

Principle of non-discrimination within the free movement of workers

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Free movement of workers

- art. 45 TFEU
 - principle of non-discrimination
 - direct effect (*Van Duyn*, 41/74)
- regulation 1612/68 on freedom of movement for workers within the Community
- directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the MS

art. 45 TFEU

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.

Interdiction of discrimination

- **DIRECT DISCRIMINATION:** restrictions based on the MS nationality
 - are in accordance with Union law only when explicitly stated
 - art. 45 par. 3 – public policy, public security or public health
 - directive 2004/38 (art. 27 and following)

Interdiction of discrimination

- **INDIRECT DISCRIMINATION:** restrictions applied regardless of the MS nationality which, indeed, lead to the discrimination of non-nationals (e.g. condition of eligibility for a social security or tax benefit is more easily satisfied by national than by non-national workers)
- are in accordance with Community law only when:
 1. justified in the general interest
 2. satisfying to the principle of subsidiarity (or effectiveness): only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by non-discrimination measures
 3. satisfying to the principle of proportionality: the discrimination measure does not go beyond what is necessary to achieve the objective of general interest

Interdiction of discrimination

- employment (*art. 7 of the regulation 1612/68*)
- eligibility for employment (*art. 1 of the regulation 1612/68*)
- employment conditions (*art. 7 par. 1 of the regulation 1612/68*)
- social security and tax benefits (*art. 7 par. 2 of the regulation 1612/68*)
- recognition of diplomas and certificates (*directive 2005/36*)
- access to education and others
