***Changes to legislation:*** *There are outstanding changes not yet made to Regulation (EU) No 492/2011 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

# 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 (codification) (Text with EEA relevance)

## 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

(codification)

(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)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community[(3)] has been substantially amended several times[(4)]. In the interests of clarity and rationality the said Regulation should be codified.

(2) Freedom of movement for workers should be secured within the Union. The attainment of this objective entails 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, as well as the right of such workers to move freely within the Union in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health.

(3) Provisions should be laid down to enable the objectives laid down in Articles 45 and 46 of the Treaty on the Functioning of the European Union in the field of freedom of movement to be achieved.

(4) Freedom of movement constitutes a fundamental right of workers and their families. Mobility of labour within the Union must be one of the means by which workers are guaranteed the possibility of improving their living and working conditions and promoting their social advancement, while helping to satisfy the requirements of the economies of the Member States. The right of all workers in the Member States to pursue the activity of their choice within the Union should be affirmed.

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(5) Such right should be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services.

(6) The right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers be eliminated, in particular as regards the conditions for the integration of the worker's family into the host country.

(7) The principle of non-discrimination between workers in the Union means that all nationals of Member States have the same priority as regards employment as is enjoyed by national workers.

(8) The machinery for vacancy clearance, in particular by means of direct cooperation between the central employment services and also between the regional services, as well as by coordination of the exchange of information, ensures in a general way a clearer picture of the labour market. Workers wishing to move should also be regularly informed of living and working conditions.

(9) Close links exist between freedom of movement for workers, employment and vocational training, particularly where the latter aims at putting workers in a position to take up concrete offers of employment from other regions of the Union. Such links make it necessary that the problems arising in this connection should no longer be studied in isolation but viewed as interdependent, account also being taken of the problems of employment at the regional level. It is therefore necessary to direct the efforts of Member States toward coordinating their employment policies,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

## EMPLOYMENT, EQUAL TREATMENT AND WORKERS' FAMILIES

### *SECTION 1*

### ***Eligibility for employment***

#### *Article 1*

1 Any national of a Member State shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

2 He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.

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*Article 2*

Any national of a Member State and any employer pursuing an activity in the territory of a Member State may exchange their applications for and offers of employment, and may conclude and perform contracts of employment in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefrom.

*Article 3*

1 Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

a where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

b where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

The first subparagraph shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.

2 There shall be included in particular among the provisions or practices of a Member State referred to in the first subparagraph of paragraph 1 those which:

a prescribe a special recruitment procedure for foreign nationals;

b limit or restrict the advertising of vacancies in the press or through any other medium or subject it to conditions other than those applicable in respect of employers pursuing their activities in the territory of that Member State;

c subject eligibility for employment to conditions of registration with employment offices or impede recruitment of individual workers, where persons who do not reside in the territory of that State are concerned.

*Article 4*

1 Provisions laid down by law, regulation or administrative action of the Member States which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of activity or region, or at a national level, shall not apply to nationals of the other Member States.

2 When in a Member State the granting of any benefit to undertakings is subject to a minimum percentage of national workers being employed, nationals of the other Member States shall be counted as national workers, subject to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications[(5)].

*Article 5*

A national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment.

*Article 6*

1 The engagement and recruitment of a national of one Member State for a post in another Member State shall not depend on medical, vocational or other criteria which are discriminatory on grounds of nationality by comparison with those applied to nationals of the other Member State who wish to pursue the same activity.

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2 A national who holds an offer in his name from an employer in a Member State other than that of which he is a national may have to undergo a vocational test, if the employer expressly requests this when making his offer of employment.

*SECTION 2*

***Employment and equality of treatment***

*Article 7*

1 A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2 He shall enjoy the same social and tax advantages as national workers.

3 He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

4 Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.

*Article 8*

A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union. He may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking.

The first paragraph of this Article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States.

*Article 9*

1 A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

2 A worker referred to in paragraph 1 may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist, and shall enjoy the resultant benefits and priorities.

If his family has remained in the country whence he came, they shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption.

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*SECTION 3*

***Workers' families***

*Article 10*

The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.

CHAPTER II

**CLEARANCE OF VACANCIES AND APPLICATIONS FOR EMPLOYMENT**

*SECTION 1*

***Cooperation between the Member States and with the Commission***

*[F1]Article 11*

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**Textual Amendments**

**F1** Deleted by 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).

*[F1]Article 12*

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**Textual Amendments**

**F1** Deleted by 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).

*SECTION 2*

***Machinery for vacancy clearance***

*Article 13*

[F1]1 . . . . . .