilitate labour mobility within the Union, the European Council requested in the Compact for Growth and Jobs that the possibility of extending the EURES network to apprenticeships and traineeships be explored. Apprenticeships and traineeships should be covered under this Regulation provided that successful applicants are subject to an employment relationship. Member States should be able to exclude from clearance certain categories of apprenticeships and traineeships in order to ensure the coherence and functioning of their educational systems and to take into account the need to design their active labour market policy measures on the basis of the needs of the workers targeted by those measures. The Council recommendation of 10 March 2014 on a quality framework for traineeships[11] should be taken into consideration for the purposes of improving the quality of traineeships, in particular as regards learning and training content and working conditions, with the aim of easing the transition from education, unemployment or inactivity to work. In accordance with that recommendation, the rights and working conditions of trainees under applicable Union and national law should be respected.

(9) The information on offers of apprenticeship and traineeships provided for in this Regulation can be complemented by web-based tools and services developed by the Commission or by other actors, thereby allowing employers to share directly with workers opportunities on apprenticeships and traineeships across the Union.

(10) Since its launch in 1994, EURES has been a network for cooperation between the Commission and the PES to provide information, advice and recruitment or placement for the benefit of workers and employers, as well as any citizen of the Union wishing to benefit from the principle of the free movement of workers, through its human network and via online service tools available on the European job mobility portal (EURES portal). A more coherent application of clearance, support services and exchange of information on labour mobility within the Union is needed. The EURES network should therefore be re-established and reorganised as a part of the revised regulatory framework in order to be further strengthened. The roles and responsibilities of the different organisations participating in the EURES network should be determined.

(11) The composition of the EURES network should be flexible enough to adjust to changing developments on the market for recruitment services. The emergence of a variety of employment services points towards the need for a concerted effort by the Commission and the Member States to broaden the EURES network as the main Union tool for delivering recruitment services across the Union. A broader membership of the EURES network would have social, economic and financial benefits and could also contribute to generating innovative forms of learning and cooperation, including on quality standards for job vacancies and support services, at national, regional, local and cross-border level.

(12) Broadening EURES membership would improve efficiency in service delivery by facilitating partnerships and enhancing complementarity and quality, and would increase the market share of the EURES network, in so far as new participants would make available job vacancies, job applications and curricula vitae (CVs) and offer support services to workers and employers.

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(13) It should be possible for any organisation, including public, private or third-sector employment services, which undertakes to fulfil all criteria and the full range of tasks set out in this Regulation to become a EURES Member.

(14) Certain organisations would not be able to perform the full range of tasks required of EURES Members under this Regulation but have an important potential contribution to make to the EURES network. It is therefore appropriate to give them the opportunity to become EURES Partners on an exceptional basis. Such an exception should be granted only where justified and could be justified on the grounds of the applicant's small size, its limited financial resources, because it usually does not provide the whole range of tasks required or because it is a not-for-profit organisation.

(15) Transnational and cross-border cooperation and support to all EURES Members and Partners operating in Member States would be facilitated by a structure at Union level (‘the European Coordination Office’). The European Coordination Office should provide common information, tools and guidance, training activities developed together with Member States, and a helpdesk function. The training activities and the helpdesk function should, in particular, assist staff operating in the organisations participating in the EURES network who are experts on providing job-matching, placement and recruitment activities, as well as information, guidance and assistance, to workers, employers and organisations interested in transnational and cross-border mobility issues and are in direct contact with those target groups for that purpose. The European Coordination Office should also be responsible for the operation and development of the EURES portal and a common IT platform. To guide its work, multiannual work programmes should be developed in consultation with Member States.

(16) Member States should establish national coordination offices (NCOs) to ensure the transfer of available data to the EURES portal and to provide general support and assistance to all EURES Members and Partners on their territory, including on how to deal with complaints and problems with job vacancies, where appropriate in cooperation with other relevant public authorities such as labour inspectorates. Member States should support cooperation with their counterparts in the other Member States, including at cross-border level, and with the European Coordination Office. The NCOs should also have the task of verifying compliance issues as regards standards for the intrinsic and technical quality of data and data protection. To facilitate communication with the European Coordination Office and help the NCOs to promote compliance with those standards by all EURES Members and Partners on their territory, the NCOs should ensure a coordinated transfer of the data to the EURES portal through a single coordinated channel, where appropriate using existing national IT platforms. In order to deliver quality service in a timely manner, Member States should ensure that their NCOs have a sufficient number of trained staff and other resources necessary to carry out their tasks as laid down in this Regulation.

(17) The social partners' participation in the EURES network contributes, in particular, to the analysis of obstacles to mobility as well as the promotion of voluntary labour mobility on a fair basis within the Union, including in cross-border regions. The social partners' representatives at Union level should therefore be able to attend the

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meetings of the Coordination Group established under this Regulation and should have a regular dialogue with the European Coordination Office, while national employers' organisations and trade unions should be involved in cooperation with the EURES network facilitated by the NCOs through a regular dialogue with the social partners in accordance with national law and practice. The social partners should be able to apply to become a EURES Member or Partner upon fulfilment of the relevant obligations under this Regulation.

(18) Given their special status, the PES should be appointed by the Member States as EURES Members, without having to undergo the admission procedure. Member States should ensure that PES comply with the minimum common criteria set out in Annex I (the minimum common criteria) and the obligations under this Regulation. In addition, Member States are able to delegate to their PES general tasks or activities relating to the organisation of the work under this Regulation, including the development and operation of the national systems for admitting EURES Members and Partners. In order to fulfil their obligations under this Regulation, each PES should have sufficient capacity, technical assistance and financial and human resources.

(19) In accordance with their competence regarding the organisation of labour markets, Member States should be responsible for admitting organisations as EURES Members and Partners on their territory. Such an admission should be subject to the minimum common criteria and a limited set of basic rules on the process of admission to ensure transparency and equal opportunities when joining the EURES network, while allowing for the flexibility necessary to take into account the different national models and forms of cooperation between PES and other actors on the labour-market in the Member States. Member States should be able to revoke such an admission in the event that an organisation ceases to fulfil the applicable criteria or requirements on the basis of which it was admitted.

(20) The purpose of establishing the minimum common criteria to become a EURES Member or Partner is to ensure compliance with minimum quality standards. Applications for admission should therefore be assessed at least against the minimum common criteria.

(21) One of the objectives of the EURES network is to support fair and voluntary labour mobility within the Union and therefore the minimum common criteria for admitting organisations to join the EURES network should also include the requirement that those organisations commit themselves to fully respecting applicable labour standards and legal requirements, including the principle of non-discrimination. Member States should therefore be able to refuse or revoke the admission of organisations that are in breach of the labour standards or legal requirements, in particular those concerning remuneration and working conditions. In the event of a refusal of admission or revocation based on non-compliance with those standards or requirements, the relevant NCO should inform the European Coordination Office, which should then forward the information to the other NCOs. The NCOs can take appropriate action in relation to organisations operating on their territory in accordance with their national law and practice.