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STUDY TO ANALYSE AND ASSESS THE SOCIO-ECONOMIC AND ENVIRONMENTAL IMPACT OF POSSIBLE EU INITIATIVES IN THE AREA OF FREEDOM OF MOVEMENT FOR WORKERS, IN PARTICULAR WITH REGARD TO THE ENFORCEMENT OF CURRENT EU PROVISIONS



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PROVISIONS**

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LIST OF ABBREVIATIONS

| | |
|---------|--|
| Art. | Article |
| CRD | Citizens' Rights Directive |
| DG | Directorate-General |
| DG EMPL | Directorate-General for Employment, Social Affairs and Inclusion |
| ECJ | European Court of Justice |
| EEC | European Economic Community |
| EMU | (Irish) Equality mainstreaming unit |
| EQUINET | the European Network of Equality Bodies |
| EU | European Union |
| FNV | Netherlands Trade Union Confederation |
| HALDE | The Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (The French Equal Opportunities and Anti-Discrimination Commission) |
| HR | Human resources |
| IBEC | Irish Business and Employers Confederation |
| ICTU | Irish Congress of Trade Unions |
| ILO | International Labour Organization |
| ISCO | International Standard Classification of Occupations |
| MHP | Dutch Trade Union Federation for Professional and Managerial Staff |
| MS | Member State(s) |
| N/A | Not applicable/ not available |
| NERA | (Irish) National Employment Rights Agency |
| NGO | Non-governmental organisation |
| SME | Small and medium-sized enterprise(s) |
| SNCU | Stichting Naleving CAO voor Uitzendkrachten (Dutch Foundation for Compliance with the Collective Labour Agreement for Temporary Employees) |
| TFEU | Treaty on the Functioning of the European Union |

0. EXECUTIVE SUMMARY

0.1 Introduction

The overall objective of the study is to analyse and evaluate the social, economic and environmental impact of possible EU initiatives to strengthen the current provisions of EU law for the freedom of movement for workers, in particular Article 45 TFEU and Regulation (EEC) 1612/69 (now 492/11). More specifically, the study will look at the possible **impact of measures that aim to improve the enforcement of citizens' rights** with respect to freedom of movement. The result of the study will feed into the Commission's impact assessment regarding options for EU action to tackle the obstacles to the free movement of workers.

The information in this study draws in large part on the following research tools:

- **27 Country Profiles:** the country profiles were used to set out the contextual factors that affect the extent to which observed impacts from the case studies could be transferred to other national contexts
- **7 impact case studies:** the case studies were used to collect data on the observed impacts of the proposed policy options in Member States where these (or very similar options) had already been implemented
- **Online survey¹ among EU workers:** the survey was used to identify perceived barriers for workers to live and/or work in another EU Member State
- **Public stakeholder consultation:** the public stakeholder consultation among citizens and organisations was used to collect data on awareness of rights, legal support to migrant workers, experience with nationality-based discrimination, and removal of obstacles to free movement
- **Expert workshop:** the workshop was used to present some preliminary findings to experts and stakeholders as well as to discuss key assumptions surrounding further analysis.

0.2 Problem definition

The problem definition outlined and scoped the problem forming the basis of this study and the idea for a potential EU intervention. It consisted of four elements: firstly, the nature of the problem – a more brief account of the problem under scrutiny in its essence, and secondly a description of scale of the problem, presenting examples of the different problems found in the Member States. Thirdly, and based on the first two elements, an assessment of policy option 1 – no EU intervention providing an estimation of how the situation of discrimination on the basis of nationality and enforcement of EU free movement legislation was likely to evolve in the Member States if the status quo was maintained and no EU action is taken. The assessment of policy option 1 is essentially the baseline scenario against which the expected impacts of the other policy options was considered.

The chapter on identifying the problem concluded by reflecting on whether and why an EU intervention might be needed and what mandate the EU has to act in this field.

¹ Carried out as a panel survey in 8 MS (FR, UK, PT, SE, PL, EE, RO and SI) with a minimum of 500 respondents in each country.

0.2.1 The nature of the problem

The right to move freely between Member States for work purposes is one of the four fundamental freedoms of the Union, yet it is the least practised of the four². While the number of European citizens exercising this right at one point or another in their life appears to be growing, currently only around 2.3% of EU citizens reside in another Member State than where they are citizens, approximately 10% have practised the right to free movement in the past, and 17% intend to do so at some point in the future³.

While (as outlined in Chapter 3) there are several de facto barriers to the movement of EU workers, such as concerns about leaving one's home and friends behind and language barriers⁴, some legal, administrative and practical barriers also seem to persist for those who wish to establish a working life in another Member State. Though the rights of EU migrant workers are strong and clear from a legal point of view, as outlined in Chapter 0, there are still problems related to the enforcement and practical implementation of these rights. Sometimes legislation adopted at a national, regional or local level is not in conformity with EU law, sometimes legislation is in conformity but there is an incorrect application by the national, regional and/or local authorities, and sometimes EU law is disregarded as a result of a general administrative practice and in specific individual situations. Sometimes it is a matter of blatant, direct discrimination against EU nationals from other Member States, and sometimes the discrimination is of a more indirect nature (conditions or demands which by effect lead to discrimination of other nationalities, including EU citizens).⁵

It seems that EU migrant workers face a wide variety of obstacles, such as different conditions applied to the recruitment of EU nationals from other Member States compared to nationals of the host country, less favourable working conditions (remuneration, career prospects, grade) compared to nationals of the host Member State, and restricted access to social advantages because they are subject to conditions more difficult for non-nationals of the Member State to meet.

The prohibition of discrimination on the grounds of nationality is in principle ensured by Regulation (EU) 492/11; however, studies show that nationality is not always included as an independent category in anti-discrimination provisions in Member States' national legislation. In practice this means that those alleging nationality-based discrimination must (if reliant on national legislation) either prove that the existing legislation indirectly includes nationality or show that the discriminatory treatment suffered fits explicitly into another category covered by the legislation (such as race or ethnic origin)⁶. This means that, though in principle protected by EU law, EU migrant workers who are victims of direct or indirect discrimination on the basis of nationality may in reality face obstacles in dealing with or challenging the discriminatory practice.

As can be seen from the above, there are many different issues related to the non-respect or wrong application of the rights of EU migrant workers. The issues, or barriers, can loosely be divided into four levels or types of problems:

- **Non-conform legislation at national, regional or local levels:** Some examples of the violation of EU migrant workers' rights appear at the formal level in legal provisions not in conformity with the EU rights of migrant workers to free movement and non-discrimination on the basis of nationality. These violations are more easily detectible and are therefore more easily addressed.
- **Incorrect application of EU law by national, regional or local authorities:** This is the semi-formal level that represents cases where the legislation (national, regional or local) is in conformity with EU law, but its application in procedures and practices of Member States'

² Mario Monti: "A new Strategy for the Single Market – at the service of Europe's economy and society"; report to the President of the European Commission, José Emanuel Barroso; 9 May 2010.

³ Eurostat

⁴ Eurobarometer: "Geographical and labour market mobility – summary"; European Commission: Special Eurobarometer; published June 2010; p. 24.

⁵ See also European Commission, DG Employment, Social Affairs and Inclusion. Roadmap: Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers. 15 June 2011.

⁶ European network on free movement of workers: Thematic Report – Application of Regulation 1612/68; January 2011

authorities does not respect EU rules and rights accorded to EU migrant workers and their family members.

- **Incorrect application of EU law by employers:** The cases of incorrect application of EU workers' rights by employers (public and private) are the most difficult to detect and address. Though the national legislation, standards and procedures applied by authorities might be in conformity with EU rules, EU migrant workers still risk being discriminated against when applying for a job or experience unequal treatment compared to nationals in terms of working conditions.
- **Non-use of rights accorded by EU law:** Many EU citizens choose not to use their right to freedom of movement for work purposes as accorded to them by EU law. Other EU workers who have moved experience discrimination but do not take actions to enforce their EU granted rights to equal treatment.

There are many different reasons why EU law on the free movement of workers is not being enforced or correctly applied. An important one, mentioned by several experts in the field, is related to a general unawareness or lack of understanding (both among citizens themselves and with national and local authorities and employers) of the extent of the EU rights⁷. Though EU free movement rights may be clear from a legal point of view, there seems to be some confusion as to its application due to the complexity of the legislation, especially the combination of Article 45 TFEU and Regulation (EU) 492/2011 with all the other legislation within the area of free movement, and the different transpositions of the related directives (e.g. the Residence Directive) into national law.

0.2.2 The scale of the problem

The study clearly revealed that discrimination on the grounds of nationality against EU migrant workers does take place. This discrimination was mainly of indirect nature, meaning that the rules or regulations applied did not concretely exclude nationals of other EU Member States, but the way these rules were written or applied favours the nationals of the host country.

The study also showed that there were some differences between the views of the EU workers on the most important barriers to moving and working abroad on the one hand and the examples that were found based on existing cases of complaints or other reports on the other hand. This may be because the EU migrant workers were not aware of their rights to complain when they felt discriminated against. The report moved on to provide examples from the Member States showing different types of barriers experienced by EU migrant workers, specifying whether the barriers were related to:

1. Non-conform legislation at national, regional or local levels (problem 1)
2. Incorrect application of EU law by national, regional or local authorities (problem 2)
3. Incorrect application of EU law by employers (problem 3)
4. Non-use of rights accorded by EU law (problem 4)

Furthermore, an assessment is made concerning the drivers that are underlying to these different types of problems. For example, it is important to know, whether the problems occur because:

- National authorities do not interpret case law in the same way as the Commission
- Member States develop their legislation with their specific objective(/national interests) in mind without paying attention to whether it is in accordance with Article 45 and Regulation (EU) 492/2011
- The officials or judges do not apply the law correctly (public authorities acting as public authorities)
- Procedures to claim rights are not or are incorrectly implemented
- Officials or judges are unaware of or misunderstand EU law regarding migrant workers' (and family members') rights
- Employers are not aware of EU law regarding migrant workers' (and their family members') rights
- Employers do not understand EU law regarding migrant workers' (and their family members') rights

⁷ Alain Lamassoure: "The citizen and the application of Community law"; Report to the president of the Republic; 8th June 2008; p. 11

- Employers disregard EU law regarding migrant workers' (and their family members') rights
- EU citizens are not aware of their rights
- EU citizens do not understand their rights
- EU citizens are unwilling to claim their rights (e.g. due to fear of losing their job)
- EU citizens do not have the means to claim their rights
- EU citizens are unaware of the means available to them to claim their rights
- Legal advisors/the legal profession are not aware of the means available to EU citizens to claim their rights

Discrimination happens everywhere in the European Union; examples were presented from almost all Member States⁸.

Examples of non-conformity with EU legislation (problem 1) were found in approximately half of the Member States. These were mainly related to study grants and other social advantages, but also to nationality requirements for public services and excessive language requirements. All of these can be characterised as belonging to the area of legislation, where much of the current EU law is based on ECJ case law rather than concrete provisions in regulations or directives. The relevant case law has in these cases not always been codified, i.e. the relevant changes have not yet led to amendments in the legal texts. In order to implement the ECJ case law in the national legislation, it is required from the Member States that they are aware and up-to-date with the ECJ rulings and take them into account when developing the national legislation. It can thus be that the Member States, where non-conformity was identified, did not take into account the relevant rulings by ECJ. It may however also be that the Member States did not interpret case law in the same way as the European Commission. Moreover, it is possible that when developing their national legislation, Member States had their specific national objectives in mind without paying close attention to whether those objectives were in accordance with Article 45 TFEU and Regulation (EU) 492/11. For example with respect to the definition of an "excessive language requirement", the ECJ has stated that measures restricting free movement "must not go beyond what is necessary"⁹, but it may be more difficult for the Member States to assess, where the limit to "beyond what is necessary" goes.

Incorrect application of EU law by national, regional or local authorities (problem 2) and incorrect application of EU law by employers (problem 3) were found in almost all Member States. These were found in particular in rules and regulations concerning the free movement of workers in general and definition of EU workers and in different topics related to eligibility for employment, and employment.

A clear trend could be seen with respect to in particular problems 2 and 3: discrimination towards EU migrant workers from the newer EU Member States, in particular Romania and Bulgaria, still subject to transitional schemes is more common than discrimination towards EU migrant workers from elsewhere in Europe. Most examples of underpayment and poor working conditions were related to workers from the newer EU Member States. Likewise, Bulgarian and Romanian citizens have felt the most discriminated against of all EU nationalities when working abroad. The Your Europe Advice-feedback report¹⁰ concludes that "most cases of **direct discrimination** affect nationals from countries which are or have been the object of transitional restrictions in access to employment. There is therefore a "spill-over" effect of such restrictions." Even though the transitional measures are no longer in place for EU-8, it seems that EU migrant workers from EU-8 still experience problems. The report concludes that there is an impression that local authorities feel that they have the right to treat EU migrant workers from newer EU Member States as "second-class EU citizens". The Your Europe Advice cases reveal that the negative consequences of transitional measures can be seen broadly. They are often related to Bulgarians and Romanians, but also to other nationalities, such as Poles, Lithuanians and Hungarians. The cases include workers and students, "who are employed in total ignorance of their rights (working time,

⁸ The examples cannot be considered exhaustive, which is why it should not be stated that no barriers for free movement of workers exist in Hungary and Romania.

⁹ Gebhard and Consiglio Dell'Ordine Degli Avocati e Procuratori Di Milano C-55/94. See: Record of Proceedings: Seminar on Key Issues in Free Movement in Ireland, Law Society of Ireland, 5 November 2010.

¹⁰ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

minimum wages), if not simply illegally (undeclared work), often without suspecting it. They find out about their precarious situation when dismissed (often unfairly and without the last payments) or leaving their job, namely when claiming unemployment benefits, or simply when in need of healthcare. They also discover that they do not really have a right to remain in the host country because they had failed to register (or had not been registered by their employer) as workers."¹¹

These findings indicate that the main challenges with respect to discrimination of EU migrant workers are not related to non-conformity with EU legislation, and that EU legislation as such is not the main problem. As mentioned above, most cases that were found with respect to non-conformity with EU legislation were related to study grants and other social advantages, as well as to nationality requirements for public services and excessive language requirements. It is the assessment of the contractor that the potential number of EU workers affected by these cases is relatively limited. Instead, there seems to be concrete challenges with respect to the practical application of the existing rules either in terms of general administrative practices, or as individual cases that disregard the EU law rather than barriers of systemic nature that would blatantly disregard the existing EU legislation. These conclusions support the findings by the European network on the free movement of workers, who state in their recent report¹² that there is a limited number of problems of systemic nature in Member States that constitute unlawful discrimination. Most of the problems that exist are related to potential forms of indirect discrimination, such as excessive language requirements or taking into account previous work experience from other Member States when establishing level of seniority.

While the majority of the examples found in this chapter represent the public sector, it should be kept in mind that the collection of examples is by no means complete, which is why this does not suggest that there are no challenges in the private sector. The violation of EU migrant workers' rights by private employers is more difficult to detect, and can only be identified when EU migrant workers complain to the court, to an equality body or other designated authority. The cases concerning private sector always fall under problem 3, which is also the level that is the most difficult one for the Commission to address. The Commission does not have the power to intervene in cases against private employers, for example when they demand their potential employees to fulfil excessive language requirements.

It is therefore worth noting, as outlined in the *general scale of the problem*, that many of the workers who had felt discriminated against did not take steps towards enforcement of their rights to equal treatment. Moreover, the majority of the migrant workers who responded to the public consultation did not feel that the current level of protection of EU migrant workers and their rights is sufficient, either because they are not aware of the means available to them for protection and enforcement of their rights or because they do not find that there are sufficient means available to them.

The data collected shows that the information provided to EU workers is very scarce and that problems often occur due to the lack of information. This goes for both the potential EU workers who are planning to move abroad, and to those EU migrant workers who are already working in an EU Member State other than the one they come from. It can thus be assumed that there are cases, where the main driver behind the problem is that EU citizens are either not aware, or do not understand their rights with respect to free movement. These drivers can be behind several types of problems, but as the examples used as a foundation for this study do not include enough detail to gain a clear understanding of the underlying drivers, it is not possible to specify to what extent this happens. However, evidence from studies on EU anti-discrimination law shows that unawareness is indeed a challenge, in particular with respect to the EU citizens' means to claim their rights and their awareness of the means available to them.¹³

¹¹ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011. Examples: 83998, 86187, 70979, 68292, 78153, 83492, 86508, 83881, 61738, 70575, 68902, 80636, 82127, 68442, 86687, 77423, 53570, 67111, 64585, 81595, 64022, 73898, 61693, 65378, 63793, 64591, 65082, 65969, 64591, 65082, 65969, 68477.

¹² Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

¹³ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011.

The examples presented in the above chapter also show that lack of awareness concerning EU migrant workers' rights does not only apply to EU migrant workers, but also to the public authorities, employers and legal advisors. Several of the examples relating to problem 2 and 3 could be explained by non-awareness or lack of understanding of rights by the employers, judges, legal advisors or by the public authorities. This is supported by findings from other sectors, where it was found that "difficulties with reversing the burden of proof in practice result from limited awareness among judges and other members of the legal profession with respect to the requirement as well as the means of its application".¹⁴

0.2.3 The baseline scenario (2012-2020)

The numbers of intra-EU migrant workers are expected to increase in the future. This means that the risk of discrimination cases is expected to increase for all clusters, as even in the cluster with a lower number of EU migrant workers, the total number of EU migrants is expected to increase between now and 2020. Recent developments in intra-EU migration, on which the projections are based, have meanwhile been affected by the EU enlargements of 2004 and 2007. Further enlargements are to be expected between now and 2020, but these are of a smaller magnitude than the 2004 and 2007 enlargements. Research shows that 75% of mobility from EU-8 to EU-15 is due to the 2004 enlargement. In addition, the research shows that 50% of mobility from EU-2 to EU-15 was due to the enlargement of 2007¹⁵. The growth in EU migrants is therefore most likely overstated.

The problems are different for each cluster; where some mainly face formal barriers to discrimination, others mainly face informal barriers. Formal barriers will continue to hinder migration without intervention. The case of informal barriers is more sensitive to other trends within the clusters. A change of public attitude towards migration may affect informal barriers to migration in a positive or negative way.

The Country Profiles showed that in ten of the Member States (*BG, CZ, DK, EE, LT, PL, PT, SK, NL, UK*) legal or other initiatives in relation to barriers to immigration of EU workers were in the pipeline. As regards the initiatives there seem to be two main trends. On the one hand countries were looking to ensure qualified labour force in the future. On the other hand, due to the current economic situation or political situation in a Member State, many of the initiatives in the field had been postponed or there were even initiatives in the pipeline aimed at protecting the national labour markets.

0.2.4 Mandate and need for EU action

As all the examples of recurrent issues of nationality-based discrimination and obstacles to free movement show, there is a need for action, especially in the context of the EU 2020 objectives calling for the EU to encourage mobility and President Barroso's request in his political guidelines for the 2012-2014 EC to ensure that the rights of European citizens are enforced¹⁶. And these objectives are best achieved by action at EU level, for the following reasons:

- The assessment of policy option one and the calculated baseline scenarios showed that the situation is not likely to improve if it is left to the Member States to take action. The economic crisis and rising unemployment rates have only created disincentives for the Member States to improve access to their labour markets for workers from other countries; evidenced by the fact that initiatives to improve the situation of migrant workers' in some countries have been put on hold or discontinued, while initiatives towards more protection of the national labour market have also been found.
- Problems with obstacles to free movement and discrimination of EU migrant workers (and/or their families) at all problem "levels" (both official and unofficial) were found in almost all Member States. There are several different drivers behind the four types of problems but a common denominator, which in some way or another influences all levels, is unawareness or misunderstanding of EU migrant workers' (and their family members') rights. At the more formal levels (problem 1 and, partly, problem 2) this may be improved by a legislative

¹⁴ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011

¹⁵ Holland et. Al (2011): Labour mobility within the EU – The impact of enlargement and the functioning of the transitional arrangements

¹⁶ José Manuel Barroso: Political Guidelines for the next Commission; p. 13.

initiative, clarifying some of the issues currently causing problems, perhaps by codifying the existing case-law. The issues at the more informal levels, meanwhile, may be dealt with through other measures of legislative or non-legislative nature. First of all, it is important to ensure that means to enforce their rights in case of discrimination are available to EU migrant workers. Secondly, and moreover, it is important to ensure that migrant workers themselves, providers of legal assistance, officials and employers alike understand and are aware of migrant workers rights and the existence of the means to enforce them.

- Any legislative initiatives should be taken at EU level, as the EU has a mandate to legislate in this field, and to ensure harmonization. Non-legislative initiatives to improve awareness and understanding should also be taken at EU level, since this helps ensure harmonization and clarity of the message provided across the EU and may take advantage of potential economies of scale.

0.3 The policy options

It is the responsibility and competence of the EU to ensure and protect the right of EU workers and their families to move freely within the Union¹⁷. As the problem definition and the baseline scenario showed, this right is presently not sufficiently ensured across all Member States. Although it is clearly prohibited by Regulation (EU) 492/11, EU workers may risk being discriminated against on the grounds of nationality when exercising this right. It is therefore considered that some kind of EU action in the field may provide added value in terms of ensuring a more coherent and effective application and enforcement of the principles of freedom of movement and equal treatment on the grounds of nationality.

Within its remit of competence and in line with the principles outlined in the Roadmap, the Commission has put forward specific policy options to tackle barriers to the free movement of EU workers. Policy option 2 is non-binding intervention, whereas Policy option 3 is a binding legislative initiative consisting of six sub-options (a-f), and its implementation could entail the introduction of one or a combination of some or all of the elements in the sub-options. The policy options are summarised in the table below.

Table 1: Overview of policy options

| Policy option | Description |
|---|---|
| Policy option 1: taking no specific action at EU level | The first option is to maintain the status quo and let things run their course without the introduction of further initiatives (neither binding nor non-binding) at EU level |
| Policy option 2: non-binding guidance | This policy option entails the introduction of non-binding guidance on the rights of EU workers exercising their right to freedom of movement . The tools used for this purpose can take the form of soft law instruments such as communications or recommendations, information campaigns, exchange of good practice, measures for promoting dialogue between social partners, or a combination of several instruments. |
| Policy option 3a: concept of discrimination | The sub-option 3a aims to prevent discrimination on the grounds of nationality by introducing elements that would help the understanding of the concept and give nationality an equal legal status (in practice) compared to other grounds for discrimination (ethnicity, gender, etc). This can be achieved by including a definition of (direct and indirect) discrimination on the basis of nationality in EU law. |
| Policy option 3b: information obligations | This policy option would contribute to raising awareness among EU citizens on their rights as migrant workers by making awareness-raising a national obligation . The policy option would also contribute towards raised awareness amongst employers. However, full impact can only be obtained in close collaboration with other stakeholders. |
| Policy option 3c: Legal assistance | This policy option intends to ensure the availability of mechanisms of legal assistance to EU migrant workers and their families at the Member State level |

¹⁷ Articles 45 and 46 TFEU

| | |
|--|---|
| mechanisms | <p>by imposing an obligation on Member States, through EU law, to provide:</p> <ul style="list-style-type: none"> ➤ Means of redress: availability of administrative or judicial procedures for EU migrant workers if they find that their rights have been violated. ➤ Legal representatives: representation of EU migrant workers by organisations or legal entities in administrative/judicial procedures concerning violations of obligations under Regulation (EU) 492/11. ➤ Provisions on victimisation: protection of EU migrant workers from dismissal or similar adverse treatment by an employer on the basis of a complaint of discrimination on the grounds of nationality. ➤ Prevention of discrimination by employers: obligation on employers to engage actively in preventing discrimination on the basis of nationality. ➤ Equality bodies: requirement of Member States to set up bodies or contact points for the promotion of equal treatment on the basis of nationality and covering all aspects of Regulation (EU) 492/11. |
| Policy option 3d: reversal of the burden of proof | <p>The objective of this sub-option is to make it easier and less burdensome for EU migrant workers to file complaints of discrimination by reversing the burden of proof, putting it on the defendant (alleged discriminator) rather than the plaintiff to prove that there has been no breach of the principle of equal treatment.</p> |
| Policy option 3e: Sanctions and compensations | <p>This sub-option aims to ensure that real and effective compensation or reparation is available to victims of discrimination on the grounds of nationality in all Member States, by introducing a legal obligation on them to make sure that sanctions are applied and compensation payments made upon violations.</p> |
| Policy option 3f: Dialogue between stakeholders | <p>The objective of this sub-option is to increase dialogue between social partners and NGOs, and consequently improve the knowledge of and correct enforcement of the rights of EU migrant workers and the aspect of equal treatment on the basis of nationality.</p> |

The overarching objective of a potential EU intervention and all of the proposed policy options was to improve the enforcement of EU workers' rights as defined by Regulation 492/11 and Article 45 TFEU and eliminate barriers to free movement and discrimination on the basis of nationality.

For the purpose of clarifying the logic behind a potential EU intervention in general and each of the policy options more specifically, the general, specific and operational objectives were identified as the following:

General objective: Contributing to the better functioning of the internal market by reducing the barriers to free movement of workers

Specific objective: Improving the enforcement of citizens' right as regards free movement of workers (Art 45 TFEU and Regulation 492/2011)

Operational objectives:

1. Increasing awareness among citizens, employers, public authorities and other stakeholders about rights of EU migrant workers and their family
2. Providing EU workers with means and/or instruments that have the purpose of facilitating intra-EU migration for workers and their family
3. Improving legal certainty about non-discrimination and rights of EU workers.

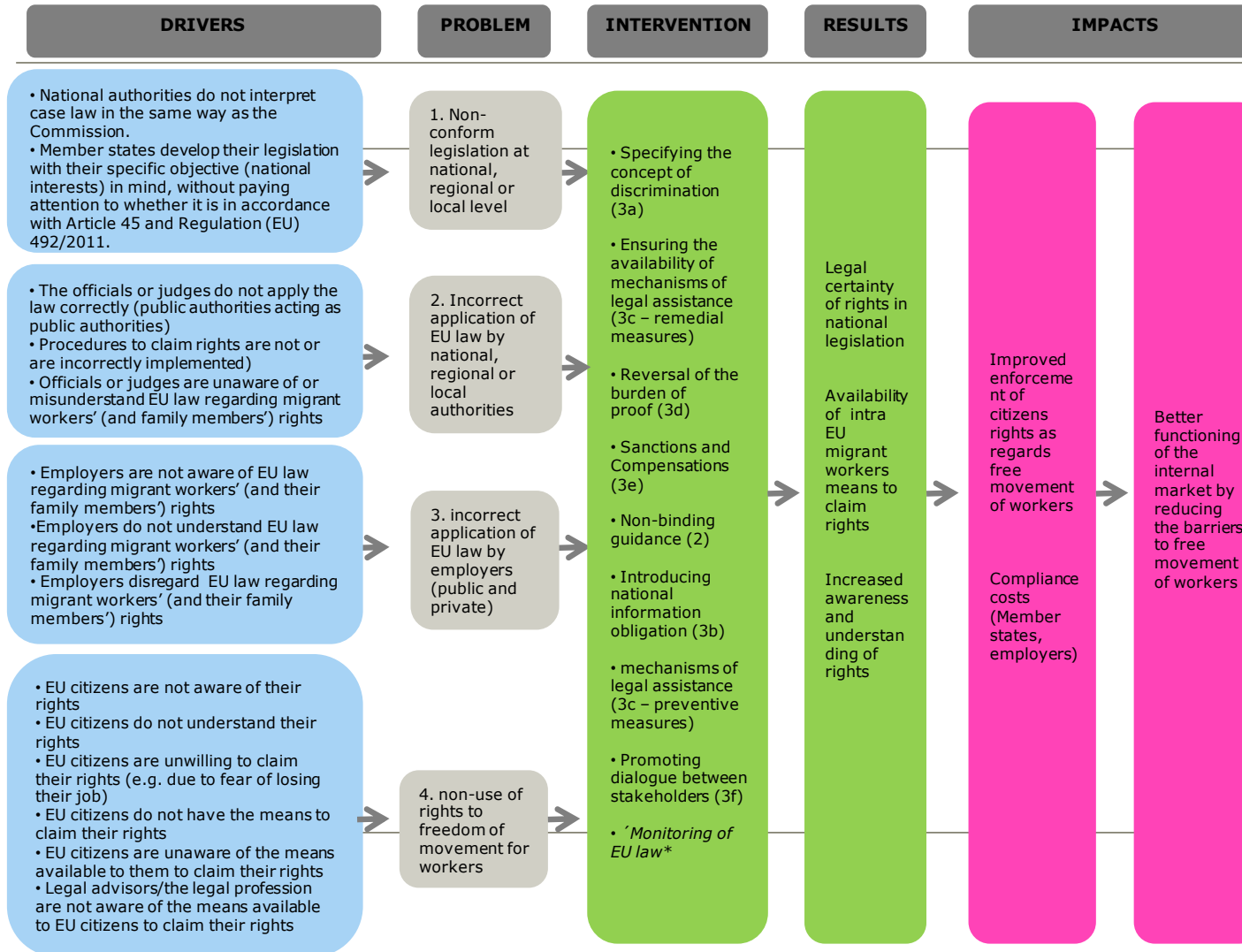
0.4 Impact analysis and comparison of policy options

In the impact assessment the eight policy options and their potential impacts were analysed and discussed in terms of their ability to (1) strengthen/create certainty about the legal rights of EU migrant workers and their families, or improve citizens' accessibility to means to claim their rights (sub-options 3a, 3c, 3d and 3e), and (2) increasing awareness and/or understanding of these rights (options 2, 3b, 3c and 3f). The assumption was that with clear legal rights, means to

claim these, and awareness of their existence, discrimination against EU migrant workers will decrease thus improving the enforcement of citizens' rights as regards free movement of workers, and ultimately supporting a better functioning of the internal market by reducing barriers to free movement of workers.

The figure below gives a graphical overview of the drivers, problems, selected policy options and expected impacts of the proposed options.

Figure 1: Intervention Logic for future EU intervention



The baseline scenario established on the basis of the problem definition assessed the future situation for EU migrant workers with the prospect of no EU intervention (policy option 1). The baseline scenario showed that the numbers of intra-EU migrant workers are expected to increase in the future. This means that the risk of discrimination cases is expected to increase for all clusters of Member States, as even in the Member States with a lower number of EU migrant workers, the total number of EU migrants is expected to increase between now and 2020.

The problems faced by EU migrant workers were different for each country cluster; while in some Member States there were mainly formal barriers to discrimination; in others the barriers are mainly informal. Formal barriers will continue to hinder migration without intervention. The case of informal barriers is considered more sensitive to other trends within the clusters. A change of public attitude towards migration may affect informal barriers to migration in a positive or negative way. Moreover, the study showed that in several Member States there were legal or other initiatives in the pipeline concerning barriers to intra-EU migration. Hence, it is possible that the situation will change without EU intervention, due to Member States' own initiatives. Meanwhile, in the context of the economic crisis, many of these initiatives have been postponed (some indefinitely) and there are even other initiatives in the pipeline aiming towards more protection of the national labour markets. This is supported by the findings of the 2010 Annual Monitoring Report on the application of EU law, which showed that problems relating jobseekers and retaining the status of worker seemed to have increased in the context of the economic crisis¹⁸.

The evidence thus suggested that there is a need for action at EU level. This corresponds well with results from the *public consultation on EU initiatives for the enforcement of EU rules on the free movement of workers*. The majority of EU Citizens responded that the best way of achieving protection of workers is by the adopting EU legislation reinforcing the rights of EU migrant workers. Information campaigns were rated as the second most important initiative. Similarly, 50% of the organisations responding to the public consultation indicated that the adoption of EU legislation reinforcing workers' rights was the most important initiative. Information campaigns enjoy second strongest support also in this group.

The study did not find any specific or substantial environmental impacts of any of the proposed policy options.

0.5 Conclusions

The impact assessment of the proposed policy options for EU intervention concluded that none of the proposed policy options stood out from the others in terms of producing significant (economic and social) impacts. All of the proposed policy options were expected to produce impacts to a limited or to some extent in all Member States – except the ones in cluster 1 (the group with the least barriers), which were expected to experience no change or impacts to a limited extent. Due to the lack of – especially quantitative – data available, the impact assessment could not provide solid conclusions as to the expected specific impacts on each stakeholder group. The study however assessed that EU migrant workers and their families are the ones most likely to benefit from any of the proposed policy options (in terms of improved legal certainty about rights, increased awareness of rights and improved access to means to claim rights), while employers (public and private) and national authorities are most likely to be negatively affected by increased costs. Besides policy option 2, the costs of all proposed policy (sub-) options were however assessed as insignificant. Meanwhile, policy option 2 was the only option expected to provide positive impacts for all stakeholders; however, the extent to which the different stakeholders would be affected in terms of increased awareness could not be determined.

The comparison of the policy options – which due to the lack of significant quantifiable impacts relied heavily on qualitative assessments established through the case studies – concluded that there were strong indications that some policy options and particularly a combination of (sub-) options would be more effective than others.

¹⁸ Commission staff working paper: Situation in the different sectors, accompanying the document "Report from the Commission – 28th Annual Report on monitoring the application of EU law (2010); Brussels 29.9.2011.

As for the policy options related to providing certainty concerning legal rights or means to claim these rights, all options are expected to impact the baseline to only a limited extent, especially if implemented separately. Meanwhile, all of the options (except the element of a legal obligation on employers under option 3c) are associated with quite low direct costs. Moreover, there appear to be some links between the legal measures in terms of increasing their expected impacts. As such, policy option 3d on the reversal of burden of proof may not have a big impact in itself, but the potential for impact is expected to be bigger if combined with options 3a and the element of legal representation under 3c, as well as perhaps an initiative to raise awareness.

When it comes to the policy options related to strengthening awareness, all the assessed options have expected impacts. Impacts are, however, not measurable. Ranking the options in terms of effectiveness and efficiency is therefore not possible. It is furthermore important to note that the results of the impact case studies showed that in terms of impacts, the policy options (2, 3b, 3c and 3f) supplement each other to some extent, as they target different groups. The campaign studied in relation to policy option 2 primarily reached journalists (as well as other stakeholder groups), policy option 3b targets citizens primarily, policy option 3c targets employers (least effectively) and citizens (through the work of the equality body), and policy option 3f targets social partners and NGOs. As all of these are important groups, it is not possible to rank one option above the other on the basis of the impact assessment, but rather conclude by noting that they can all be expected to have some (although not measurable) impacts on important stakeholder groups.

0.6 Recommendations

The conclusions of this study ruled out policy option 1, as the findings showed that there is a need for an EU intervention to achieve the objective of an improved enforcement of the rights of EU migrant workers and their families with regards to freedom of movement and non-discrimination. Barriers persist (on all "problem levels" and across the European Union) and the situation is not likely to improve on Member States' own initiatives. Moreover, considering the main trends found in the problem definition, the context of the economic crisis and the upcoming termination of the transition schemes for EU2 there will probably be an increased need for action.

It is furthermore recommended that the EU intervention takes the form of legally binding measures (policy option 3). This recommendation is based on several considerations:

- a) From the findings of the case study on policy option 2 there is no substantial evidence of impacts of the campaign. This holds true for the other policy options too, meanwhile the campaign was considered to be rather ambitious and dispersed in terms of its target groups, rendering it less efficient considering the relatively large costs of carrying out such an extensive campaign. A similar campaign concerning EU migrant workers' rights would in principle have an equally large scope, since problems appear to exist in relation to many different stakeholders (employers, workers, national authorities) and at many different levels, which can all in different ways be linked to lack of awareness and/or understanding.
- b) Many of the barriers found related to the so-called "gray areas" of the existing legislation, namely social advantages, language requirements and public sector employment, which are mainly defined through case-law. This indicates that there is a need for some sort of clarification in these areas perhaps through an amendment of the Regulation codifying the relevant case-law.
- c) Experts in the field have argued the importance of the so-called "signal value" of having (clear) legislation prohibiting discrimination on the basis of nationality in place (also at national level), as a basis for discussions about the issue and for creating awareness. This is underlined by the abovementioned finding in relation to anti-discrimination legislation that there is an increased awareness among EU citizens of their fundamental rights but not an equivalent awareness of their access to means to claim these rights. Meanwhile, before an attempt is made to raise awareness of the latter, it must be ensured that these means are in place and effective.

This study did not provide a specific recommendation on whether the legally binding measures should take the form of a directive or a regulation. This will have to be a political decision taken

by the Commission in their impact assessment. Meanwhile, the advantages and disadvantages of both options, considering the above conclusions and recommendations are discussed in the following.

No matter which policy instrument is chosen, it is recommended to introduce a combination of hard and soft law, maybe even a “package” of a directive/regulation in combination with e.g. a handbook or other type of guidance for instance through a website or similar. This recommendation is based on advice from experts in the field as well as the European Governance White Paper, which advocates the effectiveness of combining policy instruments, i.e. “combining formal rules with other non-binding tools such as recommendations, guidelines, or even self-regulation”¹⁹. In terms of guidance/handbook, inspiration could potentially be found in the handbook for the Services Directive, and/or the handbook recently published by the European Fundamental Rights Agency on EU non-discrimination law, which also provides guidance on the case law established in the field and already covers some of the issues related to discrimination on the basis of nationality and the EU legislation on free movement of workers²⁰.

¹⁹ Commission of the European Communities: “European Governance – a White Paper”; Brussels, 25.7.2001; p. 20

²⁰ European Union Agency for Fundamental Rights (2010): “Handbook on European non-discrimination law” (http://fra.europa.eu/fraWebsite/attachments/handbook-non-discrimination-law_EN.pdf)

1. INTRODUCTION

This document contains the draft final report for the *Study to analyse and assess the socio-economic and environmental impact of possible EU initiatives in the area of freedom of movement for workers, in particular with regard to the enforcement of the current EU provisions (in particular, Article 45 TFEU and Regulation (EEC) 1612/68)*.

1.1 Study objectives

The fundamental right of free movement of workers in the EU is enshrined in Article 45 TFEU²¹ and has been further developed in Regulation (EU) 492/11.²² All EU citizens are (in principle) free to move to another EU Member State to pursue career opportunities in markets where demands for labour may be higher or a better fit with their qualifications. However, in reality the right to free movement is exercised by relatively small numbers of EU citizens. With only 2.3% of EU citizens (11.2 million persons in 2010²³) living outside their home country²⁴, it is the least used of the four freedoms of the single market²⁵. It seems that legal, administrative and practical obstacles to exercise the right to free movement within the European Union still exist. Consequently, there is a need for identifying possible future actions in this field in order to encourage mobility and to support Europeans in making more use of their right to move freely²⁶.

The overall objective of the study is to analyse and evaluate the social, economic and environmental impact of possible EU initiatives to strengthen the current provisions of EU law for the freedom of movement for workers, in particular Article 45 TFEU and Regulation (EEC) 1612/69 (now 492/11). More specifically, the study will look at the possible **impact of measures that aim to improve the enforcement of citizens' rights** with respect to freedom of movement. The study aims to feed into the Commission's impact assessment regarding options for EU action to tackle the obstacles to the free movement of workers.

1.2 Activities undertaken

European Commission, DG Employment, Social Affairs and Inclusion commissioned Ramboll Management Consulting to carry out the study as a part of the Framework Contract on evaluation and impact assessment. The study was undertaken in June through December 2011. The study follows the different steps identified in the Impact Assessment Guidelines published by the European Commission, consisting of the following:

²¹ Consolidated version of the treaty on the functioning of the European Union. OJ C115, 9.5.2008.

²² Regulation (EU) 492/11 of the European Parliament and of the Council of 5 April 2011 on freedom of movement of workers within the Union, Codifying Regulation (EEC)1612/68. OJ L141, 27.5.2011.

²³ EU Labour Force Survey:

http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_unemployment_ifs/data/database.

²⁴ European Commission, DG Employment, Social Affairs and Inclusion. Roadmap: Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers. 15 June 2011.

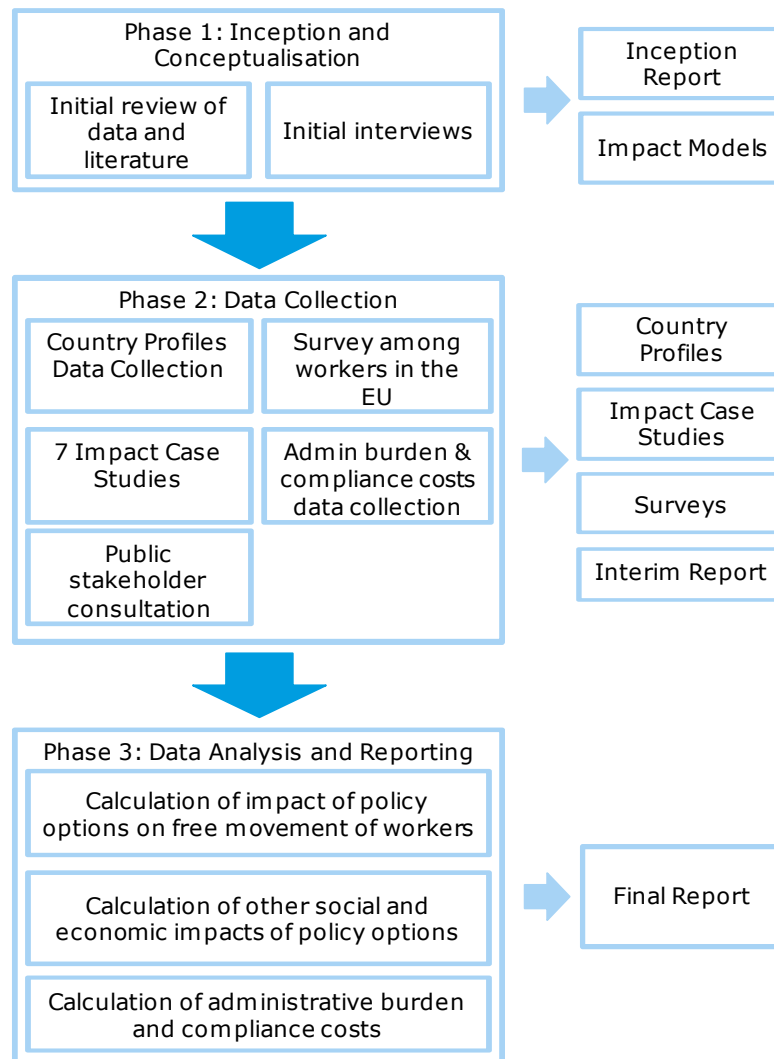
²⁵ Mario Monti: A new Strategy for the Single Market – at the service of Europe's economy and society; Report to the President of the European Commission, José Emanuel Barroso; 9 May 2010

²⁶ European Commission, DG Employment, Social Affairs and Inclusion. Roadmap: Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers. 15 June 2011.

- Step 1: The development of the problem definition and detailed description of the baseline scenario, including collecting available data and assessing the costs of the non-enforcement of current rules for EU migrant workers and members of their families
- Step 2: The identification of economic, social and environmental impacts of the specified policy options
- Step 3: The qualitative assessment of the significant impacts
- Step 4: The quantitative analysis of the most significant impacts.

These four steps were undertaken within three different study phases through specific activities, presented in the figure below.

Figure 2: Overview of Study Framework



1.3 Report objectives and structure

This report provides an overview of the activities undertaken during the study, the main results of the study, and some conclusions and recommendations on how the results may feed into an impact assessment on possible options for EU action.

The report is structured in the following way:

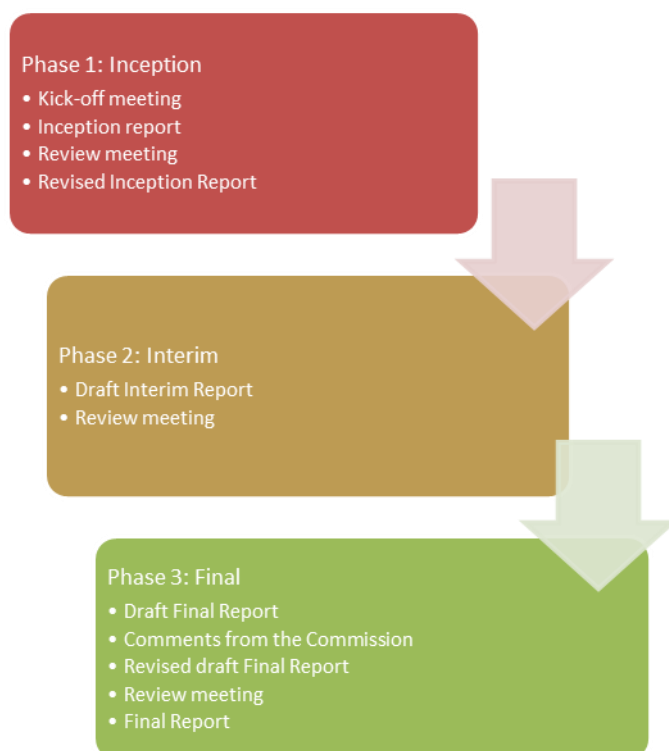
Following this introduction, **section 2** summarises the methodology used to carry out the study. **Section 3** provides a background for the context of the study by presenting labour mobility patterns in the European Union. **Section 4** presents the current conceptual framework in the field of the free movement of workers, in particular Article 45 TFEU and Regulation (EU) 492/11.

Section 5 contains two sub-sections describing the nature and scale of the problem. **Section 6** presents the baseline scenario, and then is followed by the presentation of policy options for tackling the problem in **section 7**. **Section 8** contains the impact analysis based on the findings concerning baseline and policy options, and **section 9** compares the policy options to find the most plausible policy option. Finally, **section 10** presents the conclusions of the study together with the contractor's recommendations.

2. METHODOLOGICAL APPROACH

The following chapter provides an overview of the processes of the analysis. It includes the main phases of the project, such as meetings and deliverables, the main data sources employed, the data collected, and the challenges and limitations in terms of data availability and collection.

The study was divided into three main phases. The main meetings and deliverables of each phase are presented in the figure below.



2.1 Presentation of the methods

The study consisted of a number of methods that led to the development of a problem definition, baseline situation, policy options, impact analysis and the presentation of a preferred policy option. The following methods were used:

- 1) Desk research
- 2) Country profiles
- 3) Survey among EU workers
- 4) Public consultation
- 5) Impact case studies
- 6) Assessment of compliance costs
- 7) Impact Assessment

2.1.1.1 Desk research

As a first step, a review of existing literature and secondary data related to the migration of EU workers was carried out. The purpose was to identify relevant existing secondary data to inform the study and, in particular, to identify important data gaps that Ramboll's collection of primary data could potentially fill. The initial desk research and data review furthermore formed the basis for the first draft of the problem definition and a (very initial) baseline scenario, which were to be further developed later based on information acquired through the primary data collection

The secondary data collected and employed in the impact assessment consists of both qualitative and quantitative information which, besides the problem definition and initial baseline scenario, have also fed into the country profiles and impact case studies. The secondary qualitative data used in the study is mainly comprised of²⁷:

- Legislation (EU and national) relating to the freedom of movement of workers (including discrimination on the grounds of nationality);
- Documents concerning the implementation of Article 45 TFEU and Regulation (EEC) 1612/68 (now 492/11), as well as other relevant Directives (i.e. Directive 2004/38/EC and Directive 98/49/EEC); (for a full list of sources, see Annex F)
- Reports and studies on barriers to free movement and discrimination of EU migrant workers (e.g. report from Your Europe Advice and studies/journals by the European network on free movement of workers).

In terms of quantitative data, multiple sources were used in particular with respect to labour market mobility trends. The priority for quantitative data collection was on datasets at the European-level for data comparability reasons, but to the extent that useful data at the European level was not available or relevant, national data was employed (e.g. in the impact case studies). The secondary quantitative data sources used include (mainly) Eurostat, European Union Labour Force Survey, national statistics and databases, and Eurobarometer surveys.

2.1.2 Country profiles

Secondly, country profiles were compiled for all EU Member States. They are based on secondary data and mainly provide information on the legal, institutional and policy characteristics of each Member State regarding the freedom of movement of workers as established in Article 45 TFEU and Regulation (EU) 492/11. They also provide data on the concrete situation in the Member States by presenting examples of areas where discrimination on the basis of nationality may take place, as well as statistics on the numbers and types of EU migrant workers in each Member State.

The country profiles are mainly considered internal working documents. Their role in the study was to provide input on the remaining data collection activities, in particular by:

- Providing examples of non-conformity with EU legislation, incorrect application of EU law and general administrative practices or specific individual cases disregarding EU law to be used in the development of the problem definition, including the scale of the problem
- Acting as input for the categorisation of the Member States in the development of the baseline based on their level of enforcement
- Providing background information for the selection of Member States to be included in the impact case studies

All country profiles and the sources used are enclosed in Annex G. For a full list of sources, see Annex F.

2.1.3 Survey among EU workers

An internet-based survey was carried out among citizens in eight different Member States to identify the barriers for workers to move and/or work in another Member State. The selected Member States are presented in Table 2 below. They were selected on the basis of geography, age of EU membership (EU15/EU8²⁸/EU2), inflow and outflow of migrants (high/low/medium)²⁹ and size of population (large/small/medium).

²⁷ For a full overview of sources, see bibliography in Annex F.

²⁸ The ten new Member States of 2004 minus Cyprus and Malta, which have not been subject to transition schemes

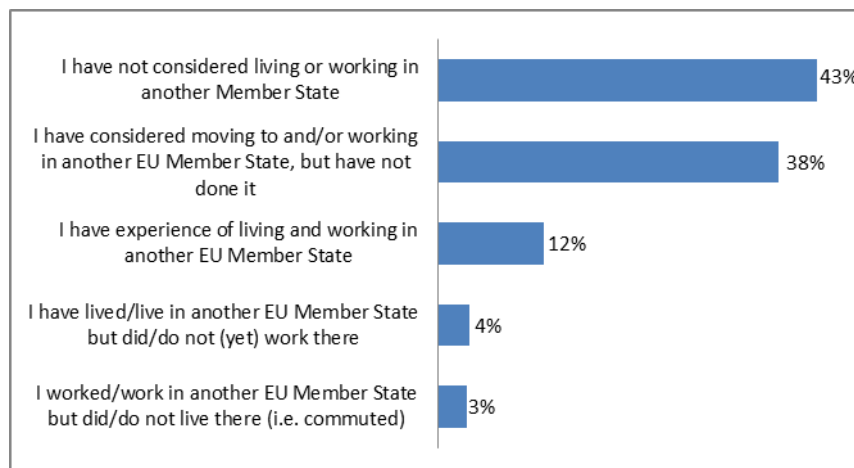
Table 2: Member States selected for the survey among EU workers

| Member State | Selection criteria |
|-----------------------|--|
| France | South-Western; EU15; low-medium inflow/low outflow, large |
| United Kingdom | North-Western; EU15; high inflow/medium outflow; large |
| Portugal | Southern; EU15; low inflow/medium outflow; medium |
| Sweden | Northern; EU15; low-medium inflow/low outflow; small |
| Poland | Central-Eastern; EU8; low inflow/high outflow; large |
| Estonia | North-Eastern; EU8; low inflow/low-medium outflow; small |
| Romania | South-Eastern; EU2; low inflow/high outflow; medium |
| Slovenia | South-Eastern; EU8; inflow/outflow data is too small to be reliable; small |

The survey targeted three types of respondents: workers who have considered moving to/working in another EU Member State, workers who have moved to/worked in another EU Member State (or are still working there), and workers who have not considered moving to/working in another EU Member State.

The survey was carried out as a *panel survey*³⁰ in the above eight Member States. A total of **4007 respondents** replied to the survey questionnaire (500 respondents from all other Member States except for Portugal, which had 507 respondents). The sample was distributed representatively according to the respondents' age, gender and geographical location. The selected panellists received an e-mail with a link to the questionnaire, which was hosted on the website of the subcontractor implementing the survey. The panellists were asked to respond to the questionnaire within two weeks.

The respondents were asked to comment on their potential plans and experience of living and/or working in another EU Member States. While the biggest share of respondents (43%) had not considered living or working in another Member State, 19% of the respondents had lived and/or worked in another EU Member State, or were currently doing it (see Figure 3).

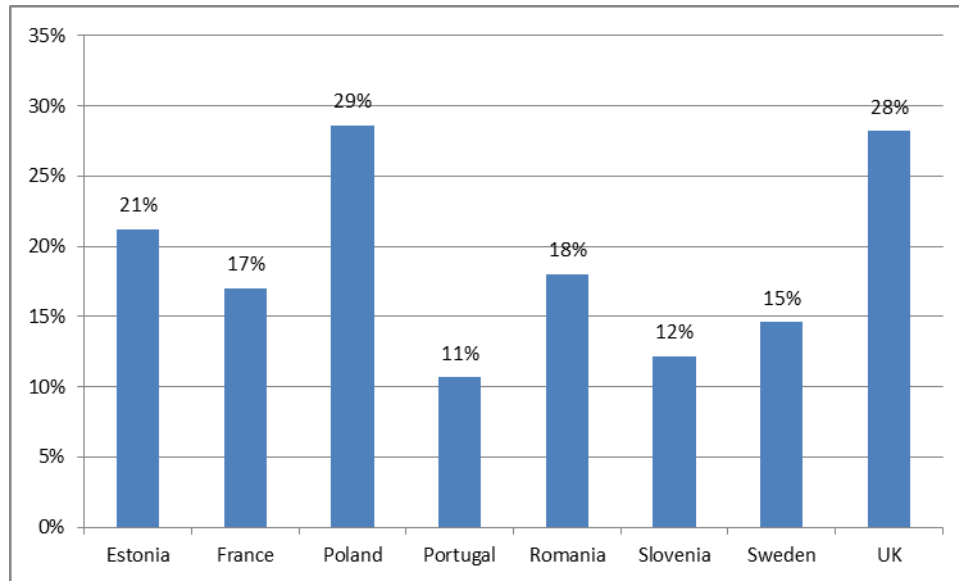
Figure 3: Respondents' experience of living and/or working in another EU Member State

²⁹ Based on data from European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities: Employment in Europe 2008

³⁰ A panel survey is a survey, where the subcontractor responsible for the implementation of the survey uses its already existing panels of voluntary respondents to select a sample of 500 people. These panels usually have up to 50,000 registered voluntary respondents.

It is interesting to see that 38% of the respondents had in fact considered moving to and/or working in another EU Member State, but had not done it. These respondents were asked to comment on their plans for the future. 43% of the 1359 relevant respondents said that it was not likely they would move to another EU Member State, while 32% said that it was likely they would move. Only 7% were sure they would not move, while 4% were sure they would move. 19% of the respondents (753 persons) had experience of living and/or working in another EU Member States. The share was highest among respondents from Poland (29%) and the UK (28%), and lowest among respondents from Portugal (11%) and Slovenia (12%).

Figure 4: Share of respondents with experience from living and/or working in another EU Member State



7% of the 19% (753 persons) of the respondents who have lived and/or worked in another EU Member State are currently living abroad, while the biggest share of respondents (36%) did it 1-5 years ago. Interestingly, 26% of the respondents were living and/or working in another EU Member State more than 9 years ago.

For more information on the survey, see Annex E presenting the methodological approach of this study in more detail.

2.1.4 Public consultation

In accordance with the Impact Assessment Guidelines, the European Commission launched a public consultation on *EU initiatives for the enforcement of EU rules on the freedom of movement of workers* in June 2011.

The responses to the public stakeholder consultation have been analysed and summarised by Ramboll. As such, the public consultation has served as the stakeholder consultation required in the Impact Assessment Guidelines. The information gained from the answers to the public consultation has contributed towards the development and completion of the problem definition and the baseline scenario.

The public consultation was launched on the European Commission website in the form of two online questionnaires – one for citizens and one for organisations (answers could also be submitted via email). The questionnaires were composed of a series of background questions about the individual or organisation followed by specific questions on the awareness of the right of free movement of workers, legal support to migrant workers, experience with discrimination on the basis of nationality, and removal of obstacles to free movement.

The public consultation among citizens received 169 responses from EU citizens. Respondents come from 20 different Member States - all Member States except Austria, Cyprus, Denmark, Estonia, Lithuania, Malta and Sweden.

The public consultation among organisations received 79 responses from organisations in 23 different Member States. Excluded Member States were Ireland, Lithuania, Luxembourg and Romania.³¹ Organisations from Germany (14%) represented a large share of the respondents. Other Member States where a minimum of five organisations contributed to the consultation were Poland (10%), Belgium (8%), Spain (8%), the Netherlands (7%) and United Kingdom (7%).

2.1.5 Impact case studies

All in all seven impact case studies were carried out, one for each policy option and sub-option³². The purpose of the impact case studies was to look closer at examples of initiatives similar to the proposed policy options already implemented in some Member States, and use the information gathered on impacts (effects, costs, etc) in the overall assessment and subsequent comparison of the proposed policy options.

The case studies were developed in close coordination with all data sources and data collection activities, particularly the country profiles. Each case study builds upon all available information collected in these profiles. The Member States were selected on the basis of ensuring the case studies included a full set of country profiles.

The purpose of the case studies was furthermore to inform and support data collected through the other activities. The case study framework and requirements were therefore developed in close coordination with e.g. the administrative burden/ compliance cost survey, the panel survey among EU workers and the public stakeholder consultation.

The case study activity was primarily an interview-based exercise in order to respect the wide stakeholder landscape of each of the policy options. Each case study included all relevant stakeholders as far as resources allowed, including e.g. national authorities, social partners and third-sector organisations. In practice, this has not always been possible due to time restraints on both the data collection process and the eligible interviewees. Much of the data found was qualitative in nature, which is why the quantitative assessment of impacts is limited in all impact case studies. The findings are to a high extent presented as qualitative rather than quantitative conclusions.

The main findings of each case study are presented in Chapter 6 on policy options, and specific descriptions of each case study, including the lists of interviewees, are annexed to this report.

2.1.6 Assessment of compliance costs

To assess the various costs connected with the proposed policy options, the contractor carried out a data collection activity on compliance costs following the completion of the impact case studies.

In accordance with the Annexes to the EU Impact Assessment Guidelines³³, the assessment of compliance costs was based on the basic principles outlined in the 'Handbook for measuring compliance costs'³⁴ and the EU Standard-Cost-Model (Annex 10 to the Guidelines). Inspired by these sources, (regulatory) compliance costs are understood as consisting of financial costs, substantive (compliance) costs and administrative costs/burdens for workers, employers and the voluntary sector. For the public authorities in the Member States, compliance costs are comprised of implementation and enforcement costs, substantive (compliance) costs and administrative costs.

On this basis and in accordance with the tender specifications, the following types of compliance costs per target group were assessed within this assignment:

³² While the impact case study for policy option 2 was carried out on the EU level, the remaining six case studies were carried out in one Member State each: 3a in Finland, 3b in Ireland, 3c in Sweden, 3d in Finland, 3e in France and 3f in the Netherlands.

³³ http://ec.europa.eu/governance/impact/commission_guidelines/docs/ia_guidelines_annexes_en.pdf

³⁴ Bertelsmann Foundation; http://www.bertelsmann-stiftung.de/bst/de/media/xcms_bst_dms_29011_29012_2.pdf

Table 3: Types of compliance costs per target group

| Types of compliance costs | Target groups | | | |
|---|--|---|--|-----------------------------------|
| | Public authorities | Enterprises - micro/small - medium-sized - large | Voluntary sector | Workers and their family |
| Financial costs | | X (description but no quantification) | X (description but no quantification) | Description but no quantification |
| Substantive (compliance) costs | X | X | X | Description but no quantification |
| Administrative costs/burdens | X | X | X | Description but no quantification |
| Implementation and enforcement costs | X (description but no quantification) | | | |

The assessment consisted of the following steps:

- Identification and mapping of obligations, target groups and cost types,
- Telephone interviews, and
- Calculating the costs.

Mapping of obligations, target groups and cost types

As the first step of the assessment, the sub-options of option 3 were analysed in order to identify and categorise the obligations, target groups and costs types. It was initially understood that option 2 (non-binding initiatives at the EU level) did not involve any obligation and therefore no compliance costs, so option 2 was not part of the analysis. Three sub-options were categorised as obligations that lead to direct compliance costs on the target groups: 3b, 3c (the element to 'take effective measures to prevent discrimination based on nationality') and 3f. With the exception of sub-options 3a and 3d, the other sub-options also lead to costs on their target groups. However, as they do not impose (direct) obligations, the associated costs were not quantified via interviews but only assessed qualitatively.

Telephone interviews

In order to assess the compliance costs associated with the relevant three sub-options imposing obligations, nine telephone interviews with the target groups (equality authority, private, public and third sector employers, and social partners) were carried out in the case study Member States (Ireland, Sweden and the Netherlands). The main purpose of the interviews was to complete the data basis to calculate the costs incurred by the target groups associated with the baseline scenario and shed light on the differences between baseline scenario and the proposed policy options in terms of costs for the various elements of option 3. As a rule of thumb, three interviews per target group of each relevant obligation associated with compliance costs per relevant Member State were required to collect cost data that is sufficient in the sense of the cost model. In terms of the private sector employers, it was planned to consult businesses of different sizes (micro, small, medium-sized, large) in order to shed light on possible differences in impacts on SME's and large companies ("SME test"³⁵). Despite contacts with 102 potential interviewees, the contractor only succeeded to book and carry out nine interviews. Scheduling interviews proved difficult, especially regarding businesses in Sweden to cover the element in sub-option 3c - 'prevention of discrimination by employers'. Hardly any of the contacted businesses were interested in participating, for example due to fear of showing that they do not live up to the requirements, or they did not consider the topic relevant to them as they did not have any employees with non-Swedish background. The lack of interviewees was compensated by additional research of secondary sources, including research conducted by the Swedish Agency for Public Management (Statskontoret). As can be seen in the case study report for policy option 3c annexed to this report, it has not been possible for the Swedish authorities to identify the administrative and compliance costs for the Swedish obligation either.

The competent public authorities, public/private employment agencies and social partners were identified via desk research; the employers to interview were selected from publicly available business registers.

Calculating costs

Based on the information collected in the interviews, the compliance costs per case study Member State were calculated. The labour costs for complying with the legal requirements were calculated as the product of the man-hours spent and the hourly pay of the person performing the action.³⁶

According to the Commission's Impact Assessment Guidelines, the effects of the administrative burdens should only be quantified in case the changes are likely to be significant. As the costs were not deemed to be significant in any of the impact case studies, the activity on collecting quantities for EU-27 (i.e. the numbers of targeted subjects) was not carried out.

For more information on the assessment of compliance costs, please see Annex E presenting the methodological approach.

2.1.7 Impact analysis

Following the impact case studies, the impact of each policy option and sub-option was identified and compared. The methods for doing so are presented in this section.

The baseline scenario, which represents policy option 1³⁷, was developed with respect to five parameters in each Member State:

1. The level of integration of EU migrant workers' rights into the national legislation
2. the level of enforcement (in practice)
3. the number of EU migrants workers
4. the share of EU migrant workers of the total working population

³⁵ See Annex 8.4 of the EU Impact Assessment Guidelines, p. 32-34.

³⁶ The tariffs/wage rates used for the calculation are based on the International Standard Classification of Occupations (ISCO) developed by the International Labour Organization (ILO).
<http://www.ilo.org/public/english/bureau/stat/isco/isco88/intro.htm>.

³⁷ The baseline scenario is defined as the current situation and expected future developments of parameters in relation to the enforcement of EU migrant workers' right to free movement.

5. the level of barriers to migration

Part of the purpose of the baseline scenario was to cluster the Member States into similar groups in order to facilitate the impact assessment. Each Member State was therefore assigned a value for each of the four parameters and clustered according to the scores.

For each cluster of Member States, the likely development without public intervention was discussed. The approach was mainly qualitative as opposed to the quantitative method of clustering. Since many parameters, besides the four mentioned, were likely to affect the development of the situation of EU migrant workers, the baseline scenario includes a number of other trends, e.g. the expected general macroeconomic development within EU27.

Consequentially, not all trends and parameters affecting the development of migration could be identified and therefore applied in the development of the baseline scenario. The described method for the development of the baseline scenario is believed to be the best pragmatic approach when assessing a development which is, without question, affected by a wide array of parameters.

The policy options and the case studies were used as the basis of **the impact analysis of policy options** 2 and 3 (and sub-options). The impacts of policy options 2 and 3, which were to a high extent qualitative rather than quantitative, were assessed in relation to the baseline scenario, i.e. policy option 1. As a first step, the potential impacts of the policy options as well as the target group of each policy option were identified. These include both the beneficial impacts, such as increased awareness, and to some extent the economic costs and potential compliance costs of the policy options.

Subsequently, the impacts at cluster and EU levels were assessed. The actual impacts in each cluster, Member State, and therefore also EU level are generally dependent on:

- The number of Member States with a measure similar to the proposed policy option currently in place, *and* whether the Member States without the policy option in place are likely to comply with the policy option if implemented, as well as the speed with which they are expected to do so.
- The future number of EU migrant workers in the Member States that could potentially benefit from the policy options

The number of Member States that currently have measures similar to the policy options in place is based on information in the country profiles. However it is not possible to say with certainty how many of the Member States without the policy option in place would comply if it were implemented and how long time they would take to do so. Information about barriers to migration in each cluster was used as an indicator of whether the proposed policy option can be expected to be correctly implemented and administrated. Another indication used was the future share of EU migrant workers of the total working population in Member States and clusters. In relation to this, one of the assumptions that could be made is that Member States and clusters where EU migrant workers constitute a rather large share of the working population will have more incentives to comply with any policy option that could ease the free movement of the EU migrant workers, in particular with respect to discrimination of EU workers with respect to employment. It may be assumed that when the share of EU workers in the labour market is high, lack of enforcement of EU legislation in particular with respect to employment (such as working conditions or social advantages) may have larger consequences than in Member States where the share of EU workers in the labour market is relatively small.

The future number of EU migrant workers who may potentially benefit from the policy options is not known. However the impact case studies and the expected future number of EU migrant workers in 2020 were used as an indicator of this, as it is realistic to assume some sort of correlation between the actual number of EU migrant workers and the EU migrant workers who would benefit from the implementation of the proposed policy options.

The impacts of the policy options are also dependent on other trends briefly mentioned in Section 5.3. The impact assessment cannot possibly take all parameters into account. The conclusion

about the impacts at each Member State, cluster and EU level should therefore be considered a *ceteris paribus*, i.e. all else equal, assessment.

The conclusions about impacts were finally used to compare and rank the policy options with respect to which policy options and combinations show the greatest potential of beneficial impacts on intra EU migration.

2.2 Limitations and key challenges

A number of limitations and key challenges experienced by the contractor deserve to be mentioned before moving on to present the findings of the study.

Several challenges in terms of collecting the relevant data, especially quantitative data, were faced. The challenges mainly concern:

- **Timeframes:** some data was not up-to-date and some datasets did not include time series that would allow for trends to be identified;
- **Completeness:** data was not available for all relevant countries at the same level of detail
- **Comparativeness:** there were differences in the way information was collected and definitions were used;
- **Aligning datasets:** each dataset provided aggregate information which made it difficult to map individuals across datasets and link prevalence to impacts; and
- **Insufficient breakdown:** large data sets made it difficult to disaggregate information according to all of the different relevant groups.

More specifically, the challenges included e.g. the lack of an overall number of employers in the European Union, as it was not available from Eurostat (see description of compliance costs in Annex E). To overcome some of these obstacles, the international or EU-level data was supplemented, to the extent possible, with (e.g. more current) national data. However, the above challenges are also present at the national level, in particular with respect to statistics concerning discrimination on the grounds of nationality of EU migrant workers. In the statistics, different discrimination grounds are often grouped together, or issues related to EU migrant workers are not reported separately from discrimination against other types of foreigners.

In order to gain an overview of statistics on the national level, all the equality bodies were contacted through the Equinet network, and asked to provide the contractor with information on the number of cases, the nature of problems as well as outcomes of the actions with respect to discrimination on the grounds of nationality of EU migrant workers.³⁸ However, there seems to be a general lack of data in the Member States on the number of cases where EU migrant workers were discriminated against on the grounds of their nationality. There are different reasons for this. Firstly, not all Member States collect statistics on each specific ground of discrimination, but it is often common procedure to group different grounds together (for example nationality, national and ethnic origin). There are also Member States where discrimination on the grounds of national or ethnic origin is considered to cover discrimination on the grounds of nationality, but this means that statistics do not specify the true cause of discrimination. Secondly, it may be difficult to isolate cases where the complainant is an EU citizen (as opposed to a third-country national), as the nationality of the complainant may not always be specified. Thirdly, in some cases the monitoring systems in the Member States do not function as planned. In Finland for example, the Finnish authorities responsible for monitoring discrimination in the workplace do not receive enough information about resolutions made in district courts due to flaws in the monitoring systems.³⁹ In the countries where statistics do specify the discrimination on the grounds of nationality, monitoring is possible (for example Belgium and Ireland) and cases of discrimination against EU migrant workers on the grounds of nationality do exist. The existing figures are presented in the Chapter 5 on the problem definition.

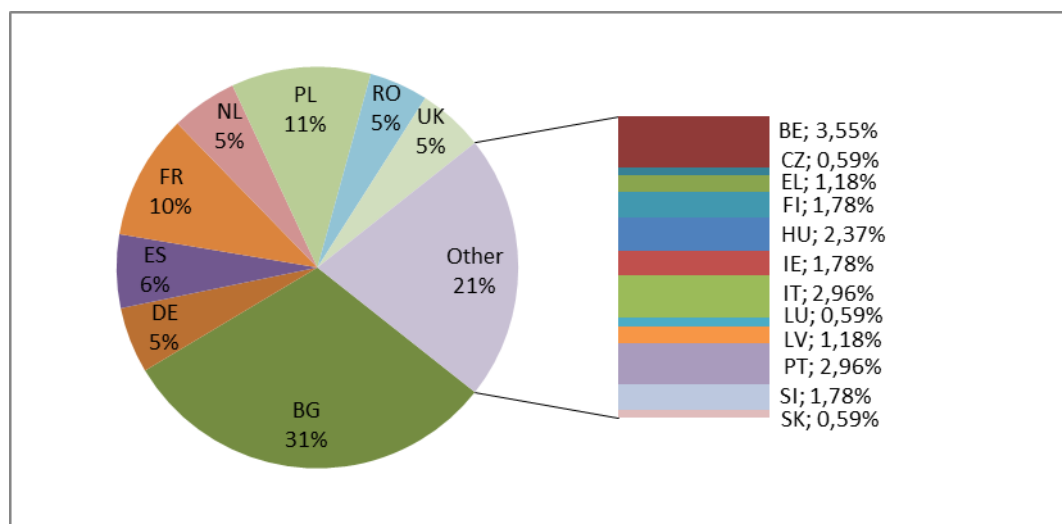
³⁸ Responses were received from the equality bodies in Belgium, Ireland and UK.

³⁹ Impact case study in Finland.

In terms of qualitative data, the main challenge was to find information on the *actual* situation in relation to the enforcement of EU migrant workers' rights. Existing studies on the enforcement of the EU legislation and EU migrant workers' rights to non-discrimination focus primarily on the "formal" level of enforcement, meaning the national legislation and whether it is in conformity with EU law. Hence, it was pivotal to try and establish an overview of the main problems related to the practical enforcement of EU migrant workers' rights (in local administrations, etc.) through the primary data collected. The survey among EU workers especially contributed to this as well as the public consultation among EU citizens and stakeholder organisations (initiated by the Commission in accordance with the Impact Assessment Guidelines), information received from Your Europe Advice, and the interviews conducted in connection with the case studies. These all contributed to the picture of the practical situation established in the problem definition.

With respect to the primary data collected and used in this study, a few limitations should be mentioned, in particular with respect to the public consultation among citizens. Figure 5 shows the percentage dispersion of nationalities among the respondents. Approximately one third (31%) of the respondents are of Bulgarian nationality, 11% are Polish, and 10% are French, i.e. more than 50% of the respondents are of one of these three nationalities. The *Other* category includes the remaining 12 Member States, which each have a share of less than 5% of the respondents. This means that the findings from the public consultation among citizens should always be seen in light of the fact that almost one third of the respondents are Bulgarian.

Figure 5: What is your country of nationality? (n=169)



Concerning the impact case studies, besides difficulties in reaching the relevant interviewees, the case study researchers also experienced challenges in terms of assessing the impacts of the initiatives, especially in quantitative measures. This was a general issue but especially applied to the initiatives that concern legal provisions and are supposed to have a preventive effect. In an attempt to compensate for the lack of information in the Member States, the contractor researched more general studies and articles on preventive impacts of legislation; however, the material available was only related to criminal law and was not very recent. This means that the impact assessments, both the overall one and the ones in the individual case studies, are to a large extent based on qualitative assessments using several different sources to view the issues from different angles and to support conclusions. In order to support the qualitative assessment, and to draft solid conclusions and recommendations, the contractor organised a workshop, where relevant experts in the field of free movement of workers were consulted with respect to their views on the findings of the study, and the relevance of the conclusions made by the contractor.

3. LABOUR MARKET MOBILITY PATTERNS

This chapter presents an overview of labour market mobility within Europe. It is mainly based on quantitative data from Eurostat. First, the general picture is outlined, and this is followed by more in-depth analysis broken down by Member State, economic activities and level of education.

Reporting on the general picture of mobility within Europe, the 2010 EU Labour Force Survey⁴⁰ data shows that only 2.2% of Europeans (11.2 million persons) live in a Member State different from that of their nationality. This not only reflects how many EU nationals can be directly affected by the poor enforcement of the regulation regarding the free movement of workers, but it is also indicative of the underlying problem of the high share of EU citizens that do not use one of their four fundamental freedoms.

Mainly due to the open borders between the Member States, there is little data available on intra-EU labour mobility. This makes it difficult to determine the exact number of EU migrant or frontier workers. In order to illustrate the situation, data on intra-EU mobility of working-age EU nationals (aged 15 to 64) and the results of the survey among EU workers carried out within the framework of this study will be used. It should be noted that Eurostat provides more data on migrants taking into account the country of birth of the parents rather than the country of birth of the migrant.

Looking at the population of migrants⁴¹ by labour status, it can be observed that, on average, 68% of the EU migrants are employed and 5.6% are unemployed, i.e. jobseekers (see Figure 6). High employment rates of EU migrants are observed in the United Kingdom (76.5%), Estonia (73%), Latvia (72.9%), the Netherlands (72.1%) and Sweden (72.1%). A very high unemployment rate is observed in Spain, where 11.2% of EU migrants do not have a job, while in Belgium, Italy and Romania, roughly 35% of EU migrants are inactive. In Greece, Malta and Poland, which have the lowest levels of employment (56.4%, 51.1%, and 56.3% respectively), the highest levels of inactive EU migrants⁴² are also found (38.7%, 46.7%, and 40.5% respectively).

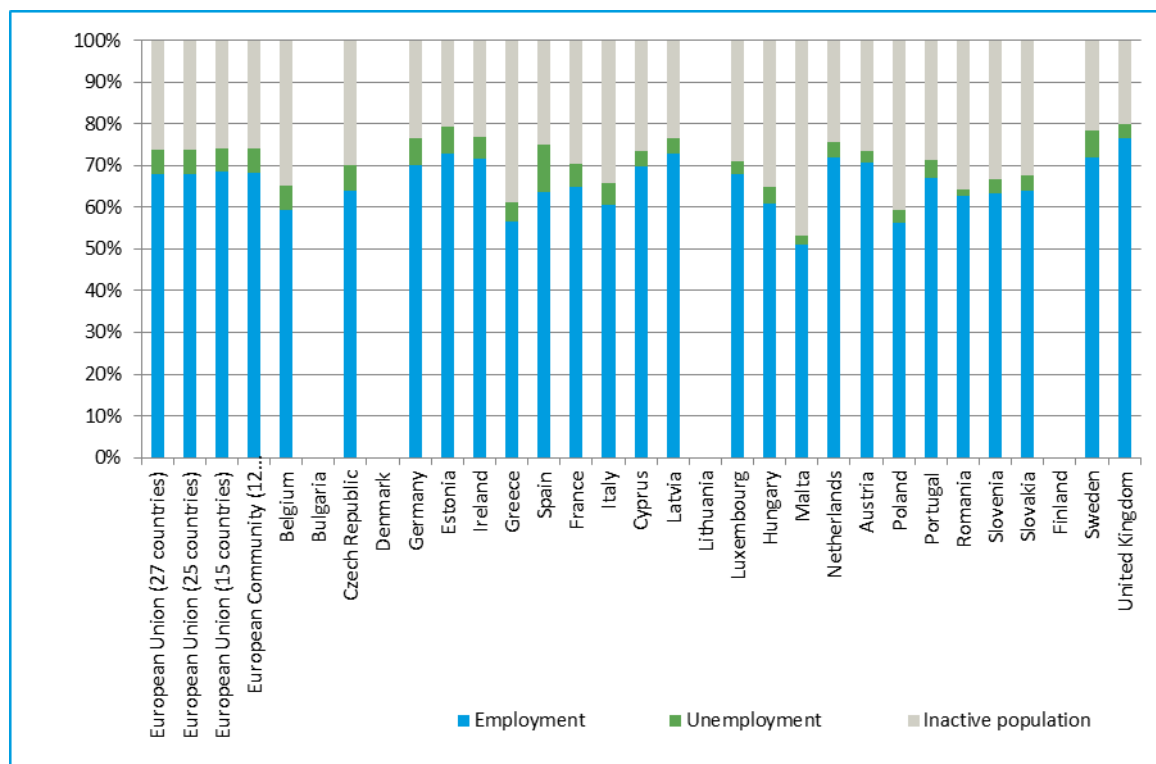
⁴⁰ EU Labour Force Survey:

http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_unemployment_ifs/data/database. This data takes into account figures for all EU27 migrants, and does not distinct between e.g. employed and non-employed persons.

⁴¹ Of working age (15 to 64) and having parents with the country of birth from EU27

⁴² Inactive EU migrants are those, who are neither employed nor unemployed.

Figure 6: Population of migrants by labour status in 2008 (Migrants aged 15 to 64, working age; country of birth of parents EU27)



Source: Eurostat.

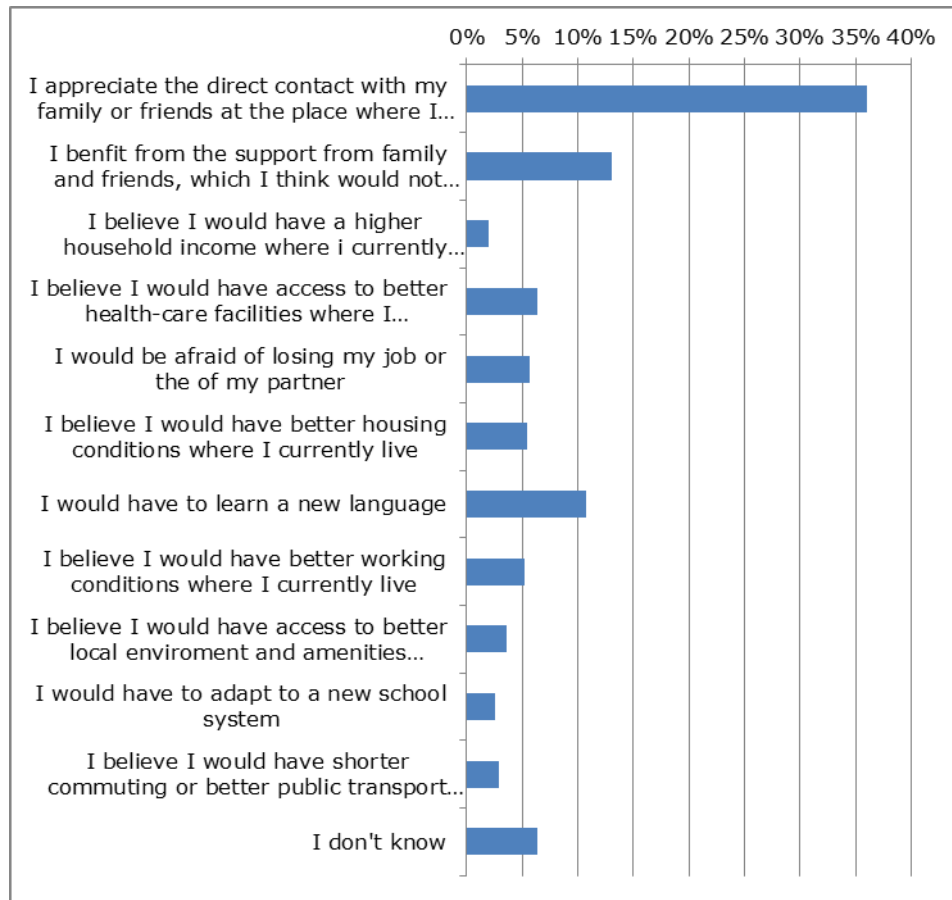
Regarding the underlying reasons for low intra-EU mobility, the disincentives to move for work are analysed in the Eurobarometer special report⁴³. Leaving home is the most discouraging factor, mentioned by 39% of the Europeans⁴⁴, followed by concerns for family and friends and problems learning a new language. On the other hand, those respondents who consider working abroad are less concerned with these aspects and are instead slightly more concerned with the political situation abroad, as well as the possibly hostile attitude abroad to foreigners.

The Eurobarometer data is supported by the data collected through the survey among EU workers. According to the survey among EU workers, for those who have not considered moving abroad, direct contact with family and friends and the support from family and friends are the main reasons why they stay in their home country. The second most important reason is the need to learn a new language.

⁴³ Special Eurobarometer 337 (June 2010), Geographical and labour market mobility, Chapter 4

⁴⁴ The results of the survey are reported using the terminology "Europeans". However, this refers to EU citizens, as defined in the technical specifications in Annex 1 of the report – the sample is "the population of the respective nationalities of the European Union Member States, resident in each of the Member States and aged 15 years and over"

Figure 7: Why did you not consider moving to another EU Member State? (n=3299⁴⁵)



Source: Survey among EU workers

The recent Eurobarometer qualitative study⁴⁶ also supports the above mentioned findings that language, family and finding employment are considered the most prominent reasons for not moving to study or work in another Member State. When asking the respondents about the main barriers for moving to another EU Member States and finding a job there, they mentioned language barriers and obstacles in recognizing academic qualifications as the main barriers. Residency issues were not seen as problematic, while there is call for more information in order to better understand social security and health coverage issues. Tax and banking issues were also considered confusing and troublesome.

Another way to examine the underlying factors is by investigating the practical difficulties Europeans have encountered or would expect to encounter when working abroad. According to respondents of the survey among EU workers, 36% of all respondents consider the lack of language skills as the main barrier when considering whether to work/move to another Member State. 19% think of difficulties in finding a job as the most important barrier. This is followed by 7% who think the biggest barriers for moving abroad are being discriminated against on the labour market compared to citizens of the host Member State, or difficulties dealing with the necessary administrative formalities. Of these, the aspect of being discrimination on the labour market compared to citizens of the host Member State is clearly a problem in terms of enforcement of EU legislation, and it will be discussed further in the problem definition (see Chapter 5). Similar findings are to be found in the Eurobarometer special report⁴⁷.

It is interesting that there are only slight differences between the views of those who have not considered moving abroad, those who have considered doing it but have not moved, and those who have lived and/or worked abroad or are currently doing it. The biggest differences can be found in terms of lack of language skills, where those who have not considered moving abroad

⁴⁵ The respondents were requested to point out up to three main reasons. 1715 persons replied to this question.

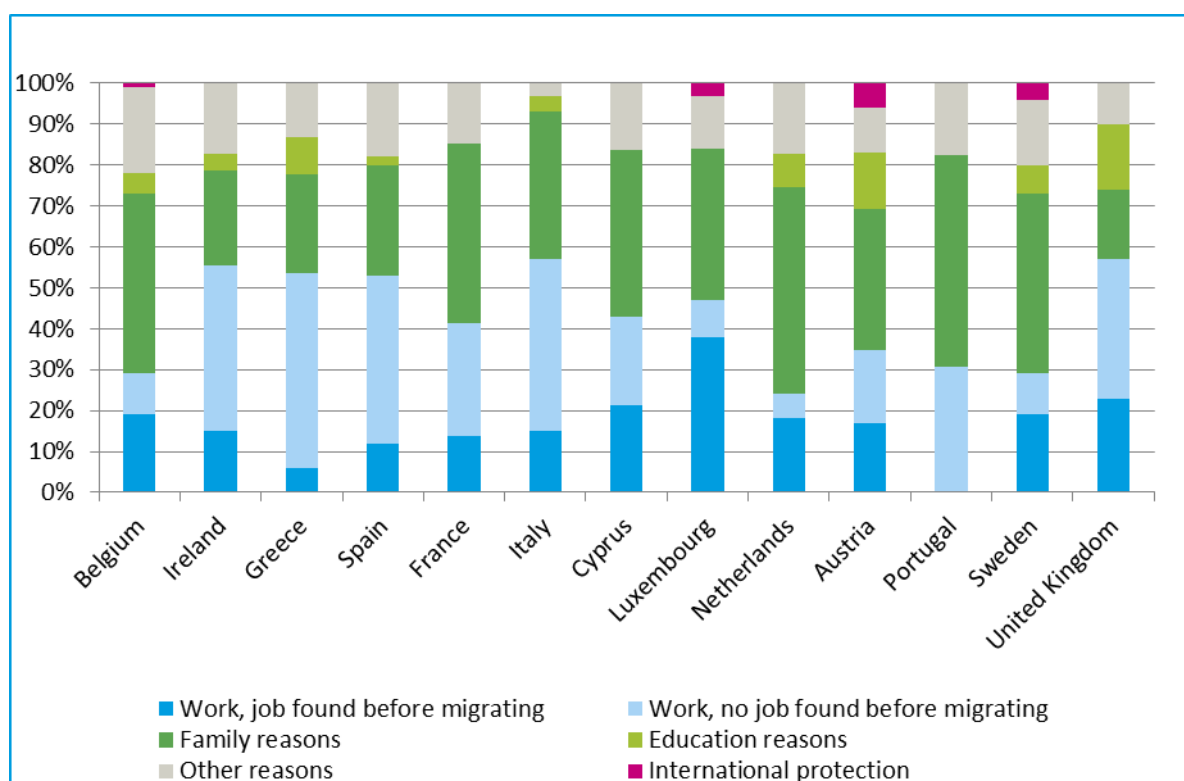
⁴⁶ Eurobarometer Qualitative Studies (September 2011), Obstacles citizens face in the Internal Market, Chapter 7

⁴⁷ Special Eurobarometer 337 (June 2010), Geographical and labour market mobility, Chapter 4, Question 28 of the Survey.

are clearly more negative (39% consider it the most important barrier, against 35% and 32% respectively). Another big difference concerns difficulties in finding a job, where 23% of those who have considered moving abroad find this to be the most important barrier, against 19% and 14% respectively. Lastly, with respect to difficulties in finding suitable housing, it is evident that those who have lived abroad have more negative views (8% consider it the most important barrier, against 4% and 4% respectively). This shows that the realities of living abroad do to some extent change the views of EU workers. This may, however, change the views to a more positive (lack of language skills are not as big a problem) and a more negative (housing is a bigger problem than expected beforehand) direction.

As Figure 8 shows, the main reason for migrating⁴⁸ is either family, as in the case of migrants from Belgium, France, Cyprus, Netherlands, Austria, Portugal and Sweden, or work, as in the case of migrants from Ireland, Greece, Spain, Italy, Cyprus, Luxembourg, Austria and United Kingdom. From those moving for work reasons, usually no job was found before migrating.

Figure 8: Population of migrants by reason for migration in 2008 (Migrants aged 15 to 64, working age; country of birth of parents EU 27)



Source: Eurostat.

3.1 Member States

The two enlargements of the European Union led to the concerns of "old" Member States that a very high inflow of workers from the poorer EU-10 and EU-2 countries would cause labour market imbalances⁴⁹. Overall, the population flows from EU-10 to EU-15 have been relatively small in size. Research shows that since the 2004 enlargement, approximately 1.8% of the EU-8 population has moved to the EU-15 countries, while the corresponding figure for EU-2 population has been 4.1% since 2007. It is estimated that 75% of the EU-8 and 50% of the EU-2 mobility can be attributed to the enlargement process itself, while the remaining 25% and 50% would have still taken place without an enlargement.⁵⁰

⁴⁸ Data available on 13 Member States, out of which only Cyprus is a new Member State

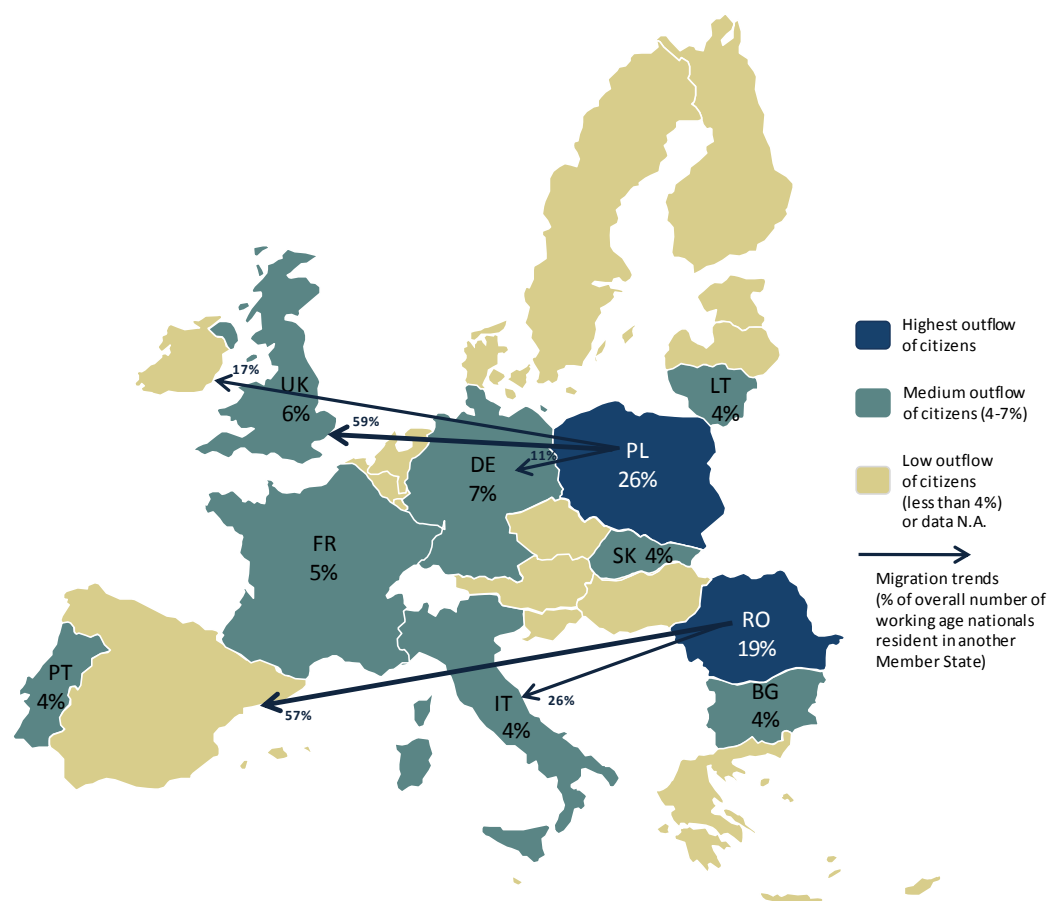
⁴⁹ European Commission, *Employment in Europe 2008*; p. 111

⁵⁰ Holland, D. et al: *Labour mobility within the EU - The impact of enlargement and the functioning of the transitional arrangements*. Final report. National Institute of Economic and Social Research, July 2011.

From the map of main EU departing countries in 2007 (see Figure 9), it becomes evident that Polish nationals account for 26% of recent intra-EU working-age migrants residing four years or less in another Member State. Romanian nationals come in second, with a share of 19% of intra-EU working-age migrants. These two newer Member States are the main departing countries and sum up almost half of the intra-EU outflows of citizens. Medium outflows stream from Germany, United Kingdom, France, Portugal, Bulgaria, Slovakia, Italy and Lithuania, while citizens from the rest of the EU-27 countries represent a total of 18% of intra-EU working-age migrants.

As far as receiving countries are concerned (if the same approach is maintained, i.e. considering recent inflows of working-age EU citizens as percentage of overall number of working-age nationals resident four years and less in another Member State), the largest receiving countries are United Kingdom with 32%, Spain with 18% and Ireland with 10%, followed by France, Germany, Italy and Austria. Roughly half of the total inflows of migrants to the United Kingdom and Ireland are Polish, while more than half of migrants to Spain are Romanian⁵¹.

Figure 9: Main EU departing countries in 2007 (Working-age citizens, resident four years and less in another EU Member State, in percentage of all EU citizens resident four years and less in another EU Member States)



Source: Data from Employment in Europe 2008 (Table 5, page 118); European Commission, DG EMPL

One thing to keep in mind though is that these figures are from before the economic crisis hit Europe. The picture might be slightly different now as unemployment rates have risen in many Member States, for instance Spain, Greece and Ireland, which were among the main receiving countries in 2007. One of the main reasons behind the massive influx to the UK (especially from Poland) was the country's non-application of the transitional measures for new Member States (except Bulgaria and Romania). In particular, many Polish workers moved to the UK and Ireland induced by the economic boom at that time and the chance to earn higher wages compared to Poland⁵².

⁵¹ Based on Tables 5 and 6 on page 118 of the Employment in Europe 2008 report

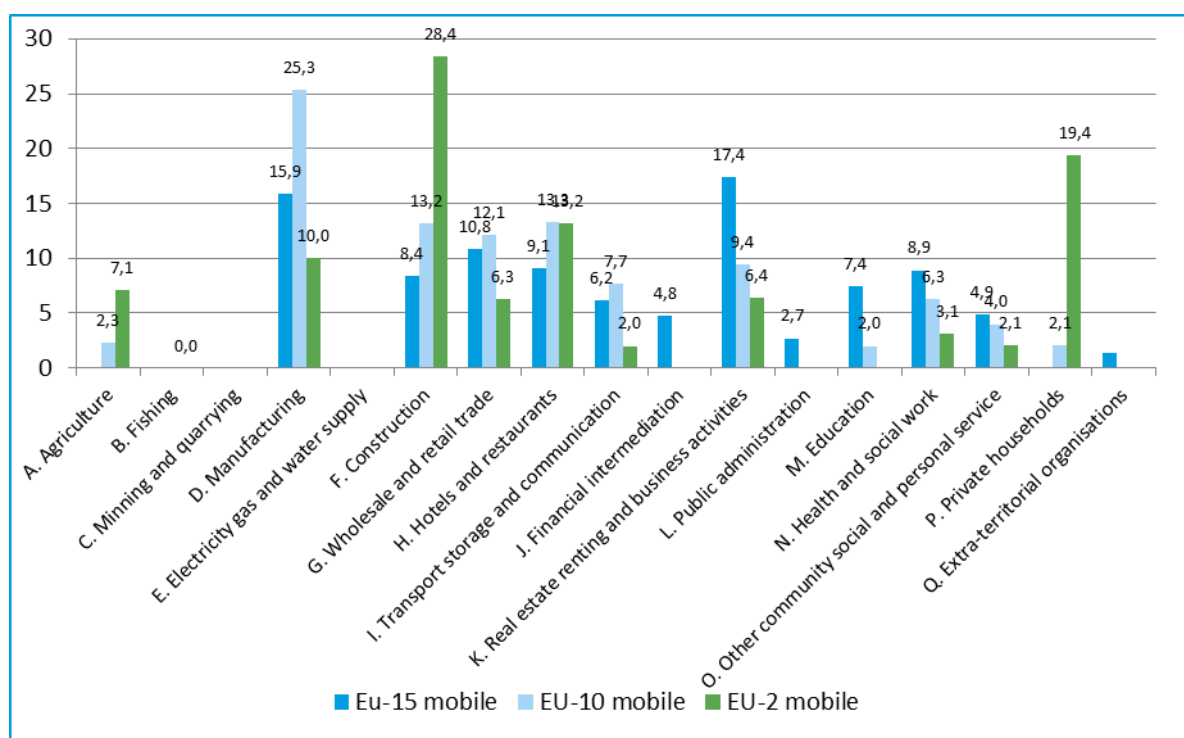
⁵² Interview with legal expert in the field of free movement of workers, Catherine Barnard, Cambridge University

However, the crisis reversed the trends and had a strong impact, especially for EU migrants from the new Member States. For example, the number of Romanian and Slovak workers employed in Hungary decreased by more than one-third from 2007 to 2008, and the number of Polish and Baltic workers employed in Ireland and the UK also declined.⁵³ It is interesting to compare the above data to the survey among EU workers, which to some extent supports these findings. The Member States with the largest share of respondents who have lived and/or worked in another EU Member State are Poland (29% of the Polish respondents), UK (28%) and Estonia (21%). The Member States where the smallest share of respondents have lived and/or worked abroad are Portugal (11%) and Slovenia (12% of the respondents).

3.2 Economic activities⁵⁴

According to the survey among EU workers, 46% of the 753 respondents who have lived and/or worked in another EU Member State are employed on a permanent contract. 16% are self-employed, 13% are employed on a temporary contract, and 8% are either looking for work or working as civil servants. Most of the mobile EU-15 citizens work in the sectors of hotels and restaurants, and real estate renting and business activities. Mobile EU-10 citizens are generally employed in manufacturing, but also in hotels and restaurants, construction, real estate, renting and business activities, and private households, while mobile Romanians and Bulgarians mostly work in agriculture, construction, hotels and restaurants and private households⁵⁵. The statistics, however, have some limitations, such as underestimating the number of employed in certain activities due to underestimation of seasonal workers.

Figure 10: Employment of total resident populations and recently mobile citizens by economic activity, 2007 (% of total employment by group)



Source: Data from Employment in Europe 2008 (Table 9, page 129); European Commission, DG EMPL

The structure of employment by occupation reveals another interesting pattern. The majority of recent mobile workers from EU-15 Member States work in high-skilled white-collar positions, such as legislators, senior officials and managers, professionals, and technicians and associate professionals. On the contrary, a very high proportion of recent mobile workers from EU-10 and

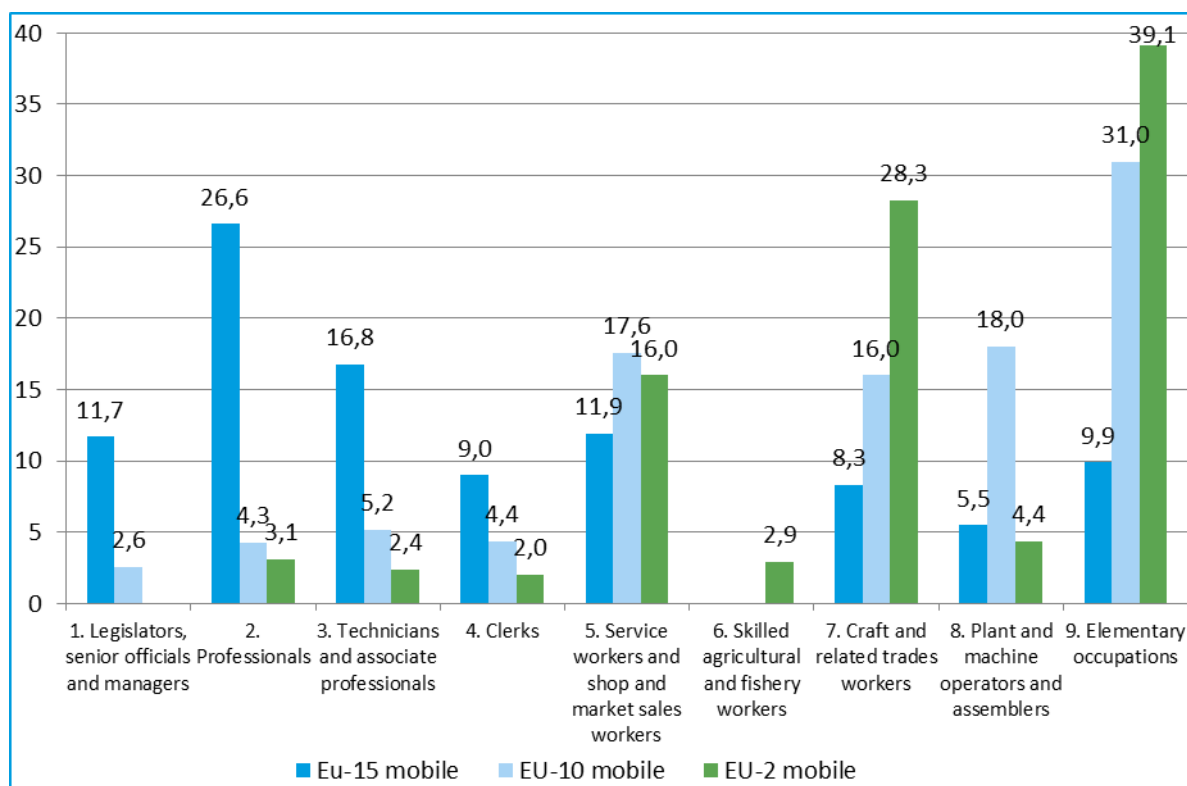
⁵³ Groenendijk, K.; Fernhout, R.; Guild, E.; Cholewinski, R.; Oosterom-Staples, H.; Minderhoud, P. (2010), European Report on the Free Movement of Workers in Europe in 2008-2009, p. 4

⁵⁴ The data available on employment of EU migrant workers in various sectors refers only to those migrating to an EU-15 country.

⁵⁵ European Commission, Employment in Europe 2008; p. 131

EU-2 are employed in low-skilled blue-collar professions, such as plant and machine operators and assemblers, and elementary occupations.

Figure 11: Occupation of total resident employment and of employed mobile citizens, 2007 (% of total employment group)

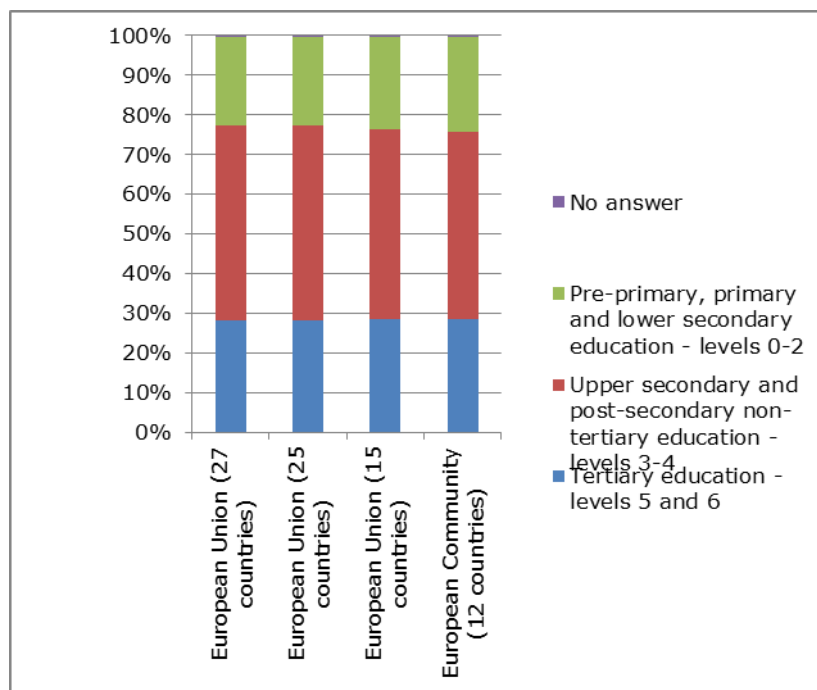


3.3 Level of education

Roughly half of all the intra-EU migrants completed upper secondary and post-secondary non-tertiary education⁵⁶. While 28% of intra-EU migrants at the EU-27 level completed a tertiary education, there are several countries of origin where more than one-third of migrants fall into this category – Belgium, Estonia, Ireland, Cyprus, the Netherlands and United Kingdom. On the other hand, most migrants from Czech Republic (75%) and Slovakia (77%) are upper secondary and post-secondary non-tertiary graduates.

⁵⁶ Missing data for Bulgaria, Denmark, Lithuania, Romania and Finland

Figure 12: Population of employed migrants by education attainment in 2008 (Migrants aged 15 to 64, working age; country of birth of parents EU27)



Source: Eurostat.

The respondents in the survey among EU workers show a somewhat different reality, where 48% of the respondents who have lived and/or worked abroad have a university level degree (tertiary education), 20% have a vocational education, and 28% have a secondary school education. A particular problem refers to the mobility of highly-skilled workers in new and innovative sectors. This is of high importance in the current economic situation because it can bring great economic benefits by compensating brain drains with brain gains through forms of intra-EU circular mobility⁵⁷.

3.4 Conclusions on labour market mobility patterns

To sum up the above, the figures show that 68% of the EU migrants are employed, and 5.6% are unemployed, i.e. jobseekers. The most important reason for not moving to another EU Member States is concern about leaving home, family and friends, followed by problems learning a new language. These findings are supported by the Eurobarometer special study, qualitative study and the survey among EU workers. Only slight differences could be found in the views of those who have moved to another EU Member State, of those who are considering moving, and of those who do not consider moving to another EU Member State. These are mainly related to the difficulties with respect to language skills (less important once you have worked in another EU Member State) and with respect to housing (more important factor once you have worked in another EU Member State).

Almost half of the people who have lived and/or worked in another EU Member State were employed on a permanent contract. Most of the mobile EU-15 citizens work in the sectors of hotels and restaurants, and real estate renting and business activities. Mobile EU-10 citizens are generally employed in manufacturing, but also in hotels and restaurants, construction, real estate, renting and business activities, and private households. Mobile Romanians and Bulgarians mostly work in agriculture, construction, hotels and restaurants and private households.

⁵⁷ Monti, Mario (2010), A New Strategy for the Single Market, Report to the President of the European Commission, José Manuel Barroso, p. 57

4. CONCEPTUAL FRAMEWORK FOR PROPOSED POLICY OPTIONS

This chapter presents the current legal framework for the freedom of movement of EU workers by outlining the rights stated in Article 45 TFEU, Regulation (EU) 492/11, as well as rights confirmed through case-law.

4.1 Overview of existing legal framework

Freedom of movement of workers was integrated in the (then) Treaty of Rome (today Article 45 TFEU) as early as 1957 as one of the four basic freedoms of the European Union. The principle of free movement of workers was later elaborated through secondary law Regulation (EU) 492/11, which codifies Regulation (EEC) No 1612/68 (hereinafter referred to as “the Regulation”). Together these provisions clearly establish that the freedom of movement for workers shall be secured within the EU, and any discrimination on the basis of nationality as regards access to employment, remuneration and other employment conditions shall be abolished⁵⁸, as freedom of movement constitutes “a fundamental right of workers and their families” in the EU⁵⁹. Moreover, by virtue of its status as a regulation, Regulation (EU) 492/11 is directly applicable, i.e. it is immediately enforceable as law in all Member States and so does not need to be transposed into national legislation. As such, the legal provisions establishing the freedom of movement of workers should be easily and directly enforceable by national authorities and employers. In reality, this is however not always the case, as will be elaborated in the problem definition in chapter 5.

There are several other legal provisions concerning issues closely related to and also affecting the freedom of movement of workers within the EU, such as Regulations 883/2004 and 987/2009 on coordination of social security systems, Directive 2005/36/EC on the recognition of professional qualifications and the Citizens’ Rights Directive (CRD) 2004/38/EC on residence and equality issues. However, for the purpose of this study, the scope of the legal framework has been confined to the basic provisions for the freedom of movement of workers enshrined in Article 45 TFEU, the Regulation and the relevant parts of the CRD (including the body of relevant case law).

According to the Regulation, the right to freedom of movement must be enjoyed by all “permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services”⁶⁰. According to the Commission, an EU migrant, as defined by EU law, is someone who “undertakes genuine and effective work for which he is paid under the direction of someone else”, working within the territory of another Member State (or outside the territory of the EU, provided that the legal relationship of employment is located in, or closely linked with the territory of a Member State) than his/her country of origin⁶¹.

⁵⁸ Consolidated version of the treaty on the functioning of the European Union; Official Journal of the European Union, C115/47; 9.5.2008 & Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community

⁵⁹ Regulation (EEC) 1612/68, preamble

⁶⁰ The Regulation, 5th Recital

⁶¹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions; Reaffirming the free movement of workers: rights and major developments; COM(2010)373 final; Brussels, 13.7.2010.

The table below summarises who is included and excluded from the definition.

Table 4: Characteristics of an EU migrant worker according to the Regulation

| Includes ⁶² | Excludes ⁶³ |
|--|--|
| A worker must be a national of an EU Member State | Third-country migrant workers. |
| A person who receives remuneration in return for services – including persons receiving only limited income and benefits in kind, and sports people ⁶⁴ | Voluntary work without any form of remuneration. Employment in the public service ⁶⁵ , in so far as it involves exercise of power and/or safeguard of national interests ⁶⁶ |
| Work in a relationship of subordination with the employer determining the choice of activity, remuneration and working conditions | Self-employed persons who perform tasks under their own responsibility ⁶⁷ |
| Part-time workers (the part-time work need not be the person's principal activity; e.g. combined with studies), trainees (given that the work performed can be considered "of growing economic value to the employer"), au pairs (provided that the activity is "effective and genuine"; applies to all) | "Activities on such a small scale as to be regarded as purely marginal and accessory" ⁶⁸ |
| Frontier workers (EU citizens who reside in one Member State and work in another) | |
| EU nationals working abroad (outside EU territory) under the conditions mentioned above; e.g. employees of EU Member State embassies in non-EU countries, employees on ships sailing under the flag of an EU Member State. | |

The scope of Article 45 TFEU, Regulation (EU) 492/11 and the CRD is more extensive than the above definition of EU migrant workers as it additionally includes a number of other beneficiaries:

- People retaining the status of worker (when temporarily unable to work due to illness, in certain conditions of involuntary unemployment, and where the individual embarks on vocational training,⁶⁹ they will retain their right of residence);
- Jobseekers (although with limited rights compared to workers).

In addition, the family members of workers, as defined by Article 2(2) and Article 3 CRD, also have a derived right of residence and enjoy the same rights as EU workers, conditional upon a continued presence of the EU citizen in the host Member State. This means that EU citizens and their family members, including third-country national family members, have the right to take up employment in the host Member State⁷⁰.

Moreover, once employed in another Member State, EU migrant workers enjoy the right to equal treatment with that of nationals in all aspects relating to employment and to eligibility for housing. Article 45 TFEU clearly states that all discrimination between workers on the basis of

⁶² Based on: COM(2010)373 final

⁶³ Ibid.

⁶⁴ "The European Court of Justice has established that sport is subject to EU law in so far as it constitutes an economic activity" (COM(2010)373 final)

⁶⁵ Article 45(4) TFEU. "The provisions of this Article shall not apply to employment in the public service."

⁶⁶ According to the European Court of Justice the exception is to be interpreted restrictively and covers only posts involving "direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interest of the state or of other public authorities." (COM(2010)373 final)

⁶⁷ The position of the self employed is covered by the CRD and the Services Directive 2006/123.

⁶⁸ Based on: COM(2010)373 final

⁶⁹ Article 7(3) CRD

⁷⁰ Regulation (EU) 492/11, Article 5

nationality shall be abolished “as regards employment, remuneration and other conditions of work and employment”, and Regulation (EU) 492/11 adds that “equality of treatment shall be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons”⁷¹.

The legal framework for the freedom of movement of workers established by Article 45 TFEU and Regulation (EU) 492/11 does not include posted workers. The posting of workers (i.e. workers employed in one Member State but sent by his/her employer to carry out work in another Member State on a temporary basis) is regulated by Article 56 TFEU and Directive 96/71/EC. Hence, issues (e.g. concerning working conditions) related to posted workers is not part of the scope of this study and will not be included in the analysis.

Table 5 below provides an overview of the (main) rights conferred on EU migrant workers and job-seekers by Regulation (EU) 492/11 and Article 45 TFEU, as well as some of the exceptions to the rules.

Table 5: Overview summarising the rights of EU migrant workers as conferred by EU law on free movement of workers

| | Right to free movement and equal treatment | Exceptions |
|---|--|--|
| Freedom of movement | <p>EU citizens and their family members (as defined above) have the <i>right to move freely within the territory of Member States for the purpose of employment</i>⁷².</p> <p>Free movement shall be guaranteed to allow workers the possibility to improve their living conditions and to pursue the activity of their choice⁷³.</p> <ul style="list-style-type: none"> - This includes professional and semi-professional sportsmen and women (e.g. football players with a terminated contract have the right to take up employment with a new club in another Member States without a transfer payment)⁷⁴ | |
| Eligibility for employment ⁷⁵ | <p><i>No discrimination – direct or indirect – on the basis of nationality in:</i></p> <ul style="list-style-type: none"> • Access to employment <ul style="list-style-type: none"> - This prohibits: <ul style="list-style-type: none"> ➤ Limits on application and/or special conditions only applicable to foreign nationals (such as special recruitment procedures, restricted advertising of vacancies, requirements for registration with employment offices and/or residence in the Member State) ➤ Other practices that in effect keep nationals from other Member State from employment in the host state⁷⁶ | <ul style="list-style-type: none"> • Access to employment <ul style="list-style-type: none"> ➤ Public posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities⁷⁹ ➤ An exception applies in relation to the conditions of linguistic knowledge required |

⁷¹ Regulation (EU) 492/11; 6th Recital

⁷² Article 45(3). TFEU

⁷³ Regulation (EU) 492/11, 4th Recital.

⁷⁴ Case C-415/93 *Union Royale Belge de Société de Football Association v. Bosman* [1995] ECR I-4921

⁷⁵ Regulation (EU) 492/11, Chapter 1, section 1

⁷⁶ Regulation (EU) 492/11, Article 3(1)

| | | |
|---------------------------------|--|--|
| | <p>(such as awarding fewer points in competition for a post to qualifications acquired in other Member States)</p> <ul style="list-style-type: none"> • Assistance from national employment offices⁷⁷ • Access to benefits of a financial nature intended to facilitate access to employment⁷⁸ | <p>due to the nature of the post to be filled⁸⁰</p> <ul style="list-style-type: none"> • Access to benefits <ul style="list-style-type: none"> ➢ can be subject to the condition of a genuine link between the job-seeker and the labour market in question, through proof that the person has sought work in the Member State for a longer period and/or residence requirement⁸¹ |
| Employment ⁸² | <p><i>No discrimination – direct or indirect – on the basis of nationality, in:</i></p> <ul style="list-style-type: none"> • Working conditions <ul style="list-style-type: none"> - in particular as regards remuneration (e.g. professional experience from another Member State must count as equal to that of experience obtained in the national labour market when considering working conditions⁸³), prospects of promotion⁸⁴, dismissal and re-instatement/re-employment⁸⁵ • Social advantages (financial and non-financial)⁸⁶ <ul style="list-style-type: none"> - Equal access of EU nationals to all social advantages (regardless of links to an employment contract) granted to national workers⁸⁷ (e.g. the child of a frontier worker is entitled to tuition from the parent's Member State of employment under the same condition as children of nationals, regardless of whether the child is a resident of the Member State or not⁸⁸) • Tax advantages⁸⁹ <ul style="list-style-type: none"> - National tax rules deterring workers | <ul style="list-style-type: none"> • Membership of trade unions <ul style="list-style-type: none"> ➢ Nationals from other Member States may be excluded from taking part in managing bodies or holding an office governed by public law⁹⁴ |

⁷⁹ Article 45(4) TFEU; and COM(2010)373 final; p. 10

⁷⁷ Regulation (EU) 492/11, Article 5

⁷⁸ Cases C-138/02 *Brian Francis Collins v. Secretary of State for Work and Pensions* [2004] ECR I-02703; C-258/04 *Office national de l'emploi v. Ioannis Ioannidis* [2005] ECR I-08275; C-22/08 *Athanasios Vatsouras v. Arbeitsgemeinschaft (ARGE) Nürnberg 900* [2009] ECR I-04585

⁸⁰ Regulation (EU) 492/11, Article 3(1)

⁸¹ COM(2010)373 final; p. 8

⁸² Regulation (EU) 492/11, Chapter 1, section 2

⁸³ COM(2010)373 final; p. 12

⁸⁴ *Ibid.*

⁸⁵ Regulation (EU) 492/11, Article 7(1)

⁸⁶ Regulation (EU) 492/11, Article 7,2. Definition of 'social advantages' by the ECJ: this concept embraces all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community. Source: European Commission.

⁸⁷ Case C-85/96 *Maria Martinez Sala v. Freistaat Bayern* [1998] ECR I-02691

⁸⁸ COM(2010)373 final; p. 13

⁸⁹ Regulation (EU) 492/11, Article 7(2)

| | | |
|--|---|--|
| | <p>from exercising their right to free movement can be considered an obstacle to the practice of that principle (e.g. EU law protects against discriminatory tax treatment of other incomes, such as pensions, where contributions to foreign schemes should also be deductible, similar to nationals⁹⁰)</p> <ul style="list-style-type: none"> • Access to training <ul style="list-style-type: none"> - In vocational schools and retraining centres⁹¹ • Membership of trade unions <ul style="list-style-type: none"> - Including the right to vote and eligibility for posts or management⁹² • Matters of housing <ul style="list-style-type: none"> - including ownership and access to housing lists⁹³ | |
|--|---|--|

While the Regulation and the CRD focus on the removal of discrimination, the case law of the Court of Justice interpreting Article 45 adopts a broader approach based on removing impediments to market access. The market access test embraces those rules which are directly or indirectly discriminatory but also non-discriminatory rules which create obstacles to free movement unless they can be justified. So, for example, in the context of football, transfer fees payable by the purchasing club for a player whose contract with the selling club has expired was considered an unlawful obstacle to the free movement of workers.⁹⁵

4.2 Conclusions on conceptual framework for proposed policy options

Art. 45 TFEU and Regulation (EU) 492/11 establish clearly that the freedom of movement for workers shall be secured within the Union and any discrimination on the basis of nationality as regards access to employment, remuneration and other employment conditions shall be abolished, as freedom of movement constitutes “a fundamental right of workers and their families” in the EU. This means that EU citizens and their family members, including third-country national family members, have the right to seek and take up an offer of employment in another Member State, and in doing so they enjoy the same rights as nationals of that Member State in terms of access to and assistance from national employment offices in seeking employment. The more concrete rights, and the definition of an EU worker are, in addition to Article 45 TFEU and Regulation (EU) 492/11, specified among others in the Communication from the Commission reaffirming the free movement of workers: rights and major developments (i.e. COM(2010)373 final), the Citizens’ Rights Directive (CRD) 2004/38/EC on residence and equality issues, and in relevant case law from the ECJ.

⁹⁴ Regulation (EU) 492/11, Article 8

⁹⁰ COM(2010)373 final; p. 13-14

⁹¹ Regulation (EU) 492/11, Article 7(3)

⁹² Regulation (EU) 492/11, Article 8

⁹³ Regulation (EU) 492/11, Article 9

⁹⁵ Case C-415/93 *Union Royale Belge de Société de Football Association v. Bosman* [1995] ECR I-4921

5. PROBLEM DEFINITION

The following chapter defines and scopes the problem forming the basis of this study and the idea for a potential EU intervention. As set out in the European Commission Impact Assessment guidelines⁹⁶, this chapter first presents the nature of the problem – a more brief account of the problem under scrutiny in its essence - and then moves on to a description of the scale of the problem, presenting examples of the different problems found in the Member States (the section on scale of the problem presented here is a summarised version providing an overview of the main issues; for a more in depth and detailed version of the problem definition, please see annex K).

The sections on nature (5.1) and scale of the problem (5.2) are followed by an assessment of policy option 1 – no EU intervention (5.3). The section provides an estimation of how the situation of discrimination on the basis of nationality and enforcement of EU free movement legislation is likely to evolve in the Member States if the status quo is maintained and no EU action is taken. The assessment of policy option 1 is essentially the baseline scenario against which the expected impacts of the other policy options will be considered.

The chapter on identifying the problem finally concludes by reflecting on whether and why an EU intervention might be needed and what mandate the EU has to act in this field.

5.1 Nature of the problem

The right to move freely between Member States for work purposes is one of the four fundamental freedoms of the Union, yet it is the least practised of the four⁹⁷. While the number of European citizens exercising this right at one point or another in their life appears to be growing, currently only around 2.3% of EU citizens reside in another Member State than where they are citizens, approximately 10% have practised the right to free movement in the past, and 17% intend to do so at some point in the future⁹⁸.

While (as outlined in Chapter 3) there are several de facto barriers to the movement of EU workers, such as concerns about leaving one's home and friends behind and language barriers⁹⁹, some legal, administrative and practical barriers also seem to persist for those who wish to establish a working life in another Member State. Though the rights of EU migrant workers are strong and clear from a legal point of view, as outlined in Chapter 4, there are still problems related to the enforcement and practical implementation of these rights. Sometimes legislation adopted at a national, regional or local level is not in conformity with EU law, sometimes legislation is in conformity but there is an incorrect application by the national, regional and/or local authorities, and sometimes EU law is incorrectly applied or disregarded by employers. Sometimes it is a matter of blatant, direct discrimination against EU nationals from other Member

⁹⁶ European Commission: Impact Assessment Guidelines; 15 January 2009; SEC(2009) 92; p. 21 (http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf)

⁹⁷ Mario Monti: "A new Strategy for the Single Market – at the service of Europe's economy and society"; report to the President of the European Commission, José Emanuel Barroso; 9 May 2010.

⁹⁸ Eurostat

⁹⁹ Eurobarometer: "Geographical and labour market mobility – summary"; European Commission: Special Eurobarometer; published June 2010; p. 24.

States, and sometimes the discrimination is of a more indirect nature (conditions or demands which by effect lead to discrimination of other nationalities, including EU citizens).¹⁰⁰

One example of such an issue from a legal perspective is the lack of separation between national immigration law and the implemented free movement rules. In some Member States, the free movement rules are integrated into the general immigration law. In these situations, the cases of EU nationals may be handled by the same immigration officers dealing with third-country nationals, keeping national immigration rules in mind. As a consequence, EU nationals may sometimes hold a status closer to that of third-country nationals rather than that of nationals of the Member State, meaning that demands are imposed on them to present the same types of documentation (e.g. proof of sufficient income) as required by third-country nationals¹⁰¹. This issue especially concerns the treatment of third-country national family members of EU migrants who are treated as third-country nationals rather than beneficiaries of EU free movement law in some Member States¹⁰².

It seems that EU migrant workers face a wide variety of obstacles, such as different conditions applied to the recruitment of EU nationals from other Member States compared to nationals of the host country, less favourable working conditions (remuneration, career prospects, grade) compared to nationals of the host Member State, and restricted access to social advantages because they are subject to conditions more difficult for non-nationals of the Member State to meet.

The prohibition of discrimination on the grounds of nationality is in principle ensured by Regulation (EU) 492/11; however, studies show that nationality is not always included as an independent category in anti-discrimination provisions in Member States' national legislation. In practice this means that those alleging nationality-based discrimination must (if reliant on national legislation) either prove that the existing legislation indirectly includes nationality or show that the discriminatory treatment suffered fits explicitly into another category covered by the legislation (such as race or ethnic origin)¹⁰³. This means that, though in principle protected by EU law, EU migrant workers who are victims of direct or indirect discrimination on the basis of nationality may in reality face obstacles in dealing with or challenging the discriminatory practice.

The table below presents an overview of some of the obstacles in relation to enforcement and application of EU law which EU migrant workers and their family members may face when exercising their right to free movement. The table overview is followed by a more in-depth analysis of the issues and the scope of the problem.

Table 6: Examples of obstacles to free movement and nationality-based discrimination of EU migrant workers across Member States¹⁰⁴

| Main problem: Violation of EU citizens' free movement rights | |
|--|--|
| Obstacles to free movement | <p><u>Obstacles related to sports:</u></p> <ul style="list-style-type: none"> Continued application of transfer fees in some sports <p><u>Administrative obstacles:</u></p> <ul style="list-style-type: none"> delays in registration of EU migrant workers and their family members that may, for example, result in difficulties with respect to working contracts EU nationals assimilated into the system applied to third-country nationals rather than the one for national workers, so rather than registering with the employment agency, EU migrant workers are required to register with the authority responsible for issuing residence permits, where the procedure is lengthy). <p><u>Other:</u></p> |

¹⁰⁰ See also European Commission, DG Employment, Social Affairs and Inclusion. Roadmap: Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers. 15 June 2011.

¹⁰¹ Annual European Report on the Free Movement of Workers in Europe in 2009-2010; December 2010; p. 7

¹⁰² Ibid

¹⁰³ European network on free movement of workers: Thematic Report – Application of Regulation 1612/68; January 2011

¹⁰⁴ The examples are gathered from the national fiches provided by the members of the Advisory committee on free movement of workers (internal documents).

| | |
|---|--|
| | <ul style="list-style-type: none"> • Difficulties giving up residence in Member State of origin fiscally (e.g. when still owning a residence in the Member State or when a young person moves directly from the parents' residence to pursue work in another Member State) • Requirements to present documentation/official translations (for example for residence applications) in the language of the host Member State may constitute a practical barrier • Part-time workers (working less than 40%) not considered workers and hence not beneficiaries of EU migrant workers' rights • Requirements for a licence for employment; in practice only a formality but nonetheless considered an administrative impediment • Advertising some positions in newspapers in the language of the host Member State only. • Worker registration numbers or similar not issued to foreign job seekers, which may present practical obstacles (e.g. in opening a bank account). |
| <p>Discrimination (direct or indirect) in eligibility for employment</p> | <p><u>Access to employment:</u></p> <ul style="list-style-type: none"> • <i>Non-proportionate language requirements</i> (e.g. excessive language requirements in the job descriptions; examination to attain the relevant professional diploma available only in the language of the Member State, even though there are no language requirements for the job; requirement of a diploma from a national high school of the host Member State as proof of sufficient linguistic skills). • <i>Excessive restrictions to posts in the public sector</i> (e.g. all posts in a public institution reserved for nationals regardless of the tasks to be performed and whether they involve exercising of powers conferred by public law and safeguarding general interests; residence requirements in the open competition for posts in the public sector; only recognition of professional experience obtained in public institutions of the host Member State). • <i>Administrative obstacles</i> (e.g. delays in registration of EU migrant workers and their family members that may, for example, result in difficulties with respect to working contracts; EU nationals assimilated into the system applied to third-country nationals rather than the one for national workers, making it so rather than registering with the employment agency, EU migrant workers required to register with the authority responsible for issuing residence permits, where the procedure is lengthy). <p><u>Assistance from national employment offices:</u></p> <ul style="list-style-type: none"> • Certain employment support measures for young persons dependent on access to social welfare, which may be subject to habitual residence conditions. <p><u>Access to financial benefits to facilitate employment:</u></p> <ul style="list-style-type: none"> • The access to job seekers' social allowances may be dependent on access to social welfare, which in turn is subject to a habitual residence condition, meaning that EU migrant job-seekers may be excluded from access to allowances. <p><u>Other:</u></p> <ul style="list-style-type: none"> • Restrictions on work permits issued to seasonal workers from EU-2 (decision incompatible with the accession treaties). • Quotas on the number of foreign players in teams and/or in competitions and higher participation fees for non-nationals in some sports (EU nationals are considered foreigners rather than nationals) |
| <p>Discrimination (direct or indirect) in employment</p> | <p><u>Working conditions:</u></p> <ul style="list-style-type: none"> • <i>Public sector:</i> management posts only accessed by nationals of the Member State, imposing a practical barrier to other EU nationals' prospects of promotion. • <i>Trainees in exchange programmes:</i> Employers who do not consider training as employment and do not live up to normal employment |

| | |
|--|---|
| | <p>contract obligations in terms of working conditions.</p> <p><u>Social advantages:</u></p> <ul style="list-style-type: none"> • <i>Frontier workers:</i> Requirements for permanent residency for entitlement to social assistance and social allowances. Children of frontier workers prevented from access to study grants, as they require residence and/or a higher education entrance qualification obtained in the host Member State. <p><u>Tax advantages:</u></p> <ul style="list-style-type: none"> • <i>Frontier workers:</i> only residents of the Member State have the advantage of tax deductions such as expenses related to having one's child in a state-owned child care facility. <p><u>Access to training:</u></p> <ul style="list-style-type: none"> • EU migrant workers denied the possibility to participate in a training programme offered to their colleagues who are nationals of the Member State. <p><u>Membership of trade unions:</u></p> <ul style="list-style-type: none"> • Statutes of unions limit membership to those who are citizens or permanent residents of the Member State, a specific diploma etc. <p><u>Matters of housing:</u></p> <ul style="list-style-type: none"> • Competitions for state administered housing only open to citizens of the Member State. <p><u>Other:</u></p> <ul style="list-style-type: none"> • Limitations on numbers of non-residents to play in competitions and registration fees for non-resident trainers in some sports |
|--|---|

According to EU law, **family members** (including third-country nationals) of EU migrant workers have the right to work and reside with their spouse/partner/parent/child in the host Member State. As mentioned above, the rights of family members, especially third-country national family members, are not always enforced, which is considered an important obstacle to EU workers' movement. Another obstacle is the direct and indirect discrimination on the basis of nationality they face when exercising their rights to free movement within the Union.

To sum up the nature of the problem on the basis of the examples mentioned in the table above, in terms of **direct discrimination**, some of the most prominent examples of obstacles to EU citizens' free movement are the quotas applied in several sports in different Member States on the numbers of foreign players allowed to play in leagues and/or competitions. Where these quotas are also applied to nationals of other EU Member States, these practices go directly against the freedom of movement provisions¹⁰⁵.

For **job-seekers** specifically, the issues of direct discrimination predominantly involve excessive (and unlawful) requirements for different permits in some Member States. These are considered obstacles to the right of EU citizens to move to and reside freely in another Member State to pursue opportunities for employment for up to three months. Other important issues of discrimination against EU nationals from other Member States are the (excessive) restrictions on access to certain posts (especially in the public sector) to nationals of the Member State.

The cases of direct discrimination against **workers** mainly concern unequal treatment regarding working conditions, such as restrictions on the possibilities for promotion of EU nationals from other Member States. This includes, for example, where management posts (in the public sector) are reserved for nationals of the host Member State. Employees that are nationals of other EU Member States may also experience unequal access to training compared to their colleagues who are nationals of the host Member State¹⁰⁶.

Among the obstacles to free movement where the **discrimination is of an indirect nature**, important issues concern non-EU family members who are denied access to work in the host Member State¹⁰⁷. Such obstacles (or expectations of facing such obstacles) may prevent EU

¹⁰⁵ Regulation (EU) 492/11, Article 4

¹⁰⁶ Feedback report from Your Europe Advice (internal document); p. 8.

¹⁰⁷ feedback report from Your Europe Advice (internal documents); p. 9.

citizens from moving for employment opportunities in another Member State. Indirect discrimination against sports players from other EU Member States occurs when certain requirements for e.g. locally trained players in effect serve as a quota on the number of foreign players.

EU migrant **job-seekers** face indirect discrimination in terms of unclear information about the requirements they need to fulfil in order to work in the host Member State, excessive language requirements for access to certain posts, and lack of recognition of previous professional experience obtained in other Member States. Such measures may in effect keep nationals from other EU Member States from accessing the labour market or specific posts and favour citizens of the host Member State.

Issues of indirect discrimination faced by **workers** mainly concern unequal employment conditions (i.e. salary, seniority, and access to continued training) because experience or training acquired in another Member State is not taken into consideration¹⁰⁸. Other issues concern Member States or local authorities that impose residence requirements for certain permits or access to certain social advantages. Such inequalities mainly affect frontier workers and their family members. They also go against the principle in EU law that frontier workers qualify as migrant workers and must enjoy the same rights to equal treatment in matters of employment.

As can be seen from the above, there are many different issues related to the non-respect or wrong application of the rights of EU migrant workers. The issues, or barriers, can loosely be divided into four levels or types of problems:

- **Non-conform legislation at national, regional or local levels:** Some examples of the violation of EU migrant workers' rights appear at the formal level in legal provisions not in conformity with the EU rights of migrant workers to free movement and non-discrimination on the basis of nationality. These violations are more easily detectable and are therefore more easily addressed.
- **Incorrect application of EU law by national, regional or local authorities:** This is the semi-formal level that represents cases where the legislation (national, regional or local) is in conformity with EU law, but its application in procedures and practices of Member States' authorities does not respect EU rules and rights accorded to EU migrant workers and their family members.
- **Incorrect application of EU law by employers:** The cases of incorrect application of EU workers' rights by employers (public and private) are the most difficult to detect and address. Though the national legislation, standards and procedures applied by authorities might be in conformity with EU rules, EU migrant workers still risk being discriminated against when applying for a job or experience unequal treatment compared to nationals in terms of working conditions.
- **Non-use of rights accorded by EU law:** Many EU citizens choose not to use their right to freedom of movement for work purposes as accorded to them by EU law. Other EU workers who have moved experience discrimination but do not take actions to enforce their EU granted rights to equal treatment.

There are many different reasons why EU law on the free movement of workers is not being enforced or correctly applied. An important one, mentioned by several experts in the field, is related to a general unawareness or lack of understanding (both among citizens themselves and with national and local authorities and employers) of the extent of the EU rights¹⁰⁹. Though EU free movement rights may be clear from a legal point of view, there seems to be some confusion as to its application due to the complexity of the legislation, especially the combination of Article 45 TFEU and Regulation (EU) 492/2011 with all the other legislation within the area of free movement, and the different transpositions of the related directives (e.g. the Residence Directive) into national law. For example, a member of the advisory board for the free movement of workers identified as a major issue that the relevant authorities did not always understand the

¹⁰⁸ feedback report from Your Europe Advice (internal documents); p. 8.

¹⁰⁹ Alain Lamassoure: "The citizen and the application of Community law"; Report to the president of the Republic; 8th June 2008; p. 11

scope of the phrase 'social advantages' as provided in Regulation (EU) 492/11 and how it related to other regulations on social benefits.

Other drivers behind the problems will be presented after we have looked closer at the scale of the problem – what kinds of problems occur in which Member States – in the following section.

5.2 Scale of the problem

While the above analysis indicates the types of problems EU workers may face when working in another EU Member State, this section aims to provide a more specific overview of the extent to which these problems do in fact occur. First, an overview of the **general scale of the problem** is provided, based on primary data collected through a survey among EU workers in eight Member States, a public consultation among citizens and a public consultation among organisations in Europe. Here it is outlined to what extent the respondents experience discrimination on the grounds of nationality and who are the persons affected by the problems. The general scale of the problem is to a high extent based on quantitative data. Following this, **the specific scale of the problem** is presented with concrete examples of problems from the Member States. It is specified whether the problems are related to a) the non-conformity of legislation at national, regional or local levels; b) incorrect application of EU law by national, regional or local authorities; c) incorrect application of EU law by employers; or d) non-use of rights accorded by EU law.¹¹⁰ Other types of problems that may exist in the Member States with regard to the discrimination of EU migrant workers on the grounds of nationality should not be excluded, so these are mentioned where relevant. The specific scale of the problem is to a high extent based on qualitative, secondary data, which is, where possible, supported by quantitative data from the survey among EU workers. The nature of the data leads to an assessment of the scale of the problem, which is to a high extent qualitative in nature.

5.2.1 The general scale of the problem

The aim of this section is to provide an overview of the scale of the problem based on the views of EU workers and organisations active in this field of the extent to which and in what context discrimination of EU migrant workers takes place. It will also look at the current level of protection in the EU Member States and at the legal recourses available to EU migrant workers when being discriminated against.

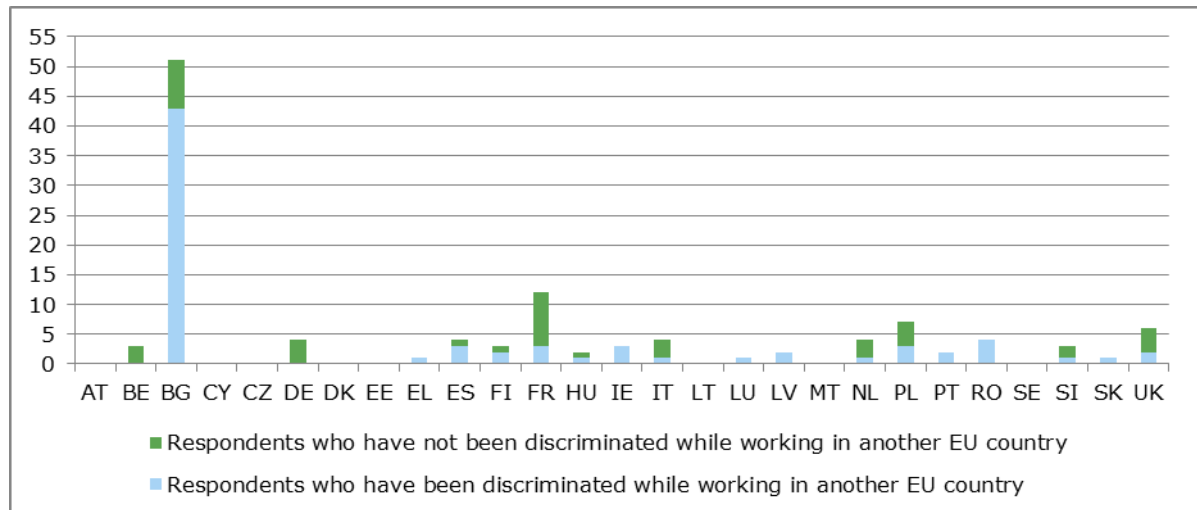
Discrimination of EU migrant workers on the grounds of nationality

Discrimination of EU migrant workers on the grounds of nationality does seem to take place in the European Union: 63% of the citizens who responded to the public consultation have felt discriminated against when working in another EU Member State. However, they only represent 117 EU workers, mainly from Bulgaria (52 Bulgarians, of whom 51 have worked abroad)¹¹¹, which is why it is important to remain cautious with respect to drawing any general conclusions for EU-27 on the basis of these findings. As can be seen from the figure below, the experience of discrimination differs between the nationalities of the workers who responded to the public consultation. While 43 of the 51 Bulgarians (84%) who have worked in another Member State have at some point felt discriminated against because of their nationality, the corresponding figure is 3 out of 12 for the French respondents (25%), 3 out of 7 for the Polish (43%), and 2 out of 6 for the UK respondents (33%).

Figure 13: By nationality: Have you ever felt discriminated against because of your nationality when working in another EU country? (n=117)

¹¹⁰ These are based on a broad variety of data sources, including the survey among EU workers, impact case studies in six Member States, public consultations among citizens and organisations, country profiles for the 27 Member States, responses from equality bodies concerning the number of cases, data from the European network on free movement of workers as well as the Thematic Report on the Application of Regulation 1612/68 (Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011) and the Your Europe Advice feedback report – Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

¹¹¹ A bias with respect to the responses of the 117 EU workers may be expected, as they are more likely to have responded to the questionnaire, if they have been discriminated against while working abroad.

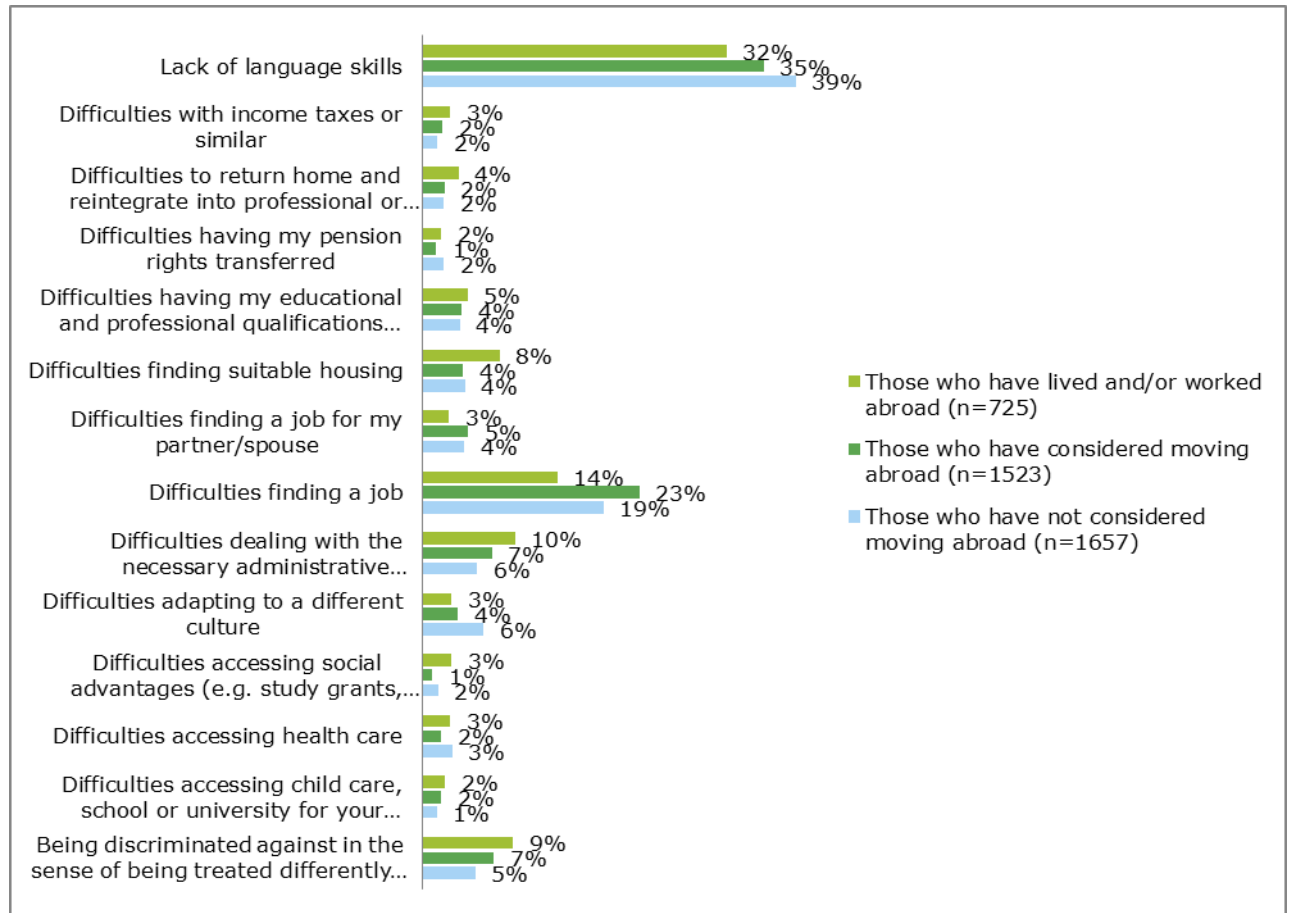


Source: Public consultation among citizens

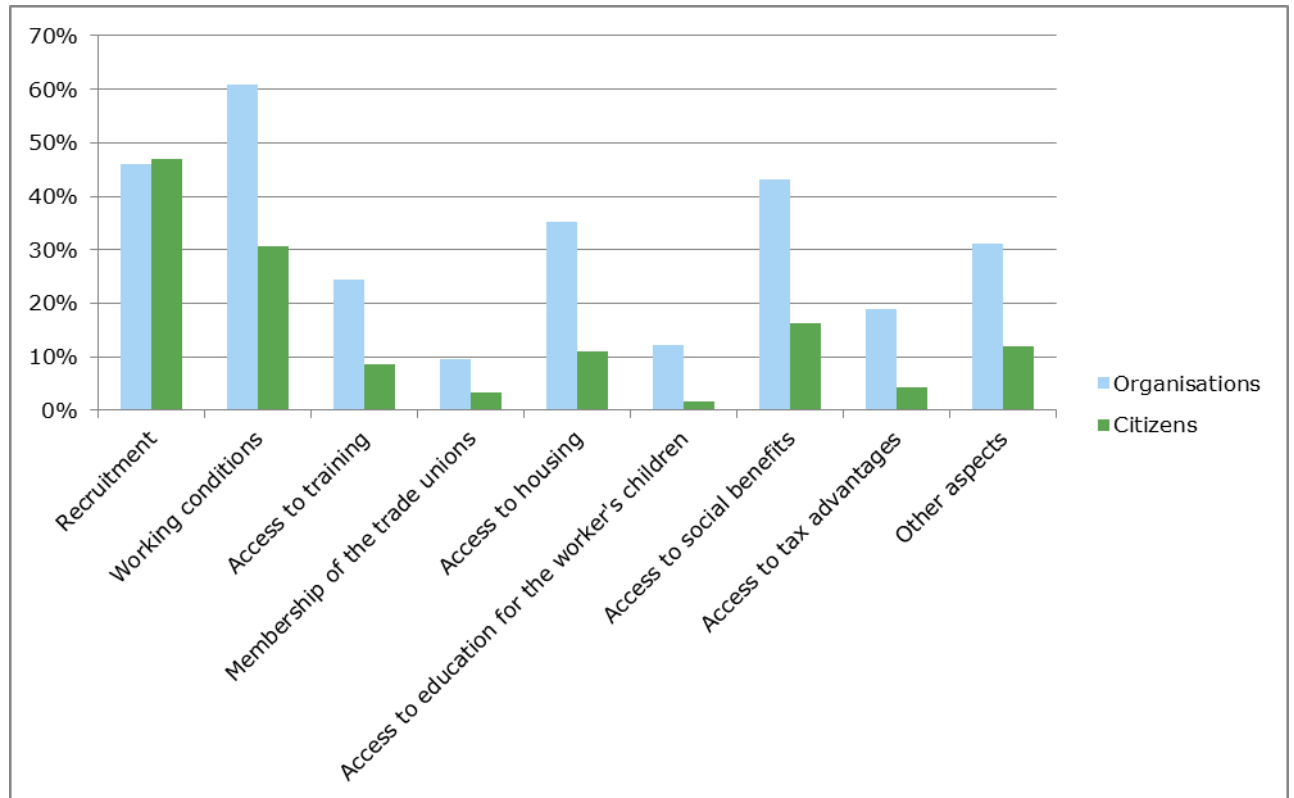
While the number of respondents differs greatly from one nationality to another, it is clear that workers from Romania and Bulgaria in particular experience discrimination on the grounds of nationality. This may to a high extent be caused by the transitional measures that are in place for nationals from these two new Member States. There are however also some respondents from the remaining EU Member States who do experience discrimination on the grounds of their nationality.

According to the survey among EU workers, the biggest barriers experienced by EU workers were not related to problems of application of EU law but were rather more practical in nature. The EU workers (both those who have experience of working in another EU Member State and those who have not) found the lack of language skills to be the biggest barrier in moving to another EU Member State to work, followed by difficulties in finding a job and dealing with the necessary administrative documents. Being treated differently to the nationals of the host country, which is a concrete problem of non-respect or non-application of EU legislation, was considered the fourth biggest barrier.

Figure 14: The most important obstacle that migrant workers sometimes experience



When they were abroad, EU migrant workers experienced discrimination, particularly with respect to recruitment (eligibility for employment) and working conditions (employment) (see figure below).

Figure 15: Situations where discrimination occurs¹¹²

Source: Public consultation among citizens and organisations

It seems that EU migrant workers from newer EU Member States, especially those from Bulgaria and Romania, who are still subject to transitional measures, have been the most exposed to direct discrimination on the grounds of their nationality. According to the respondents of the public consultation among organisations, migrant workers from the newer Member States in particular received lower salary compared to nationals for the same positions. In addition, pressure was put on them to work unofficially without contributions to the social security by employers. Language problems were mentioned as one of the reasons why these exploitative working conditions exist, as workers are not aware of their rights.

There are however important differences between the countries in which the respondents have worked and between respondents of different nationalities.

¹¹² Question to citizens: In which situations did you feel discriminated against? (N=74) Question to organisations: According to your experience, what are the main problems that EU citizens face when working in another country of the European Union? (N=74). Multiple answers were possible, which is why the sums of the responses do not add up to 100%, but they are indicated as share of respondents instead.

Table 7 below reveals that discrimination was experienced more often with respect to applying for a job in the Netherlands, while discrimination with respect to working conditions was equally recurrent in France as discrimination when applying for a job.

Table 7: By host country: In which situations were respondents discriminated? (Host countries with most respondents) (n=111)¹¹³

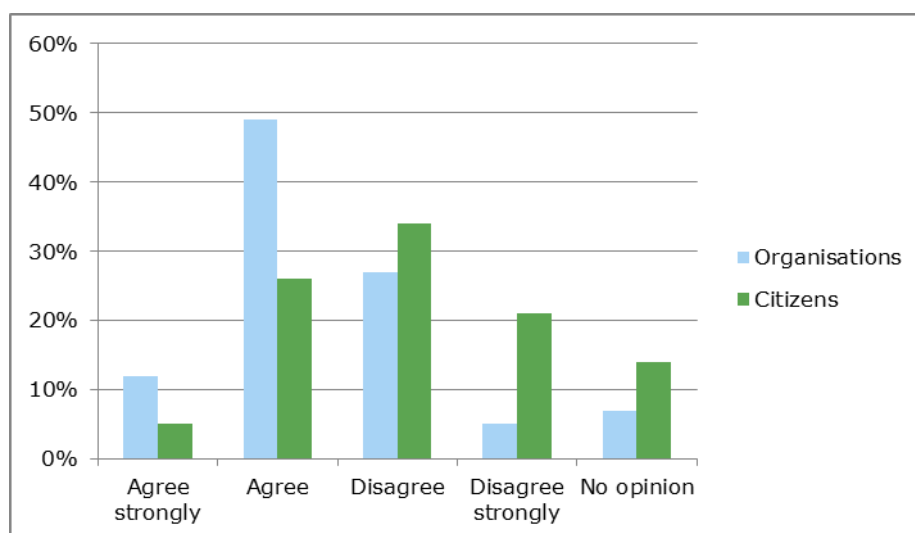
| | BE (n=22) | DE (n=23) | FR (n=17) | NL (n=18) | UK (n=31) | Total (n=111) |
|-----------------------------------|--------------|--------------|--------------|--------------|--------------|------------------|
| Applying for a job | 18% | 17% | 35% | 61% | 45% | 35% |
| Working conditions | 0 | 13% | 35% | 17% | 32% | 20% |
| Training | 0 | 9% | 0 | 6% | 10% | 5% |
| Membership of trade unions | 0 | 0 | 0 | 0 | 3% | 1% |
| Housing | 0 | 4% | 12% | 11% | 10% | 7% |
| Education for children | 0 | 4% | 6% | 0 | 0 | 2% |
| Social benefits | 0 | 4% | 12% | 17% | 13% | 9% |
| Tax advantages | 0 | 0 | 12% | 0 | 3% | 3% |
| Other | 0 | 0 | 0 | 6% | 13% | 5% |
| TOTAL: Did feel discriminated | 18% | 26% | 47% | 67% | 45% | 40% |
| TOTAL: Did not feel discriminated | 50% | 39% | 41% | 17% | 29% | 35% |
| TOTAL: Not known (n=15) | 32% | 35% | 12% | 17% | 26% | 25% |

Source: Public consultation among citizens

Protection of EU migrant workers

The views of citizens and organisations (in the public consultation) differ as to the current level of protection available to EU migrant workers. Citizens to a larger extent disagreed or strongly disagreed with the statement that the current level of protection is adequate, while the majority of the organisations agreed with the statement.

Figure 16: The country where organisation is based/person is employed protects workers adequately against discrimination on the grounds of nationality¹¹⁴



Source: Public consultation among citizens and organisations

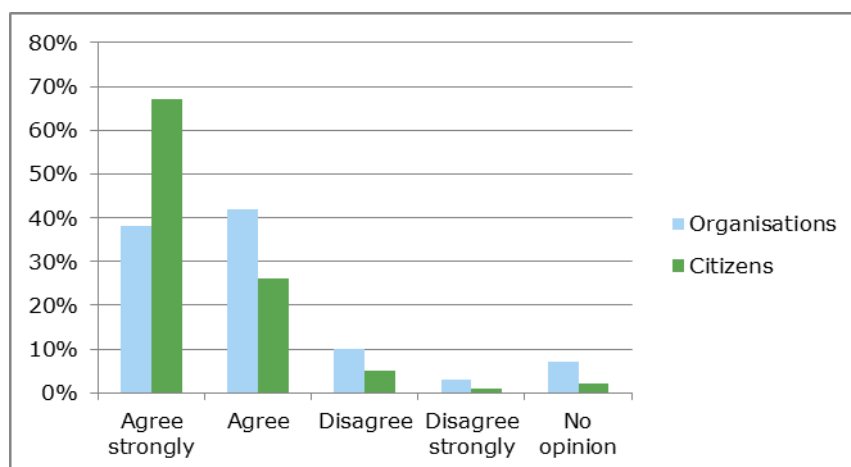
The majority of respondents, both citizens and organisations, however, agreed that there is a need for better protection of EU migrant workers when working in another EU Member State.

¹¹³ Some of the respondents, who have been discriminated against, have worked in more than one Member State, and it cannot be known for sure, which of the host countries the respondent refers to, and, therefore, these respondents have been categorised as "Not known".

¹¹⁴ Question to organisations: Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=74); Question to citizens: Do you think that the country where you are employed or have been employed (other than the country of your nationality) adequately protects workers against discrimination on the grounds of nationality? (n= 117)

Again, the citizens find the need for better protection bigger compared with the responding organisations, as the majority of the citizens strongly agreed with the statement.

Figure 17: Should EU workers be better protected when working in another EU Member State?¹¹⁵



Source: Public consultation among citizens and organisations

These results indicate that citizens may be less aware of the means available for the protection of their rights or that they do not find them sufficiently protective. Moreover, the issue here does not seem to be only related to unawareness, since both citizens and organisations tend to agree that there is room for improvement in the protection of EU migrant workers and their rights.

Legal recourse in case of discrimination on the grounds of nationality

According to the public consultation, legal recourse did not seem to be a measure often taken by EU migrant workers. Of the 74 respondents who had felt discriminated against while working in another EU Member State, only 10.8% (8 respondents) were able to seek recourse under national law. One respondent obtained a successful response, while five did not. The respondents were also asked whether national authorities applied European law (Regulation 1612/68 on freedom of movement for workers) when the respondents challenged the discrimination at the national level. Two respondents answered “yes” while three answered “no”, and three respondents left the question unanswered.

88.4% of the respondents stated that they were not able to seek legal recourse. Based on the data available, it is not possible to conclude whether this is due to a lack of means available to claim their rights under national law, a lack of information about the means available to them to seek legal recourse under national law, or unwillingness to seek recourse. It may also be that the type of discrimination experienced by the EU migrant worker (for example due to transitional measures) is not illegal.

It is thus interesting to examine to what extent organisations did in fact support migrant workers by taking actions, providing legal advice or other types of support to EU migrant workers. As can be seen from

¹¹⁵ Question to organisations: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=73); Question to citizens: Do you think citizens should be better protected from discrimination on the grounds of nationality when working in a different country of the European Union? (n=117)

Table 8, approximately half of the organisations provided one or more of the three forms of support to EU migrants.

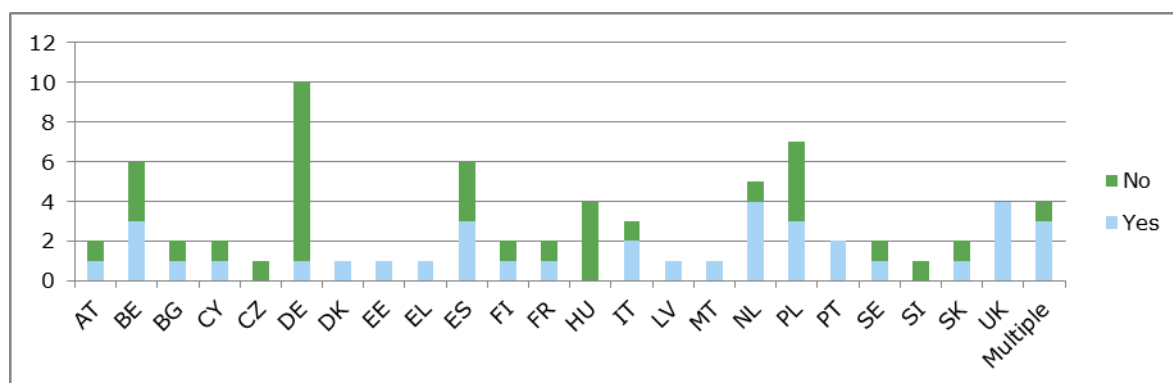
Table 8: Legal/non-legal support to migrant workers

| Support to migrants workers | Yes | No |
|---|-----|-----|
| Possibility to take action on behalf of migrant workers (n=72) | 51% | 49% |
| Legal advice to workers discriminated against on the basis of their nationality (n=73) | 58% | 42% |
| Any other form of support to EU migrant workers when discriminated against on the basis of nationality (n=74) | 51% | 49% |

Source: Public consultation among organisations

When looking at the corresponding figures in terms of Member States presented in Figure 18, it can be seen that in several Member States¹¹⁶ the majority of the organisations had the possibility to take an action on behalf of migrant workers.

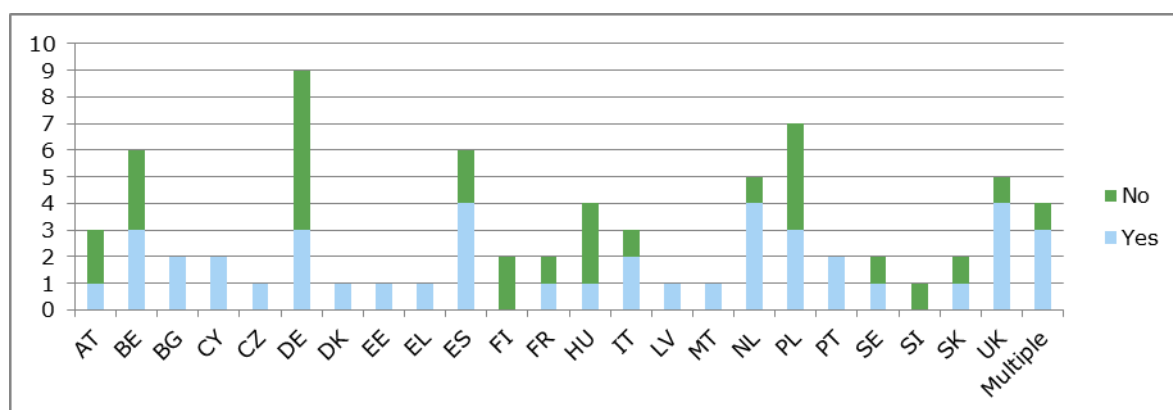
Figure 18: Possibility to take an action on behalf of migrant workers in the country of the European Union where you are based by Member State (n=72)



Source: Public consultation among organisations

As seen in Figure 19, the majority of the respondents provided legal advice in most of the Member States. However, in Finland and Slovenia, none of the organisations provided legal advice to workers who have been discriminated against on the basis of nationality.¹¹⁷

Figure 19: Legal advice to workers who have been discriminated against on the basis of their nationality by Member State country (n=72)



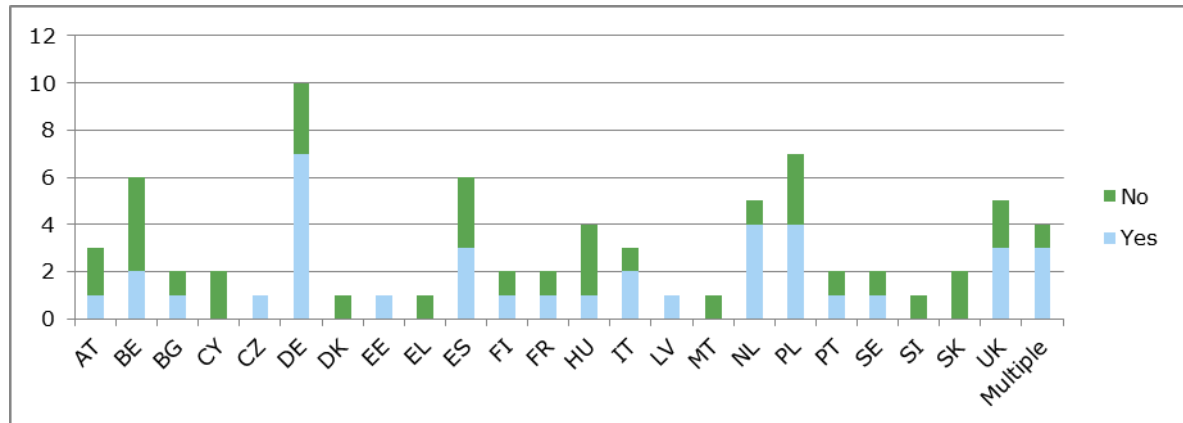
Source: Public consultation among organisations

In most Member States, other forms of support than legal advice were provided, as shown in Figure 20.

¹¹⁶ DK, EE, EL, IT, LV, MT, NL, PT, UK.

¹¹⁷ These organisations include employers' organisation and a national church in Finland and employers' organisation in Slovenia.

Figure 20: Any other form of support to EU workers when discriminated against on the basis of nationality by Member State (n=73)



Source: Public consultation among organisations

The nature of support varied according to the type of organisation rather than the country where respondents were based. For national authorities, other support included support from employment offices and labour inspectorates. Other organisations specified the provision of practical support and consulting as other support. The support and consulting usually consisted of providing information about the workers' rights, as well as advising what action could be taken in case of discrimination. In addition to providing practical support and consulting in a number of Member States¹¹⁸, labour unions, NGOs and employer organisations were involved with awareness-raising campaigns or similar activities¹¹⁹, general advocacy work¹²⁰ and referring to an equality body¹²¹.

5.2.2 The specific scale of the problem

The above section on the general scale of the problem presented an overview of the views of citizens and organisations concerning the situation of EU migrant workers in Europe. The aim of the present section is to take this knowledge to the Member State level, and to provide an overview of the types of problems that EU migrant workers have experienced in the different Member States. The section will also specify whether the barriers experienced by EU migrant workers are related to:

1. Non-conformity of legislation at national, regional or local levels (problem 1);
2. Incorrect application of EU law by national, regional or local authorities (problem 2); or
3. General administrative practices or specific individual cases that disregard EU law (problem 3)
4. Non-use of rights to free movement of workers (problem 4)

Furthermore, an assessment is made concerning the drivers that are underlying to these different types of problems. For example, it is important to know, whether the problems occur because:

- National authorities do not interpret case law in the same way as the Commission
- Member States develop their legislation with their specific objective(/national interests) in mind without paying attention to whether it is in accordance with Article 45 and Regulation (EU) 492/2011
- The officials or judges do not apply the law correctly (public authorities acting as public authorities)
- Procedures to claim rights are not or are incorrectly implemented
- Officials or judges are unaware of or misunderstand EU law regarding migrant workers' (and family members') rights

¹¹⁸ BG, DE, ES, IT, and a European wide organisation.

¹¹⁹ DE, FR.

¹²⁰ DE.

¹²¹ N.

- Employers are not aware of EU law regarding migrant workers' (and their family members') rights
- Employers do not understand EU law regarding migrant workers' (and their family members') rights
- Employers disregard EU law regarding migrant workers' (and their family members') rights
- EU citizens are not aware of their rights
- EU citizens do not understand their rights
- EU citizens are unwilling to claim their rights (e.g. due to fear of losing their job)
- EU citizens do not have the means to claim their rights
- EU citizens are unaware of the means available to them to claim their rights
- Legal advisors/the legal profession are not aware of the means available to EU citizens to claim their rights

It deserves to be mentioned that this section does not aim to provide an exhaustive analysis of the specific scale of the problem in each Member State, as it was not possible to conduct a full study on the scale of the problem in each Member State within the scope of this study. The data used is thus to a high extent secondary data. However, the present chapter provides a clear indication of the types of problems that do in fact exist in the Member States with respect to free movement of EU workers, for example by specifying which of the three types of problems and drivers which seem to be most common. All assessments in this section are those of the contractor. As mentioned above, the section presented here in the main report is a shorter version of the problem definition, which only provides an overview of the main tendencies and conclusions found. For a full overview of all the different examples of obstacles, which the conclusions are based on, please see annex H (categorisation of barriers) and K (problem definition – full length version).

The section is divided into sub-sections providing an overview of the areas where discrimination against EU migrant workers on the grounds of nationality is forbidden. Consequently, the first sub-section concerns the overall **obstacles to free movement**, followed by issues related to discrimination in **eligibility for employment**, and finally discrimination in **employment**.

It should be taken into account at all times that there are differences as to the possibilities of the European Commission to tackle the different types of problems identified in this chapter. For example, the Commission would not have the right to take proceedings against a private employer who demands excessive language requirements for job seekers to be eligible for a given position, whereas an identical case in the public sector would provide the Commission with the possibility of taking action for non-compliance against the Member State for failing to fulfil its obligations under EU law. It is important to point out that, in most cases, the migrant workers (or family members) who are victims of discrimination on the grounds of nationality have to take action themselves to ensure enforcement of their rights by bringing their case to a court (or equality body) in order to claim their rights.

Obstacles to free movement

As the Regulation (EU) 492/11 states in its 4th recital, freedom of movement constitutes a fundamental right of EU workers and their families.

The different obstacles to free movement found in the Member States relate to the following:

- Concrete obstacles to free movement and definition of an EU worker
- Requirements for documentation and registration of workers
- Free movement of family members
- Obstacles with respect to free movement in the field of sport

Concrete obstacles to free movement were found in a limited number of Member States. Examples were found in seven Member States (BG, LT, DK, NL, FR, DE, SE). It seems that most of these cases are related to incorrect application of EU legislation by authorities in the Member

States (problem 2), but a few cases of non-conformity of national legislation were also found (problem 1).

A limited number of Member States (CY, CZ, LV, MT, BE, FI, FR, SE, ES) required excessive **registration and documentation** from EU migrant workers or their family members, causing a practical barrier to free movement of workers. The different examples of barriers with respect to requirements for documentation and registration of workers were mostly of an indirect nature. The problems are mainly caused by bureaucratic issues and delays and therefore do not fall into any of the four main categories of problems (problem 1, 2, 3 and 4).

The main problems with respect to **family members** of EU migrant workers are related to the definition of family members and to the situation of third-country national family members. It seems that there are overall several differences between Member States on the definition of what constitutes a "durable relationship"¹²². While these are not necessarily contradictory with EU legislation, they can cause confusion among EU migrant workers, as different rules apply depending on the EU Member State. Issues related to the definition and rights of family members (especially third-country nationals) were found in nine Member States (UK, NL, CY, BG, AT, FR, IE, SK, LT). While most barriers to the free movement of family members were related to incorrect application of EU law by authorities (problem 2), there were also examples of non-conformity of national legislation with EU law (problem 1). Most cases could be characterised as indirect discrimination, but some cases of direct discrimination also exist. (The concrete categorisation of each example can be found in Annex H.)

As also concluded in a report by the European network on free movement of workers¹²³, one area where discrimination on the grounds of nationality exists in most Member States is **sport**. Problems were reported in at least nine Member States¹²⁴. The direct discrimination occurred in the form of quotas (CZ, DK, FI, PT, UK); subsidies or access to tournaments based on the number of citizens of the country on the team (AT, DK); transfer fees (PT) and other specific rules that favoured the hiring of nationals instead of EU workers (EL, ES, SE). All the examples can be characterised as direct discrimination caused by incorrect application of EU law by employers (problem 3).

Eligibility for employment

Based on Regulation (EU) 492/11¹²⁵, all nationals of EU Member States have the right to take up an activity as an employed person in any of the other EU Member States, irrespective of his place of residence. Discrimination in this respect is prohibited in terms of:

1. Access to employment
2. Assistance from national employment offices
3. Access to benefits of a financial nature intended to facilitate access to employment

Concerning **access to employment**, the main barriers found in the Member States are related to administrative obstacles, nationality requirements for public authority positions, non-proportionate language requirements, as well as other relevant barriers, such as specific cases of direct discrimination in access to employment. Access to employment does seem to form an important barrier to EU workers for moving to another EU Member State to work. Interestingly, some concrete cases of legislation that is not in conformity with EU law do exist (problem 1), even though the majority of the cases were related to general administrative practices or specific cases disregarding EU law (problem 3). In relation to access to employment, examples of both indirect and direct discrimination were found, but indirect discrimination was predominant.

¹²² Article 3.2. of Directive 2004/38/EC.

¹²³ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

¹²⁴ AT, CZ, DK, EL, ES, FI, PT, SE and UK. Based on Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011; and Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

¹²⁵ Regulation (EU) 492/11, Chapter 1, section 1.

Based on the examples found in the course of the study, it seems that EU nationals have wide **access to assistance at the national employment offices** in other EU Member States. Registration as a jobseeker was often required in order to access the services. Barriers were reported in a limited number of Member States (CY, LV, FI, SI, SE, BE). The examples found were mainly indirect cases of general administrative practices or specific cases where the EU law was disregarded by authorities (problem 2).

The situation regarding **access to benefits of a financial nature** intended to facilitate access to employment varies greatly between Member States. Nevertheless, it seems that discrimination on the grounds of nationality does not take place in most of the Member States, but the same rules are applied to the EU job seekers as to the nationals of the Member State. This can cause challenges to the job seekers entering the country, e.g. in eight Member States¹²⁶ it is specifically stated that financial benefits are contribution-based. A limited number of barriers are reported. The examples found were related to cases where EU law was incorrectly applied by authorities (problem 2).

Employment

Equality in employment between EU workers is guaranteed in Regulation (EU) 492/11, Article 7, stating that "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 [...]". Equality in employment is guaranteed in the following areas:

- Working conditions
- Social advantages (financial and non-financial)
- Tax advantages
- Access to training
- Membership of trade unions
- Matters of housing

The examples of problems experienced by EU migrant workers with respect to **working conditions** were mainly related to incorrect application of EU law by employers (problem 3). It seems that non-recognition of previous experience when calculating seniority and other benefits is indeed a barrier for EU migrant workers. Moreover, underpayment and poor working conditions are identified, particularly with respect to EU migrant workers from the newer EU Member States. The discrimination they experience is normally indirect, but some cases of direct discrimination do occur.

The barriers experienced by EU migrant workers with respect to **access to social advantages** are related to social advantages in general and study or tuition grants.

General barriers for EU migrant workers in terms of access to different types of social advantages were reported from several Member States¹²⁷. They are related to lack of equal access to social advantages in general, and more specifically to access to social advantages for families. The cases found were, to a high extent, examples of legislation not in conformity with EU law (problem 1). There are some examples of incorrect application of EU law by authorities (problem 2) as well. The cases can mainly be characterised as indirect discrimination, while a limited number of cases of direct discrimination also exist.

Barriers in terms of access to study grants and other education related benefits were reported from at least nine Member States¹²⁸. Most of these examples are cases of non-conformity with the EU legislation (problem1), which grants equal treatment in access to social advantages, including study grants, to EU migrant workers¹²⁹.

¹²⁶ AT, CY, DK, EE, LT, PT, NL, UK.

¹²⁷ Including DK, EL, FI, FR, IT, LV, NL, PL, SK and UK.

¹²⁸ AT, EL, IE, LT, LV, LU, MT, NL and PT.

¹²⁹ See for example cases: LAIR, case 39/86; BERNINI, case 3/90; ECHTERNACH AND MORITZ, cases 389/87; and 390/87; BROWN, case 197/86; MATTEUCCI, case 235/87; MEEUSEN, case C-337/97.

With respect to **taxation**, problems are mainly related to frontier workers. The cases were mainly related to incorrect application of EU law by national, regional or local authorities (problem 2). Most cases were relevant only for frontier workers and they seem to consist of mainly indirect discrimination, as frontier workers could also be of the nationality of the country where they are working, but live in the neighbouring country. For many of the examples related to access to tax advantages, as for some other issues of indirect discrimination, it is the case that while they are indirectly discriminatory and pose an obstacle to free movement, they may be objectively justified.

Barriers related to **access to training** for EU migrant workers seem to be almost non-existent in the Member States. There was one example from Latvia, where the vocational training courses were only available in Latvian, making it potentially difficult for EU migrant workers to participate in the courses¹³⁰. The findings from the survey among EU workers to some extent support this finding, as there was a clear majority of respondents who considered this to be either a non-important, less important or neither important nor unimportant barrier.

One example of a barrier related to **membership of trade unions** was found. Lithuania reported specific problems in respect of trade union membership. While general trade union legislation does not limit the access of other EU nationals to trade union membership¹³¹, the Statute of the Lithuanian Seamen's Union (paragraph 3) provides that the members of the Union must be Lithuanian citizens. Thus, the residence condition is a restriction for foreigners working on Lithuanian ships to enter the trade union if they do not have a permanent residence in Lithuania. As a result, their salary and other working conditions may not be well represented in the event of a conflict¹³².

The obstacles related to **housing** seem to be limited among EU migrant workers, and potential barriers were only reported in five Member States¹³³. The examples in the field of housing were related to problems 1 and 2, i.e. there were cases of non-conformity with EU law and cases of incorrect application by authorities. They can mainly be characterised as direct discrimination.

In sum, discrimination with respect to employment seems to be the area where non-conformity with EU legislation (problem 1) takes place most frequently. Most cases were related to social advantages, including study grants. This is a concrete area where much of the EU legislation is based on ECJ case law and was not yet codified. In terms of drivers behind the problems, it can thus be the case that Member States, where non-conformity was identified, did not interpret case law in the same way as the European Commission. Moreover, it is possible that when developing their national legislation, Member States had their specific national objectives in mind without paying close attention to whether those objectives were in accordance with Article 45 TFEU and Regulation (EU) 492/11.

Examples of incorrect application of EU law by national, regional or local authorities (problem 2) were also found. These examples were related to social benefits, housing, non-recognition of professional experience and difficult access to tax advantages (for example application of an old legislation only allowing nationals of the country in the housing register).

Most examples related to unequal treatment in matters of employment can be characterised as incorrect application of EU law by employers (problem 3). The examples covered all the relevant topics in the field of employment and there were examples from both public and private sectors.

With respect to the private sector, most examples referred to underpayment and poor working conditions. It could also be seen that underpayment and poor working conditions were most common among EU migrant workers from the newer EU Member States. This is however a concrete example of an area, where the Commission has no possibility to intervene in the cases disregarding EU law. The Commission can provide the information about the migrant workers'

¹³⁰ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

¹³¹ Law on Trade Unions of 2001.

¹³² Source: Interview with Catherine Barnard, Cambridge university.

¹³³ BE, IT, MT, NL and PT.

rights and advise them to seek solutions through means available at the national level¹³⁴. The Commission notes however that enforcement of these rights at a national level is often problematic.

Employment is an area where discrimination of EU migrant workers happens both directly and indirectly. The direct discrimination was mainly related to EU migrant workers from the newer Member States who were hired for lower salaries and worse working conditions than the nationals of the host country, or with respect to housing, where nationality of the host country was required in some cases. The indirect cases of discrimination were related to professional experience from other Member States not being taken into account, for example when calculating seniority, with respect to residence requirements for study grants and other social advantages, and with respect to frontier workers, in particular in the case of tax advantages.

Other issues

In addition to general obstacles to free movement, discrimination in terms of eligibility for employment and discrimination in terms of employment, some other issues have been identified that form barriers to free movement of workers. One of them seems to be the lack of information available to EU migrant workers concerning their rights. In a number of Member States, the research shows that it was difficult for EU migrant workers to access information about their rights. The lack of awareness of one's rights is also one of the drivers behind problems that EU migrant workers experience with respect to enforcement of rights of free movement, which is why it is interesting to provide additional evidence on the views of EU migrant workers.

When looking at the responses of the EU citizens' public consultation, approximately two-thirds (65.8%) of the 117 respondents who have worked in another EU Member State were not informed about their rights under European law when moving to the host country. Of the 34.2% of respondents who were informed about their rights, 7.7% were informed by the national authorities, 2.6% were informed by a labour union, and 5.1% were informed by their employers. 18.8% of the respondents were informed through other sources, mainly friends, universities, or by searching on the internet, e.g. five respondents found information on EU web pages.

Of the 40 respondents who received information, only two (5%) did not find that the information was provided in a language understandable to them. This indicates that there are no major language issues concerning the understanding of the information provided to EU migrant workers. Even the respondents who have worked in multiple EU Member States did not seem to have had any issues with the language in which the information was provided.

5.2.3 Conclusions on the scale of the problem

The above sections that present the scale of the problem clearly reveal that discrimination on the grounds of nationality against EU migrant workers does take place. This discrimination is mainly of indirect nature, meaning that the rules or regulations applied do not concretely exclude nationals of other EU Member States, but the way these rules are written or applied favours the nationals of the host country.

The above sections also show that there are some differences between the views of the EU workers on the most important barriers to moving and working abroad on the one hand and the examples that were found based on existing cases of complaints or other reports on the other hand. This may be because the EU migrant workers were not aware of their rights to complain when they felt discriminated against.

Discrimination happens everywhere in the European Union; examples were presented from almost all Member States¹³⁵.

¹³⁴ Commission staff working paper: Situation in the different sectors *accompanying the document* report from the Commission. 28th Annual Report on Monitoring the Application of EU law (2010). SEC (2011) 1093 final, 29.9.2011.

¹³⁵ The examples cannot be considered exhaustive, which is why it should not be stated that no barriers for free movement of workers exist in Hungary and Romania.

Examples of non-conformity with EU legislation (problem 1) were found in approximately half of the Member States. These were mainly related to study grants and other social advantages, but also to nationality requirements for public services and excessive language requirements. All of these can be characterised as belonging to the area of legislation, where much of the current EU law is based on ECJ case law rather than concrete provisions in regulations or directives. The relevant case law has in these cases not always been codified, i.e. the relevant changes have not yet led to amendments in the legal texts. In order to implement the ECJ case law in the national legislation, it is required from the Member States that they are aware and up-to-date with the ECJ rulings and take them into account when developing the national legislation. It can thus be that the Member States, where non-conformity was identified, did not take into account the relevant rulings by ECJ. It may however also be that the Member States did not interpret case law in the same way as the European Commission. Moreover, it is possible that when developing their national legislation, Member States had their specific national objectives in mind without paying close attention to whether those objectives were in accordance with Article 45 TFEU and Regulation (EU) 492/11. For example with respect to the definition of an "excessive language requirement", the ECJ has stated that measures restricting free movement "must not go beyond what is necessary"¹³⁶, but it may be more difficult for the Member States to assess, where the limit to "beyond what is necessary" goes.

Incorrect application of EU law by national, regional or local authorities (problem 2) and incorrect application of EU law by employers (problem 3) were found in almost all Member States. These were found in particular in rules and regulations concerning the free movement of workers in general and definition of EU workers and in different topics related to eligibility for employment, and employment.

A clear trend could be seen with respect to in particular problems 2 and 3: discrimination towards EU migrant workers from the newer EU Member States, in particular Romania and Bulgaria, still subject to transitional schemes is more common than discrimination towards EU migrant workers from elsewhere in Europe. Most examples of underpayment and poor working conditions were related to workers from the newer EU Member States. Likewise, Bulgarian and Romanian citizens have felt the most discriminated against of all EU nationalities when working abroad. The Your Europe Advice-feedback report¹³⁷ concludes that "most cases of **direct discrimination** affect nationals from countries which are or have been the object of transitional restrictions in access to employment. There is therefore a "spill-over" effect of such restrictions." Even though the transitional measures are no longer in place for EU-8, it seems that EU migrant workers from EU-8 still experience problems. The report concludes that there is an impression that local authorities feel that they have the right to treat EU migrant workers from newer EU Member States as "second-class EU citizens". The Your Europe Advice cases reveal that the negative consequences of transitional measures can be seen broadly. They are often related to Bulgarians and Romanians, but also to other nationalities, such as Poles, Lithuanians and Hungarians. The cases include workers and students, "who are employed in total ignorance of their rights (working time, minimum wages), if not simply illegally (undeclared work), often without suspecting it. They find out about their precarious situation when dismissed (often unfairly and without the last payments) or leaving their job, namely when claiming unemployment benefits, or simply when in need of healthcare. They also discover that they do not really have a right to remain in the host country because they had failed to register (or had not been registered by their employer) as workers."¹³⁸

These findings indicate that the main challenges with respect to discrimination of EU migrant workers are not related to non-conformity with EU legislation, and that EU legislation as such is not the main problem. As mentioned above, most cases that were found with respect to non-conformity with EU legislation were related to study grants and other social advantages, as well as to nationality requirements for public services and excessive language requirements. It is the

¹³⁶ Gebhard and Consiglio Dell'Ordine Degli Avocati e Procuratori Di Milano C-55/94. See: Record of Proceedings: Seminar on Key Issues in Free Movement in Ireland, Law Society of Ireland, 5 November 2010.

¹³⁷ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

¹³⁸ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011. Examples: 83998, 86187, 70979, 68292, 78153, 83492, 86508, 83881, 61738, 70575, 68902, 80636, 82127, 68442, 86687, 77423, 53570, 67111, 64585, 81595, 64022, 73898, 61693, 65378, 63793, 64591, 65082, 65969, 64591, 65082, 65969, 68477.

assessment of the contractor that the potential number of EU workers affected by these cases is relatively limited. Instead, there seems to be concrete challenges with respect to the practical application of the existing rules either in terms of general administrative practices, or as individual cases that disregard the EU law rather than barriers of systemic nature that would blatantly disregard the existing EU legislation. These conclusions support the findings by the European network on the free movement of workers, who state in their recent report¹³⁹ that there is a limited number of problems of systemic nature in Member States that constitute unlawful discrimination. Most of the problems that exist are related to potential forms of indirect discrimination, such as excessive language requirements or taking into account previous work experience from other Member States when establishing level of seniority.

While the majority of the examples found in this chapter represent the public sector, it should be kept in mind that the collection of examples is by no means complete, which is why this does not suggest that there are no challenges in the private sector. The violation of EU migrant workers' rights by private employers is more difficult to detect, and can only be identified when EU migrant workers complain to the court, to an equality body or other designated authority. The cases concerning private sector always fall under problem 3, which is also the level that is the most difficult one for the Commission to address. The Commission does not have the power to intervene in cases against private employers, for example when they demand their potential employees to fulfil excessive language requirements.

It is therefore worth noting, as outlined in the *general scale of the problem*, that many of the workers who had felt discriminated against did not take steps towards enforcement of their rights to equal treatment. Moreover, the majority of the migrant workers who responded to the public consultation did not feel that the current level of protection of EU migrant workers and their rights is sufficient, either because they are not aware of the means available to them for protection and enforcement of their rights or because they do not find that there are sufficient means available to them.

The data collected shows that the information provided to EU workers is very scarce and that problems often occur due to the lack of information. This goes for both the potential EU workers who are planning to move abroad, and to those EU migrant workers who are already working in an EU Member State other than the one they come from. It can thus be assumed that there are cases, where the main driver behind the problem is that EU citizens are either not aware, or do not understand their rights with respect to free movement. These drivers can be behind several types of problems, but as the examples used as a foundation for this study do not include enough detail to gain a clear understanding of the underlying drivers, it is not possible to specify to what extent this happens. However, evidence from studies on EU anti-discrimination law shows that unawareness is indeed a challenge, in particular with respect to the EU citizens' means to claim their rights and their awareness of the means available to them¹⁴⁰.

The examples presented in the above chapter also show that lack of awareness concerning EU migrant workers' rights does not only apply to EU migrant workers, but also to the public authorities, employers and legal advisors. Several of the examples relating to problem 2 and 3 could be explained by non-awareness or lack of understanding of rights by the employers, judges, legal advisors or by the public authorities. This is supported by findings from other sectors, where it was found that "difficulties with reversing the burden of proof in practice result from limited awareness among judges and other members of the legal profession with respect to the requirement as well as the means of its application".¹⁴¹

5.3 Policy option 1 (baseline scenario)

This section clusters the Member States into groups on the basis of their ranking on four parameters:

¹³⁹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

¹⁴⁰ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011.

¹⁴¹ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011

1. The level of protection of EU migrant workers' rights at Member State level
2. The current number of EU migrant workers
3. The share of EU migrant workers of the total working population
4. the specific scale of the problem, as described in section 5.2.2

Each of these parameters is further elaborated below. In addition, the level of protection of EU **rights concerning free movement of** workers in practice would also have been an important parameter to have used. Nevertheless, the contractor has within the limits of this study only been able to establish a non-exhaustive picture in each of the Member States. Consequently, this parameter is only partially used to categorise and cluster the Member States below.

The level of protection of EU migrant workers' rights at Member State level

This indicator stems from the individual country profiles of each Member State and is used as a measure of protection of EU migrant workers' rights to freedom of movement and non-discrimination on the basis of nationality. It serves as the first natural step in clustering the Member States. The legal framework of each Member State is characterised in the country profiles by (1) current EU provisions regarding EU migrant workers' rights are integrated into the national legislation; (2) current EU provisions regarding EU migrant workers' rights are partly integrated into the national legislation; or (3) current EU provisions regarding EU migrant workers' rights are not, or only to a limited extent integrated into the national legislation.

According to the research carried out by the contractor, the existing EU legal framework on freedom of movement of workers was integrated into the legislations of 15 Member States. This was often done in the context of the general legislation applicable to foreigners.¹⁴² In three Member States the existing EU legal framework on freedom of movement of workers was integrated into the national legislation to a limited extent only or not at all¹⁴³, and in the remaining nine Member States, the existing EU legal framework on freedom of movement of workers was partly integrated into the national legislations¹⁴⁴.

The current number of EU migrant workers

The number of EU migrant workers in the Member States, which can also be found in the country profiles of each Member State (see Annex G), is used as an indicator of the potential target group for nationality-based discrimination. It cannot be said for certain whether Member States with a high number of EU migrant workers have more issues with nationality-based discrimination, but the potential is certainly larger due to the relative size of the target population. Moreover, Member States with many EU migrant workers are considered to have a larger potential of benefitting from an intervention against nationality-based discrimination. The Member States are therefore divided into five groups according to the current number of migrants in 2010: (1) less than 100,000 EU migrant workers or number not available; (2) between 100,000 and 300,000 EU migrant workers; (3) between 300,000 and 600,000 EU migrant workers; (4) between 600,000 and 900,000 EU migrant workers; and (5) more than 900,000 EU migrant workers.

Looking at the number of EU migrant workers in 2010, 17 Member States¹⁴⁵ are placed in group 1 (i.e. less than 100,000 EU migrant workers), five Member States¹⁴⁶ are placed in group 2 (between 100,000 and 299,999 EU migrant workers), no Member States is placed in group 3 (between 300,000 and 599,999), three Member State¹⁴⁷ in group 4 (between 600,000 and 900,000) and finally two Member States¹⁴⁸ are placed in group 5 (more than 900,000 EU migrant workers).

¹⁴² BG, CZ, FI, FR, IE, IT, LT, LU, PL, PT, RO, SI, ES, NL, UK.

¹⁴³ CY, DK, LV.

¹⁴⁴ AT, BE, EE, DE, EL, HU, MT, SK, SE.

¹⁴⁵ BG, CY, CZ, DK, EE, FI, EL, HU, LV, LT, LU, MT, PL, PT, RO, SK, SI

¹⁴⁶ AT, BE, IE, SE, NL.

¹⁴⁷ FR, IT, ES

¹⁴⁸ DE, UK.

Besides the actual number of EU migrant workers, it is also important to look at the share of EU migrant workers compared to the total working population. The share of EU migrant workers provides an indicator of the extent to which the Member States may have an incentive to change the legislation or in other ways influence the discrimination problems in the Member States. The current number of EU migrant workers is therefore also calculated as a share of the number of all workers in each Member State in 2010.

On the basis of these calculations, the Member States are divided into three groups: (1) EU migrant workers constitute less than 2% of the working population or the number is not available, (2) EU migrant workers constitute between 3 and 9% of the working population, (3) EU migrant workers constitute more than 10% of the working population in 2010.

16 Member States¹⁴⁹ belong to category 1, nine Member States¹⁵⁰ belong to category 2, and only Cyprus and Luxembourg belong to category 3. The case of these two Member States is considered to be very special, as 12% and 45% of the working population in Cyprus and Luxembourg, respectively, were EU migrants in 2010.

The numbers used in clustering can be found in Table 9 below:

Table 9: Number and share of EU migrant workers in 2010

| Member State | Number of EU migrant workers in 2010 (in '000) ¹⁵¹ | Share of migrants from working population 2010 |
|-----------------------|---|--|
| Austria | 184,9 | 4,60% |
| Belgium | 293,6 | 6,60% |
| Bulgaria | N/A | N/A |
| Cyprus | 46,3 | 12,44% |
| Czech Republic | 36,3 | 0,75% |
| Denmark | 59,4 | 2,23% |
| Estonia | N/A | N/A |
| Finland | 22,2 | 0,92% |
| France | 600,0 | 2,35% |
| Germany | 1.394,9 | 3,66% |
| Greece | 73,7 | 1,71% |
| Hungary | 20,9 | 0,56% |
| Ireland | 171,0 | 9,50% |
| Italy | 696,3 | 3,10% |
| Latvia | N/A | N/A |
| Lithuania | N/A | N/A |
| Luxembourg | 98,0 | 44,83% |
| Malta | 2,6 | 1,60% |
| Poland | 5,5 | 0,03% |
| Portugal | 27,9 | 0,60% |
| Romania | N/A | N/A |
| Slovakia | 3,4 | 0,15% |
| Slovenia | N/A | N/A |
| Spain | 811,0 | 4,43% |
| Sweden | 119,8 | 2,70% |
| Netherlands | 140,5 | 1,71% |
| United Kingdom | 1.166,0 | 4,15% |
| Total | 5.974,2 | |

¹⁴⁹ BG, CZ, EE, FI, EL, HU, IE, LV, LT, MT, PL, PT, RO, SK, SI, NL.

¹⁵⁰ AT, BE, DK, FR, DE, IT, ES, SE, UK.

¹⁵¹ Eurostat, EU Labour Force Survey. The figures refer to employed, working-age (15-64) citizens from EU27 countries except declaring country

The scale of the problem

The specific scale of the problem, described in section 5.2.2, provides an indication of the barriers faced by EU migrant workers in the different Member States and whether these are related to:

1. Non-conform legislation at national, regional or local levels (problem 1);
2. Incorrect application of EU law by national, regional or local authorities (problem 2)
3. Incorrect application of EU law by employers (public and private) (problem 3); or
4. Non-use of EU rights to freedom of movement for workers (problem 4)

The analysis of barriers related to problem 1, 2 and 3 is based on concrete cases from the Member States and these provide an indication of the scale of the problem. However, as the list of barriers in the Member States is non-exhaustive, this does not provide the full picture of the actual level of enforcement of EU provisions across EU-27. This indication is therefore only partially used to categorise and cluster the Member States. The issues categorised under problem 4 are generally cross-cutting and concern EU migrant workers in general and various reasons for not making use of their rights to free movement or not taking steps towards enforcing them, due to lack of awareness or understanding of their rights or means available to enforce them. These issues cannot be assigned to specific Member States, and problem 4 has therefore not been used in the clustering of the Member States.

The types of barriers classified as problems 1 are believed to be somewhat official or formal by nature. These barriers are expected to be affected by the new legislation. Problem 2 barriers are less formal than those under problem 1 and cover both more institutionalised, and hence semi-formal, practices and individual examples of wrong or non-application of EU free movement law by authorities. Some of these barriers may also be indirectly affected by new legislation, as an improvement at the problem 1 level – legislation in conformity with EU law – could improve some of the issues related to application. Problem 3 barriers, on the other hand, are all non-official or informal barriers that cannot necessarily be dealt with through the implementation of additional legislation. It is however believed that these types of barriers, as well as the more informal barriers under problem 2, may be reduced with increased awareness and understanding of EU law and discrimination issues related to EU migrant workers.

Member States are divided into five groups on the basis of the identified cases and their division according to the four problems: (1) Member States with no identified barriers or only very few (informal) problem 3 type barriers; (2) Member States where only problem 2 barriers have been identified; (3) Member States where only problem 2 and 3 type barriers were identified; (4) Member States with examples of only problem 1 and 3 type barriers; and (5) Member States where all kinds of barriers are identified.

Category 1 consists of only three Member States¹⁵². There is only one Member State in category 2¹⁵³. In category 3, there are nine Member States.¹⁵⁴ In category 4, there are six Member States¹⁵⁵, and finally category 5 consists of the remaining eight Member States.¹⁵⁶

Clustering

Based on the three parameters described above, the Member States are assigned a value that indicates the extent of the issues related to nationality-based discrimination.

¹⁵² HU, RO, EE.

¹⁵³ SI.

¹⁵⁴ SE, PT, UK, DE, FR, CY, FI, IT, ES.

¹⁵⁵ BG, PL, AT, EL, MT, SK.

¹⁵⁶ NL, DK, LV, LT, BE, CZ, IE, LU.

Table 10: Assigning values for clustering

| | Protection of EU rights at MS level ¹⁵⁷ | Current number of EU migrant workers per Member State ¹⁵⁸ | EU migrant workers share of working population ¹⁵⁹ | Barriers to migration ¹⁶⁰ | Sum |
|-----------|--|--|---|--------------------------------------|-----------|
| AT | 2 | 2 | 2 | 4 | 10 |
| BE | 2 | 2 | 2 | 5 | 11 |
| BG | 1 | 1 | 1 | 4 | 7 |
| CY | 3 | 1 | 3 | 3 | 10 |
| CZ | 1 | 1 | 1 | 5 | 8 |
| DK | 3 | 1 | 2 | 5 | 11 |
| EE | 2 | 1 | 1 | 1 | 5 |
| FI | 1 | 1 | 1 | 3 | 6 |
| FR | 1 | 4 | 2 | 3 | 10 |
| DE | 2 | 5 | 2 | 3 | 12 |
| EL | 2 | 1 | 1 | 4 | 8 |
| HU | 2 | 1 | 1 | 1 | 5 |
| IE | 1 | 2 | 1 | 5 | 9 |
| IT | 1 | 4 | 2 | 3 | 10 |
| LV | 3 | 1 | 1 | 5 | 10 |
| LT | 1 | 1 | 1 | 5 | 8 |
| LU | 1 | 1 | 4 | 5 | 11 |
| MT | 2 | 1 | 1 | 4 | 8 |
| PL | 1 | 1 | 1 | 4 | 7 |
| PT | 1 | 1 | 1 | 3 | 6 |
| RO | 1 | 1 | 1 | 1 | 4 |
| SK | 2 | 1 | 1 | 4 | 8 |
| SI | 1 | 1 | 1 | 2 | 5 |
| ES | 1 | 4 | 2 | 3 | 10 |
| SE | 2 | 2 | 2 | 3 | 9 |
| NL | 1 | 2 | 1 | 5 | 9 |
| UK | 1 | 5 | 2 | 3 | 11 |

Based on the assignment of values, the Member States are grouped into three clusters expected to evolve differently with respect to nationality-based discrimination, either with or without public intervention. An overview of the clusters is presented below. The baseline descriptions follow in the next section.

¹⁵⁷ 1 = Yes, 2 = partly, 3 = no. Information available in country profiles.

¹⁵⁸ 1 = <100.000 EU migrant workers or number not available, 2 = 100.000 - 299.999, 3 = 300.000 - 599.999, 4 = 600.000 - 899.999, 5 = > 900.000.

¹⁵⁹ 1 = < 2%, 2 = 2 - 9%, 3 = 10 - 14%, 4 = > 15%.

¹⁶⁰ 1 = no identified barriers or only very few (informal) problem 3 type barriers, 2 = only problem 2 barriers, 3 = only problem 2 and 3 type barriers, 4 = only problem 1 and problem 3 type barriers, 5 = all kinds of barriers.

Table 11: Clustering

| | Total value | Number of Member States |
|------------------|-----------------|-------------------------|
| Cluster 1 | 4 to 7 | 8 |
| Bulgaria | 7 | |
| Estonia | 5 | |
| Finland | 6 | |
| Hungary | 5 | |
| Poland | 7 | |
| Portugal | 6 | |
| Romania | 4 | |
| Slovenia | 5 | |
| Cluster 2 | 8 to 10 | 14 |
| Austria | 10 | |
| Cyprus | 10 | |
| Czech Republic | 8 | |
| France | 10 | |
| Greece | 8 | |
| Ireland | 9 | |
| Italy | 10 | |
| Latvia | 10 | |
| Lithuania | 8 | |
| Malta | 8 | |
| Slovakia | 8 | |
| Spain | 10 | |
| Sweden | 9 | |
| The Netherlands | 9 | |
| Cluster 3 | 11 to 17 | 5 |
| Belgium | 11 | |
| Denmark | 11 | |
| Germany | 12 | |
| Luxembourg | 11 | |
| UK | 11 | |

5.3.1 Baseline scenarios for clusters

As mentioned above, the baseline scenarios serve the purpose of describing how the situation of EU migrant workers may evolve without an EU intervention, i.e. policy option 1. The European Commission has identified and described the so-called no action effects in the following way:

"Such an option [of doing nothing] has a strong political cost; it does not respond to the concerns of social partners, European Institutions and other stakeholders on the necessity to make effective a fundamental principle of the Treaty such as free movement of workers"¹⁶¹

Otherwise put, the situation of EU migrant workers is not likely to improve without public intervention due to existing barriers which will remain and continue to impose problems.

In the following, we look closer at some of the factors that may influence the situation for EU migrant workers without an EU intervention and which therefore need to be taken into account in the baseline scenarios.

¹⁶¹ European Commission, DG Employment, Social Affairs and Inclusion. Roadmap: Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers. 15 June 2011.

Supply/demand of labour

According to a Eurobarometer survey,¹⁶² almost half of the respondents would consider moving regions or countries to find work in the case of unemployment. The projections on unemployment rates may show that there is a larger potential of mobility in the coming years. It should be noted that the same Eurobarometer survey indicated that moving intentions were strongly linked to the perceived chances of finding a job abroad.

The unemployment rate of EU27 in October 2011 is currently 9.8%¹⁶³, which is the highest unemployment rate in the new millennium. Unemployment has been increasing since the beginning of the financial crisis in 2008¹⁶⁴. It should be noted that in the forecast from Eurostat from autumn 2011¹⁶⁵ the EU27 average annual unemployment rate is expected to stay at similar level for 2012 and 2013 (see table below). The current unemployment rate is high due to the crisis and can therefore be expected to decrease in the second half of the baseline scenario should Europe find its way out of the crisis within the next couple of years.

Table 12: Unemployment rate (number of unemployed as a percentage of total labour force, 2011-2013)

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|--------------------|------|------|------|------|------|------|------|------|------|
| EU 27 | 9.0 | 8.3 | 7.2 | 7.1 | 9.0 | 9.7 | 9.7 | 9.8 | 9.6 |
| Austria | 5.2 | 4.8 | 4.4 | 3.8 | 4.8 | 4.4 | 4.2 | 4.5 | 4.2 |
| Belgium | 8.5 | 8.3 | 7.5 | 7.0 | 7.9 | 8.3 | 7.6 | 7.7 | 7.9 |
| Bulgaria | 10.1 | 9.0 | 6.9 | 5.6 | 6.8 | 10.2 | 12.2 | 12.1 | 11.3 |
| Cyprus | 5.3 | 4.6 | 3.9 | 3.7 | 5.3 | 6.2 | 7.2 | 7.5 | 7.1 |
| Czech Rep. | 7.9 | 7.2 | 5.3 | 4.4 | 6.7 | 7.3 | 6.8 | 7.0 | 6.7 |
| Denmark | 4.8 | 3.9 | 3.8 | 3.3 | 6.0 | 7.4 | 7.4 | 7.3 | 7.1 |
| Estonia | 7.9 | 5.9 | 4.7 | 5.5 | 13.8 | 16.9 | 12.5 | 11.2 | 10.1 |
| Finland | 8.4 | 7.7 | 6.9 | 6.4 | 8.2 | 8.4 | 7.8 | 7.7 | 7.4 |
| France | 9.3 | 9.2 | 8.4 | 7.8 | 9.5 | 9.8 | 9.8 | 10.0 | 10.1 |
| Germany | 11.3 | 10.3 | 8.7 | 7.5 | 7.8 | 7.1 | 6.1 | 5.9 | 5.8 |
| Greece | 9.9 | 8.9 | 8.3 | 7.7 | 9.5 | 12.6 | 16.6 | 18.4 | 18.4 |
| Hungary | 7.2 | 7.5 | 7.4 | 7.8 | 10.0 | 11.2 | 11.2 | 11.0 | 11.3 |
| Ireland | 4.4 | 4.5 | 4.6 | 6.3 | 11.9 | 13.7 | 14.4 | 14.3 | 13.6 |
| Italy | 7.7 | 6.8 | 6.1 | 6.7 | 7.8 | 8.4 | 8.1 | 8.2 | 8.2 |
| Latvia | 8.9 | 6.8 | 6.0 | 7.5 | 17.1 | 18.7 | 16.1 | 15.0 | 13.5 |
| Lithuania | 8.3 | 5.6 | 4.3 | 5.8 | 13.7 | 17.8 | 15.1 | 13.3 | 11.6 |
| Luxembourg | 4.6 | 4.6 | 4.2 | 4.9 | 5.1 | 4.6 | 4.5 | 4.8 | 4.7 |
| Malta | 7.3 | 6.9 | 6.5 | 6.0 | 6.9 | 6.9 | 6.7 | 6.8 | 6.6 |
| Poland | 17.8 | 13.9 | 9.6 | 7.1 | 8.2 | 9.6 | 9.3 | 9.2 | 8.6 |
| Portugal | 8.6 | 8.6 | 8.9 | 8.5 | 10.6 | 12.0 | 12.6 | 13.6 | 13.7 |
| Romania | 7.2 | 7.3 | 6.4 | 5.8 | 6.9 | 7.3 | 8.2 | 7.8 | 7.4 |
| Slovenia | 6.5 | 6.0 | 4.9 | 4.4 | 5.9 | 7.3 | 8.2 | 8.4 | 8.2 |
| Slovakia | 16.3 | 13.4 | 11.1 | 9.5 | 12.0 | 14.4 | 13.2 | 13.2 | 12.3 |
| Spain | 9.2 | 8.5 | 8.3 | 11.3 | 18.0 | 20.1 | 20.9 | 20.9 | 20.3 |
| Sweden | 7.7 | 7.1 | 6.1 | 6.2 | 8.3 | 8.4 | 7.4 | 7.4 | 7.3 |
| Netherlands | 5.3 | 4.4 | 3.6 | 3.1 | 3.7 | 4.5 | 4.5 | 4.7 | 4.8 |
| UK | 4.8 | 5.4 | 5.3 | 5.6 | 7.6 | 7.8 | 7.9 | 8.6 | 8.5 |

The financial crisis

As mentioned in Chapter 3, the financial crisis did seem to have an impact on mobility, especially in some Member States in which the number of migrants decreased¹⁶⁶. This means that the

¹⁶² Special Eurobarometer 337 (June 2010), Geographical and labour market mobility

¹⁶³ Eurostat

¹⁶⁴ Eurostat: News release, Euroindicators, October 2011

¹⁶⁵ Eurostat – European Economic Forecast:

http://ec.europa.eu/economy_finance/eu/forecasts/2011_autumn/statistical_en.pdf and Source:

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsiem110&plugin=1>

¹⁶⁶ Groenendijk, K.; Fernhout, R.; Guild, E.; Cholewinski, R.; Oosterom-Staples, H.; Minderhoud, P. (2010), European Report on the Free Movement of Workers in Europe in 2008-2009, p. 4

prediction of number of EU migrants may be understated as more EU citizens may have sought work in another Member State had it not been for the financial crisis. This assumption is supported by the Eurobarometer¹⁶⁷, where, as mentioned above, intentions to move are said to be strongly linked to the perceived chances of finding a job abroad.

General political will

The Eurobarometer¹⁶⁸ shows that people in the old Member States, EU15, have become increasingly hostile to workers from the new Member States, EU10 and EU2. This state of mind of the public may affect the general political will to act upon and improve nationality-based discrimination-related issues. This leads the contractor to the belief that the problems related to nationality-based discrimination may increase without intervention. On the contrary, if the public state of mind changes in favour of EU migrant workers, some informal barriers may be reduced. However, the contractor would not want to speculate on how the public opinion towards EU migrants would evolve until 2020 neither in the EU as a whole nor in the individual Member States.

Past patterns of mobility

The Eurobarometer¹⁶⁹ discussed the influence of past mobility on future mobility. The basic idea was that people who have moved to seek a job are more likely to do so again; equally students who have studied abroad are also more likely to work abroad later on in their life. This could contribute to an overall increase in the EU migrant worker population due to a snowball effect, and therefore also a larger target population for nationality-based discrimination. In addition, a majority of the workers in the Eurobarometer survey who envisaged working abroad have friends or family in their chosen country for the move, which the contractor believe would indicate a concentration of future EU migrant workers in the primary recipient countries. Meanwhile, the survey also showed that in spite of - or perhaps due to the worsening economic climate since autumn 2005, in general Europeans are now less willing to move if they become unemployed and are unable to find a job where they live. According to the Eurobarometer, the proportion willing to move to another region and/or country has decreased from 66% to 48%.

Cluster 1¹⁷⁰ consists of Member States that face only a few problems compared to the other clusters in terms of nationality-based discrimination. In these Member States, the current EU provisions are either partially or fully integrated into the national legislation. They all have less than 100,000 EU migrant workers, and the EU migrant workers constitute a low share of the total working population (less than 2%). EU migrant workers in the cluster 1 Member States face different kinds of barriers at both the formal and informal levels. Six out of 8 Member States in this cluster are from EU-10 or EU-2.

The situation of EU migrant workers in cluster 1 is expected to continue in a similar manner. There is only a limited influx of EU migrant workers to these countries, which may be partly due to the fact that there is currently a relative low demand for workers as 4 out of the 8 MS in this cluster have an unemployment rate for 2011 (see table above) equal to or above the EU average of 9,7% according to Eurostat and would continue to have so according to the projections for 2012 and 2013.

In addition, migrants will only to a small degree face formal difficulties when entering the Member States. However, a few informal barriers exist and these are unlikely to change in the baseline scenario for cluster 1. There are incentives for the Member States to deal with these, as EU migrant workers constitute only a small part of the total working population and our projections show that the share is going to stay unchanged between now and 2020.

¹⁶⁷ Special Eurobarometer 337 (June 2010), Geographical and labour market mobility

¹⁶⁸ Special Eurobarometer 337 (June 2010), Geographical and labour market mobility

¹⁶⁹ Special Eurobarometer 337 (June 2010), Geographical and labour market mobility

¹⁷⁰ BG, EE, FI, HU, PL, PT, RO and SI.

The Member States in **cluster 2**¹⁷¹ are very mixed in terms of the integration of EU provisions. What they do have in common is that most of the Member States have a very large potential target group for intervention in the sense that the number of EU migrant workers is large for most of these Member States. However, since the working population is generally large in these Member States, the relative share of EU migrant workers is nevertheless small. Most of the Member States seem to have many barriers to migration at both the formal and informal levels. Member States are both EU15 (6 Member States) and EU10 (8 Member States) countries. This cluster includes four of the EU15 MS worst hit by the financial crisis (EL, ES, IE and IT) and maybe as a consequence of this the contractor has observed high unemployment rates in these countries and a political climate which is far from an encouraging starting point for a reinforcement of EU migrant workers' rights .

The formal barriers are likely to remain in the baseline scenario. In addition, the informal barriers are also likely to remain as there is little incentive for cluster 2 Member States to deal with the informal barriers since EU migrant workers constitute a small share of the total working population. It cannot, however, be ruled out that attitudes toward migrants from new Member States may change with time, e.g. as Bulgaria and Romania become more integrated with the rest of the EU after the abolition of the transitional arrangements in the remaining Member States at latest by 1 January 2014. This may entail a reduction of some of the informal barriers to migration, which can be ascribed to awareness-issues.

Cluster 3¹⁷² consists of Member States in which the EU provisions are not, or are only partially integrated into the national legislation. The number of EU migrant workers differs between the Member States in this cluster, but most have quite a large number of EU migrant workers which entails a large potential target group for any future EU initiatives. In most of these Member States, the EU migrant workers constitute a small share of the total working population. In a few cases, the share is slightly higher (5 – 9%). All Member States in cluster 3 have both formal and informal barriers to migration.

There are many formal barriers that hinder EU workers' migration and access to employment. The potential target group is large but the share of EU migrant workers is small in most cases. The formal barriers will continue to exist and the informal barriers are unlikely to be dealt with. There is a slight possibility that the Member States, which are all EU-15 countries, will become accustomed to the inflow of EU migrant workers, thereby decreasing some of the attitude and awareness issues. This may result in informal barriers to emigration and immigration, and employment for EU migrant workers. If the current trend of unemployment rates below EU average is a lasting feature for this cluster, this may motivate potential EU migrant workers to consider one of these countries as their next destination.

One country stands out from the remaining Member States. In Luxembourg, integration of EU provision is in place and there are few EU migrant workers. However, these constitute a very large share of the Luxembourgish working population. The Member State has both formal and informal barriers to migration, but these are expected to be considered less significant or outweighed by other factors (e.g. better quality of life; better social and health care system) by EU migrant workers since immigration is already happening to such a large extent.

5.3.2 Conclusions on the baseline scenario 2012-2020

The numbers of intra-EU migrant workers are expected to increase in the future. This means that the risk of discrimination cases is expected to increase for all clusters, as even in the cluster with a lower number of EU migrant workers, the total number of EU migrants is expected to increase between now and 2020. Recent developments in intra-EU migration, on which the projections are based, have meanwhile been affected by the EU enlargements of 2004 and 2007. Further enlargements are to be expected between now and 2020, but these are of a smaller magnitude than the 2004 and 2007 enlargements. Research shows that 75% of mobility from EU-8 to EU-15 is due to the 2004 enlargement. In addition, the research shows that 50% of mobility from EU-2

¹⁷¹ AT, CY, CZ, FR, EL, IE, IT, LT, LV, MT, SK, ES, SE and NL

¹⁷² BE, DE, DK and UK

to EU-15 was due to the enlargement of 2007¹⁷³. The growth in EU migrants is therefore most likely overstated.

The problems are different for each cluster; where some mainly face formal barriers to discrimination, others mainly face informal barriers. Formal barriers will continue to hinder migration without intervention. The case of informal barriers is more sensitive to other trends within the clusters. A change of public attitude towards migration may affect informal barriers to migration in a positive or negative way.

The Country Profiles showed that in ten of the Member States (*BG, CZ, DK, EE, LT, PL, PT, SK, NL, UK*) legal or other initiatives in relation to barriers to immigration of EU workers were in the pipeline. As regards the initiatives there seem to be two main trends. On the one hand countries were looking to ensure qualified labour force in the future. On the other hand, due to the current economic situation or political situation in a Member State, many of the initiatives in the field had been postponed or there were even initiatives in the pipeline aimed at protecting the national labour markets.

5.4 Mandate and need for EU action

The legal basis for Regulation 492/11 on Freedom of movement of workers within the Union is article 46 of the Treaty on the Functioning of the European Union, which states that "The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45". These two articles of the Treaty (45 and 46) hence give the EU mandate to take action – to "issue directives or make regulations" – against discrimination based on nationality and other barriers inhibiting the free movement of workers within the Union.

As the EU has competence to act in this area, the principles of subsidiarity and proportionality apply¹⁷⁴. Moreover, as all the examples of recurrent issues of nationality-based discrimination and obstacles to free movement show, there is a need for action, especially in the context of the EU 2020 objectives calling for the EU to encourage mobility and President Barroso's request in his political guidelines for the 2012-2014 EC to ensure that the rights of European citizens are enforced¹⁷⁵. And these objectives are best achieved by action at EU level, for the following reasons:

- The assessment of policy option one and the calculated baseline scenarios showed that the situation is not likely to improve if it is left to the Member States to take action. The economic crisis and rising unemployment rates have only created disincentives for the Member States to improve access to their labour markets for workers from other countries; evidenced by the fact that initiatives to improve the situation of migrant workers' in some countries have been put on hold or discontinued, while initiatives towards more protection of the national labour market have also been found.
- Problems with obstacles to free movement and discrimination of EU migrant workers (and/or their families) at all problem "levels" (both official and unofficial) were found in almost all Member States. There are several different drivers behind the four types of problems but a common denominator, which in some way or another influences all levels, is unawareness or misunderstanding of EU migrant workers' (and their family members') rights. At the more formal levels (problem 1 and, partly, problem 2) this may be improved by a legislative initiative, clarifying some of the issues currently causing problems, perhaps by codifying the existing case-law. The issues at the more informal levels, meanwhile, may be dealt with through other measures of legislative or non-legislative nature. First of all, it is important to ensure that means to enforce their rights in case of discrimination are available to EU migrant workers. Secondly, and moreover, it is important to ensure that migrant workers themselves, providers of legal assistance, officials and employers alike understand and are aware of migrant workers rights and the existence of the means to enforce them.

¹⁷³ Holland et. Al (2011): Labour mobility within the EU – The impact of enlargement and the functioning of the transitional arrangements

¹⁷⁴ European Commission: Impact Assessment Guidelines; January 2009; SEC(2009) 92; p. 22.

¹⁷⁵ José Manuel Barroso: Political Guidelines for the next Commission; p. 13.

Any legislative initiatives should be taken at EU level, as the EU has a mandate to legislate in this field, and to ensure harmonization. Non-legislative initiatives to improve awareness and understanding should also be taken at EU level, since this helps ensure harmonization and clarity of the message provided across the EU and may take advantage of potential economies of scale.

6. POLICY OPTIONS

It is the responsibility and competence of the EU to ensure and protect the right of EU workers and their families to move freely within the Union¹⁷⁶. As the problem definition and the baseline scenario showed, this right is presently not sufficiently ensured across all Member States. Although it is clearly prohibited by Regulation (EU) 492/11, EU workers may risk being discriminated against on the grounds of nationality when exercising this right. It is therefore considered that some kind of EU action in the field may provide added value in terms of ensuring a more coherent and effective application and enforcement of the principles of freedom of movement and equal treatment on the grounds of nationality.

The overall aim of this impact assessment is to evaluate and compare different potential measures for better enforcement of EU workers' rights as defined by Regulation (EU) 492/11 and Article 45 TFEU to eliminate barriers to free movement and discrimination on the basis of nationality. This is consequently the overarching objective of future policy, and the purpose of this study is to assess which of the proposed policy options will provide the greatest impacts in terms of achieving it. Thus, the set objectives constitute the link between the problem definition and the proposed policy options. On the basis of thorough research and discussion with the European Commission, the general, specific and operational objectives for a potential EU intervention in the area of freedom of movement of workers have been identified as the following:

General objective: Contributing to the better functioning of the internal market by reducing the barriers to free movement of workers

Specific objective: Improving the enforcement of citizens' rights regarding the free movement of workers (Art 45 TFEU and Regulation 492/2011)

Operational objectives:

1. Increasing awareness among citizens, employers, public authorities and other stakeholders about rights of EU migrant workers and their family
2. Providing EU workers with means to claim their rights to free movement and non-discrimination
3. Improving legal certainty about non-discrimination and rights of EU migrant workers.

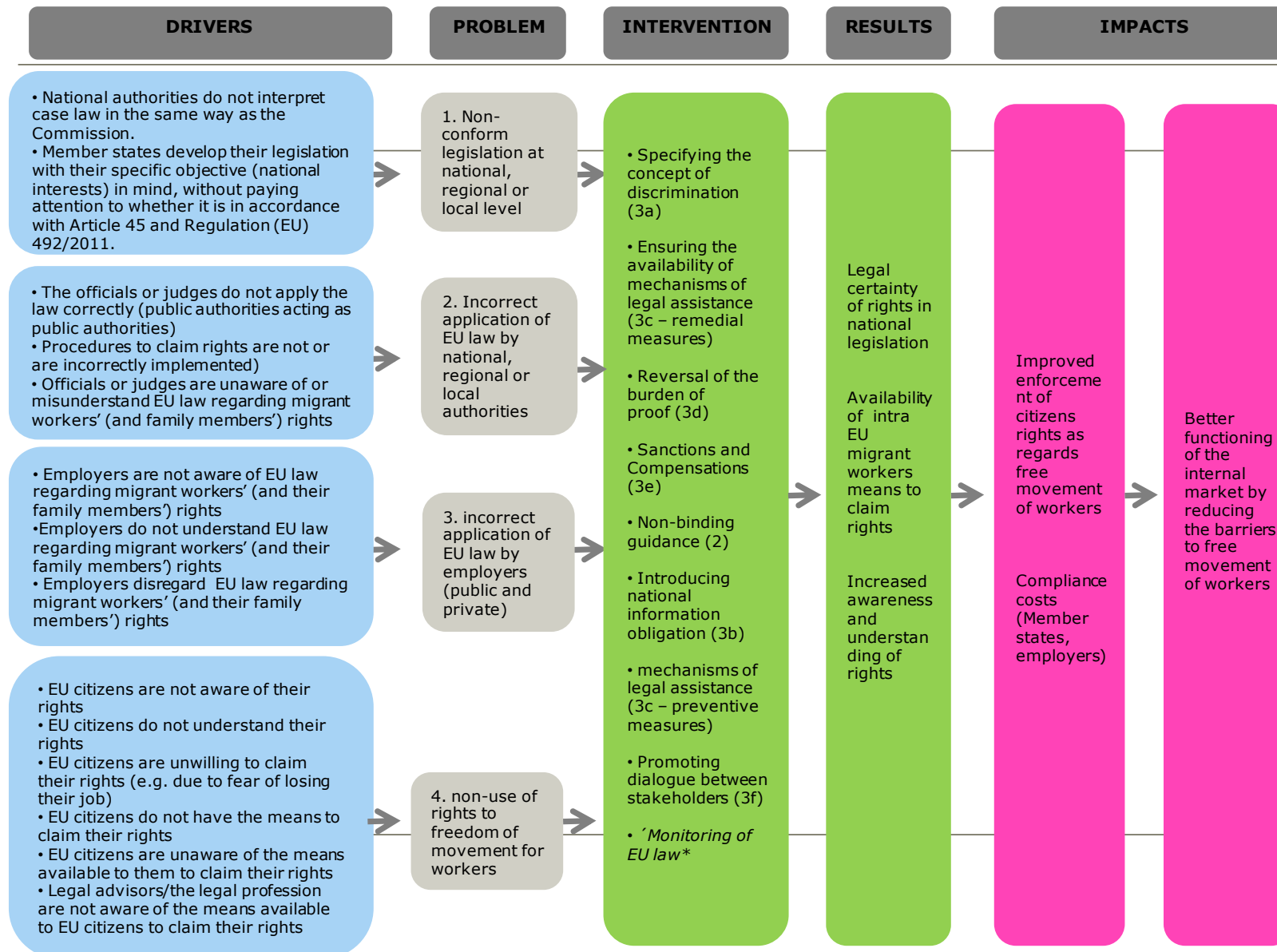
The Roadmap¹⁷⁷ drafted by the Directorate-General for Employment, Social Affairs and Inclusion Unit B4 has identified that action by Member States alone, which has been the case up to now, is not sufficient to ensure the enforcement of the rights stipulated in Article 45 of TFEU and Regulation (EU) 492/2011. It is argued that the mechanisms of enforcement are different from one Member State to another. Moreover, there is no common, sufficient or adequate protection when individuals wish to initiate judicial actions against private employers in the case of nationality-based discrimination. Consequently, and as stated in the Roadmap, the added value of an EU intervention, rather than national initiatives, "*would be that the measures taken by the Member States to implement the principles of equal treatment are coherent and more effective*".

¹⁷⁶ Articles 45 and 46 TFEU

¹⁷⁷ Roadmap "Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers", DG EMPL B4, (version: 15/06/2011)

The figure below gives a graphical overview of the drivers, problems, selected policy options and expected impacts of the proposed options.

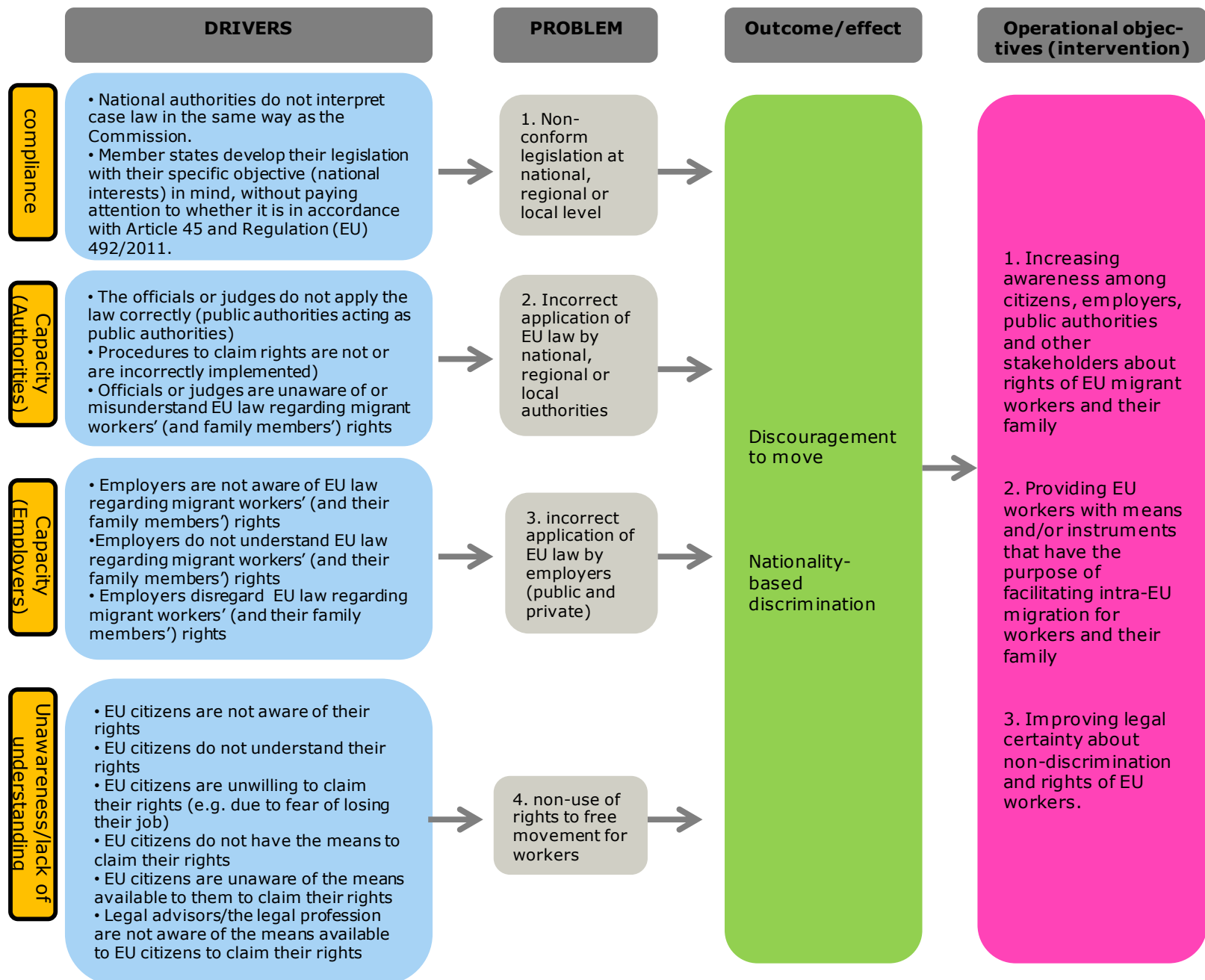
Figure 21: Expected impacts of each policy option



Moreover, this impact assessment explores seven policy options directed towards eliminating barriers to the free movement of workers. Through the drivers the policy options address two distinct sides of the problem: (1) lack of certainty about legal rights or means to claim existing legal rights; and (2) awareness and/or understanding of legal rights. The assumption is that discrimination against EU migrant workers will decrease with clear legal rights, means to claim them, awareness of their existence, and understanding on how to apply them.

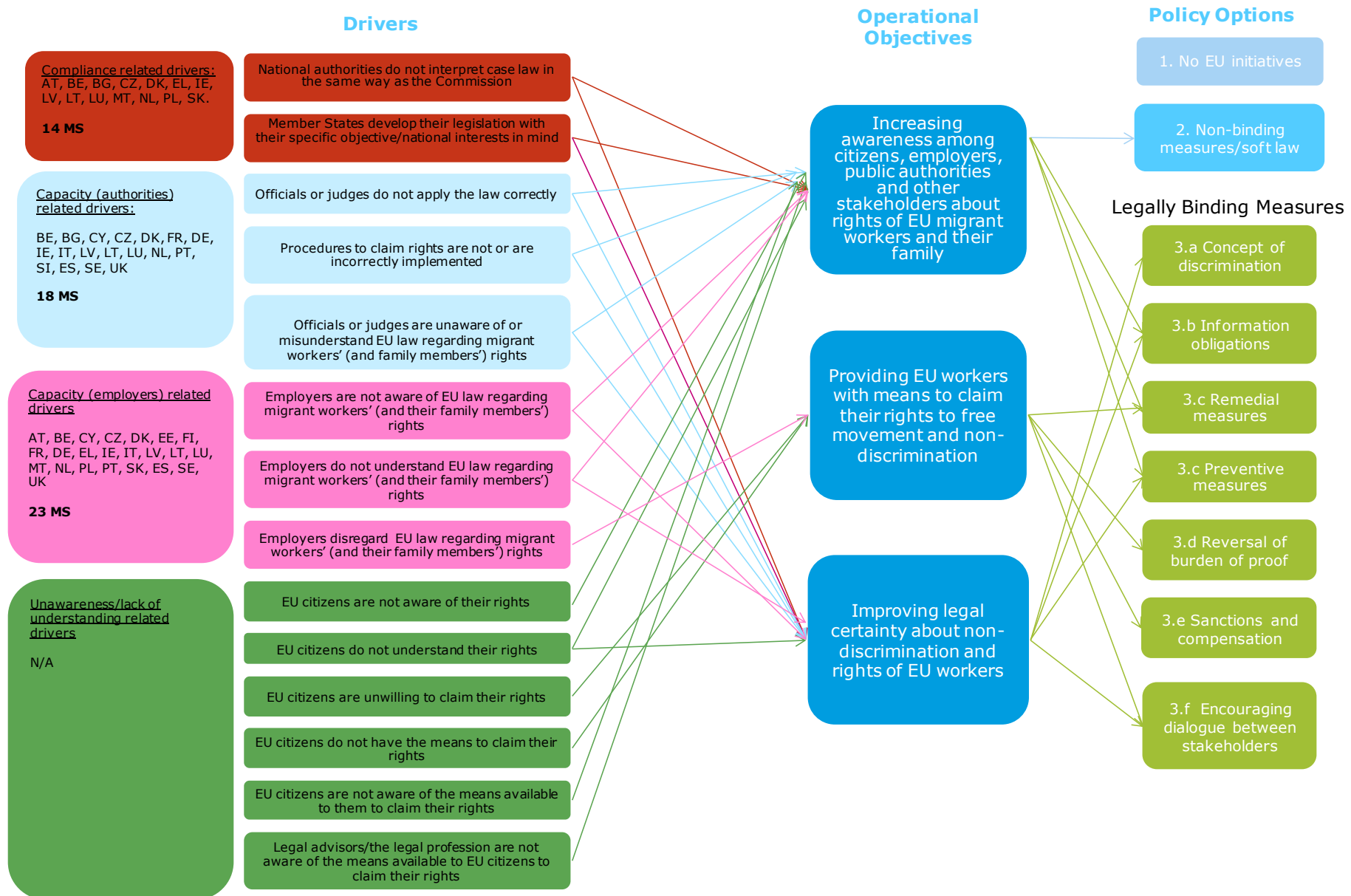
The figure below in turn illustrates the links between the operational objectives, policy options, problems and drivers.

Figure 22: Links (ex-ante) between drivers, problems, policy options and operational objectives



Finally, the figure below is an attempt to show the complex web of ex-ante expected links between, on the right-hand side of the figure, drivers and policy options, and, on the left hand-side of the figure, the policy options and the operational objectives of a future EU intervention.

Figure 23: Links between ex-ante impacts, policy options and drivers



As can be seen from the figure above the seven policy options (policy option 2 and 6 sub-options of policy option 3) can – if all of them were implemented – be expected to address the three operational objectives of a future EU intervention. Taking a closer look at the mapping of the expected causal relationship between the policy options and the operational objective, the table indicates that policy option 2 (non-binding guidance), 3a (concept of discrimination), 3b (legally binding information obligations), 3c (legal assistance mechanisms – remedial measures) and 3f (encouraging dialogue between stakeholders) could lead to an increased awareness among citizens, employers, public authorities and other stakeholders concerning the right of EU migrant workers and their families.

Likewise, policy options 3c (legal assistance mechanisms – preventive and remedial measures), 3e (sanctions and compensations) and 3f (encouraging dialogue between stakeholders) can be expected to provide EU workers with means to claim their rights to free movement and non-discrimination.

According to the contractor's ex-ante assessment of expected impacts, improved legal certainty about non-discrimination and rights of EU workers would be achieved through the implementation of policy option 3a (concept of discrimination), 3b (legally binding information obligations), 3c (legal assistance mechanisms – preventive measures) and 3f (encouraging dialogue between stakeholders).

All in all, it was the ex-ante assessment of the contractor that each of the proposed policy options could potentially address one or more of the operational objectives established for a future EU intervention. Consequently, the policy options could be expected to contribute to improving the enforcement of citizens' rights as regards free movement of workers (specific objective), which would in turn contribute to a better functioning of the internal market by reducing barriers to free movement of workers (general objective).

Moving on to the left-hand side of the figure, i.e. looking at the ex-ante expected links between the drivers (e.g. causes of problems) and the operational objectives, the web looks even more complex.

First of all, the two compliance related drivers are expected to be addressed by both the operational objective concerning increasing awareness as well as the one focusing on improving legal certainty about non-discrimination and rights of EU workers. Likewise, it is the assessment of the contractor that all drivers related to capacity of public authorities and employers with one exception (employers disregard EU law regarding migrant workers' (and their family members') rights) would be addressed by these two operational objectives as well.

Secondly, the operational objective "providing EU workers with means to claim their rights to free movement and non-discrimination" would address one driver related to capacity of employers (employers disregard EU law regarding migrant workers' (and their family members') rights) as well two unawareness/lack of understanding related drivers (EU citizens do not have the means to claim their rights; EU citizens are unwilling to claim their rights).

Thirdly, the operational objective concerning increasing awareness was also expected to address four drivers related to unawareness/lack of understanding, namely the following drivers: EU citizens are not aware of their rights; EU citizens do not understand their rights; EU citizens do not understand their rights; EU citizens are unaware of the means available to them to claim their rights; Legal advisors/legal profession are not aware of the means available to EU citizens to claim their rights.

The rest of this section of the report is structured along the proposed policy options. For each policy option, one case study Member State was selected to examine the option's rationale, critical factors and transferability to the EU level. The Member States and the specific case studies were identified based on the existence of measures that are as close as possible to the policy option. For each option, impacts and costs have been mapped; these are compared in the next chapter of the report. As mentioned above, the challenges experienced by the contractor in extracting quantitative impacts from the different case studies resulted in conclusions that are highly qualitative in nature.

6.1 Policy option 2 – non-binding guidance

This policy option entails the introduction of non-binding guidance on the rights of EU workers exercising their right to freedom of movement. The tools used for this purpose can take the form of soft law instruments such as communications or recommendations, information campaigns, exchange of good practice, measures for promoting dialogue between social partners, or a combination of several instruments.

6.1.1 Policy option rationale

The previous chapter has shown that consistent and clear application and enforcement of EU legislation at national, regional and local levels is a key challenge to ensuring free movement of workers. Lack of awareness among EU citizens of their legal rights has been identified as a key driver of this problem.

This is the main rationale behind the proposal for an EU initiative to raise awareness of EU workers' rights to freedom of movement. As the problem definition showed, the lack of or incorrect enforcement of EU rules in the area of freedom of movement can in many cases, particularly in those of erroneous application and administrative procedures, be linked to unawareness or misinformation. Moreover, if the EU citizens themselves are not aware of their rights, especially their right to complain in cases of violation, there is a risk of continued mal-enforcement.

In its outset, policy option 2 was very widely defined, as can be seen in the box above. In order for the policy option to be assessed in terms of its potential social and economic impacts and to be able to compare it to the other proposed policy options, it was necessary to firstly narrow the scope and more specifically define the policy option. In terms of soft law instruments, the Commission has fairly recently (2010) published a communication "Reaffirming the free movement of workers: rights and major developments"¹⁷⁸. Moreover, while both experts and the European Governance White Paper recommend the use of hard and soft law in combination¹⁷⁹, soft law as a standalone instrument was not considered as particularly effective¹⁸⁰. Since the idea of promoting dialogue between social partners, also included in the broad definition of the policy option, was already included under one of the other options (3f), it was decided to narrow the scope of policy option 2 to assessing the effects of a potential EU wide information campaign, similar to one being carried out in the field of discrimination on other grounds.

Since the existing EU legislation is in the form of a regulation directly applicable across the EU and thus not transposed into national legislation, this option is based on a view that actions to raise awareness of EU legislation should also be taken at the EU-level. The ambition of this option is to reach all Member States. Since the national contexts and conditions for implementing such a campaign are all different, the option further relies on the involvement of stakeholders at the national level. In particular, the campaign must be adapted to the extent possible in a way that matches local culture, languages, systems, etc. The "For Diversity. Against Discrimination" campaign can serve as an example of this. It was used for the case study (see annex I) that examines the potential impacts of this policy option and is further described below.

6.1.2 Theory of change

To assess the potential impacts of awareness-raising initiatives at the EU level, the campaign "For Diversity. Against Discrimination" has been selected for a case study. The campaign

¹⁷⁸ European Commission: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Reaffirming the free movement of workers: rights and major developments; Brussels 13-07-20120; COM(2010)373 final.

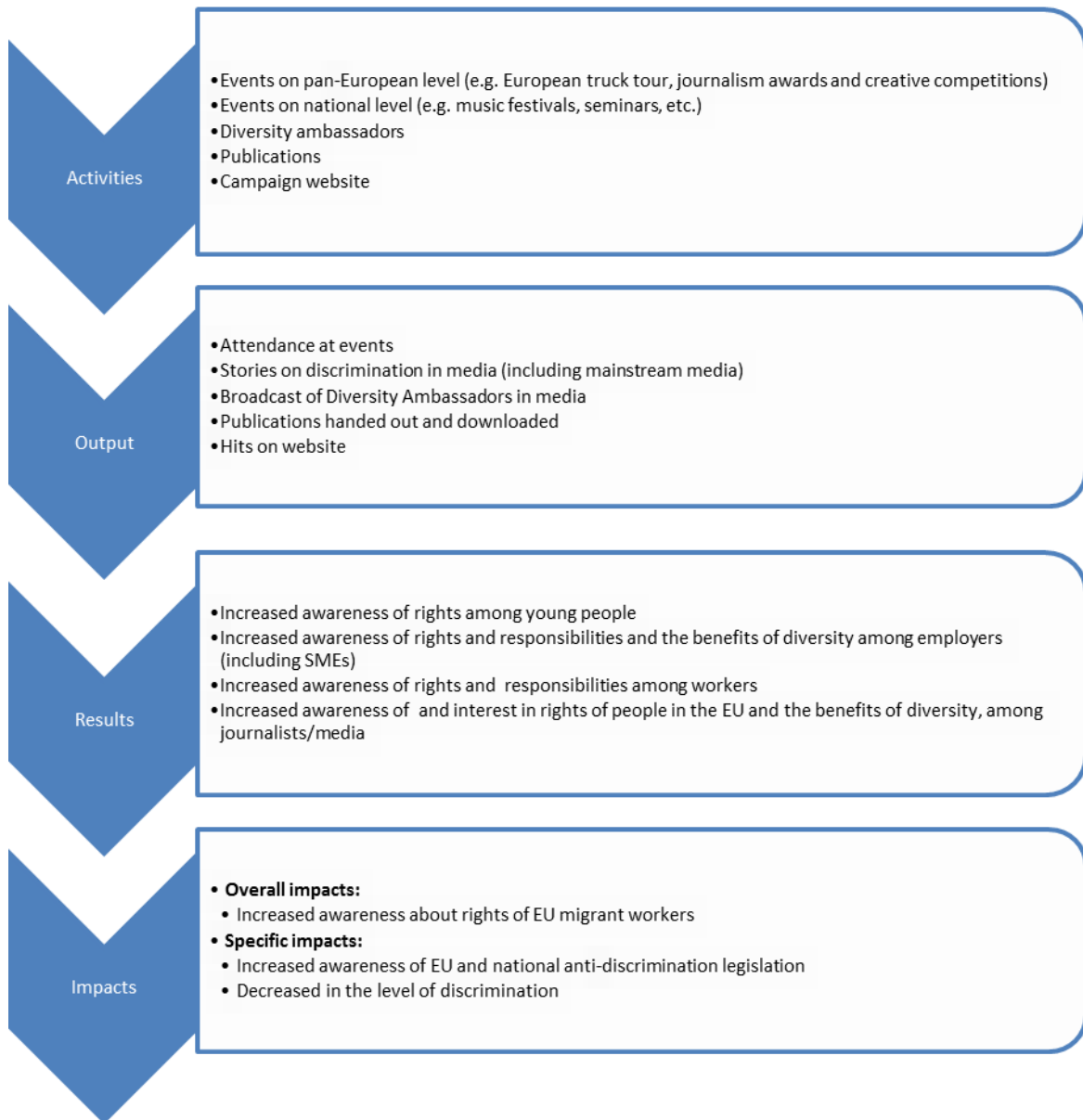
¹⁷⁹ Commission of the European Communities: "European Governance – a White Paper"; Brussels, 25.7.2011; p. 20.

¹⁸⁰ For further discussions on the advantages of combining hard and soft law, please see the chapter on recommendations.

originated from EU legislation concerning discrimination on the grounds of sex, racial/ethnic origin, religion/belief, disability, age or sexual orientation and the launch of the 2000 Directives (the Employment Equality Directive and the Racial Equality Directive). These define a set of principles that offer everyone in the EU a common minimum level of legal protection against discrimination. The two main objectives of the campaign were to make people more aware of their rights and responsibilities, to fight against stereotypes and to promote the benefits of diversity.

The figure below depicts the theory of change or intervention logic of the campaign (i.e. the impacts the campaign was expected to result in). Since the "For Diversity. Against Discrimination." campaign concerns EU workers' rights to non-discrimination on the basis of grounds other than nationality – namely sex, racial/ethnic origin, religion/belief, disability, age and sexual orientation – the operational impact was not only related to awareness of the rights of migrant workers (and their families) but rather all people's rights to non-discrimination (on the grounds mentioned above) within the EU. Consequently, the formulation of the overall impact in the intervention logic has been altered.

Figure 24: Ex-ante view of the impacts of the policy option



6.1.3 Critical factors

The most critical factors, or those that make a difference between the impacts of a campaign in the area of freedom of movement of workers and the impacts of the “For Diversity. Against Discrimination” campaign, are the European Year of Equal Opportunities and the PROGRESS programme. In 2007, the European Year of Equal Opportunities placed an immense focus on discrimination issues in an extent the campaign alone could not have done. Therefore the European Year of Equal Opportunities most likely boosted or at least supported the effects of the campaign. Along the same lines, the PROGRESS programme, which formed the framework for the campaign, also worked to promote anti-discrimination issues through other channels, such as support to the development of equality policies at the national level, anti-discrimination training activities, and other initiatives¹⁸¹ that also support or add to the impacts of the campaign.

¹⁸¹ European Commission, DG Justice: http://ec.europa.eu/justice/discrimination/index_en.htm

6.1.4 Transferability

The “For Diversity. Against Discrimination” campaign is similar to the proposed policy option in terms of the option’s rationale: the intention of raising awareness of already existing EU legislation and the rights and obligations of EU citizens, institutions, employers, etc. stemming from this legislation. The “For Diversity. Against Discrimination” campaign focused on implementation at national and local levels in the Member States with few activities at the European level. Policy option 2 is intended to be carried out by the European Commission, in consultation with national stakeholders, on the European level, yet with the aim of reaching target groups in all Member States. Thus, the campaign design of “For Diversity. Against Discrimination”, while focusing more on activities in the Member States than perhaps originally envisaged for the policy option, serves as a good example of how such an awareness-raising could be set up. The “For Diversity. Against Discrimination” campaign could thus also be used as inspiration for an awareness-raising campaign on the freedom of movement of workers. Moreover, besides inspiration, a campaign in the area of freedom of movement could probably learn from some of the lessons learned from the “For Diversity. Against Discrimination” campaign (see case study report for recommendations for a future campaign).

One important outcome of the anti-discrimination campaign was the establishment of a sense of “community” among the organisations involved in the campaign by working with a common objective – to fight discrimination and promote diversity (see the section on results below). A potential awareness-raising campaign within the area of freedom of movement of workers using a similar design/set-up to the one in “For Diversity. Against Discrimination.” might to some extent be able to build on this qualitative outcome. Many of the stakeholder organisations involved in the anti-discrimination campaign (e.g. trade unions) could very well also be involved in a campaign concerning the free movement of workers. Thus, their knowledge of each other and the other organisations’ work might be an advantage in establishing cooperation on a potential free movement-campaign. Meanwhile, the individual persons working in the area of free movement within these organisations may very well be different from the ones working with discrimination on other grounds; this could somewhat diminish the transferability of the network-effect.

6.1.5 Case study results

The “For Diversity. Against Discrimination.” campaign is believed to have had positive impacts in terms of raising awareness of people’s rights to non-discrimination within the EU. However, the extent and specificities of these impacts are uncertain and non-assessable at the time of this study.

In relation to the specific impacts, the campaign is believed to have been the least effective in terms of raising awareness of the existing EU and national legislation and EU citizens’ rights if they become victims of discrimination or harassment. In terms of decreasing the level of discrimination, the assessment is inconclusive. While there are EU surveys that indicate decreased discrimination, there are national tendencies that show the opposite. Regardless of whether one focuses on the positive development shown by the EU survey or the more pessimistic outlook at national level in some Member States, there is no evidence to clearly link the outcome to the campaign’s intervention. One will have to await the more in depth evaluation of the campaign currently being carried out for a better assessment of the impacts.

At this point in time and according to the information gathered through the case study, the most significant qualitative impact of the campaign is considered to be the creation of a so-called “antidiscrimination community”. This community brings together organisations that work with the common goal of fighting discrimination, promoting the work of these organisations at campaign events, and increasing interest among journalists (including more mainstream media) in covering discrimination issues. These results are believed to contribute to an increased awareness of discrimination among people who get in touch with the involved organisations at events or

hear/read the stories reported by journalists in the media. Meanwhile, without actual measurements/assessments of the level of awareness before and/or after the activities, it is not possible to draw any sound conclusion on this.

A recommendation stemming from the case study analysis is to avoid overloading the participants in the events with too much information, as there is a risk of perceiving the campaign as "yet another campaign". The campaign has been very ambitious in terms of its aim to reach four different target groups (young people, employers, employees and the media) and the many different activities carried out at both pan-European and national level¹⁸² over several years, adding to the challenge in terms of collecting and assessing results. Well focused and targeted specific messages to be passed seem in this context a good formula to make communication effective, to increase the impact and perhaps make it more monitorable.

6.1.6 Costs of policy options

The "For Diversity. Against Discrimination." campaign currently has a **budget** of around 3 million Euros per year, which is allocated from the PROGRESS programme and implemented through a communication framework contract. The costs of the campaign, including the activities at national level (such as "diversity days" and conferences), have mainly been covered by the EU budget.

6.2 Policy option 3

Policy option 3 consists of six sub-options (a-f), and its implementation could entail the introduction of one or a combination of some or all of the elements in the sub-options.

The purpose of policy option 3 is to address the lack of specific provisions in the practice of the rights conferred by EU law on free movement, as well as to protect against nationality-based discrimination similar to those in other areas, such as discrimination on the grounds of race, gender, etc. The idea behind this policy option is that introducing such provisions may provide better protection if an EU migrant worker wished to initiate a judicial procedure against an employer in case of discrimination on the grounds of nationality. Such provisions are, as can be seen below, already in place in some Member States; however, it is believed that there may be a need for an EU initiative to create more coherence and to make EU legislation more attuned to the problems posed.

A binding legislative initiative introducing provisions on legal advice, legal assistance and/or information for EU migrant workers could mirror those in other relevant EU legislations concerning discrimination on other grounds¹⁸³ and equal treatment between men and women¹⁸⁴. It could take the form of a regulation revising and/or supplementing the existing Regulation (EU) 492/11, or of a directive helping enforce rights under Regulation (EU) 492/11. The advantages of a regulation are that it is directly applicable and may help avoid differences in implementation. Meanwhile, a directive may be considered more appropriate if the selected option and combination of sub-options were to mirror existing legislation in the anti-discrimination field, which take the form of directives. Both options and their potential implications are assessed and compared in the subsequent phases of this study.

¹⁸² Activities include e.g. a truck-tour of Europe, "Athletes for diversity", events at music festivals, debates, conferences and seminars, creative competitions (e.g. a poster and a photo competition), "diversity ambassadors" (well-known faces from sport, TV and business), journalist awards and seminars, and a number of publications.

¹⁸³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF>

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:180:0022:0026:EN:PDF>

¹⁸⁴ Directive 2006/54/EC

6.3 Policy option 3a – concept of discrimination

The sub-option 3a aims to prevent discrimination on the grounds of nationality by introducing elements that would help the understanding of the concept and give nationality an equal legal status (in practice) compared to other grounds for discrimination (ethnicity, gender, etc). This can be achieved by including a definition of (direct and indirect) discrimination on the basis of nationality in EU law.

6.3.1 Policy option rationale

The objective of this sub-option is to prevent discrimination (direct or indirect) on the grounds of nationality by ensuring that it (in practice) receives the same legal status as other grounds for discrimination (e.g. ethnicity or gender). This would be done by including a definition of nationality-based discrimination (direct and indirect) in EU law. The rationale is based on an assumption that specifying nationality-based discrimination in EU law will improve the clarity of legal rights in cases of discrimination, thus presenting (potential) claimants with a better basis for action. This in turn is assumed to improve the enforcement of citizens' rights regarding the free movement of workers.

As such, this option would be a first step or prerequisite for most of the other sub-options presented below, as it relates to many of the legal/administrative obstacles presented in the problem definition. Moreover, as this option is based on existing EU legislation, the added value of EU action that aims to ensure equal treatment across all Member States has already been established.

With inspiration from the EU directives on discrimination on other grounds¹⁸⁵, nationality-based discrimination could be defined as:

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on nationality.
2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of nationality;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of one nationality at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

As established in the baseline scenario and synthesis of country profiles (please see annex D), 13 Member States¹⁸⁶ currently have definitions of discrimination on the grounds of nationality in their national legislation. 8 of these also include a definition of direct and indirect discrimination¹⁸⁷.

In Finland, nationality has an equal legal status to other grounds for discrimination. In addition to nationality, Finnish law includes ethnicity, national origins, age, language, religion, opinion, health, disability, sexual orientation or other reasons considering the person in question as grounds for discrimination. Moreover, direct and indirect discrimination are both defined in the Finnish legislation¹⁸⁸. Finland therefore serves as a case study for examining the effectiveness of the option.

¹⁸⁵ Especially Directive 2000/43/EC, Article 2

¹⁸⁶ BG, CZ, FI, FR, IE, IT, LU, PL, PT, RO, SK, SI, , NL.

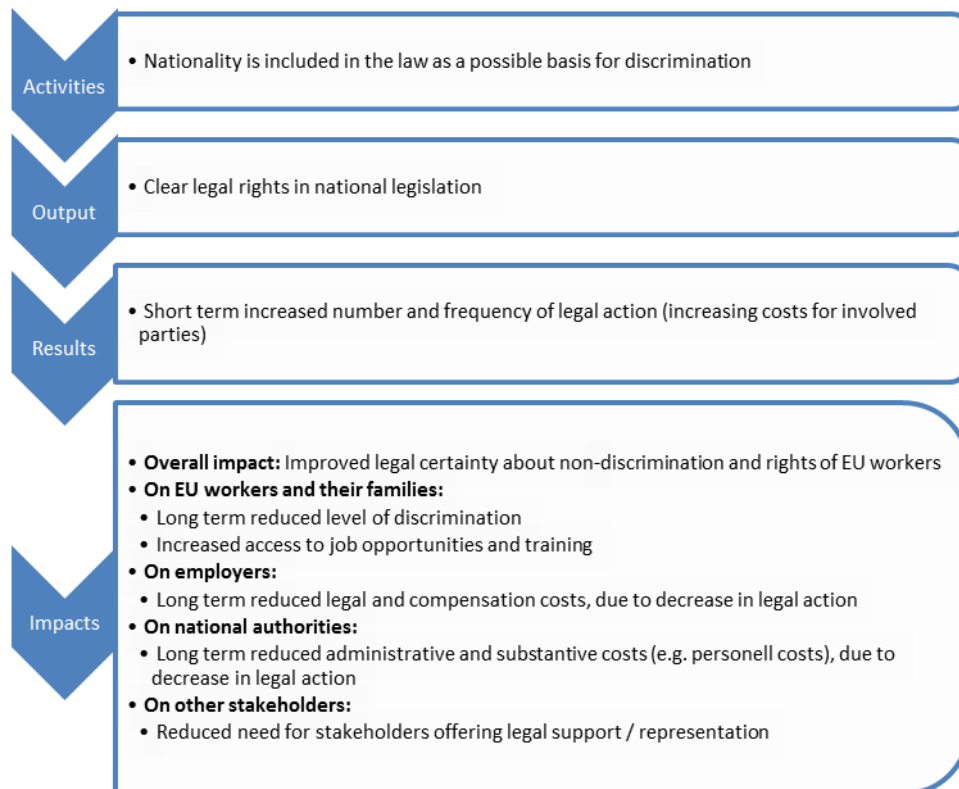
¹⁸⁷ BG, FI, FR, IE, IT, PL, RO, SI .

¹⁸⁸ Yhdenvertaisuuslaki 20.1.2004/21 § 6

6.3.2 Theory of change

The figure below depicts an ex-ante view on the impacts expected to be found in the case study, based on the country profile and supporting documentation. The purpose of the figure is to provide an overview of the impacts expected to be found, thus providing a framework for assessing the effectiveness of the option in question.

Figure 25: Ex-ante view of the impacts of the policy option



As the intervention logic shows, the expected impact – or result – in a short term perspective is an increase in legal action, as the clarification of nationality as a grounds for discrimination would make it easier for EU migrant workers to claim discrimination. In the long run, however, the awareness of the prohibition and understanding of the concept of nationality-based discrimination is expected to have a preventive effect and spur a decrease in the level of discrimination on this ground and thereby reduce legal action.

6.3.3 Critical factors

The prohibition of discrimination on the basis of nationality was included in the Finnish law in 2004 and was prepared from EU legislation. Concurrently, there was a special legal case in Finland that involved Chinese stone masons who were discriminated against by being paid too little and were given inferior working conditions to Finnish workers. The case got a lot of media attention and the lawmaking community was trying to find a tool to tackle the issue of discrimination of underpaid workers of foreign nationality. For this purpose, the Finnish criminal law (rikoslaki) introduced a prohibition of discrimination on the basis of nationality. From this point on the discrimination on the basis of nationality was introduced in all relevant legal contexts. The main driving force behind the implementation of the policy option in question has been the harmonisation of national legislation.

A critical factor could be the political support and media attention brought to the issue of nationality-based discrimination in Finland on the basis of the abovementioned case with the Chinese workers. This could have facilitated the implementation and awareness of the legal provision. However, as the case study results show, no significant quantitative impacts of the initiative have been registered (i.e. on number of cases), so the political climate and media attention do not appear to be very critical factors. Moreover, it is a matter of a relatively simple legal provision that defines direct and indirect discrimination on the basis of nationality. This is similar to what already exists on other grounds of discrimination in the Member States, and there are no Member State-specific critical factors considered related to the implementation of such a provision.

6.3.4 Transferability

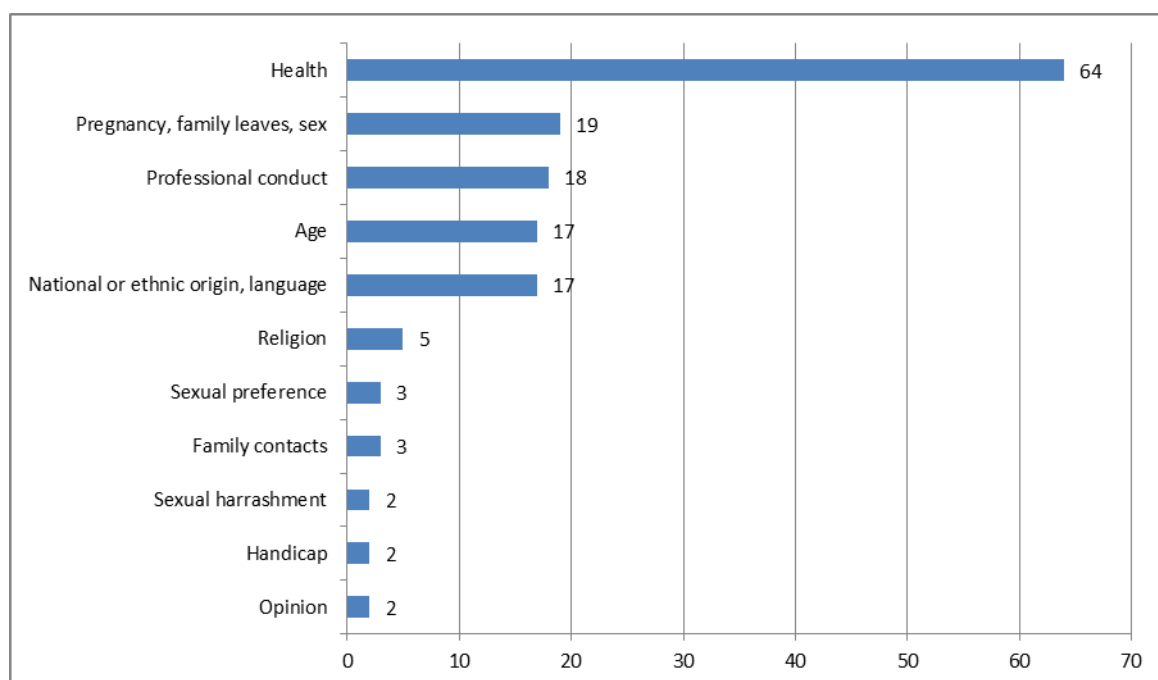
As this option is based on existing EU legislation, it would be a question of ensuring implementation across all Member States. Although the effectiveness of the option is linked to a number of different factors, in particular the awareness of the target group in question of their specific rights, the option is in itself transferable to all Member States.

6.3.5 Case study results

The impacts of the inclusion of nationality as a basis for discrimination in Finland have not been very dramatic for EU migrant workers and their families, neither in quantitative nor in qualitative terms. The interviewees also agreed that it was quite difficult to find specific impacts of the policy option on EU migrant workers.

When considering the intervention logic drawn above, there is one source of information that could be evidence of the level of discrimination or frequency of legal action based on nationality. The Regional State Administrative Agency for Southern Finland (Etelä-Suomen aluehallintovirasto) published figures about discrimination accusations they received. In 2010, the office had 152 enquiries that reported possible discrimination in the workplace. Figure 26 below shows how these enquiries are divided in different categories.

Figure 26: No. of cases reported to the Regional State Administrative Agency of Southern Finland when workers have felt that discriminated against in workplace; divided by different grounds for discrimination; 2010



Source: Syrjintäkieltojen asiakasaloitteiden valvonta vuonna 2010; Etelä-Suomen aluehallintovirasto – työsuojelun vastuualue, 17.3.2011

As the figure demonstrates, national or ethnic origin and language are quite common grounds for suspected discrimination. As stated in another report from the same authority in 2010, 21 cases were identified that fulfilled all necessary characteristics of discrimination in the workplace. Six of these cases were identified as being discriminatory on the basis of language, national or ethnic origin. The interviewees also brought up that ethnicity, language, nationality and national origin usually overlap each other in discrimination cases. The finding supports EU-wide evidence presented in the chapter above, demonstrating low levels of legal action in cases of nationality-based discrimination.

The evidence is unclear on whether these figures exclude or include nationality as grounds for discrimination (as they have been defined on the basis of national origin and not nationality).

According to the interviewees, the prohibition of discrimination on the basis of nationality should in theory increase the openness of the Finnish job market and increase job opportunities for workers of foreign nationality. In practice, however, the issue is more complicated. Workers and job seekers may not be aware of their rights or they might choose to work under different working conditions than the rest of the workforce. Interviewees also stress the issue that taking a discriminatory issue to court and collecting compensation is not an easy task. It takes time and resources, which is very difficult for people who e.g. work on short contracts or are otherwise disadvantaged. The policy option in question does not help to get around this issue.

The intervention logic suggests that the policy option should increase the number of cases in a short-term perspective and reduce the level of discrimination in a long-term perspective. Meanwhile, there is neither qualitative nor quantitative evidence that the level of nationality-based discrimination has been increased (short term) or reduced following codification of the tests for direct and indirect discrimination. This implies that the policy option has in itself had little impact on providing improved enforcement of citizens' rights regarding the free movement of workers.

6.3.6 Costs of policy option

This sub-option would entail implementation costs for the 14 Member States where nationality is not yet or only partly included as an independent category in the national anti-discrimination provisions.¹⁸⁹ The implementation costs would be limited to the costs associated with the general legislative procedure to adapt the Member State's legal frameworks in line with the new provision in the EU's Regulation. These costs are not quantified as they generally occur for binding EU initiatives.

There are no other (direct) compliance costs for any target group associated with the option as it as a general rule does not stipulate any kind of obligation. From a monitoring point of view, nationality-based discrimination could easily be included in existing monitoring frameworks and would therefore not result in additional costs. However, there is a link to most of the other sub-options because the definition/prohibition of discrimination based on grounds of nationality is a reinforcing factor for introducing legal assistance mechanisms and related provisions.

Should the numbers and frequency of legal claims increase, one could assume that this would entail legal and compensation costs for several stakeholders (particularly official authorities, employers and claimants) associated with legal cases. As the option seems to have had limited impact in terms of numbers and frequency of legal action, these costs are not considered relevant or significant for the purpose of this study.

¹⁸⁹ AT, BE, CY, DE, DK, EE, EL, ES, HU, LT, LV, MT, SE, UK.

6.4 Policy option 3b – information obligations

This policy option would contribute to raising awareness among EU citizens on their rights as migrant workers by making awareness-raising a national obligation. The policy option would also contribute towards raised awareness amongst employers. However, full impact can only be obtained in close collaboration with other stakeholders.

6.4.1 Policy option rationale

This policy option addresses the lack of or low awareness of EU migrant workers' rights among both EU nationals and Member State authorities.

The objective of this sub-option is to raise awareness among EU citizens about their rights as migrant workers and enable them to better exercise these rights by making it obligatory for public authorities, agencies and/or social partners to disseminate information to EU migrant workers. The option proposes making awareness-raising a national obligation and its implementation legally binding.

Although the rights of EU migrant workers are strong and clear from a legal point of view, a number of legal, administrative and practical barriers still exist for EU citizens who wish to practice their right to establish a working life in another Member State (as outlined in chapter 5). The discrepancy between legal rights and practical barriers indicate that there is a need for raising awareness of the legal rights. The rationale is that raised awareness will enable citizens to better practice their rights. As such, making awareness-raising a national obligation is expected to be an important contribution towards the objective of free movement of workers.

Furthermore, a critical factor for successful implementation of this policy option is for information to reach the relevant target audiences. Successful implementation is therefore conditioned by close cooperation with national advocacy groups and other interested parties, as these groups are well positioned to spread information "on the ground". The need for the involvement of advocacy groups on a national level indicates that successful implementation of this policy option is best facilitated by making implementation a national obligation.

This policy option differs from policy option 2 in that it puts the responsibility of the awareness-raising activities on the individual Member States rather than the EU itself (although the two could of course be combined). The rationale for this is based on cost-effectiveness. It assumes that placing the responsibility at the Member State level will not significantly increase costs and will instead prove an effective means to raise awareness among the target population. While the previous section demonstrated that lack of awareness is a general challenge across the EU, it provides arguments for EU intervention to ensure equal practice between the Member States.

To explore the expected effects of this policy option, Ireland is used as a case study. Ireland belongs to the category of states where discrimination on the grounds of nationality is specifically addressed in the national legislation. Ireland has set up an independent authority, the Equality Authority, with a designated function to promote equality legislation. The authority is *inter alia* set up to provide information to the public on equality legislation.

6.4.2 Theory of change

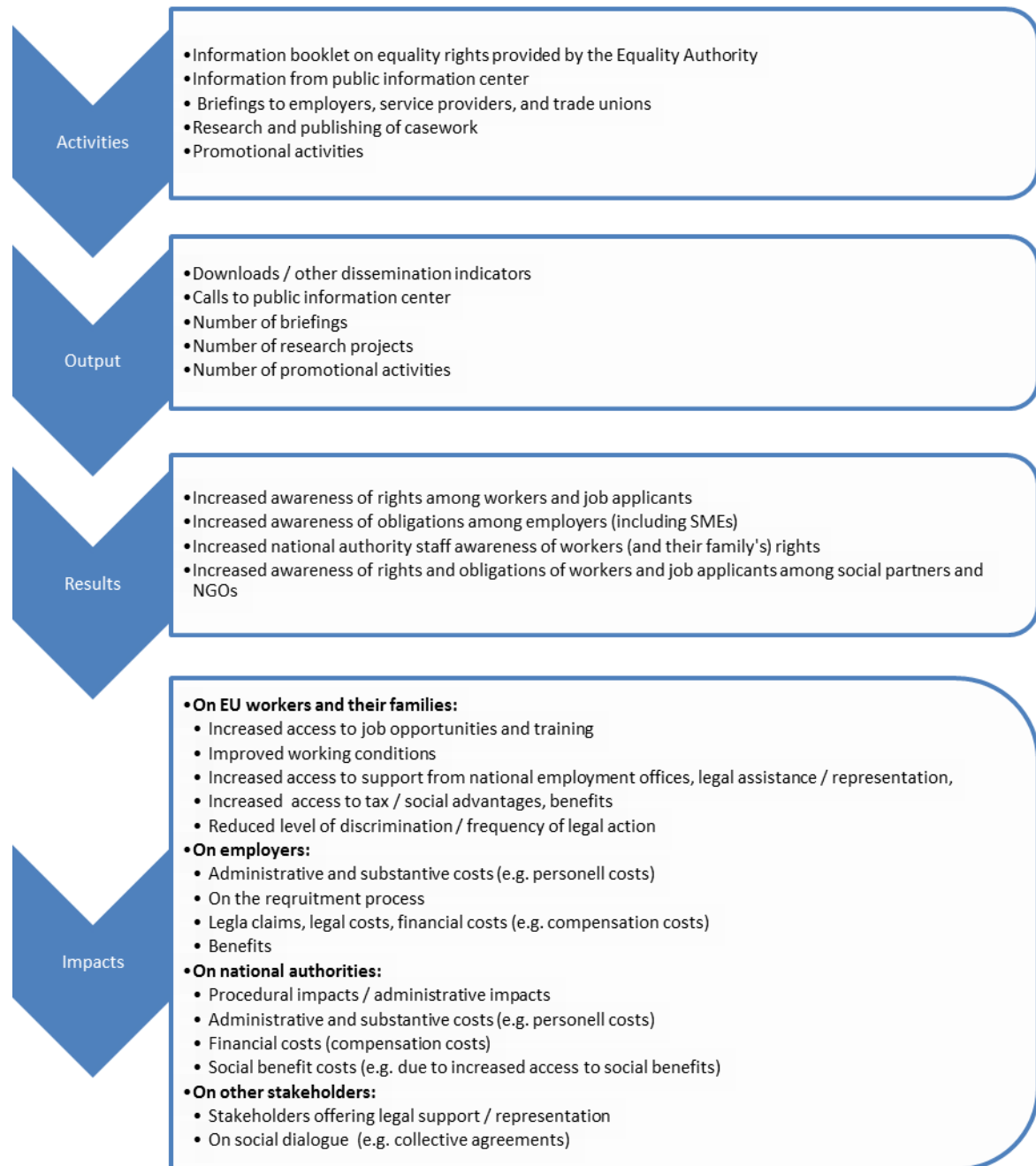
The objective of this policy option is to increase awareness about rights of EU migrant workers among citizens, employers, public authorities and other stakeholders.

In Ireland, the Equality Authority provides information on equality rights through several functions. Important amongst these are:

- 1) produces **booklets** with information on the relevant pieces of legislation in 14 different languages that can be ordered in hard copy or downloaded through the authority's website;
- 2) responds to queries from the general public through **a public information center**;
- 3) provides **briefings to employers, service providers, and trade unions** on case law under equality legislation and on good equality and diversity practices;
- 4) **conducts research and publishes casework** reviews to communicate learning from the casework;
- 5) contributes to raising public awareness on equality issues through **promotional activities** (stands etc).

The figure below depicts an ex-ante view on the impacts expected to be found in the case study of Ireland.

Figure 27: Ex-ante view of the impacts of the policy option



6.4.3 Critical factors

The central critical factor in this policy option was for the information to reach the target audiences of citizens, employers, national authorities and other stakeholders.

In order to reach the target audiences, the Equality Authority in Ireland performed its information functions in conjunction with a set of other stakeholders and service providers. Important amongst these were the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers Confederation (IBEC), and the National Employments Rights Authority (NERA). The latter was an

office under the Department of Jobs, Enterprise and Innovation. Thus, a fundamental trust and close collaboration between public authorities and other stakeholders were important success factors for this policy option. Of special importance were collaboration between national authorities on the one hand and employers and employee organisations on the other. Furthermore, in order to reach the migrant workers, it was important to collaborate with migrant advocacy groups where they exist.

In the same line of argument, positive attitudes amongst the relevant advocacy groups towards the free movement of workers were an important precondition for the success of the policy. When the relevant equality legislation was passed in Ireland towards the end of the 1990s, nationality and free movement of workers were not contested issues. The legislative process was facilitated by the economic boom that took place in Ireland during the second half of the 1990s. This partly facilitated support from the business community. Furthermore, the legislation was passed before the eastern enlargements of the European Union of 2004 and 2007. Ireland was at the time a relatively homogenous society with no substantial ethnic minority groups (except from the English group). Thus, nationality and immigration were not contested issues. However, although Ireland received a massive influx of immigrants after the eastern enlargements and has experienced an economic recession, the attitudes of the organisations do not seem to have changed; both the employers and employee advocacy groups expressed strong commitment to promoting the rights of migrant workers.

6.4.4 Transferability

“National equality bodies are independent organisations established on the basis of EU equal treatment directives – Directive 2000/43/EC (the so-called Race Directive), Directive 2004/113/EC (the so-called Gender Goods and Services Directive) and Directive 2006/54/EC (the so called Gender Recast Directive) - with a mandate to provide an independent assistance to victims of discrimination, conduct independent surveys concerning discrimination and publish independent reports and make recommendations on any issue relating to discrimination in their country.”

However, not all of these have the mandate to deal with discrimination on the grounds of nationality. Transferring this policy option would therefore imply extending the mandate of existing structures.

There are thus no direct obstacles when it comes to transferring this policy to all Member States. However, as close collaboration between public authorities and different advocacy groups is important for the success of the policy, positive attitudes amongst the latter groups towards free movement of workers are important preconditions for the success of the policy.

6.4.5 Case study results

It is the conclusion of the contractor that the Equality Authority in Ireland contributes towards raising the awareness of rights among migrant workers. However, positive developments cannot exclusively be attributed to the work of the Equality Authority, but are instead a result of several stakeholders working together.

All interviewed stakeholders felt the link between *access to information on rights* and *actual exercise of rights* was strong. Thus, there are good reasons to believe the Equality Authority contributed towards removing obstacles for the free movement of workers. Statistics from the Irish Central Statistics Office suggest that non-Irish in Ireland are more aware of their rights today than they were in the beginning of the millennium when the Equality Authority was established (1999). The Equality Authority, in collaboration with other stakeholders and contributors, played an important part in this development. Specifically, the Equality Authority contributed to raising awareness on the following issues relevant to EU migrants:

- Equal pay
- Access to employment
- Vocational training and work experience
- Terms and condition of employment
- Promotion or re-grading
- Classification of posts
- Dismissal and collective agreements

The Equality Authority informed the public in general, not just EU migrants. Therefore it was not possible to conclude in definite quantitative terms the Equality Authority's contribution towards awareness of EU migrant rights. However, this conclusion could be made on the basis of qualitative data, as all interviewed stakeholders believed that this group had also been affected.

The Equality Authority also contributed towards raising awareness of equality laws among employers. Specifically, the authority focused on producing information on the advantages for employers of implementing equality policies. This information was spread in close collaboration with IBEC. Statistics on Equality policies suggest that more employers have implemented equality policies today compared to the beginning of the millennium.

Below, the impacts are described in more detail.

Results and impacts on EU migrant workers and their families

A quantitative indication of the impact on EU migrant workers can be found in the Quarterly National Household Survey produced by the Irish Central Statistics Office. In a June 2011 publication, the 2004 survey was compared to the 2010 survey. In 2004, 13% of non-Irish respondents reported that they had experienced work-related discrimination (either "looking for work" or "in the work-place") in the previous two years. In 2010, the number had dropped to 12%. The percentage reporting that they had experienced discrimination accessing services¹⁹⁰ dropped from 17% to 12% in the same period.

Another interesting figure presented in the report from the Central Statistics Office relates to awareness of rights. Between 2004 and 2010, the percentage of non-Irish that reported they had no understanding of their rights under Irish equality law dropped from 38% to 27%.

The statistics presented above should be read bearing in mind that the national backgrounds of Ireland's non-Irish population changed dramatically between 2004 and 2010. In 2004, Ireland had a substantial minority with English origin, but no other major groups of foreign nationals. This changed after the EU enlargement of 2004. Between 2004 and 2007, Ireland received a huge influx of immigrants from the eastern accession countries. Thus, the non-Irish population in the 2010 survey covered a more heterogeneous group compared to the 2004 survey. Before the enlargement, the majority of immigrants were white collar workers who were traditionally well aware of their rights. After the enlargement there was a huge influx of blue collar workers. This implies that the moderate positive development described above is better than the pure numbers indicate.

Moreover, the data focuses on non-Irish nationals and discrimination in the workplace in general and not only EU migrant workers and nationality-based discrimination. Unfortunately, such specific data is not available in Ireland. However, the overall numbers and development includes EU migrant workers and nationality-based discrimination.

¹⁹⁰ Persons in this category reported feeling discriminated against in at least one of the following areas: 'In the workplace', 'Looking for work', 'In shops, pubs or restaurants', 'Using the services of banks, insurance companies or financial institutions', 'Education', 'Obtaining housing or accommodation', 'Accessing health services', 'Using transport services' and 'Accessing public services'.

Linking the positive developments described above directly to the work of the Equality Authority is not possible. All interviewees indicated that the positive developments were a result of several combined factors, such as contributions from IBEC, ICTU and NERA. However, all respondents indicated that the work of the equality authority was an important contribution.

Results and impacts on employers and SMEs

The Equality Authority did not have a designated function to advise employers. However, it worked closely with IBEC and they conducted research used to inform employers on benefits of equality policies.

Statistics on Equality Authority policies in the Irish labour market indicate that there was positive development amongst employers in recent years. In 2009, 84% of employees were working in an organisation with a formal equality policy, compared to 75% of employees in 2003. Coverage particularly increased in the private sector¹⁹¹. The numbers indicate increased equality awareness in the private sector, or increased willingness to implement equality measures. However, the equality policies included in this statistic are not restricted to EU migrants, but instead cover a broader range of equality measures.

Again, it was not possible to attribute this development directly to the information work of the Equality Authority. Furthermore, the effects are most likely less strong than the effects on EU migrants described above. The Equality Authority did not have a designated function to advise employers on equality measures. However, the authority did work closely with IBEC (the employers' organisation) on informing employers of equality measures. Specifically, the authority conducted research on the benefits for employers in promoting equality measures (e.g. on the relationship between equality measures and innovation). Furthermore, through its Equality Mainstreaming Unit (EMU), the authority – operated a supporting scheme for SMEs that enabled the latter to develop equality policies and to establish an equality infrastructure. In 2010, the EMU also prepared a report on examples of good practice from SMEs.

These are some examples of research, information and enabling work done by the Equality Authority directed towards employers and SMEs. Direct effects from these initiatives could not be measured, but as all interviews indicated that the authority contributed to raising awareness in the private sector, it could be qualitatively concluded that some positive impacts do exist. Again, it should be noted that most of the authority's work was not specifically related to EU immigrants, but to equality policies in general.

Results and impacts on national authorities

The Equality Authority conducted research on equality issues, and as such was a contributor to policy development at the national level.

Results and impacts on other stakeholders

The Equality Authority worked closely with other stakeholders. Both IBEC and ICTU drew on research and information pieces made by the authority, and the authority funded activities conducted by these and other organisations.

6.4.6 Costs of policy options

This sub-option would lead to implementation costs in the 3 Member States (FR, NL and RO) where such an information obligation is not yet in place. This study was not able to confirm if an information obligation was implemented in 19 MS¹⁹², meaning that these MS may also face implementation costs. However, these would be limited to the costs associated with the general legislative procedure to implement the EU information obligation in the national legislation. The Member States would need to tailor the obligation to disseminate information to EU migrant

¹⁹¹ The Equality Authority and the Economic Social Research Institute (forthcoming) "2003 and 2009 National Workplace surveys"

¹⁹² AT, BE, BG, CY, CZ, DE, DK, EE, ES, EL, FI, HU, IT, LV, LT, LU, MT, PL, SI.

workers to their specific context and determine the target group(s) (public authorities, agencies and/or social partners).

Qualified as an information obligation, the option would furthermore impose administrative costs on the determined target group(s).

In the Ireland case study, the obligation to provide information was targeted at the Equality Authority. The resulting administrative costs consisted of the one-off costs for setting up an information infrastructure (website, public information centre/phone hotline) and recurring/ongoing costs for information activities. The one-off costs, however, could also be regarded as implementation costs related to the establishment of the infrastructure at the Equality Authority, if not already in place.

As explained above, the Irish Equality Authority carries out five different activities/measures in order to comply with the legal information obligation. The resulting recurring administrative costs consisted of man-hour, equipment, outsourcing and other costs, as seen in the table below:

Table 13: Activities of the Irish Equality Authority to comply with the legal information obligation

| Activities | Administrative cost elements |
|---|---|
| 1. Creating and providing booklets with information on the relevant pieces of legislation | <ul style="list-style-type: none"> - Outsourcing costs (external service provider) for re-designing, updating and re-publishing the booklet due to changes in the legislation - Outsourcing costs for translating the booklet into 14 languages |
| 2. Responding to queries from the general public through a public information centre | <ul style="list-style-type: none"> - Man-hour costs of the staff for getting trained, providing information by phone, eventually processing a query into a potential case, following up on phone calls by sending written information/material, and documenting the calls; - Equipment/supplies costs for phone bills |
| 3. Briefings to employers, service providers, and trade unions – presentations and trainings | <ul style="list-style-type: none"> - Man-hour costs for preparing the trainings/presentations logistically and content-wise, and conducting the trainings/holding the presentations - Other costs: man-hour costs for travelling and travel costs |
| 4. Conducting research and publishing casework | <ul style="list-style-type: none"> - Man-hour costs - Equipment/supplies or outsourcing costs for the publications |
| 5. Promotional activities – information stands, events | <ul style="list-style-type: none"> - Man-hour costs for the staff attending the information stands/events - Equipment/supplies costs for the booth (technical equipment etc.) |
| 6. Providing information through the website | <ul style="list-style-type: none"> - Man-hour costs of the staff uploading publications, press releases etc. - Equipment/supplies costs: basic maintenance of the website and additional security costs (for upgrades etc.) - Outsourcing costs: external IT support |

However, in terms of the associated administrative costs, it must be noted that the information activities of the Equality Authority are not limited to information regarding discrimination of EU migrant workers on the grounds of nationality. Rather, the authority disseminates information on equality legislation in general. It was therefore not possible to single out the costs directly and only related to the rights of EU migrant workers.

This has to be kept in mind when looking at the figures provided in the table on the following page. In total, the Equality Authorities' recurring administrative costs associated with the

obligation to provide information on equality in general – and not only about rights of EU migrant workers and their families – amounted to around EUR 340,000 in 2010. This amount excludes the one-off related implementation costs for setting up the information structure. As the information structure was set up 12 years ago in the phase of the establishment of the Equality Authority these costs could not be quantified. Additionally, it has to be noted that the activities related to advertisement such as e.g. creating booklets and associated administrative costs differ from year to year.

Table 14: Administrative costs on the Equality Authority in Ireland associated with the information obligation

| Measures | Activities | Description employees | Employee type | Hourly wage (in euro) | Time spent per activity (in hours) | Internal costs (in euro) | Frequency | Total internal costs (in euro) | Material/equipment costs (in euro) | Consultancy costs (in euro) | Other costs (in euro) | Total AC (in euro) | Comments | | |
|--|--|--------------------------------|------------------|-----------------------|------------------------------------|--------------------------|-------------|--------------------------------|------------------------------------|-----------------------------|-----------------------|--------------------|--|--|--|
| 1. Website | a) Setting up the website | | | | | | | | | | | 30.136 | Cannot be quantified as the website was set-up 12 years ago. | | |
| | b) Maintaining/updating the website | Clerical standard officer | 4: Clerks | 23 | 16 | 368 | per week | 52 | 19.136 | 11.000 | | | 30.136 | The material costs consist of the basic maintenance costs and the additional security costs (for upgrading etc.). The IT-support costs (external costs) could not be quantified. | |
| 2. Phone hotline | a) Setting up the hotline | | | | | | | | | | | | Cannot be quantified as the phone system already existed. | | |
| | b) Providing hotline services | | | | | | | | | | | | | | |
| | Regular training of staff providing hotline services | 4 clerical standard officers | 4: Clerks | 23 | 64 | 1.472 | once a year | 1 | 1.472 | | | 1.472 | 213.856 | | |
| | | 1 executive officer | 3: Technicians | 31 | 16 | 496 | once a year | 1 | 496 | | | 496 | | | |
| | | 1 higher executive officer | 2: Professionals | 40 | 16 | 640 | once a year | 1 | 640 | | | 640 | | | |
| | Advising/providing information, follow-up on phone calls/sending information/material, documenting calls by filling a form | 3,5 clerical standard officers | 4: Clerks | 23 | 328,3 | 7.551 | per month | 12 | 90.611 | 4.000 | | 94.611 | | | |
| | | 1 executive officer | 3: Technicians | 31 | 93,8 | 2.908 | per month | 12 | 34.894 | | | 34.894 | | | |
| 1 higher executive officer | | 2: Professionals | 40 | 93,8 | 3.752 | per month | 12 | 45.024 | | | 45.024 | | | | |
| a) Trainings/presentations to service providers, employers, trade unions, etc. | Head of Communications or Principal Officer | 1: Managers | 51 | 16 | 816 | number per year | 30 | 24.480 | | | 12.240 | 36.720 | | Other costs are travel costs. | |
| b) Information events/stands | 1 clerical officer | 4: Clerks | 23 | 12 | 276 | per occurrence | 11 | 3.036 | 9.075 | | | 12.111 | 16.203 | Material costs are the costs for the booth. | |
| | 1 executive officer | 3: Technicians | 31 | 12 | 372 | per occurrence | 11 | 4.092 | | | | 4.092 | | | |
| c) Advertisement | | | | | | | | | | | | 80.000 | | | |
| | Updating, redesigning and re-publishing a booklet due to changes in the legislation | | | | | | | | 50.000 | | | | 50.000 | Spent in 2010 | |
| | Public awareness campaign for the updated publication/booklet | | | | | | | | | 30.000 | | | 30.000 | Spent in 2010 | |
| | | | | | | | | | | | | 340.195 | | | |

Considering that providing information on EU migrant workers' rights is only a smaller part of the broad information activities of the Equality Authority and that it was not possible to single out the costs directly and only related to the rights of EU migrant workers, the recurring administrative costs associated with the information obligation was difficult to determine in exact terms

However, the extent of the costs for the Member States where such an information obligation is not yet in place would depend on three factors. First, the number of "stakeholders" determined to be targeted by the obligation (same set-up as in Ireland with the Equality Authority being the only obligated party or broader scope of the obligation targeting several parties, e.g. also including the social partners) plays an important role.

Second, the level of costs would depend on the 'state of play' in the individual Member States. The one-off costs would be lower in Member States where the target group(s) already has an information infrastructure in place because the infrastructure would only need to be adapted to the specific information needs.

Third, the cost level strongly depends on the labour costs in each Member State. According to the International Standard Classification of Occupations (ISCO) developed by the International Labour Organization (ILO)¹⁹³, average gross hourly labour costs vary to a great extent are delivered for the EU-27. ISCO groups jobs together in occupations and more aggregated groups based on similar skills required to fulfil the tasks and duties of the jobs. ISCO is structured in ten major groups. The first four major groups are considered relevant for this impact assessment study and have the following ranges of gross hourly labour costs:

- 1. Legislators, senior officials and managers: from EUR 3.30 (Bulgaria) to EUR 56.63 (Luxembourg) per hour (EUR 49.56 in Ireland);
- 2. Professionals: from EUR 2.24 (Bulgaria) to EUR 49.75 (UK) per hour (EUR 45.94 in Ireland);
- 3. Technicians and associate professionals: from EUR 1.94 (Bulgaria) to EUR 38.41 (Denmark) per hour (EUR 32.86 in Ireland)
- 4. Clerks: from EUR 1.42 (Bulgaria) to EUR 27.80 (Luxembourg) per hour (EUR 24.97 in Ireland).

6.5 Policy option 3c – legal assistance mechanisms

This policy option intends to ensure the availability of mechanisms of legal assistance to EU migrant workers and their families at the Member State level by imposing an obligation on Member States, through EU law, to provide:

- Means of redress: availability of administrative or judicial procedures for EU migrant workers if they find that their rights have been violated.
- Legal representatives: representation of EU migrant workers by organisations or legal entities in administrative/judicial procedures concerning violations of obligations under Regulation (EU) 492/11.
- Provisions on victimisation: protection of EU migrant workers from dismissal or similar adverse treatment by an employer on the basis of a complaint of discrimination on the grounds of nationality.
- Prevention of discrimination by employers: obligation on employers to engage actively in preventing discrimination on the basis of nationality.
- Equality bodies: requirement of Member States to set up bodies or contact points for the promotion of equal treatment on the basis of nationality and covering all aspects of Regulation (EU) 492/11.

¹⁹³ <http://www.ilo.org/public/english/bureau/stat/isco/isco88/intro.htm>

6.5.1 Policy option rationale

As described in the problem definition, violations of EU migrant workers' rights to freedom of movement and non-discrimination on the basis of nationality occur on different levels in the Member States – in the legislation, in the application of the legislation and in administrative practices. While the first two are usually more likely to be discovered, as they relate to the official levels of legal and procedural texts, the third and more practical level is harder to ascertain from the EU level. For example, administrators in a local employment office in the town of Silkeborg, Denmark or the owner of a small production company in Thessaloniki, Greece, that are recruiting a new IT specialist are far away both physically and mentally from EU policy makers. So, while the EU legislation may be clear on EU migrant workers rights from an EU perspective, it is difficult to monitor their enforcement at the local and practical level.

Hence, it is important for EU migrant workers themselves to be able to claim their rights as EU citizens (or their relatives) if they feel that these are being violated. The operational objective of policy option 3c is to ensure that EU migrant workers have access to legal instruments to claim their rights to freedom of movement and non-discrimination in all Member States. The rationale for this is that the attention brought to the issue by an administrative or judicial case and the potential “slap on the wrist” or sanction in connection with a ruling will, in the aftermath, improve the enforcement of EU citizens’ rights regarding the free movement of workers.

The urgency of taking further EU action in order to ensure the availability of such legal assistance mechanisms varies between the different elements of the policy option. The baseline provided by the country profiles has shown that means of redress are generally available to migrant workers in all EU Member States¹⁹⁴, legal representation is possible in all but three EU Member States¹⁹⁵, and provisions on victimisation are included in the national legislation of 17 Member States¹⁹⁶. The existence of obligations on employers to prevent discrimination has been more difficult to assess, as this may take many different forms. However, specific legal obligations rather similar to what is proposed in this policy option could be found in only two Member States (Slovenia and Sweden). Equality bodies on the other hand existed in all Member States due to the transposition of other EU directives concerning discrimination on the basis of grounds other than nationality. This is because the other directives required the set-up of such bodies. Meanwhile, only 19¹⁹⁷ of these existing national equality bodies currently cover all the matters related to Regulation (EU) 492/11.

Thus, it will take longer to impose legal obligations on employers in all Member States compared to establishing the means of redress (already in place) or Equality bodies (must still be required to cover free movement rights in the 8 remaining MS¹⁹⁸). Consequently, the impacts of the implementation seen from the EU level on the different elements may be different. The impacts may also be dependent on the existence or simultaneous implementation of some of the other policy options, as will be further elaborated below.

An added value of an EU intervention to ensure the availability of legal assistance mechanisms would be the similarity between Member States’ systems and the derived certainty that this may provide EU citizens in that they would know their rights and means for claiming their rights are similar no matter which Member State they decide to move to and/or work in.

¹⁹⁴ Generally, means of redress are already available to EU migrant workers in all Member States. However, in those Member States where nationality is not yet included as a legal ground to claim discrimination (see option 3a), the means of redress would need to be adapted.

¹⁹⁵ DE, EE, MT.

¹⁹⁶ .AT, BE, BG, CY, ES, FI, FR, DE, IT, LV, LT, PL, PT, SI, SE, NL, UK.

¹⁹⁷ AT, BE, BG (but only in the field of employment), CY, CZ, DK (but nationality-discrimination only covered under race or ethnicity), FI, FR, HU, IE, IT, LV, LT, PO, PT, RO, SI, SE, UK

¹⁹⁸ DE, EE, EL, ES, LU, MT, NL, SK.

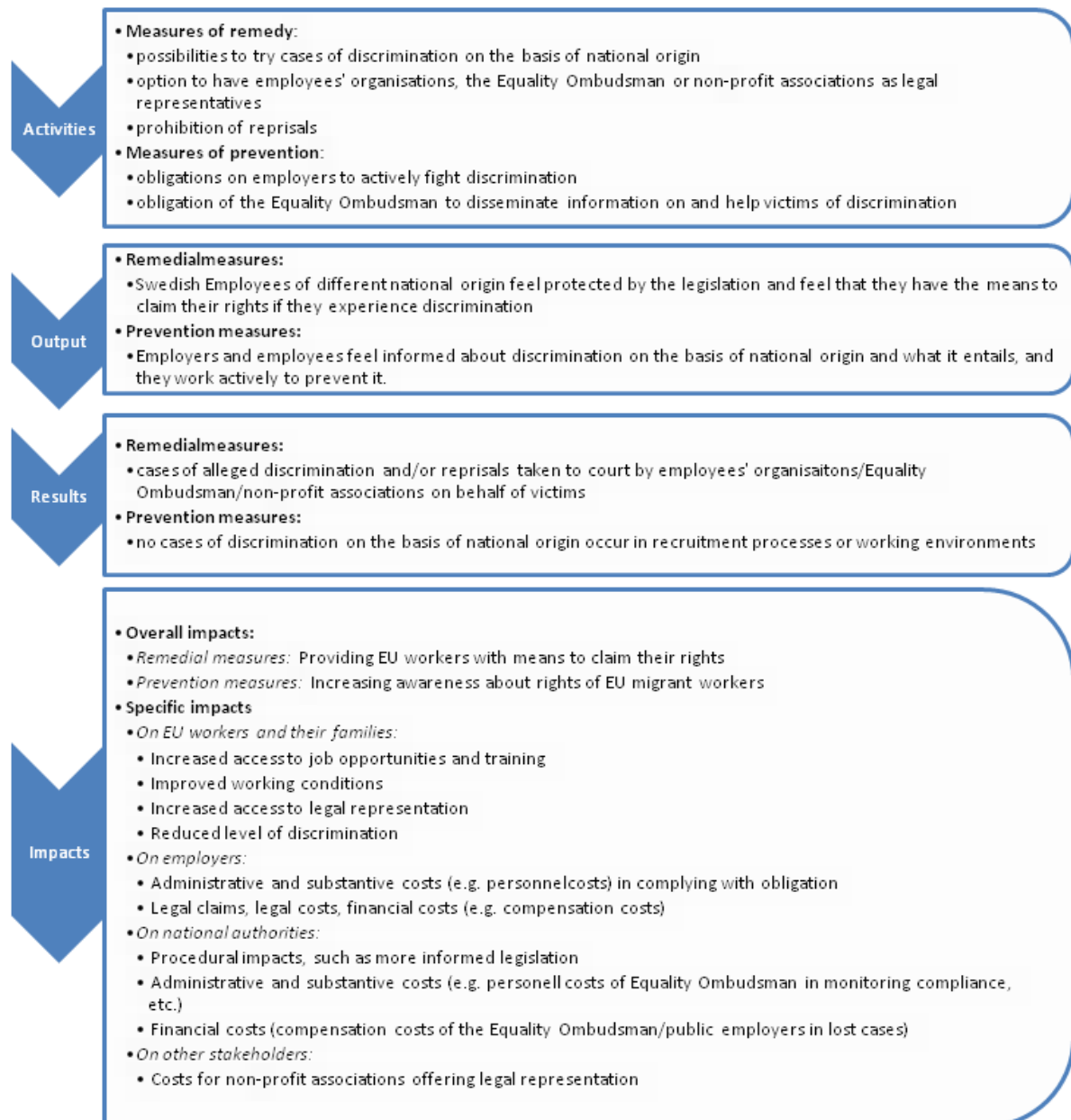
To assess the potential impacts of this policy option, Sweden (one of the only two countries with legal obligations on employers) has been selected for a case study, as the Swedish legislation is comprised of all five elements of the proposed policy option.

6.5.2 Theory of change

The prohibition of discrimination on the grounds of ethnic origin, defined as national origin, is enshrined in the Swedish Discrimination Act. This act also provides means of redress, the possibility to have legal representatives at court (i.e. through labour unions, the Equality Ombudsman or NGOs), provisions on victimisation (prohibition of reprisals), an obligation of employers to take “active measures” to prevent and combat discrimination, and provisions for the establishment of an Equality Ombudsman to monitor compliance with the Act.

The five selected elements of the Discrimination Act, as well as the Act as a whole, serve two different purposes: prevention and remedy. As seen in the figure below, this means that the legal measures in the Swedish case feed into two different intervention logics that actually oppose each other at some points.

Figure 28: Ex-ante view of the impacts of the policy option



6.5.3 Critical factors

As seen below, although there is no clear evidence of substantial impacts derived from the legal assistance mechanism in Sweden, there is one critical factor in relation to the more specific effects. That critical factor involves the power of labour unions and the relatively high unionisation in Sweden. The size and relative power of labour unions is a critical factor in several ways:

- It was stated in the provisions on “active measures” by employers in the Discrimination Act that the work to prevent discrimination should be carried out in cooperation between

employers and employees. This was possible due to the strong position of labour unions in Sweden. Moreover, labour unions played an important role in terms of putting pressure on employers to comply with their obligations under the Discrimination Act.

- In terms of legal representation, labour unions played an important role, as they were the body that acted as legal representation. The possibility to act as legal representative was only open to the Equality Ombudsman or NGOs if the individual was not a member of a labour union or the organisation did not wish to take the case. This also implies that in other countries where fewer people are organised in labour unions, the effects of allowing the equality body and NGOs to act as legal representatives may be larger.
- The case study showed that, while the role of the Equality Ombudsman to monitor compliance with the Act was important, the Ombudsman's office did not have sufficient resources to monitor compliance thoroughly and continuously. Thus, they relied to a large extent on their ability to network with other organisations, other employers associations and labour unions. Again, this was possible in the Swedish context due to the tradition for cooperation and negotiation between the labour market parties.

The potential impacts of an EU action similar to the proposed policy option 3c are closely linked with some of the other sub-options under policy option 3, particularly sub-option a. The Swedish legislation prohibited discrimination on the basis of national origin, similar (though not identical) to what is proposed in policy option 3a. Although Regulation (EU) 492/11, which is directly applicable in all EU Member States, prohibits discrimination on the grounds of nationality, the means of redress, provisions on victimisations, legal representatives, etc in the national legislation are not effective in providing migrant workers with means to claim their rights if they are not linked to prohibition of discrimination on the basis of nationality.

6.5.4 Transferability

Considering that four of the five elements of policy option 3c are already in place in some form in the majority of Member States – though not linked to nationality-based discrimination in all cases – these four elements (means of redress, legal representatives, provisions on victimisation and equality bodies) are considered transferable. Their effect may, however, differ across Member States. The role and status of labour unions in the Swedish context were, as mentioned above, a critical factor in relation to some of the elements. In Member States with lower degrees of unionisation and/or less powerful unions, the impact of introducing equality bodies and NGOs as legal representatives may be bigger. On the other hand, the impacts of the work of the equality bodies may be lessened by the lack of a similar network of labour market parties to cooperate with.

The aspect of putting a legal obligation on employers to work to prevent discrimination may be the least transferable or the one that will require the most efforts. This is because something similar currently exists in only one other Member State. Again, the aspect of unionisation may be an important factor, as the labour unions' ability to put pressure on employers is important to the effects of the "active measures". Moreover, the public discourse on discrimination issues and level of awareness may be important factors. This is because the case study showed that the impact of the "active measures" on the level of discrimination was quite small, and that the most important factor in encouraging employers to work actively with discrimination issues was pressure from the public to show social responsibility. The level and effects of such pressure may be different in other Member States that do not have the same history of debating discrimination issues (particularly in relation to gender) as in Sweden.

6.5.5 Case study results

Based on the case study findings, the legal assistance mechanisms of the Swedish Discrimination Act – the means of redress, the legal representatives, the prohibition of victimisation, the active measures-obligation on employers and the Equality Ombudsman – can be said to contribute to the overall impacts of providing EU migrant workers with the means to claim their rights (remedial measures) and increasing their awareness about rights (prevention measures).

Providing EU migrant workers with the means to claim their rights

With the provisions of the Discrimination Act (the remedial measures), migrant workers had access to necessary means to claim their rights to non-discrimination on the basis of national origin and equal opportunities. One issue in relation to raising discrimination claims in practice, however, remains the difficulties in proving that it was a case of discrimination and not other reasons behind e.g. a missed job opportunity (such as simply another candidate who was more qualified).

The best available indication of how big a problem discrimination is in Sweden, is the fact that the Equality Ombudsman has handled 969 complaints in the first half of 2009, of which 341 concerned ethnic discrimination (including discrimination on the grounds of national origin). Unfortunately, the Ombudsman does not keep separate statistics on the number of complaints from EU migrant workers specifically. According to qualitative assessments by the interviewees, the scope of the issue of nationality-based discrimination in relation to EU nationals in Sweden is relatively small compared to those related to third-country nationals. The issues of discrimination are considered to be more linked to so-called "ethnic markers" (i.e. foreign/non-Swedish appearance) rather than a person's nationality.

In terms of the specific impacts, the interviews showed that the remedial measures led to increased access to legal representatives. The Discrimination Act provided the possibility for NGOs, in addition to labour unions and the Equality Ombudsman, to represent individuals at court in discrimination cases. Although in reality the organisations may not have had the financial means to take on many of the cases, the accessibility of e.g. the locally present anti-discrimination bureaus and their cooperation with the Ombudsman provided for increased access to legal representation.

The increased access to legal representation and the availability of means of redress and prohibition of reprisals have not shown any quantifiable direct impacts in terms of an increased number of court cases on discrimination on grounds of nationality. Several reasons are suggested for this, such as: i) cases were often settled outside of court; ii) the existence of the legal provisions had a signal value and a preventive effect; or iii) (as most interviewees claim) nationality/national origin was not a big issue in relation to discrimination, with the main issue instead being ethnicity ("ethnic markers"). However, although the remedial measures did not lead to the expected quantifiable outcome of more court cases on nationality discrimination, one of the specific qualitative impacts – increased access to legal representation – was achieved. Also, the overall objective of providing EU migrant workers with the means to claim their rights was reached in that the legal measures are in place if migrant workers find a need and a use for them.

Increasing awareness of rights of EU workers

The link between the prevention measures and the specific objectives (increased access to job opportunities and training, improved working conditions, and reduced level of discrimination) is weaker. While the qualitative data indicated that the specific objectives have been achieved to a certain extent, there is no evidence that these impacts can be ascribed to the obligation on employers to take active measures and the Equality Ombudsman. The positive effects are mainly ascribed to a high awareness of and attention to discrimination issues in the Swedish society in general. This is, however, partly attributed to the information and awareness raising work carried out by the Equality Ombudsman.

While the effects of the active measures on reducing discrimination and promoting equal opportunities are considered to be relatively small and mainly qualitative in nature, having such legal provisions, along with others on prohibiting discrimination and reprisals in the work place, are considered pivotal in terms of emphasising the importance of these issues, as well as a basis for debates and awareness-raising. Thus, the prevention measures can claim to have had an

(indirect) impact on increasing awareness of – if not all the rights of EU migrant workers – then at least their right not to be discriminated against on the basis of national origin (or any other grounds of discrimination included in the Swedish Discrimination Act).

6.5.6 Costs of policy options

This section explores the implementation/enforcement and compliance costs that public authorities, businesses (including SME's), and/or social partners would incur when introducing the policy sub-option.

Means of redress

This part of the sub-option would lead to implementation costs in the Member States where means of redress for claiming nationality-based discrimination are not yet available. Generally, means of redress are already available to EU migrant workers in all Member States. However, in those Member States where nationality is not yet included as a legal ground to claim discrimination (see option 3a), the means of redress would need to be adapted. The implementation costs would be limited to the costs associated with the general legislative procedure to implement the EU provision on means of redress in the national legislation and training of the competent actors on how to deal with the new legal ground. Furthermore, Member States would need to make sure that the actors competent for dealing with means of redress to claim discrimination based on nationality (which vary from an equality body or mediator to labour, civil or criminal courts depending on the Member State) are provided with sufficient resources/manpower for the enforcement. The competent people in the administration and at the courts would also need to be trained on how to deal with the new legal ground.

Indirectly, providing means of redress would lead to enforcement costs at national authorities or courts and to administrative costs on EU migrant workers when they appeal due to experienced discrimination on the grounds of nationality as well as for the defendant employer. The administrative costs would consist of man-hour costs for running the (administrative or judicial) proceedings, potentially including outsourcing costs for legal assistance and accompanied by financial costs, i.e. legal costs. While the administrative costs in any event would be borne by the individual party, the distribution of the outsourcing and financial costs would be part of the court decision. The extent of these costs per party is hence difficult to predict.

Generally, the extent of the enforcement, administrative and financial costs would be very Member State specific, depending on national procedural rules and schedules for fees. The other determining factor would be the number of cases per Member State, which is very hard to predict and is dependent on the number of EU migrant workers, the level of nationality-based discrimination, and the knowledge of and willingness to take court actions.

Legal representatives

The implementation costs for this part of sub-option 3c are again limited to the costs associated with the general legislative procedure to implement the EU provision allowing associations, organisations or legal entities with a legitimate interest to provide administrative or judicial support to workers in cases of nationality-based discrimination in the three Member States where this is currently not foreseen by the national law (Estonia, Germany and Malta).

Indirectly, the provisions allowing this support might lead to costs resulting from the (labour) time spent on providing support. Depending on the national provisions, these costs would be borne by the organisation providing legal support or by the EU migrant worker making use of it. However, as this provision does not represent a legal obligation to act but instead a procedural rule, these costs are not considered as compliance costs. In case of the complaining migrant worker bearing the costs, the costs could be considered as part of the worker's administrative costs/burdens resulting from the administrative or judicial redress procedure (see section on 'means of redress' above).

Provisions on victimisation

Implementing a provision on victimisation in the context of nationality-based discrimination as legal ground for taking court actions would lead to implementation costs on the Member States. In those Member States where provisions on victimisation already exist in the context of discrimination on grounds other than nationality, these costs would be limited to the costs associated with the general legislative procedure to adapt the provision and make it available for cases of nationality-based discrimination. In the nine Member States where provisions on victimisation as such do not yet exist,¹⁹⁹ the implementation of the legislative procedure would require empowering the people at the courts to apply the new provision by providing information and training, thereby increasing the implementation cost.

As this provision does not represent a legal obligation to provide information, pay a duty or generally to act, there is no compliance costs associated with it.

Prevention of discrimination by employers

As with all possible new EU provisions, this part of sub-option 3c would lead to implementation costs. However, it would be limited to the costs associated with the general legislative procedure to implement the obligation to actively engage in preventing discrimination on the basis of nationality in the Member States where such an obligation does not yet exist.

The obligation to take active measures ('obligation to act') is targeted at all employers, i.e. businesses, public authorities and third sector organisations. This results in substantive compliance costs for them. The substantive compliance costs would mainly consist of man-hour costs associated with taking the different active measures, as well as potential equipment and outsourcing costs e.g. for training facilities and trainers. Quantifying the substantive compliance costs is very difficult due to several reasons:

1. As the studied Swedish obligation was goal-oriented and did not require specific measures, the measures taken by the employers differ. In fact, it turned out that all Swedish interviewees understood the need to take active measures to promote equality, and considered the resources needed to comply as reasonable compared to the objectives of the obligation. However, they considered the obligation as not being sufficiently clear and comprehensible.
2. The scope of the Swedish obligation referred to combating discrimination based on all possible grounds; it was not solely related to nationality-based discrimination. Due to this it was impossible for the interviewees to single out the compliance costs only related to discrimination on the grounds of nationality.
3. The measures were heavily interlinked with business-as-usual activities carried out by the employers.

This must be kept in mind when looking at the non-exhaustive list of measures linked to the obligation mentioned as examples in interviews with public and third sector employers:

¹⁹⁹ CZ, EE, EL, HU, IE, LU, MT, RO, SK. In Denmark it is unknown if provisions on victimisation exist.

Table 15: Examples linked to the obligation of prevention of discrimination by employers

| Measures | Activities |
|--|---|
| Yearly equality plan ²⁰⁰ | <ul style="list-style-type: none"> - Discussion of (general) equality issues and objectives on a monthly basis in the group of managers or with the employees in monthly team meetings - Yearly general meeting of all managers and employees to discuss the achievement of the objectives of the equality plan |
| Yearly survey among employees on the level of equality and discrimination issues | <ul style="list-style-type: none"> - Preparing the questionnaire and handouts, launching the survey – sending out the questionnaires, receiving and analysing the filled questionnaires, summarising the results in a report - HR department; - Presentation and discussion of results – managers and employees |
| Guidelines | <ul style="list-style-type: none"> - Developing guidelines (HR department, working group) - Publishing guidelines on the website |
| Criteria list to be used in recruiting/application procedures | <ul style="list-style-type: none"> - Developing a criteria list which helps focusing on the abilities of the applicant rather than his/her nationality, skin colour etc. by HR department |
| Publication of job offers in English (besides the national language) | <ul style="list-style-type: none"> - Translation of job offers |
| Educational activities/trainings on equality matters | <ul style="list-style-type: none"> - General trainings or trainings on specific discrimination issues determined on the basis of the outcome of the yearly survey - Targeted at managers and/or employees - Organised by the HR department - Prepared and provided by external trainers |
| Language courses for foreign employees | <ul style="list-style-type: none"> - Provided by external trainer (targeted at all foreign employees, not only to EU migrant workers) |

A study on the effects and costs of provisions concerning active measures in Sweden's Discrimination Act carried out by the Swedish Agency for Public Management on behalf of the Government body Statskontoret²⁰¹, also came to the conclusion that it is difficult to provide exact estimates of the compliance costs associated with the 'active measures'. The study included a questionnaire survey of 220 employers²⁰² and 17 education and training providers. Despite two reminders, the response rates were low, at 33% for the employers (=79) and 59% for the course providers (=10). In terms of the cost-related questions in the survey the response rates were even lower. Consequently, a "failure analysis" was carried out by phone on one of the survey

²⁰⁰ The general aim of the equality plans is equal treatment of men and women; however, they are often affirming equal treatment of employees regardless of matters such as gender, religion, sexuality and ethnicity. The nature and content of equality plans vary according to how developed they are. Some plans are pure equality statements not linked to any specific actions. Other, more developed plans might include *special actions* targeted at defined areas or limited groups of employees. Plans embedded in an employer's general human resources/personnel policy are likely to be even more developed. In such cases, the equality plans concerned are applied to all employees and all sections of the organisations concerned. Businesses with less than 10 employees (micros) are excluded from the obligation to set up an equality plan; see <http://www.eurofound.europa.eu/eiro/2004/02/study/tn0402101s.htm>

²⁰¹ Statskontoret: "Aktiva åtgärder mot diskriminering – effekter och kostnader"; 2011:4. <http://www.statskontoret.se/upload/Publikationer/2011/201104.pdf>

²⁰² The employers were selected from a list of 569 employers provided by the Equality Ombudsman comprising the companies which had taken part in the so called „Miljogranskning" – a supervision exercise carried out by the Ombudsman a few years earlier. The study report does not provide information on the size of the surveyed companies or cost estimations divided by different sizes of companies.

questions, but it still proved to be difficult to get answers. The “failure analysis” indicated that the employers who did answer to the survey were the ones who had been working with active measures to a larger extent. This led to the assumption that the results provided by the study are slightly overestimated. Despite the very low response rate, the Agencies’ view is that further investigations in the area would not to any substantial extent affect the situation or result in any conclusions other than those provided.²⁰³

Taking account of the low response rates and the admitted difficulties of the survey respondents in providing exact cost estimates, the study found that Swedish employers on average spent around 800 SEK (~ EUR 88) per employee per year on complying with all active measures-obligations included in the Discrimination Act²⁰⁴. Meanwhile, the largest sums go towards work on gender-related issues. Of the provisions related to discrimination on the basis of ethnicity, the most costly is section 6 of chapter 3: taking measures to prevent harassment or reprisals, which is assessed at 170 SEK (~ EUR 19) per employee per year. Taking aside the measures related to section 8 (education and training on gender equality), section 6 (preventing harassment), section 1 (cooperation between employees and employers) and section 5 (combining work life and parenthood), the costs of compliance with all the remaining obligations (including, among others, sections 3, 4 and 7 which relate to ethnicity) amount to only 130 SEK (~ EUR 15) per employee per year, on average.

As the Active Measures related to ethnicity are less specific than the obligations related to gender issues, they provide more flexibility for employers to choose different measures in their work to prevent discrimination, and compliance costs are similarly bound to be varying. This also means that smaller companies, on which compliance costs would normally weigh more heavily, are freer to adjust their efforts according to means and resources. Equally, the compliance costs would depend on the scope of the measures taken by each employer, i.e. the scope of yearly equality plan.

Equality bodies

Equality bodies exist in all Member States, however, this part of sub-option 3c would lead to implementation costs in the 8 Member States²⁰⁵ where an equality body exists but is not literally assigned to deal with discrimination based on nationality (see option 3a). Moreover, the equality body in those Member States must be assigned to deal with nationality-based discrimination, the implementation costs are expected to be low. Depending on the responsibilities and tasks to be assigned to the body, there is a link to the costs associated with the other options, especially with option 3b. Some additional costs may be expected in terms of educating staff on these issues, new information material and potentially an increased number of complaints to be handled.

²⁰³ <http://www.statskontoret.se/in-english/publications/2011/active-measures-against-discrimination-effects-and-costs-20114/>

²⁰⁴ As mentioned above, the Swedish Agency for Public Management came to the conclusion that it was very difficult to provide exact estimates of the compliance costs for the “active measures” let alone distributing costs on each individual measure

²⁰⁵ DE, EE, EL, ES, LU, MT, NL, SK.

6.6 Policy option 3d – reversal of the burden of proof

The objective of this sub-option is to make it easier and less burdensome for EU migrant workers to file complaints of discrimination by reversing the burden of proof, putting it on the defendant (alleged discriminator) rather than the plaintiff to prove that there has been no breach of the principle of equal treatment.

6.6.1 Policy Option Rationale

Introducing provisions on the reversal of the burden of proof is meant to make it easier for EU migrant workers to file complaints of discrimination, supporting the objective of providing better protection for EU migrant workers. The option thus supports the policy objective of providing better means to claim rights as regards freedom of movement of workers.

Provisions on reversed or shared burden of proof are already in place in many Member States (reversed burden of proof in seven Member States²⁰⁶ and shared burden of proof in 14 Member States²⁰⁷). Many of these do not, however, relate to discrimination on the basis of nationality, as they have in many cases been introduced in connection with the transposition of EU directives on discrimination on other grounds. If the national legislation does not already cover nationality as a ground for discrimination, as in the Finnish case (see policy option 3a), the provisions on burden of proof are not linked to nationality-based discrimination but only to the grounds covered by the EU directives. An EU intervention could ensure more coherence between the legal systems in the different Member States in terms of implementing the principle of equal treatment and creating more legal certainty, as has been attempted through the EU directives concerning discrimination on other grounds.

In the case study interviews, the reversal of burden of proof was identified as an important provision to address nationality-based discrimination. The reversal of burden of proof truly transforms the burden of proof in discrimination cases (though it is not applied in criminal law) from the worker to the employer. This is a significant change because the employer usually has the relevant information on the accusation. This means employers cannot remain passive and are instead forced to present arguments and proof that they have not discriminated against the individual in question.

To assess the impacts of this policy option, Finland was chosen as a case study. In Finland, the provision on the reversal of the burden of proof has been in place since 2004. Reversal of the burden of proof is applicable to all cases of discrimination as long as the case fits in the scope of the law on equality (*yhdenvertaisuuslaki*), which covers nationality as grounds for discrimination (see policy option 3a). The reversal of the burden of proof is not applicable to criminal cases in Finland.

It is extremely important to note that there must still be some clear evidence of the alleged discrimination. A worker cannot accuse their employer of discrimination without giving some support for the case. If alleged discrimination has been established, the employer can show that the difference in treatment can be explained by acceptable reasons. Even with the reversal of burden of proof, the accuser has clear legal responsibility.

The reversal of burden of proof has been adopted directly from the EU legislation on discrimination on other grounds. The rationale behind the policy option is similar to the above mentioned statements. The motive for the system of the reversed burden of proof is to make it easier to press discrimination charges. The people interviewed for the case study recognised that

²⁰⁶ BE, EE, FI, LV, PL, PT, SE

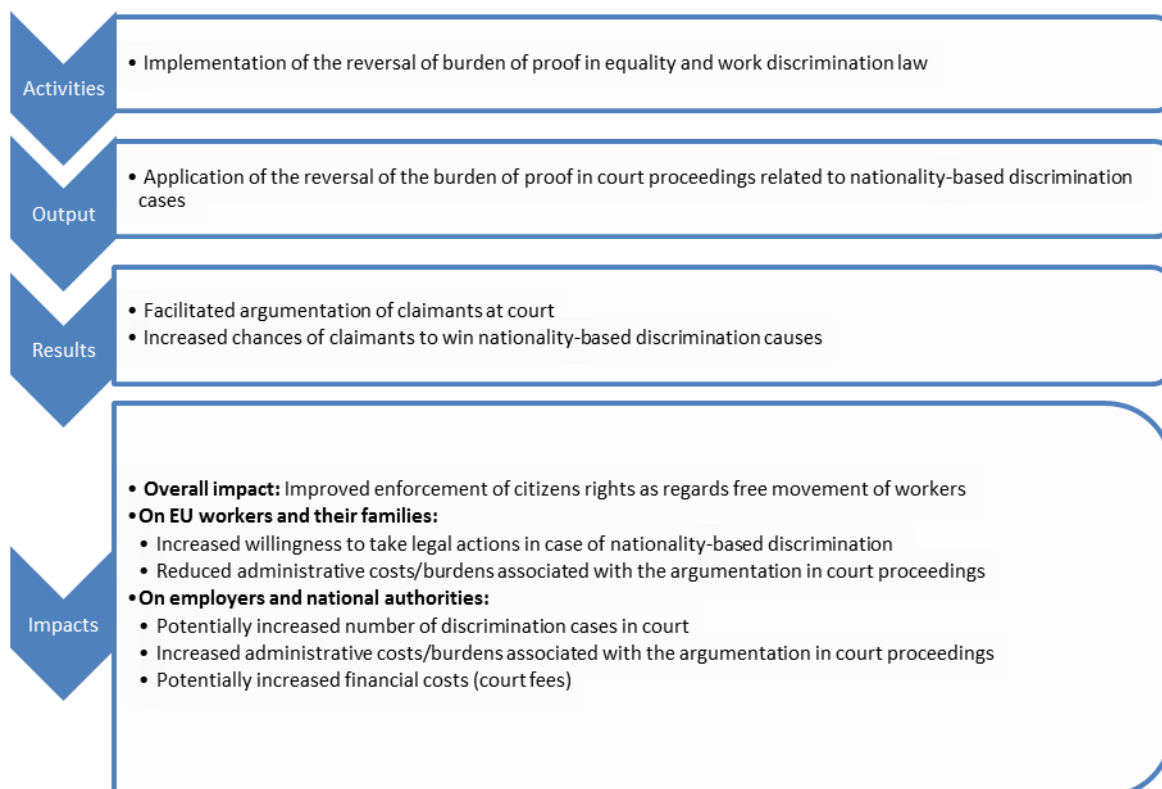
²⁰⁷ AT, BE, BG, CY, ES, FI, FR, DE, IT, LV, LT, PL, PT, SI, SE, NL, UK

discrimination cases are usually very hard to prove and in most cases the employer has the needed information. The reversal of burden of proof is meant to fix this situation.

6.6.2 Theory of change

The figure below depicts an ex-ante view on the impacts expected to be found in the case study and is based on the country profile and supporting documentation.

Figure 29: Ex-ante view of the impacts of the policy option



6.6.3 Critical factors

The reversal of burden of proof has been adopted directly from the EU legislation (directives on discrimination on other grounds). The implementation of the policy option in Finland was in general seen as quite unproblematic.

The only critical factor identified in relation to the effects of this policy option in the Finnish context is the fact that it was linked to nationality-based discrimination, as this ground was covered by the Finnish legislation. The impacts in terms of enforcement of EU migrant workers' rights to non-discrimination on the basis of nationality will only be secured in other Member States if the reversed burden of proof is linked to nationality-based discrimination.

6.6.4 Transferability

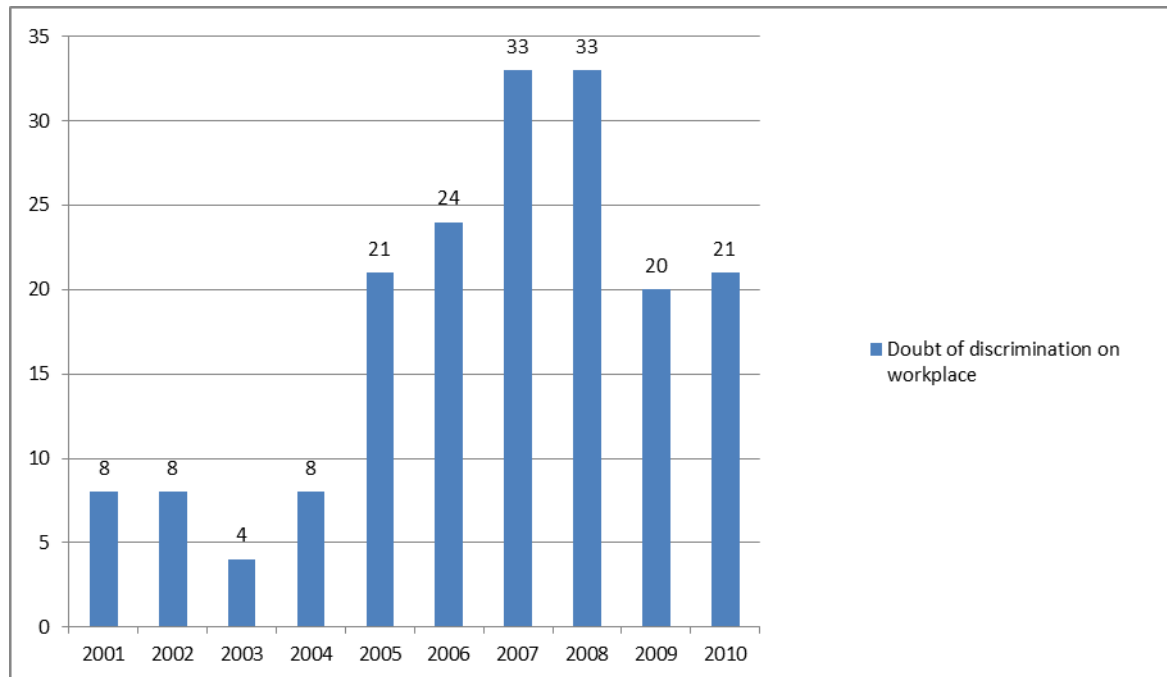
To ensure EU-wide implementation, this policy option requires adoption of the option in national legislation in 20 Member States. This could be subjective to (extensive) social dialogue between social partners. However, the detail of the provision would not differ (significantly) and could thus be considered transferable to all Member States.

6.6.5 Case study results

The intervention logic above suggests that the implementation of the policy option would result in increased chances of claimants to win discrimination cases as well as increased willingness to press discrimination charges. The implementation of the policy option would imply reduced burden for claimants and increased burden for employers.

When considering the figures of discrimination in the workplace in general, national statistics in Finland showed that the number of cases had steadily risen since 2004 (Figure 30).

Figure 30: Number of cases where there is doubt about discrimination in the workplace in the area of responsibility of the Regional State Administrative Agency of Southern Finland (occupational safety and health)



Source: Syrjintäkieltojen asiakasaloitteiden valvonta vuonna 2010; Etelä-Suomen aluehallintovirasto – työsuojelun vastuualue, 17.3.2011.

However, interviewees could not distinguish what part of the increase could be explained by the reversal of burden of proof, nor link the cases to nationality-based discrimination. It was assumed that the increase could be explained by the introduction of legislation dealing with equality matters in general, and at the same time by the economic situation such as the downturn experienced in 2008. It was therefore difficult to estimate the impact of the policy option on actual case proceedings.

Qualitatively, the interviewees claimed that the reversal of burden of proof brought clear benefits for the worker when the case was brought forward. They also believed it helped the national monitoring authorities or other stakeholders, such as the workers unions, press discrimination cases for their beneficiaries. This was because it was easier to show the supposed discrimination than to actually prove that discrimination had happened. Based on the qualitative data, it could thus be concluded that, the reversal of burden of proof made it easier to press discrimination cases.

However, according to a *Comparative study on access to justice in gender equality and anti-discrimination law*, there have been rather mixed results of introducing a reversal of burden of proof in anti-discrimination law in the different Member States, and the new provisions do not appear to clarify and simplify things as much as intended. The report shows that in practice, the claimant still has to provide “prima facie evidence” (evidence that there is a case of discrimination to be made) of the alleged discrimination before a case can be established and the reversed burden of proof comes into force. What constitutes “prima facie evidence” is very different from one country to another and not always clearly defined which in many cases in practice leads to lowering the burden of proof for the defendant (i.e. the opposite of the intention). Moreover, there is often not a clear demarcation between the “prima facie”-step and

when the reversal of burden of proof steps into force; again placing a comparatively larger burden on the claimant than the defendant²⁰⁸.

In the Finnish case, the reversal of burden of proof is as mentioned considered to have made it easier to win in or settle outside the court, but pressing legal claims was still cumbersome, as some interviewees pointed out. The reversal of burden of proof was identified by interviewed stakeholders as a good initiative among the other initiatives tackling the issue of workplace discrimination, but to truly reduce the level of discrimination, other instruments are also needed. The main issue seemed to be the awareness of rights among the workers of foreign nationality.

Should the number of cases increase, the impact on employers could prove to be significant. This is because they would be made to carry the burden of proof since they are seen as holding the relevant information on the possible discrimination cases. One interviewed expert explained that the employers that would otherwise remain passive would need to act by giving information and proof that the possible discriminatory decision could be explained objectively. If the employer remained passive, there would be strong reasons to doubt that their behaviour was in fact discriminatory.

The common view among the interviewed stakeholders was that larger companies were more aware of the issue and able to act accordingly. This may for example result in better documentation of the decision made in a recruitment process, making it possible to show the logic behind the decisions if the employer was accused of discrimination. There could be costs related to such adjustments of procedures to adapt to the situation, but there have not been any estimations of how much or in what way they would materialise. The ex-ante intervention logic suggests that the potential direct costs caused by the increased number of discrimination cases can have more significant financial impacts for the employers. Meanwhile, in the long term, the reversal of burden of proof, together with other non-discrimination measures, may reduce the level of discrimination altogether, and this would in turn also reduce the costs imposed by the court cases.

National authorities responsible for monitoring the occupational safety and health issues have benefited from the reversal of burden of proof. It was easier for them to give advice to the person who might have met discrimination. They did not need to prove the discrimination, but could suggest that it had probably happened, which made a clear difference to the authorities.

6.6.6 Costs of policy options

Providing for a procedural rule, this option does not entail any direct compliance costs. The only relevant direct costs are associated with the general legislative procedure to implement the provisions in the national (procedural) legislation (implementation costs) in the 20 Member States where a provision on the reversal of the burden of proof in nationality-based discrimination cases does not yet exist.²⁰⁹

However, what must be considered are the impacts of the reversal of the burden of proof on the administrative and financial costs of claimants and defendant employers resulting from discrimination cases. In terms of administrative costs/burdens resulting from the court proceedings, there is a partial shift of the costs associated with the argument from the claimant to the employer. As regards the outsourcing costs and financial costs associated with the court proceedings (lawyer's and court fees), the reversal of the burden of proof has no direct impact on these as they are distributed on the basis of the court decision. However, indirectly it has an impact on the court decision itself as it increases the chances of claimant employees to win the case. This might lead to a shift of costs from the claimant to the employer. However, in this

²⁰⁸ Milieu for DG Justice (2011): "Comparative study on access to justice in gender equality and anti-discrimination law – synthesis report"; p. 24-25. (http://ec.europa.eu/justice/gender-equality/files/final_report_access_to_justice_final_en.pdf)

²⁰⁹ AT, BG, CY, CZ, DE, DK, EL, ES, FR, HU, IE, IT, LT, LU, MT, NL, RO, SK, SI, UK.

context it must be kept in mind that the cost rules in labour court cases might be different from the general rule that the losing party bears the costs, i.e. that each party bears its own costs.

Overall, it can be expected that the reversal of the burden of proof has a stimulating effect on potential claimants as it facilitates their argument at court and increases their chances of winning. Therefore, the implementation of this sub-option might indirectly lead to an increase of discrimination cases taken to court and thus to an increase of enforcement costs for the courts, as well as of administrative costs/burdens and financial costs on workers (claiming their rights) and employers as defendants for court proceedings.

In the studied case of Finland, the implementation of the reversal of the burden of proof has produced a need to educate the authorities responsible for monitoring the occupational safety and health issues. The reversal of burden of proof is different to the other issues important to the authorities. The national guidelines for occupational safety and health issues, currently being prepared, also put lots of emphasis on the reversal of burden of proof.

6.7 Policy option 3e – sanctions and compensations

This sub-option aims to ensure that real and effective compensation or reparation is available to victims of discrimination on the grounds of nationality in all Member States, by introducing a legal obligation on them to make sure that sanctions are applied and compensation payments made upon violations.

6.7.1 Policy option rationale

Similar provisions as the ones foreseen in this policy option can be found in the following three directives: Directive 2006/54/EC, Article 18; Directive 2000/43/EC, Article 15; Directive 2000/78/EC, Article 17. For example, the preamble of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) states that:

"It has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation, except where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive was the refusal to take his/her job application into consideration."

Article 18 of the same directive specifies that the Member States "shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this directive is the refusal to take his/her job application into consideration."

The rationale is that this improves the availability of intra EU migrants to claim their rights as regards free movement of workers, thus improving the general enforcement of these rights.

This policy option has been further developed and examined with inspiration from France, where both sanctions and compensation for employment discrimination (including nationality-based discrimination) can be found in the national legislation. In France, the legislation partially specifies an upper limit for fines and/or compensation, which is why the provision in for example

Directive 2006/54/EC, presented above on exclusion of an upper limit, has not been included in the policy option. The policy option should however not make it compulsory for Member States to set upper or lower limits for sanctions and compensation.

In particular, the statement of the Court of Justice²¹⁰, concluding that adequate compensations are necessary to ensure the effectiveness of equal treatment, speaks of the need to introduce effective compensation or reparation to victims of nationality-based discrimination.

It can also be argued that the introduction of effective compensation and reparation is a concrete method to enforce the legislation prohibiting discrimination on the grounds of nationality. The lack of such measures may discourage victims of nationality-based discrimination from reporting their cases and bringing them to court.

With respect to the added value of an EU action, research shows that 23 Member States (all MS but DK, DE, EL and MT) already have provisions in place that introduce compensation or reparation for victims of nationality-based discrimination.

6.7.2 Theory of change

This section presents an ex-ante view on the impacts expected to be found in the case study. The ex-ante view is based on the country profile of the case study country, France, and on other supporting documentation.

Figure 31 is targeted at the French case, where the existing discrimination legislation²¹¹ was in principle considered to cover everyone, and the principle of equality applied to non-nationals "unless the legislator could justify a difference in treatment based on conditions of public interest".²¹² More concretely, discrimination on the grounds of nationality is forbidden in the French Labour Code and Penal Code. According to the Penal Code, "discrimination comprises any distinction applied between natural persons by reason of their origin [...] their membership or non-membership, true or supposed, of a given ethnic group, nation, race or religion."²¹³ A similar distinction between people as belonging or not belonging to a nation is prohibited by the Labour Code²¹⁴. This is considered to cover the concept of national origin.²¹⁵ The Penal Code, the Labour Code and the Equal Opportunities Law 2006-396 of 31 March 2006²¹⁶ specified the sanctions and compensation that apply in the cases of discrimination on the grounds of nationality. An overview of the current legislation is provided below.

²¹⁰ The preamble of Directive 2006/54/EC.

²¹¹ In private law, the general legal regime relating to discrimination is to be found in codified law i.e. the Labour Code (LC), the Penal Code (PC) and the Civil Code (CC), the Law no 2004-1486 of 30 December, 2004 creating the High Authority against discrimination and for Equality (HALDE) and the Law no 2008-496 of 16 May, 2008 implementing community law in the fight against discrimination (hereafter Law no 2008-496). See: Latraverse, Sophie: Report On Measures To Combat Discrimination. Directives 2000/43/EC and 2000/78/EC. Country report France, 2009. European network of experts in the non-discrimination field, p. 4.

²¹² Latraverse, Sophie: Report On Measures To Combat Discrimination. Directives 2000/43/EC and 2000/78/EC. Country report France, 2009. European network of experts in the non-discrimination field, p. 79.

²¹³ French Penal Code, Article 225-1.

²¹⁴ French Labour Code, Article L1134-4.

²¹⁵ European network on free movement of workers, *Thematic Report: Application of Regulation 1612/68, 2011*, p. 5.

²¹⁶ Loi No 2006-396 du 31 mars 2006 pour l'égalité des chances.

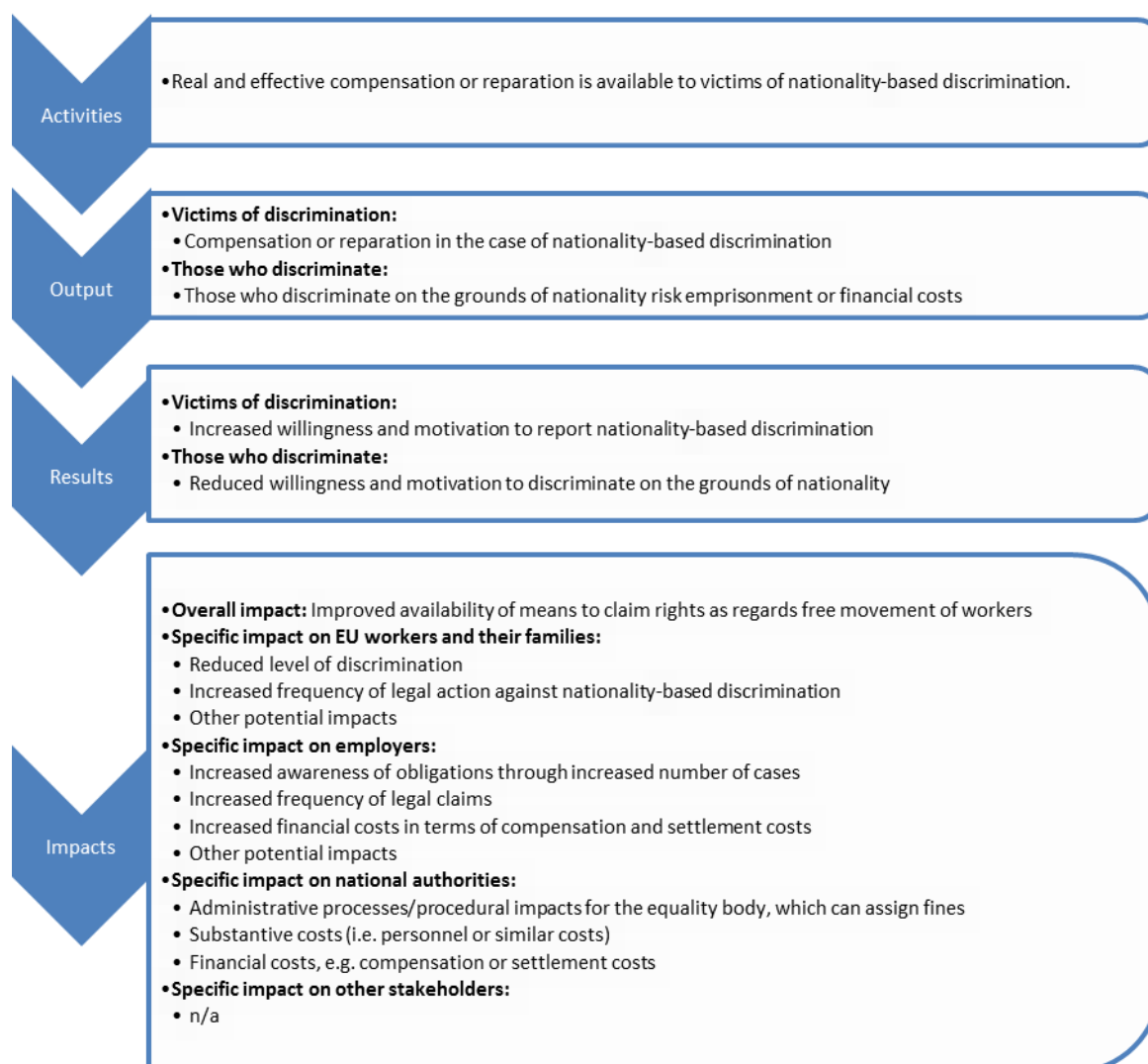
Table 16: Overview of the French legislation on sanctions and compensation

| Legislation | More specific description |
|--|---|
| Penal Code, Article 225-2 | <p>Discrimination (including based on nationality) is punished by three years of imprisonment and a fine of €45,000 where it consists:</p> <ul style="list-style-type: none"> 1° of the refusal to supply goods or services; 2° of obstructing the normal exercise of any given economic activity; 3° of the refusal to hire, to sanction or to dismiss a person; 4° of subjecting the supply of goods or services to a condition based on one of the factors referred to under Article 225-1; 5° of subjecting an offer of employment, an application for a course or a training period to a condition based on one of the factors referred to under Article 225-1; 6 ° of refusing to accept a person onto one of the courses referred to under 2 ° of Article L.412-8 of the Social Security Code. <p>Where the discriminatory refusal [...] is committed in a public place or in order to bar the access to this place, the penalties are increased to five years' imprisonment and to a fine of €75,000.</p> |
| Labour Code, Article L1134-4 and L1134-5 | <p>Where a court has decided in the favour of an employee claiming discrimination, and where the employee refuses to continue his/her contract of employment, the industrial tribunal allocates compensation corresponding to:</p> <ul style="list-style-type: none"> 1° Compensation corresponding to not less than the salary of six months; 2° Compensation corresponding to the severance pay provided for in Article L.1234-9 [of the Labour code] or in the applicable collective agreement, or employment contract. |
| Equal Opportunities Act 2006-396 of 31 March 2006, Article 41 | <p>The French Equal Opportunities and Anti-Discrimination Commission HALDE may, in case it identifies discrimination as defined in the Penal Code and the Labour Code, and in case no public action has been set in motion due to the discriminating activities, assign to the offender "a penal transaction" involving the payment of a transactional fine which cannot exceed € 3,000 in the case of an individual and € 15 000 if it is a legal entity. It is also possible for HALDE to assign compensation for damages experienced by the victim. The amount of the fine is set according to the seriousness of the act and the resources of the person in question. The proposal has to be validated by the prosecutor.²¹⁷</p> <p>(The former) HALDE²¹⁸ proposes a penal transaction to both parties, and in case they both agree, a case is closed directly. In case the parties do not agree, the case is forwarded to a judge, but no judicial proceedings are necessary.</p> |

²¹⁷ An interview with a representative of le Défenseur des Droits reveals that prosecutors approve of (former) HALDE's decision in most cases.

²¹⁸ On 1 May 2011 the HALDE was merged together with three other anti-discrimination organisation and is now called the Defender of Rights (Défenseur des Droits).

Figure 31: Ex-ante view of the impacts of the policy option



6.7.3 Critical factors

The French legislation, used as the case study for this concrete policy option, is very similar to the policy option in question. No country-specific, critical factors were identified that may modify the impacts of the study and result in different impacts when taken to another context.

6.7.4 Transferability

The respondents agreed that the existence of the legal framework is an important tool to raise awareness about discrimination on the grounds of nationality. Even if it was not possible to show concrete impacts in quantitative terms of the existence of legislation due to the lack of relevant statistics, the proposal to develop EU legislation requesting the Member States to impose sanctions and compensation in cases where workers were discriminated against on the grounds of their nationality was supported by all interviewees.

The concrete transferability of the French case, and in particular the responsibilities of the equality authority, to the EU level seems to be theoretically possible in most EU Member States, as the powers given to the equality authority in France are included in the legislation transposing

the EU equality directives²¹⁹. It would however require the prohibition and penalisation of discrimination on the grounds of nationality in each Member State and the extension of the powers of each equality authority.

It is doubtful whether the impacts of the policy option would differ if the legislation imposing sanctions and compensation was based on an EU intervention. It seems that in the case of France, either the "nationality ground" was not used as the basis for court case/transactional fine, or discrimination on the grounds of nationality against EU migrant workers barely took place. What would be beneficial, however, would be to request the Member States to categorise discrimination cases so that cases where nationality was the main grounds of discrimination could be monitored.

6.7.5 Case study results

Overall, while the respondents acknowledge the importance of having in place legislation ensuring sanctions and compensation for discrimination on the grounds of nationality, it did not seem that the existence of this concrete measure had an impact on the situation of EU migrant workers in France. All respondents pointed out that the situation of EU migrant workers (apart from those from Romania and Bulgaria, who were subject to transitional measures) was generally good in France. Where problems did exist, they were usually related to Romanian and Bulgarian nationals, as well as third-country family members of EU migrant workers. This was also supported by the findings presented in chapter 5.2 (scale of the problem), which showed examples of issues related to citizens from new EU Member States, e.g. in relation to assistance from national employment offices. This was because administrators were unsure about the status of Romanians and Bulgarians as EU citizens in the aftermath of the transition schemes.

None of the respondents knew of cases where sanctions or compensation were used in cases of discrimination on the grounds of nationality towards EU migrant workers. The former HALDE never used the Article 41 right to impose sanctions and compensations with this regard, and even though the number of complaints due to discrimination on the grounds of origin was increasing, discrimination on the grounds of nationality of EU migrant workers seemed to represent a marginal share of the cases.

However, there was a concrete awareness among the respondents of the existence of the relevant legislation and of the possibility to bring cases to court where these came to the knowledge of the relevant actors. It can thus be concluded in qualitative terms that the policy option did to some extent lead to improving means to claim rights as regards free movement of workers. It can also be argued that the option improved the legal certainty of non-discrimination and rights of EU migrant workers and the awareness of these rights.

6.7.6 Costs of policy options

The implementation of this sub-option would lead to implementation costs for the Member States where provisions on sanctions and compensation or reparation of damages for cases of nationality-based discrimination are not yet available (Denmark, Germany, Greece and Malta). These would be limited to the costs associated with the general legislative procedure needed to adapt the national legal framework (see option 3a).

In France, the policy option has not yet led to any other costs, as according to the interviewees the legislation has not been used in practice. However, applying the provisions on sanctions and compensation would lead to financial costs on employers (or other parties) for paying the fine or compensation in the case that a court considered them guilty of discrimination (provision in Penal Code). These financial costs do, however, not directly result from the legal provision but from the court decision.

²¹⁹ Racial Equality Directive 2000/43/EC and Employment Equality Directive 2000/78/EC.

Additionally, the provision in the Penal Code would lead to enforcement costs on the side of the criminal court mainly consisting of man-hour costs for running the proceedings. The Labour Code provision would not result in any other costs as it represents a cost rule that does not provide for an obligation. The provision in the Equal Opportunities Act would lead to enforcement costs at the equality authority when going through cases on nationality-based discrimination and when proposing transactional fines. Similar costs would also take place within the judicial system, where the prosecutor would approve the proposals, when the parties would disagree, or when a judge would take a decision. These costs would be additional and would not replace costs for judicial cases, as the equality authority would normally take up cases that had not been brought to court.

6.8 Policy option 3f – dialogue between stakeholders

The objective of this sub-option is to increase dialogue between social partners and NGOs, and consequently improve the knowledge of and correct enforcement of the rights of EU migrant workers and the aspect of equal treatment on the basis of nationality.

6.8.1 Policy option rationale

The original policy option proposed that the dialogue be increased through the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice. It also proposed to make the implementation of one or more of these activities legally binding, as in the examples mentioned in Directive 2000/78/EC, Article 13; Directive 2000/43/EC, Article 11; and Directive 2006/54/EC, Article 21. The option has however been somewhat modified with inspiration from the Dutch case study, where the increased dialogue occurred through an active dialogue between social partners within specific forums and not through the above-mentioned activities.

The implementation of the policy option would ensure that the topic of EU migrant workers is actively put on the agenda in the EU Member States. This would in turn increase the active exchange of views on the topic by the social partners and, subsequently, lead to an increased awareness about the situation of EU migrant workers in the Member State. Theoretically, common actions by the social partners together are more powerful than activities undertaken by one side only (for example the labour unions). Bringing several actors together automatically ensures that the interests of more stakeholders, including the topic of EU migrant workers, are covered by the discussions. If the different parties can agree on common measures to be taken, these measures can be expected to have a greater impact as they are supported by a multitude of actors.

Very few Member States have measures in place that are completely similar to the policy option. For example, where the labour unions are active in disseminating knowledge about the rights of the EU migrant workers and are engaged in the work to protect the rights, these measures are voluntary in nature and initiatives of the organisations.

Measures of active dialogue between social partners on the situation of EU migrant workers are in place in the Netherlands, where the employer organisations and the labour unions are in close dialogue about the situation of EU migrant workers. The employer organisations are in favour of the free movement of workers and promote it actively. Trade unions are active in defending the rights of migrant workers who face discrimination e.g. in terms of working conditions. Similar measures are, apart from the Netherlands, only in place in five Member States²²⁰, however, contrary to what is proposed in the policy option, these measures are non-binding.

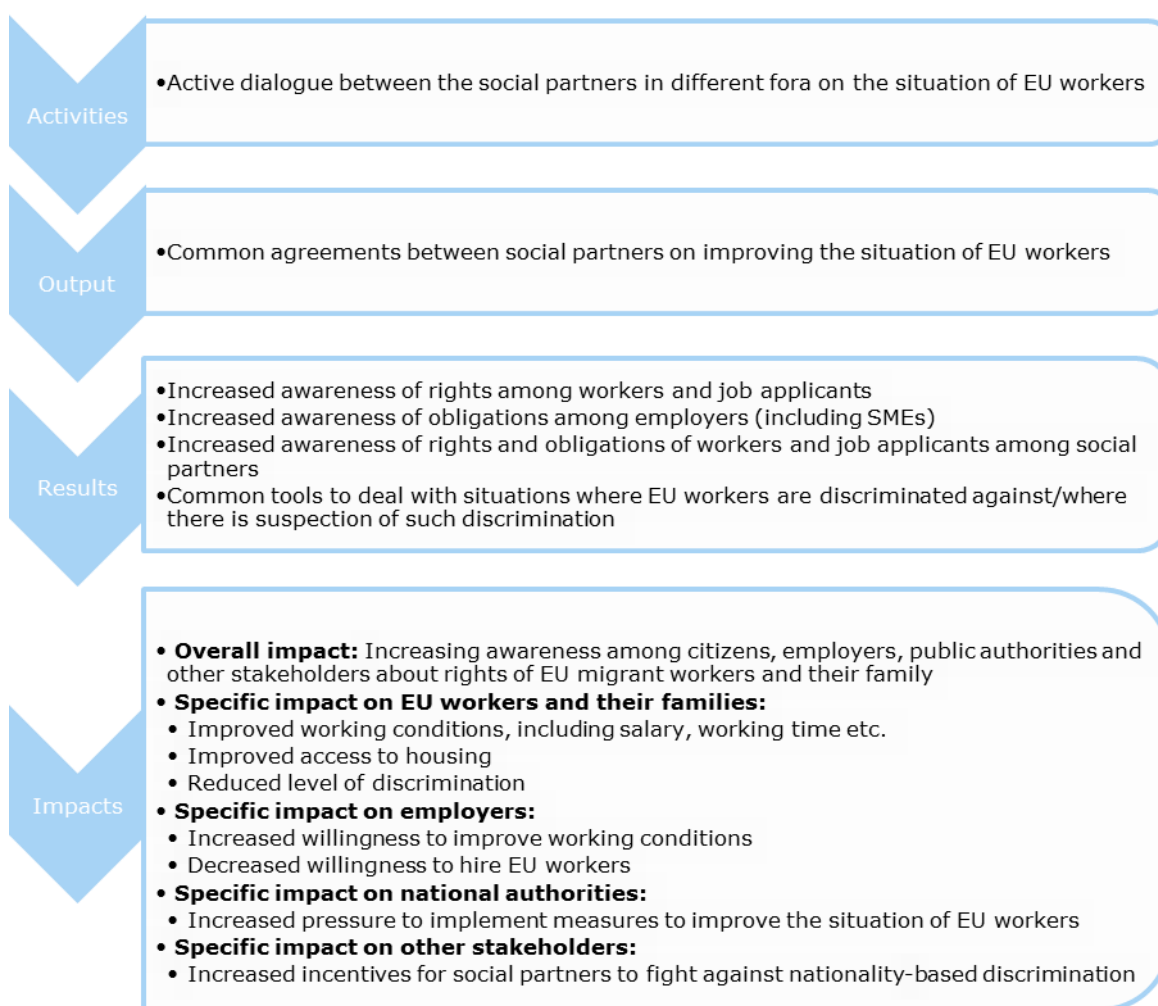
²²⁰ CZ, PT, SI, SE, UK

6.8.2 Theory of change

This part presents an ex-ante view on the impacts expected to be found in the case study. The ex-ante view is based on the country profile of the case study country, the Netherlands, and on other supporting documentation. The purpose of Figure 32 was to provide a systematic basis to adapt the case study template to the policy option in question, and thus focus on the most relevant questions. It is targeted at the Dutch case. It is a long-standing tradition in the Netherlands for the social partners to conduct an active dialogue in a structured form, referred to as a "consultation economy". This means that decision-making and policy-making are traditionally based on discussions, negotiations and bargaining. In the Netherlands, the consultation between employers and employees is based on the feeling of duty to work together and to consult with each other in order to ensure sound public policy. This is in particular true with respect to negotiations on work and income. This happens in particular within two forums: the bi-partite Labour Foundation (Stichting van de arbeid) and the tri-partite Social and Economic Council (Sociaal-Economische Raad - SER).²²¹

The case study aimed to respond to the question of the extent to which the active dialogue and consultation between social partners improves the knowledge and correct enforcement of the rights of EU migrant workers and ensures their equal treatment.

Figure 32: Ex-ante view of the impacts of the policy option



²²¹ Labour Foundation in brief. The Labour Foundation, 2010.

6.8.3 Critical factors

The Dutch case is relatively specific as it is based on the long-standing tradition of a "consensus-model" where the social partners are in active dialogue with each other and always aim to reach a consensus through bargaining, discussions and negotiations. It may be that the Dutch model is an enabling factor for the impacts to materialise. Another specificity of the Dutch case is the low level of trade union density (24%²²²). However, this is not necessarily an enabling factor in terms of impacts, and may in fact hinder further positive impacts.

6.8.4 Transferability

Each interviewee was invited to comment on the policy option where active social dialogue would be made obligatory through European legislation. The employers considered this to be a bad idea. In their view the social partners should be allowed to do what is in their own interest. They did not consider that a change would lead to an improvement in the rights of the workers.

The employee organisations were more positive towards such an initiative. FNV (Netherlands Trade Union Confederation) was in favour of legal protection for migrant workers at the EU level, and argued that it was very important for employment protection legislation, wages and benefits (social security and pension), rights to education and training be protected at a minimum common EU level. At the national level FNV felt an additional level of protection must be allowed in line with national labour market policy.

Finally, MHP (Dutch Trade Union Federation for Professional and Managerial Staff) supports the idea of a Commission at the national level where it would be obligatory to discuss the issue of EU migrant workers.

A few observations must be made. In order for the impacts to be transferable to another EU Member State, it would be necessary for there to be an active dialogue between the different social partners in the Member State. The clear willingness of the different social partners to reach common conclusions is an important enabling factor, supporting the creation of positive impacts for EU migrant workers, employers, national authorities and the social partners. In the Netherlands, trade union density is only 24%²²³, and it could be expected that in Member States where trade unions are stronger, an active dialogue between the employer and employee organisations (when possible) on the situation of EU migrant workers would lead to even more positive impacts. The employer organisation density in the Netherlands is 90%, so here similar improvements might not be possible. It is also not possible to say whether the power-relationship between the Dutch employer and employee organisations has an impact on the results.

Similarly, the dialogue might have more positive results if more EU migrant workers were members of labour unions. The share of EU migrant workers who are members of labour unions is not known, but based on the interviews it seems that the shares are low, especially when the overall density is only 24%.

6.8.5 Case study results

As mentioned above, the active social dialogue is a long-standing tradition in the Netherlands. The questions of EU migrant workers were discussed in particular at the Labour Foundation (founded in 1945) and at the Social and Economic Council (founded in 1950). The questions of EU migrant workers have to some extent always been present in the discussions, but it was in particular through the accession of EU-8 in 2004 and of Romania and Bulgaria in 2007 that the issue has again become a topic.

Both the employers and the employees promoted free movement of workers, but from two somewhat different points of view. While the employers saw it as the right of their members to

²²² http://www.eurofound.europa.eu/eiro/country/netherlands_1.htm.

²²³ http://www.eurofound.europa.eu/eiro/country/netherlands_1.htm.

select their workers from a broader "pool" than just the Dutch workers, the employees were concerned with the need to ensure equal pay for equal work for all workers.

Overall, it seems that the active dialogue on EU migrant workers among social partners increased the awareness, in particular among the social partners themselves, the national authorities, and the member organisations of the employer organisations on the situation of EU migrant workers.

It does not seem that the activities directly contributed to increasing the awareness of EU migrant workers or their families on their rights and obligations. It was a common view among the interviewees that additional awareness-raising was necessary in the countries where the EU migrant workers come from, in order to ensure that the EU migrant workers were already aware of their rights when they planned to move, and to know what to do in case these rights were not respected.

Some positive impacts could be noted in terms of working conditions: the active dialogue led to the establishment of the Foundation for Compliance with the Collective Labour Agreement for Temporary Employees (Stichting Naleving CAO voor Uitzendkrachten - SNCU). This could check in practice whether the working conditions stated in the collective agreement were properly followed. This was an important step, as it seems that most problems identified in the Netherlands in terms of EU migrant workers and their rights were related to their employment through temporary work agencies. The SNCU brought numerous cases to court and imposed high fines on temporary work agencies. This in particular increased the awareness of the employers of the need to follow the collective agreements. This result was however not relevant for all other EU Member States. The tasks of the SNCU are covered by the labour inspectors in many other Member States, which was why there was usually no need for the creation of such an entity. However, for this observation to be valid, the labour inspectors needed to have the authority to check not only compliance with minimum wages and working time, but also the relevant provisions in collective agreements.

A more limited view on the impacts could also be seen. Even though the active dialogue between social partners had a positive impact on bringing the topic of EU migrant workers' rights to the table, it has, according to some interviewees, had little impact in practice on the lives of EU migrant workers and their families.

Several measures were taken in the field of housing, but despite the involvement of social partners in this topic, it was difficult to say whether the measures led to improved access to housing and improved housing conditions.

Both the employee and employer organisations were increasingly active in promoting the free movement of workers and the rights of EU migrant workers. While it was difficult to say whether it was the active dialogue that increased the incentives of social partners to fight against nationality-based discrimination, it could be concluded that the active dialogue did increase the awareness of the social partners on this topic.

6.8.6 Costs of policy options

Sub-option 3f would entail implementation costs for all Member States where dialogue between social partners and NGO's targeted at combating nationality-based discrimination was not yet (legally) provided for and not yet taking place. These implementation costs would be limited to the costs associated with the general legislative procedure to implement the new provision in the EU Regulation, if necessary.

As obligation to act, the implementation of the option would lead to compliance costs on the social partners and NGOs in all Member States. These costs would mainly consist of man-hour costs for regular meetings and other forms of dialogue.

In the case study, dialogue on the situation of EU migrant workers takes place in the Labour Foundation (see above). The Labour Foundation consists of different committees, all based on parity between representatives of the employers' federation and trade unions' federation. The Agenda Committee, which meets once a month, initiates topics that are treated in eight special committees/working groups. One of the working groups is specialised on European matters; here the labour conditions of EU migrant workers are discussed. The working group consists of ten members, four members representing the national employers' federation, four members representing the national trade union confederation, one employee from the secretariat of the Labour Foundation and one minute writer. The working group meets two to six times per year for around two hours.

These meetings result in compliance costs mainly consisting of man-hours for the preparation of the meetings (logistically and content-wise) carried out by the Labour Foundation's Secretariat, the execution of the meetings with the ten members, documenting the results in a protocol and drafting recommendations to be agreed with the Agenda Committee and their publication on the Labour Foundation's website. The employer and employee federations receive compensation for the participation of their members in the Labour Foundation meetings. Hence, the compliance costs are mainly born by the Labour Foundation itself. The following table provides an overview of the compliance costs imposed on the Labour Foundation's Secretariat.

Table 17: Compliance costs associated with Option 3f in the Netherlands

| Measures | Activities | Description employees | Employee type (ISCO) | Hourly wage (ISCO) (in euro) | Time spent per activity (in hours) | Internal costs (in euro) | Frequency | | Total internal costs (in euro) | Material/equipment costs (in euro) | Consultancy costs (in euro) | Other costs (in euro) | Total AC (in euro) | | Comments |
|---|---|--|----------------------|------------------------------|------------------------------------|--------------------------|--------------------|----|--------------------------------|------------------------------------|-----------------------------|-----------------------|--------------------|---------------|--|
| | | | | | | | | | | | | | | | |
| Regular meetings of the Agenda Committee | Preparation of the Agenda Committee meetings - research documents - prepare the agenda - invite participants - book location and lunch (if necessary) | Head of Secretariat of the Labour Foundation | 1: Managers | 37 | 5 | 185 | monthly | 12 | 2.220 | | | | 2.220 | 2.781 | |
| | Holding the Agenda Committee meetings | 1 employee of the secretariat of the Labour Foundation <i>(4 members representing the national employer's federation 4 members representing the national trade union confederation 1 person responsible for the protocol)</i> | 2: Professionals | 35 | 0,25 | 9 | monthly | 12 | 105 | 31 | 125 | 300 | 561 | | Material costs: location and lunch External costs for the protocolist (including participation in the meeting and drafting the protocol) range between 800 and 1.250 euro. Other costs: compensation fee to organisations for members' participation in the meetings |
| Regular meetings of the Special Committee | Preparing the Special Committee meetings - research documents - prepare the agenda - invite participants - book location and lunch (if necessary) | Head of Secretariat of the Labour Foundation | 1: Managers | 37 | 40 | 1.480 | 2-6 times per year | 4 | 5.920 | | | | 5.920 | 26.650 | |
| | Holding the Special Committee meetings | 1 employee from the secretariat of the Labour Foundation <i>(3 representatives of the Employer's side 3 representatives of the Employee's side 2 representatives from Ministries 1 professional protocolist - external)</i> | 2: Professionals | 35 | 2 | 70 | 2-6 times per year | 4 | 280 | 250 | 1.000 | 2.400 | 3.930 | | Material costs: location and lunch External costs for the protocolist (including participation in the meeting and drafting the protocol) range between 800 and 1.250 euro. Other costs: compensation fee to organisations for members' participation in the meetings |
| | Drafting recommendation, agreeing with participants and sending to Agenda Committee (outcome of the meeting) | 2 employees of the secretariat | 2: Professionals | 35 | 120 | 4.200 | 2-6 times per year | 4 | 16.800 | | | | 16.800 | | |
| | Publishing the recommendation on the website and in a brochure | | | | | | | | | | | | | | The upload to the website is carried out by an external IT-agency, the brochures are printed externally. For both, the external costs cannot be quantified. |
| | | | | | | | | | | | | | 29.431 | | |

With nearly EUR 30,000 per year, the costs associated with the dialogue in the specific Dutch set-up are not regarded as being significant; hence they are not quantified for EU-27.

Overall, the costs associated with the dialogue are not significant; hence they are not quantified for EU-27.

6.9 Conclusions on the policy options

In this chapter the potential impacts of the seven policy options were presented, based on the impact case studies, which were conducted on the EU level (policy option 2) and in selected Member States (the six sub-options of policy option 3).

According to the ex-ante intervention logics drafted for each policy (sub-) option, the options were expected to produce the following overall and specific impacts on the indicated stakeholders:

| Policy (sub-) option | (Ex-ante) expected impacts | Stakeholders |
|---------------------------------------|--|--|
| 2 – non-binding guidance | <p><i>Overall impacts:</i> Increased awareness of rights of EU migrant workers</p> <p><i>Specific impacts:</i></p> <ul style="list-style-type: none"> • Increased awareness of EU and national anti-discrimination legislation • Decrease in the level of discrimination | <ul style="list-style-type: none"> • Young people • Employers • Employees • The media |
| 3a – concept of discrimination | <p><i>Overall impacts:</i> Improved legal certainty about non-discrimination and rights of EU workers</p> <p><i>Specific impacts:</i></p> <ul style="list-style-type: none"> • Short term: increased number and frequency of legal action; increased compensation, administrative and substantive costs, due to increased legal action • Long term: reduced level of discrimination; reduced costs, due to decrease in legal action | <ul style="list-style-type: none"> • EU workers and their families • Employers • National authorities • Other stakeholders offering legal support/representation |
| 3b – information obligations | <p><i>Overall impacts:</i> Increased awareness of rights of EU migrant workers</p> <p><i>Specific impacts:</i></p> <ul style="list-style-type: none"> • Workers: Increased access to job opportunities and training • Workers: Improved working conditions • Workers: Increased access to support from national employment offices • Workers: Reduced level of discrimination • Employers: Legal claims, legal costs, financial costs (e.g. compensation costs) | <ul style="list-style-type: none"> • EU workers and their families • Employers • National authorities • Other stakeholders |

| | | |
|---|---|--|
| | <ul style="list-style-type: none"> • Employers: Benefits of employers • National authorities: Administrative and substantive costs (e.g. personnel costs) • Other stakeholders: On social dialogue (e.g. collective agreements) | |
| 3c – legal assistance mechanisms | <p><i>Overall impacts:</i></p> <ul style="list-style-type: none"> • Providing EU workers with means to claim their rights • Increasing awareness about rights of EU migrant workers <p><i>Specific impacts:</i></p> <ul style="list-style-type: none"> • Workers: Increased access to job opportunities and training • Workers: Improved working conditions • Workers: Increased access to legal representation • Workers: Reduced level of discrimination • Employers: Administrative and substantive costs (e.g. personnel costs) in complying with obligation • Employers: Legal claims, legal costs, financial costs (e.g. compensation costs) • National authorities: Procedural impacts, such as more informed legislation • Administrative and substantive costs (e.g. personnel costs of Equality Ombudsman in monitoring compliance, etc.) • Financial costs (compensation costs of the Equality Ombudsman/public employers in lost cases) • Costs for non-profit associations offering legal representation | <ul style="list-style-type: none"> • EU workers and their families • Employers • National authorities • Other stakeholders offering legal support/representation |
| 3d – reversal of the burden of proof | <p><i>Overall impacts:</i></p> <p>EU migrant workers have means to claim their rights to free movement and non-discrimination</p> <p><i>Specific impacts:</i></p> <ul style="list-style-type: none"> • Workers: Increased willingness to take legal actions in case of nationality-based discrimination • Workers: Reduced administrative costs/burdens associated with the argumentation in court proceedings • Employers: Potentially | <ul style="list-style-type: none"> • EU workers and their families • Employers • National authorities |

| | | |
|---|--|---|
| | <p>increased number of discrimination cases in court</p> <ul style="list-style-type: none"> • Employers: Increased administrative costs/burdens associated with the argumentation in court proceedings • National authorities: Potentially increased financial costs (court fees) | |
| 3e – sanctions and compensations | <p><i>Overall impacts:</i> Improved availability of means to claim rights as regards free movement of workers</p> <p><i>Specific impacts:</i></p> <ul style="list-style-type: none"> • Workers: Reduced level of discrimination • Workers: Increased frequency of legal action against nationality-based discrimination • Employers: Increased awareness of obligations through increased number of cases • Employers: Increased frequency of legal claims • Employers: Increased financial costs in terms of compensation and settlement costs • National authorities: Administrative processes/procedural impacts for the equality body, which can assign fines • National authorities: Substantive costs (i.e. personnel or similar costs) • National authorities: Financial costs, e.g. compensation or settlement costs | <ul style="list-style-type: none"> • EU workers and their families • Employers • National authorities |
| 3f – dialogue between stakeholders | <p><i>Overall impacts:</i> Increased awareness of rights of EU migrant workers</p> <p><i>Specific impacts:</i></p> <ul style="list-style-type: none"> • Workers: Improved working conditions, including salary, working time etc. • Workers: Improved access to housing • Workers: Reduced level of discrimination • Employers: Increased willingness to improve working conditions • Employers: Decreased willingness to hire EU workers • National authorities: Increased pressure to implement measures to improve the situation of EU workers | <ul style="list-style-type: none"> • EU workers and their families • Employers • National authorities • Social partners |

- Other stakeholders: Increased incentives for social partners to fight against nationality-based discrimination

As can be seen from the ex-ante intervention logics and the table above, policy options 3a, 3c, 3d and 3e aim through different means to improve the legal certainty about non-discrimination on the basis of nationality and the rights of EU migrant workers (3a) and improve EU migrant workers' access to means to claim their legally established rights (3c, 3d, 3e). The specific impacts of these policy options were expected to affect both EU migrant workers and their families, employers, national authorities and other stakeholders (3a and 3c – NGOs offering legal support/representation).

According to the findings of the case studies, the expected specific impacts of policy option **3a** have not been achieved in the Finnish case. There is no evidence of increased legal action concerning nationality-based discrimination (short-term impact) or reduced level of discrimination and hence legal action (long-term impact). Hence, the expected impacts on **employers, national authorities and NGOs** providing legal guidance/representation were not found through the case study. It was also not possible to establish how aware **EU migrant workers and job-seekers** are of the prohibition of discrimination on the basis of nationality. It appears that in many instances, workers of foreign nationality do either not recognize being discriminated against or choose to ignore it for the benefit of having employment. So even though it might have contributed clarity about non-national workers' rights not to be discriminated against in Finland (as the introduction of the law intended), this has not lead to more legal action being taken.

With regards to the remedial measures in policy option **3c**, the Swedish case study indicated that the inclusion of means of redress, prohibition of reprisals and legal representation have improved **EU migrant workers'** access to means to claim their legal rights. Meanwhile, with no evidence of an increase in cases or complaints about nationality-based discrimination, there is no basis for concluding on any specific impacts of these elements of the policy option on **employers**. With the Swedish Discrimination Act has been given the right to act as legal representatives, and this has had an impact on **workers'** access to legal representation, on the **NGOs** acting as legal representatives and on **national authorities**, such as the Equality Ombudsman, who can now share this workload with the NGOS.

On the basis of the information available in Finland for the case study on option **3d**, it could not be concluded that the introduction of the reversal of burden of proof has led to the expected specific impacts. There has been an increase in reports of discrimination to the responsible **national authority**, but it cannot be concluded whether these cases relate to nationality-based discrimination and/or the reversal of the burden of proof. There is consequently no evidence of specific impacts on **employers**. In practice, the **worker** alleging discrimination will still have to prove that there is a case before it can be taken to court and the reversal of burden of proof invoked.

In the French case study, looking into the potential impacts of policy option **3e**, no cases of actual payment of compensation due to nationality-based discrimination were found. Hence, there has been no impact on **employers** and **national authorities** in terms of costs related to sanctions and compensations and the work on assigning fines. Meanwhile, the case study showed general awareness of the existence of these provisions, so there is a possibility that the threat of sanctions has had a preventive impact leading to non-discrimination of **EU migrant workers and their families**.

Policy options 2, 3b, 3c (preventive measures) and 3f aim to increase awareness of EU workers' rights to non-discrimination among young people (option 2 specifically), employers (all options),

employees/workers (all options) and other stakeholders, including the media (option 2 specifically).

Due mainly to a lack of data on awareness and the effects of the campaign activities as well as an evaluation still on the way, the case study on **policy option 2** could not provide evidence of substantial impacts stemming from the campaign. Mainly, the campaign is considered to have affected the **stakeholders involved in its organisation**, such as ministries, equality bodies and NGOs. Moreover, the awareness of the participants in activities at national level is considered to have increased. These include **HR managers, employees, young people and journalists**. The latter have additionally been reached through the journalist awards specifically targeted at this stakeholder group. Meanwhile, the extent of this impact (how many people were reached within each stakeholder group, in which countries, etc.) is not known.

With regards to policy option **3b**, statistics from the Irish Central Statistics Office showed that from 2004 to 2010 the number of **non-national workers** in Ireland who had felt discriminated against in the workplace had dropped and their awareness of their rights had increased. Though there is no evidence of a direct link between these developments and the work of the equality body, there are strong indications (in qualitative sources) that this is partly an effect of the body's work. Statistics on Equality policies also showed an increase in the number of organisations with an official equality policy. Again this cannot be directly attributed to the equality body, but it is believed that the results are partly brought about by the body's work on informing **employers** about the benefits of diversity and equality policies.

The preventive measures of policy option **3c**, the obligation on employers and the equality body, have had both positive and negative impacts, although neither is very substantial or well-established. The obligation on employers has, as expected, had an impact in terms of costs for **employers** to comply with the obligation; however, the costs are hardly ever calculated by the employers and are considered insignificant. The impacts of this obligation in terms of increasing awareness and decreasing discrimination in the workplace are believed to have some effect, although it is again considered insignificant compared to other factors such as public debates and pressure. There is no concrete evidence of the effects of the work of the Equality Ombudsman, but its work is generally considered important and relevant in terms raising awareness and helping **migrants** who experience discrimination.

Based on the case study on policy option **3f**, it appears that encouraging active dialogue on EU migrant workers between social partners has had an impact in terms of raising awareness, but primarily among the **social partners** themselves, the **national authorities**, and the **member organisations of the employer organisations**. There is no evidence of a derived effect in terms of increased awareness among **EU migrant workers or their families** on their rights and obligations.

Most of the impacts identified were based on qualitative, rather than quantitative data, which is why the following chapters on impact analysis and comparison of policy options will to a high extent provide a qualitative assessment of the potential impacts.

7. IMPACT ANALYSIS

In this chapter the socio-economic impacts²²⁴, which are primarily based on qualitative assessments, and costs mapped out for each policy option in the previous section will be applied to the baseline scenario for all three clusters (see recap of composition of cluster in the table below followed by a summary of the main characteristics of each cluster) established in Section 5.3 (Policy option 1 (baseline scenario)). This chapter is structured along the proposed policy options. A projection of how many EU migrant workers could potentially be affected by a given policy option in each Member State in 2020 in comparison with the total number of projected EU migrant workers in 2020 if no public intervention takes place (i.e. the baseline scenario) is included for each policy option.

Table 18: The three clusters

| Cluster 1 (8 MS) | Cluster 2 (14 MS) | Cluster 3 (5 MS) |
|------------------|-------------------|------------------|
| Bulgaria | Austria | Belgium |
| Estonia | Cyprus | Denmark |
| Finland | Czech Republic | Germany |
| Hungary | France | Luxembourg |
| Poland | Greece | United Kingdom |
| Portugal | Ireland | |
| Romania | Italy | |
| Slovenia | Latvia | |
| | Lithuania | |
| | Malta | |
| | Slovakia | |
| | Spain | |
| | Sweden | |
| | The Netherlands | |

As we saw in Chapter 6, **Cluster 1**²²⁵ consists of Member States that face only a few problems compared to the other clusters in terms of nationality-based discrimination. In these Member States, the EU provisions have been partially or fully integrated into the national legislation. They all have fewer than 100,000 projected EU migrant workers in 2020, and the EU migrant workers constitute a low share of the total working population (less than 2%). EU migrant workers in the cluster 1 Member States face different kinds of barriers at both the formal and informal levels. Six out of eight Member States in this cluster are from EU-10 or EU-2.

²²⁴ The contractor did not identify any environmental impacts

²²⁵ BG, EE, FI, HU, PL, PT, RO and SI.

The Member States in **cluster 2**²²⁶ are very mixed in terms of the integration of EU provisions. What they do have in common is that most of the Member States have a very large potential target group for intervention in the sense that the projected number of EU migrant workers is large for most of these Member States, the relative share of EU migrant workers is nevertheless small. Most of the Member States seem to have many barriers to migration at both the formal and informal levels. This cluster include four of the EU-15 MS worst hit by the financial crisis (EL, ES, IE and IT) and maybe as a consequence of this the contractor has observed high unemployment rates in these countries and a political climate which is far from encouraging from the perspective of reinforcing EU migrant workers' rights .

Cluster 3²²⁷ consists of Member States in which the EU provisions were not, or were only partially integrated into EU provisions. The number of EU migrant workers differed between the Member States in this cluster, but most have quite a large number of EU migrant workers which entails a large potential target group for any future EU initiatives. In most of these Member States, the EU migrant workers constitute a small share of the total working population. In a few cases, the share is slightly higher (5 – 9%). All Member States in cluster 3 have both formal and informal barriers to migration. The contractor is of the opinion that there is a slight possibility that the Member States, which are all from EU-15, will become accustomed to the inflow of EU migrant workers, thereby decreasing some of the attitude and awareness issues. This may result in informal barriers to emigration and immigration, and employment for EU migrant workers. If the current below EU average unemployment rates is a staying feature for this cluster, this may motivate potential EU migrant workers to consider one of these countries as their next destination.

7.1 Policy option 2 – non-binding guidance

This policy option entails the introduction of non-binding guidance on the rights of EU workers exercising their right to freedom of movement. The tools used for this purpose can take the form of soft law instruments such as communications or recommendations, information campaigns, exchange of good practice, measures for promoting dialogue between social partners, or a combination of several instruments.

7.1.1 Assessment of impacts

On the basis of the quantitative and qualitative findings from the impact case study that used the "For Diversity. Against Discrimination." campaign as inspiration, it can be assumed that this policy option would bring about positive impacts in terms of raising awareness of EU migrant workers' rights within the EU among young people, employers, employees and the media. However, the findings with regards to the extent and specificities of these impacts are very uncertain, meaning that it is not possible to assess them. As already mentioned, while there are EU surveys indicating that discrimination has decreased, there are national tendencies that show the opposite. Regardless of whether the result is positive or negative, it cannot be linked to the activities of the campaign that was the focus of the case study.

Economic costs

It can be assumed that the costs for the policy option would be similar to the analysed campaign, i.e. approximately 3 million Euros per year mostly on EU level. The total costs of the campaign have therefore amounted to 24 million Euros since the campaign started in 2003.

7.1.2 Impacts on cluster and EU level

The policy option case study covers the EU level, and the impacts in specific Member States have not been considered. Still an assessment of the expected impacts of non-binding awareness

²²⁶ AT, CY, CZ, FR, EL, IE, IT, LV, LT, MT, SK, ES, SE and NL

²²⁷ BE, DE, DK, LU and UK

raising activities similar to the case study is made for each of the three clusters of Member States in order to consider whether different levels of impacts can be expected in the different clusters and why.

For the 8 Member States in Cluster 1 (see Member States included in this cluster in Table 18 above), the impact of a non-binding awareness campaign is considered to be **limited** because the number and share of beneficiaries, i.e. EU migrant workers, is rather low and because the current EU legal framework is already either fully or partly integrated into the national legislation.

It is assessment of the contractor that the 14 Member States grouped in Cluster 2 (see Member States included in this cluster Table 18 above) would be impacted to **some extent** should policy option 2 be implemented, since most of the Member States have a high number of EU migrant workers. This would be based on the assumption that the awareness activities are designed in such a way so that they actually reach the intended target groups, i.e. young people, employers, employees and the media.

All five Member States in Cluster 3 (see Member States included in this cluster Table 18 above) have both formal and informal barriers vis-à-vis EU migrant workers and their families as well as a large number of EU migrants. Presuming that awareness activities reach their target groups, it could be expected that policy option 2 could potentially have **some impact** on Cluster 3 Member States. This is supported by the possibility that the national administrations in Cluster 3 Member States, which are from EU-15, would become accustomed to dealing with issues related to EU migrant workers, especially those from new Member States, and thereby increase their awareness about the rights of migrant workers.

An equally important factor to consider is the current level of awareness concerning nationality-based discrimination in each of the Member States. It is assumed that Member States with a currently high level of awareness, e.g. because they have already organised information campaigns, benefit less from a campaign than Member States with a currently low level of awareness. Six Member States already have information activities similar to policy option 2 (see table below). The remaining 21 Member States do not (19 Member States) or only partly (two Member States) have similar initiatives according to the baseline descriptions from the country profiles. In

Table 19, the number of EU migrant workers who can potentially benefit from an information campaign raising awareness among young people, employers, employees and the media like policy option 2 is summarised. Note that the number of EU workers in 2005 to 2010 has been forecasted to 2020 to provide an indication of how many EU migrant workers could potentially benefit from the policies if implemented. Migrant workers in six Member States (BG, EE, LV, LT, RO, and SI) have not been included as no data is available for migrant workers in these countries.

Table 19: Member States divided by policy implementation; yes, no and partly

| Member State | Policy option implemented | Number of migrants 2010 | Potential number of affected migrants |
|------------------------|---------------------------|-------------------------|---------------------------------------|
| Austria | No | 184,9 | 184,9 |
| Belgium | Partly | 293,6 | N/A |
| Bulgaria | No | N/A | N/A |
| Cyprus | No | 46,3 | 46,3 |
| Czech Republic | No | 36,3 | 36,3 |
| Denmark | No | 59,4 | 59,4 |
| Estonia | No | N/A | N/A |
| Finland | No | 22,2 | 22,2 |
| France | No | 600,0 | 600 |
| Germany | No | 1.394,9 | 1394,9 |
| Greece | No | 73,7 | 73,7 |
| Hungary | Partly | 20,9 | N/A |
| Ireland | Yes | 171,0 | 0 |
| Italy | No | 696,3 | 696,3 |
| Latvia | No | N/A | N/A |
| Lithuania | Yes | N/A | 0 |
| Luxembourg | No | 98,0 | 98 |
| Malta | No | 2,6 | 2,6 |
| Poland | No | 5,5 | 5,5 |
| Portugal | Yes | 27,9 | 0 |
| Romania | No | N/A | N/A |
| Slovakia | No | 3,4 | 3,4 |
| Slovenia | Yes | N/A | 0 |
| Spain | No | 811,0 | 811 |
| Sweden | Yes | 119,8 | 0 |
| The Netherlands | No | 140,5 | 140,5 |
| UK | Yes | 1.166,0 | 0 |
| Total | | 5.974,2 | 4.175,0 |

In the 19 Member States where the policy option has not yet been implemented, the potential target group comprises almost 4.2 million EU migrant workers, as well as other important stakeholders including employers and public authorities at the national and EU levels. However, the case study could not go as far as to assess how many or how big a share of these would be reached or what the extent of the impact would be.

7.2 Policy option 3a – concept of discrimination

The sub-option 3a aims to prevent discrimination on the grounds of nationality by introducing elements that would help the understanding of the concept and give nationality an equal legal status (in practice) compared to other grounds for discrimination (ethnicity, gender, etc). This can be achieved by including a definition of (direct and indirect) discrimination on the basis of nationality in EU law.

7.2.1 Assessment of impacts

As mentioned previously, the intervention logic would suggest that the policy option should increase the number of cases in a short-term perspective and reduce the level of discrimination in a long-term perspective. Meanwhile, neither qualitative nor quantitative evidence was found in the case study, suggesting that the level of nationality-based discrimination has been either increased (short term) or reduced. This implies that the policy option has in itself had little impact on providing improved enforcement of citizens' rights regarding the free movement of workers.

Consequently, **it is difficult to assess the extent of any impacts** this policy option may have on nationality-based discrimination against EU migrant workers and their families. The ex-ante assumption that the policy option would lead to a reduced need for national advisors to offer legal support or representation did not seem to have materialised yet. The case study showed that the awareness of the issue among employers and employees was not very strong, and most of the discriminatory behaviour had therefore not necessarily been brought into the light.

Nevertheless, it can be assessed, as suggested by experts interviewed for this case study, that including a definition of nationality-based discrimination in EU law would be a necessity for providing clearer rights and more legal certainty about the concept of discrimination on the basis of nationality. Consequently, the implementation of this policy option can be regarded as a reinforcing factor for most of the other proposed policy options.

Economic costs

There are no (direct) compliance costs for any target group associated with the option as it is a general rule that does not stipulate any kind of obligation. However, should the numbers and frequency of legal claims increase, one could assume that this would entail legal and compensation costs for several stakeholders (official authorities, employers and claimants in particular) associated with legal cases. As the option seems to have had limited impact in terms of numbers and frequency of legal action, these costs are not considered relevant nor significant for the purpose of this study.

7.3 Policy option 3b – information obligations

This policy option would contribute to raising awareness among EU citizens on their rights as migrant workers by making awareness-raising a national obligation. The policy option would also contribute towards raised awareness amongst employers. However, full impact can only be obtained in close collaboration with other stakeholders.

7.3.1 Assessment of impacts

The option proposes making the awareness-raising among EU migrant workers and their families, employers, national authorities as well as other stakeholders a national obligation and to make its implementation legally binding.

The case study results show that such a policy option would contribute towards increased awareness of rights among EU migrant workers and contribute to removing obstacles for the free movement of workers due to an assumed strong link between access to information and the actual exercise of rights. At the same time, it should be acknowledged that the positive impacts are a result of several stakeholders and contributors working together, meaning that they have come about not only due to the activities carried out by the equality body researched in our case study.

It can be assessed that the positive impact on **EU migrant workers** and their families would materialise in the form of better understanding of their legal rights, decreasing discrimination at the work-place and in accessing services.

This is measured by decreases of non-Irish reporting having no understanding of their rights, from 38% in 2004 to 27% in 2010²²⁸. These figures relate to migrant workers in general; however, an impact can be expected in relation to EU migrant workers if awareness increased among all migrant workers.

Based on the case study findings, it can be assumed that positive developments **amongst employers** would be an increased share of organisations with a formal equality policy (from 75% in 2003 to 84% in 2009 in the case study²²⁹), as well as an increased willingness to implement equality measures.

Similar to policy option 2, the central critical factor in this policy option is for information to reach the target audiences: citizens, employers, national authorities and other stakeholders.

No direct obstacles were identified when it came to transferring this policy to all Member States. However, close collaboration between public authorities and different advocacy groups was important for the success of the policy, as the positive attitudes amongst the latter groups towards free movement of workers was an important precondition for the success of the policy.

Economic costs

Qualified as an information obligation, the option would impose administrative costs on the responsible body. These consist of the one-off resp. implementation costs for setting up an information infrastructure (website, public information centre/phone hotline) and recurring/ongoing costs for information activities. The resulting recurring administrative costs consist of man-hour, equipment, outsourcing and other costs.

The case study identified recurring compliance costs for the affected national authority of around 340,000 euro annually. However, only a smaller part of these costs is directly and only associated with providing information regarding discrimination of EU migrant workers based on nationality; and these costs were difficult to single out. There would be variation in the costs between Member States due to three determining factors: 1) number of stakeholders to be targeted; 2) "state of play" in each country with regards to the information infrastructures; and 3) labour costs in the individual Member State.

7.3.2 Impacts on cluster and EU level

Close collaboration between public authorities and different advocacy groups may affect the success of the policy and hence the transferability of the results of this policy option. The extent to which the Member States already have similar policies in place might also affect the impacts of the policy option.

The case study concluded that awareness increased by 11% within the population of migrants in general over a period of six years in Ireland²³⁰. The current level of awareness cannot be estimated, but as the level of awareness in the Irish case study increased from 62% to 73%, a similar 11% increase in all affected Member States could be considered as a rough projection.

Five Member States (IE, PT, SK, SE and the UK) already have a corresponding legally binding policy in place. Three Member States (FR, RO and NL) do not. For the remaining 19 Member States, it is not known whether a similar policy is in place. Therefore a minimum and a maximum estimate were calculated. In the minimum case, it is assumed that the policy is implemented in all Member States where it is not known whether the policy is actually implemented. In the

²²⁸ Quarterly National Household Survey produced by the Irish Central Statistics Office, June 2011

²²⁹ Ibid

²³⁰ The Equality Authority and the Economic Social Research Institute (forthcoming) "2003 and 2009 National Workplace surveys"

maximum case, it is assumed that the policy is not implemented. Table 20 shows the number of potentially affected migrants under the assumption that awareness increases from 62% to 73%. However, as can be seen from the table, there is quite a difference between the minimum and maximum estimates due to large uncertainty on whether Member States already have a policy similar to policy option 3b in place.

Table 20: Member States divided by policy implementation; yes, no and partly

| Member State | Policy option implemented | Number of migrants 2010 ('000) | Minimum estimate: 11% of EU migrants | Maximum estimate: 11% of EU migrants |
|------------------------|---------------------------|--------------------------------|--------------------------------------|--------------------------------------|
| Austria | Not known | 184,9 | 0 | 20,339 |
| Belgium | Not known | 293,6 | 0 | 32,296 |
| Bulgaria | Not known | N/A | 0 | N/A |
| Cyprus | Not known | 46,3 | 0 | 5,093 |
| Czech Republic | Not known | 36,3 | 0 | 3,993 |
| Denmark | Not known | 59,4 | 0 | 6,534 |
| Estonia | Not known | N/A | 0 | N/A |
| Finland | Not known | 22,2 | 0 | 2,442 |
| France | No | 600,0 | 66 | 66 |
| Germany | Not known | 1.394,9 | 0 | 153,439 |
| Greece | Not known | 73,7 | 0 | 8,107 |
| Hungary | Not known | 20,9 | 0 | 2,299 |
| Ireland | Yes | 171,0 | 0 | 0 |
| Italy | Not known | 696,3 | 0 | 76,593 |
| Latvia | Not known | N/A | 0 | N/A |
| Lithuania | Not known | N/A | 0 | N/A |
| Luxembourg | Not known | 98,0 | 0 | 10,78 |
| Malta | Not known | 2,6 | 0 | 0,286 |
| Poland | Not known | 5,5 | 0 | 0,605 |
| Portugal | Yes | 27,9 | 0 | 0 |
| Romania | No | N/A | N/A | N/A |
| Slovakia | Yes | 3,4 | 0 | 0 |
| Slovenia | Not known | N/A | 0 | N/A |
| Spain | Not known | 811,0 | 0 | 89,21 |
| Sweden | Yes | 119,8 | 0 | 0 |
| The Netherlands | No | 140,5 | 15,455 | 15,455 |
| UK | Yes | 1.166,0 | 0 | 0 |
| Total | | 5.974,2 | 81,5 | 493,5 |

Even if only one (Portugal) of the Member States in cluster 1 (see Member States included in this cluster in Table 18 above) already have a similar policy in place, it can be assumed that this policy option would impact **cluster 1** Member States only to a **limited extent** since all countries in the cluster have fewer than 100,000 projected EU migrant workers in 2020 and few barriers.

It is the assessment of the contractor that the 14 Member States grouped in **cluster 2** (IE and SK have a similar policy in place already) would be impacted to **some extent**. This is because

most of the Member States have a very large potential target group of such a campaign due to their high number of EU migrant workers. This would be based on the assumption that the awareness activities were designed in such a way so as to actually reach the intended target groups.

All five Member States in **cluster 3** (see Member States included in this cluster in Table 18 above), of which Sweden and the UK already have a similar measure in place, have both formal and informal barriers vis-à-vis EU migrant workers and their families, as well as a large number of EU migrants. Presuming that awareness activities reach their target groups, it can be expected that policy option 3b could potentially have **some impact** on the Member States in cluster 3. This is supported by the possibility that the administrations in cluster 3 Member States, which are from EU-15, become accustomed to dealing with issues related to EU migrant workers, especially from the new Member States, and thereby increase their awareness about the rights of migrant workers.

7.4 Policy option 3c – legal assistance mechanisms

This policy option intends to ensure the availability of mechanisms of legal assistance to EU migrant workers and their families at the Member State level by imposing an obligation on Member States, through EU law, to provide:

- Means of redress: availability of administrative or judicial procedures for EU migrant workers if they find that their rights have been violated.
- Legal representatives: representation of EU migrant workers by organisations or legal entities in administrative/judicial procedures concerning violations of obligations under Regulation (EU) 492/11.
- Provisions on victimisation: protection of EU migrant workers from dismissal or similar adverse treatment by an employer on the basis of a complaint of discrimination on the grounds of nationality.
- Prevention of discrimination by employers: obligation on employers to engage actively in preventing discrimination on the basis of nationality.
- Equality bodies: requirement of Member States to set up bodies or contact points for the promotion of equal treatment on the basis of nationality and covering all aspects of Regulation (EU) 492/11.

7.4.1 Assessment of impacts

The case study divided the above measures into two different purposes: remedy and prevention. The assessment of impacts was also made accordingly. As can be seen from the above, while the expected outcome of the remedial measures was not reached (more court cases on nationality discrimination), one of the specific impacts – increased access to legal representation – was achieved. It can thus be concluded that the overall objective of providing EU migrant workers with the means to claim their rights has been reached. The legal measures are in place if migrant workers find a need and a use for them.

Concerning prevention, the conclusion of the case study was that the prevention measures can be claimed to have an (indirect) impact on increasing awareness of the right of EU migrant workers to not be discriminated against on the grounds of their national origin.

None of these impacts are measurable or quantifiable, but based on qualitative assessments made by interviewed experts.

Economic costs

The policy option is associated with different types of costs for each type of measure. Compliance costs to employers exist with respect to the “active measures to prevent discrimination” taken by

employers, but are very difficult to quantify. In the Swedish study referred to in section 6.5.6 they were estimated it being around 130 SEK (~15 EUR) per employee per year on average. This primarily covers the costs of human resources managers to develop guidelines and similar initiatives, and is considered to be non-substantial costs.

7.4.2 Impacts on cluster and EU level

It is interesting to see the impacts of the policy option 3c in the light of the remaining policy options. For example, the policy option 3d on reversed burden of proof (see section 6.6) was found to work better if it was supported by additional measures supporting remedy (e.g. legal representation) and awareness-raising. This is why the impacts of policy option 3c should be assessed in combination with other policy options.

Table 21: Member States divided by policy implementation; yes, no and partly

| Member State | Policy option implemented | 4 out of 5 elements in place | Number of migrants 2010 ('000) | Potential number of affected migrants ('000) |
|-----------------|---------------------------|------------------------------|--------------------------------|--|
| Austria | No | Yes | 184,9 | 184,9 |
| Belgium | No | Yes | 293,6 | 293,6 |
| Bulgaria | No | Yes | N/A | N/A |
| Cyprus | No | Yes | 46,3 | 46,3 |
| Czech Republic | No | No | 36,3 | 36,3 |
| Denmark | No | No | 59,4 | 59,4 |
| Estonia | No | No | N/A | N/A |
| Finland | No | Yes | 22,2 | 22,2 |
| France | No | Yes | 600,0 | 600,0 |
| Germany | No | No | 1.394,9 | 1.394,9 |
| Greece | No | No | 73,7 | 73,7 |
| Hungary | No | No | 20,9 | 20,9 |
| Ireland | No | No | 171,0 | 171,0 |
| Italy | No | Yes | 696,3 | 696,3 |
| Latvia | No | Yes | N/A | N/A |
| Lithuania | No | Yes | N/A | N/A |
| Luxembourg | No | No | 98,0 | 98,0 |
| Malta | No | No | 2,6 | 2,6 |
| Poland | No | Yes | 5,5 | 5,5 |
| Portugal | No | Yes | 27,9 | 27,9 |
| Romania | No | No | N/A | N/A |
| Slovakia | No | No | 3,4 | 3,4 |
| Slovenia | Yes | Yes | N/A | N/A |
| Spain | No | No | 811,0 | 811,0 |
| Sweden | Yes | Yes | 119,8 | 0,0 |
| The Netherlands | No | No | 140,5 | 140,5 |
| UK | No | Yes | 1.166,0 | 1.166,0 |
| Total | | | 5.974,2 | 5.854,4 |

Most Member States do not have all the elements of the policy option in place. However, four of the five elements of policy option 3c are already in place (in some form or another) in 12 of the Member States²³¹, even though these are not in all cases linked to discrimination on the grounds of nationality. The impacts of the policy option should also be seen in the light of the role of the

²³¹ AT, BE, BG, CY, FI, FR, IT, LT, LV, PL, PT, UK

trade unions, as they were identified as an enabling and supporting factor in the case study. In Member States without strong labour unions, the impacts are expected to be even smaller.

Based on the conclusions on the impact of the policy option, assessment of the potential impact on the baseline for each cluster of Member States can be made.

With respect to cluster 1 (see Member States included in this cluster in Table 18 above), the policy option is **not likely to change** the baseline scenario. It can be seen that five of the Member States²³² in this cluster have all or four out of five elements of the policy option in place. The policy option can be expected to have some impacts in the three Member States that do not have at least four out of five elements of the policy option in place, representing a total of 54.300 migrants. The small impacts on awareness-raising are expected to materialise in all Member States that do not yet have the policy option in place. However, many of the Member States in this cluster are EU-10, and it seems that the reach of labour unions in these Member States is below EU average, bringing the impact even more down.

The policy option is likely to change the baseline scenario for cluster 2 (see Member States included in this cluster in Table 18 above) **to a limited extent**. The majority²³³ (eight out of 14) of the Member States in this cluster do not have at least four out five elements of the policy option in place, which is expected to increase the impacts. The policy option would thus potentially have an impact on 1.4 million EU workers. However, as the impacts found in the case study were relatively small and mainly on a specific level, the impacts are also expected to be limited for this cluster. The policy option may to some extent decrease the informal barriers in place, as the introduction of the elements in this policy option may support the correct administration and implementation of the rights of EU migrant workers, in particular with respect to remedy.

Of the five Member States in cluster 3 (see Member States included in this cluster in Table 18 above), two have the policy option partly in place, while three do not. The policy option is hence likely to change the baseline scenario for cluster 3 **to a limited extent**. The introduction of the policy option could potentially have an impact on 1.5 million EU workers in the two affected Member States, but as the expected impacts are limited on an overall level, no substantial impacts should be expected. The most important aspect, which is providing EU migrant workers with the means to claim their rights, may lead to some positive impacts. Also, as in cluster 2, the informal barriers may be decreased due to the introduction of the different elements in this policy option that may support the implementation of other policy options.

An overall conclusion can be made that the policy option would change the overall baseline scenario at a maximum to a limited extent. The identified impacts were all in all relatively small, and even though there are several Member States where the policy option is not in place, there are several other factors that may bring the impacts of this policy option down.

²³² BG, FI, PL, PT, SI.

²³³ AT, CY, CZ, EL, FR, EL, IE, IT, LT, LV MT, SK, ES, SE and NL.

7.5 Policy option 3d – reversal of the burden of proof

The objective of this sub-option is to make it easier and less burdensome for EU migrant workers to file complaints of discrimination by reversing the burden of proof, putting it on the defendant (alleged discriminator) rather than the plaintiff to prove that there has been no breach of the principle of equal treatment.

7.5.1 Assessment of impacts

As the impact case study revealed no cases and therefore no corresponding impacts in terms of costs and benefits, the impact assessment is limited to a discussion about the specific impacts of different stakeholder groups based on qualitative assessments by the interviewed experts. These stakeholder groups are EU migrant workers, employers and the national authorities. The impacts for each group are discussed in the following sections.

Research indicates that at least in theory, reversal of burden of proof makes it easier for the EU migrant workers to bring forward the claim about discrimination. This burden is now shifted towards the employer. In addition the process is made easier for the national monitoring authorities and other stakeholders, like the workers' unions, as they may find it easier to press discrimination cases for their beneficiaries. Overall the reversal of burden of proof makes it easier to win in or settle outside the court.

However, this is not the only obstacle for legal claims that are still very cumbersome. The main obstacle seems to be that EU migrant workers are not aware of their own rights. Moreover, reversed burden of proof only shifts the burden once, i.e. if the case goes to court. In practice, the victim of discrimination or the organisation representing him/her must still show proof of discrimination, forming the basis for a court case before the judicial process can be rolled out. In this understanding, the burden on the plaintiff may not be reduced by much. This means that an introduction of reversed burden of proof is most effective if combined with other relevant measures, such as the possibility for legal representation. This is believed to address the barrier to making a law suit posed by the vast costs related to it.

As already mentioned in Chapter 6, a recent *Comparative study on access to justice in gender equality and anti-discrimination law*, have found rather mixed results of introducing a reversal of burden of proof in anti-discrimination law in the different Member States, and the new provisions do not appear to clarify and simplify things as much as intended. Moreover, there is often not a clear demarcation between the “prima facie”-step (evidence that there is a case of discrimination to be made) and when the reversal of burden of proof steps into force; again placing a comparatively larger burden on the claimant than the defendant. However, evidence in some of national reports analysed as part of the study, indicated that the difficulties with reversing the burden of proof in practice resulted from limited awareness among judges and other members of the legal profession with respect to the requirement as well as the means of its application²³⁴. The case study did not shed light on the level of awareness among judges and other members of the legal profession dealing with rights of EU migrant workers, nevertheless the contractor suggest that a future policy option should consider how to ensure the necessary awareness among judges and other members of the legal profession.

Economic costs

No compliance costs were identified, and the costs of making a legal claim are expected to stay unchanged for EU migrant workers (who would still need to bring their cases in front of the appropriate body) and increase for SMEs and employers as they would bear the burden of proof

²³⁴ Milieu for DG Justice (2011): “[Comparative study on access to justice in gender equality and anti-discrimination law – synthesis report](http://ec.europa.eu/justice/gender-equality/files/final_report_access_to_justice_final_en.pdf)”; p. 24-25. (http://ec.europa.eu/justice/gender-equality/files/final_report_access_to_justice_final_en.pdf)

after implementing the policy option. In addition, more cases may be settled in favour of the worker and may increase the employers' compensation costs paid to the EU migrant workers.

In the long term, the amount of cases may decrease which causes the costs for both employees and employers to decrease. This is however only speculation.

7.5.2 Impacts on cluster and EU level

As always the policy option will have no impact on Member States that already apply reversed burden of proof. The effect can furthermore be said to be limited in the cases where the Member State has a system of shared burden of proof. Seven Member States have a reversed burden of proof and 14 Member States have a system of shared burden of proof. Therefore only six Member States may experience the full impacts of converting to a reversed burden of proof system. Once again, a minimum and maximum estimate is calculated in Table 22 below.

Table 22: Member States divided by policy implementation; yes, no and partly

| Member State | Policy option implemented | Number of migrants 2010 ('000) | Minimum estimate – MS with partly implemented policy do not benefit | Maximum estimate – MS with partly implemented policy benefit |
|-----------------|---------------------------|--------------------------------|---|--|
| Austria | Partly | 277,229 | 0 | 277,229 |
| Belgium | Yes | 392,848 | 0 | 0 |
| Bulgaria | Partly | N/A | 0 | N/A |
| Cyprus | No | 91,395 | 91,395 | 91,395 |
| Czech Republic | No | 79,776 | 79,776 | 79,776 |
| Denmark | Partly | 112,052 | 0 | 112,052 |
| Estonia | Yes | N/A | 0 | 0 |
| Finland | Yes | 36,419 | 0 | 0 |
| France | Partly | 701,214 | 0 | 701,214 |
| Germany | No | 1,684,138 | 1,684,138 | 1,684,138 |
| Greece | Partly | 118,333 | 0 | 118,333 |
| Hungary | Partly | 30,919 | 0 | 30,919 |
| Ireland | Partly | 109,960 | 0 | 109,960 |
| Italy | No | 1,593,695 | 1,593,695 | 1,593,695 |
| Latvia | Yes | N/A | 0 | 0 |
| Lithuania | Partly | N/A | 0 | N/A |
| Luxembourg | No | 136,233 | 136,233 | 136,233 |
| Malta | Not known | 4,080 | 0 | 4,080 |
| Poland | Yes | 5,362 | 0 | 0 |
| Portugal | Yes | 27,452 | 0 | 0 |
| Romania | Partly | N/A | 0 | N/A |
| Slovakia | Partly | 3,240 | 0 | 3,240 |
| Slovenia | Partly | N/A | 0 | N/A |
| Spain | Partly | 1,286,771 | 0 | 1,286,771 |
| Sweden | Yes | 146,843 | 0 | 0 |
| The Netherlands | Partly | 169,976 | 0 | 169,976 |
| UK | Partly | 2,208,538 | 0 | 2,208,538 |
| Total | | 9,216,475 | 3,585,237 | 8,607,549 |

Based on the conclusions on the impact of the policy option, the potential impact on the baseline for each cluster of Member States can be assessed.

The policy option is likely to change the baseline for cluster 1 (see Member States included in this cluster in Table 18 above) **to a limited extent**. Most Member States in this cluster either have reversed or shared burden of proof in place, which is why changing the legislation would only have a limited impact on these Member States. The potential number of EU workers affected would be 20.900. Considering that the policy option is likely to be more effective should other relevant measures also be in place, it can be seen that most of these Member States enforce the free movement of EU workers' rules in their national legislation. The impact of the policy option may thus be stronger than otherwise. The countries may however have low incentives to, for example, raise awareness about the existence of the legislative measure, bringing the impact again downwards.

With respect to cluster 2 (see Member States included in this cluster in Table 18 above), the policy option is likely to change the baseline **to a limited extent**. The impacts are expected to be somewhat more extensive than for cluster 1, as the cluster also includes Member States that do not have the policy option in place. Moreover, the number of immigrants affected is higher (2.809.500), which is why the potential impact would have a larger potential maximum target group. However, the Member States in this cluster have more formal barriers in place than cluster 1, which may not support the implementation of the policy option. Likewise, the baseline scenario for cluster 2 is more negative than the one for cluster 1, bringing the impacts somewhat down.

The Member States in cluster 3 (see Member States included in this cluster in Table 18 above) consist both of Member States where the policy option is in place and of those where it is not. This is why the policy option is expected to change the baseline **to a limited extent**. Most of the Member States have formal barriers to free movement of EU workers in place, making the implementation of the policy option more relevant. There may however be limited incentives among the Member States to implement the policy option, which may lead to additional administrative barriers even when the formal barriers are removed.

An overall conclusion can be made that the impacts of this policy option are very much dependent on EU migrant workers actually knowing and claiming their rights. Therefore this policy option should be combined with a policy option that raises awareness. The policy option is expected to have a limited impact on the overall baseline scenario.

7.6 Policy option 3e – sanctions and compensations

This sub-option aims to ensure that real and effective compensation or reparation is available to victims of discrimination on the grounds of nationality in all Member States by introducing a legal obligation on them to make sure that sanctions are applied and compensation payments made upon violations.

7.6.1 Assessment of impacts

The aim of the policy option and the French legislation is to provide EU migrant workers with legal instruments to claim their rights. The expected preventive effect of the legislation on nationality-based discrimination cannot be measured or quantified. It is however likely that the legislation has had a preventive effect on discrimination. The theory of deterrence dictates that "people will engage in criminal and deviant activities if they do not fear apprehension and punishment". The research on deterrence furthermore indicates that for some crimes, especially acts to produce economic gain and certain types of street crime, there is a correlation between preventive strategies and the reduction of criminal activities²³⁵.

Discrimination on the grounds of nationality cannot be considered as "acts to produce economic gain or street crime". Therefore the matter of a preventive effect of the legislation remains open to discussion.

As concluded above, *the policy option does to some extent lead to improving means to claim rights as regards free movement of workers*. It can also be argued that the option improves the legal certainty of non-discrimination, rights of EU migrant workers and their families, and the awareness of these rights.

Economic costs

The French case study did not reveal any costs due to the fact that the policy option has not been actively used in the country. However there are theoretical costs associated with this policy option on the man-hours for running the proceedings and the enforcement costs at the equality authority as well additional costs for employers – private and public – if they are imposed sanctions and being obliged to provide compensation to workers.

As the individual costs could not be identified in the case study, it was not possible to multiply these costs to the EU level.

7.6.2 Impacts on cluster and EU level

Theoretically it should be possible for all Member States that have not already included a similar policy in their national legislation to achieve a preventive effect of the policy option on nationality-based discrimination. Currently 23 Member States (all MS except DK, DE, EL and MT) have provisions on sanctions and compensation to victims of discrimination. These are currently not all linked to discrimination on the grounds of nationality, which means that an additional measure of prohibiting discrimination on the grounds of nationality is needed in many Member States. However, assuming that this is in place, four Member States (DK, DE, EL and MT) would benefit from this policy option. The expected amount of affected EU migrant workers is summarised in Table 23.

²³⁵ Rational Choice and Deterrence Theory (<http://www.umsl.edu/~keelr/200/ratchoc.html>)

Table 23: Member States divided by policy implementation; yes, no and partly

| Member State | Policy option implemented | Number of migrants 2010 ('000) | Potential number of affected migrants ('000) |
|-----------------|---------------------------|--------------------------------|--|
| Austria | Yes | 184,9 | 0 |
| Belgium | Yes | 293,6 | 0 |
| Bulgaria | Yes | N/A | 0 |
| Cyprus | Yes | 46,3 | 0 |
| Czech Republic | Yes | 36,3 | 0 |
| Denmark | No | 59,4 | 59,4 |
| Estonia | Yes | N/A | 0 |
| Finland | Yes | 22,2 | 0 |
| France | Yes | 600,0 | 0 |
| Germany | No | 1.394,9 | 1.394,9 |
| Greece | No | 73,7 | 73,7 |
| Hungary | Yes | 20,9 | 0 |
| Ireland | Yes | 171,0 | 0 |
| Italy | Yes | 696,3 | 0 |
| Latvia | Yes | N/A | 0 |
| Lithuania | Yes | N/A | 0 |
| Luxembourg | Yes | 98,0 | 0 |
| Malta | No | 2,6 | 2,6 |
| Poland | Yes | 5,5 | 0 |
| Portugal | Yes | 27,9 | 0 |
| Romania | Yes | N/A | 0 |
| Slovakia | Yes | 3,4 | 0 |
| Slovenia | Yes | N/A | 0 |
| Spain | Yes | 811,0 | 0 |
| Sweden | Yes | 119,8 | 0 |
| The Netherlands | Yes | 140,5 | 0 |
| UK | Yes | 1.166,0 | 0 |
| Total | | 5.974,2 | 1.530,6 |

Based on the conclusions on the impact of the policy option, the potential impact on the baseline for each cluster of Member States can be assessed.

With respect to cluster 1 (see Member States included in this cluster in Table 18 above), the policy option is likely to change the baseline **to a limited extent**. The Member States in cluster 1 all have a measure similar to the policy option in place, so the only potential impact is seen in the increased awareness of rights among the EU migrant workers to in fact claim their rights.

With respect to cluster 2 (see Member States included in this cluster in Table 18 above), the policy option is likely to change the baseline **to some extent**. There are Member States in cluster 2 that do not have a measure similar to the policy option in place. The Member States in this cluster although have a relatively small potential target group for intervention (76.300). As the impact of the intervention itself is considered to improve means to claim rights to some extent, it can be said that the baseline scenario for cluster 2 will also improve to some extent. This should particularly be true because several countries in this cluster still have transitional schemes in place for EU migrant workers from EU-2.

With respect to cluster 3 (see Member States included in this cluster in Table 18 above), the policy option is likely to change the baseline **to some extent**. Like in cluster 2, there are also Member States in cluster 3 that do not have a measure similar to the policy option in place. The potential number of affected EU workers is 1.454.300. Most of the Member States in this cluster have a high number or share of EU workers. The policy option might change the situation in those Member States that do not have the policy option in place, and increase the awareness of the existing policy option in those that already have it in place.

It can be concluded that the policy option would impact the overall baseline **to a limited extent**, as many Member States already have similar provisions in place. It is likely that the introduction of an EU initiative would increase the awareness of the existence of the provisions, which may lead to the limited positive impact.

7.7 Policy option 3f – dialogue between stakeholders

The objective of this sub-option is to increase dialogue between social partners and NGOs, and consequently improve the knowledge of and correct enforcement of the rights of EU migrant workers and the aspect of equal treatment on the basis of nationality.

7.7.1 Assessment of impacts

The case study concludes that the policy option has increased the awareness among social partners, the national authorities and the members of employers' organisations. This should in theory improve the working conditions of the EU migrant workers, but the case study was not able to quantify this impact in practice partly because few EU migrant workers are members of Dutch labour unions. As described under policy option 2, awareness cannot be measured or quantified in a meaningful way. It is however important to discuss the kind of awareness brought about by the policy option.

According to the experience from the Netherlands, this policy option has the potential of increasing awareness among the employers, labour unions and other involved organisations. As long as these actors play critical parts in producing the wanted effect of reducing discrimination and in turn improving working conditions, the policy option is very likely to have positive impacts. The national authorities hold a vital role in spreading information and thereby further increasing awareness. Increased awareness among employers and employers' organisations can result in direct reduction of nationality-based discrimination and hence the improvement of working conditions.

It is therefore concluded that policy option 3f has in fact the potential to contribute to the awareness among stakeholders of EU workers' rights to free movement which can help to decrease nationality-based discrimination.

Economic costs

Besides costs of implementation, some compliance costs are expected for the social partners and NGO's, even though there are no concrete measures of these in the case study. These compliance costs would mainly consist of man-hour costs for regular meetings and other forms of dialogue. . In the specific Dutch dialogue set-up the compliance costs for the Labour Foundation Secretariat amount to approximately EUR 30,000 per year (see section 6.6.8 above). As the social partners receive compensation for their participation in the meetings, the costs borne by the Secretariat are the main costs.

7.7.2 Impacts on cluster and EU level

The implementation of a policy option similar to 3f may theoretically have positive impacts in terms of increased awareness in all Member States. Five of the Member States currently have

measures that are similar to the policy option in place but, contrary to what is proposed in the policy option, the measures are not binding in any of the Member States.

Table 24: Member States divided by policy implementation; yes, no and partly

| Member State | Policy option implemented | Number of migrants 2020 | Potential number of affected migrants |
|-----------------|---------------------------|-------------------------|---------------------------------------|
| Austria | No | 184,9 | 184,9 |
| Belgium | No | 293,6 | 293,6 |
| Bulgaria | No | N/A | N/A |
| Cyprus | No | 46,3 | 46,3 |
| Czech Republic | Yes | 36,3 | 0 |
| Denmark | No | 59,4 | 59,4 |
| Estonia | No | N/A | N/A |
| Finland | No | 22,2 | 22,2 |
| France | No | 600,0 | 600,0 |
| Germany | No | 1.394,9 | 1.394,9 |
| Greece | No | 73,7 | 73,7 |
| Hungary | No | 20,9 | 20,9 |
| Ireland | No | 171,0 | 171,0 |
| Italy | No | 696,3 | 696,3 |
| Latvia | No | N/A | N/A |
| Lithuania | No | N/A | N/A |
| Luxembourg | No | 98,0 | 98,0 |
| Malta | No | 2,6 | 2,6 |
| Poland | No | 5,5 | 5,5 |
| Portugal | Partly | 27,9 | 0 |
| Romania | No | N/A | N/A |
| Slovakia | No | 3,4 | 3,4 |
| Slovenia | Yes | N/A | 0 |
| Spain | No | 811 | 811 |
| Sweden | Yes | 119,8 | 0 |
| The Netherlands | Yes | 140,5 | 0 |
| UK | Yes | 1.166,0 | 0 |
| Total | | 5.974,2 | 4.483,7 |

Based on the conclusions on the impact of the policy option, assessment of the potential impact on the baseline for each cluster of Member States can be made.

With respect to cluster 1 (see Member States included in this cluster in Table 18 above), the policy option is likely to change the baseline **to a limited extent**. Most of the Member States do not have provisions in place that are similar to this policy option, which is why it can be expected that there would be a positive impact in the Member States in this cluster on the awareness of stakeholders. However, the incentives of the stakeholders on dealing with issues related to EU migrant workers are small due to a lower number of EU migrant workers. This is likely to be a highly limiting factor for the expected impacts. It is also known that many of the new Eastern European Member States have below average levels of union membership, which is even more likely to diminish the interest of the social partners in the topic of EU migrant workers and the potential impact on EU migrant workers.

With respect to cluster 2 (see Member States included in this cluster in Table 18 above), the situation is similar to that in cluster 1: the policy option is likely to change the baseline **to a limited extent**. There are also Member States in this cluster with a lower than average level of

union membership. This is expected to limit the impact of the policy option. The difference to cluster 1 is in the fact that the cluster has a relatively large potential target group for intervention, and as the baseline situation is expected to worsen more in cluster 2 than in cluster 1, the impact will also be smaller.

This policy option is likely to change the baseline of cluster 3 (see Member States included in this cluster in Table 18 above) **to some extent**. Only one of the Member States has anything similar to the policy option in place, which is why positive impacts can be expected in most Member States. The increased awareness among stakeholders may help decrease the additional barriers (in particular the informal ones) that the Member States in this cluster experience. However, as a concrete worsening of the situation is projected in the baseline, it is expected that the impact of this policy option would be limited. It would however have the potential to stop the concretely worsening curve of these Member States.

It can be concluded that the policy option would impact the overall baseline to a limited extent. While most of the Member States do not have similar provisions in place, and positive impacts are expected, the expected impacts are such in character that they can only improve the worsening curve in the baseline scenario. The policy option is most likely to have an impact on Member States where informal barriers exist mainly due to the lack of awareness of stakeholders and citizens concerning EU workers' rights.

7.8 An overview of impacts

To summarise, the following socio-economic impacts²³⁶ to the baseline per cluster, which are mainly based on qualitative assessments, - were identified for the different policy options:

Table 25: Overview of impacts per policy option and cluster

| Policy option | Cluster 1: (BG, EE, FI, HU, PL, PT, RO, SI) | Cluster 2: (AT, CY, CZ, FR, EL, IE, IT, LV, LT, MT, SK, ES, SE, NL) | Cluster 3: (BE, DK, DE, LU, UK) |
|--|---|--|------------------------------------|
| Policy Option 1: No specific action | | | |
| Policy option 2: non-binding guidance | To a limited extent | To some extent | To some extent |
| Policy option 3a: concept of discrimination | No change | No change | No change |
| Policy option 3b: information obligations | To a limited extent | To some extent | To some extent |
| Policy option 3c: legal assistance mechanisms | No change | To a limited extent | To a limited extent |
| Policy option 3d: reversal of the burden of proof | To a limited extent | To a limited extent | To a limited extent |
| Policy option | To a limited extent | To some extent | To some extent |

²³⁶ The contractor did not identify any relevant environmental impacts.

| | | | |
|---|---------------------|---------------------|----------------|
| 3e: sanctions and compensations | | | |
| Policy option 3f: dialogue between stakeholders | To a limited extent | To a limited extent | To some extent |

Based on the evidence considered, the study would indicate that cluster 3 Member States would experience impacts to a limited (3c and 3d) or to some extent (2, 3b, 3e and 3f) should either of the seven policy options but 3a be implemented. Likewise are Member States part of cluster 2 likely to achieve impacts to a limited extent from option 3c, 3d and 3f and to some extent from option 2, 3b and 3e. According to the study, cluster 1 Member States would either experience no change or impacts to a limited extent should either of the seven policy options turn into an EU intervention.

In the following chapter "Comparison of Policy Options" the report will go on to making a comparative analysis of the efficiency, effectiveness and coherence of the seven policy options being considered.

However, before then, an overview of the expected, but in many cases unverified, impacts for each stakeholder are summarised in the table below. The information is primarily taken from the analysis of the policy options in Chapter 7. Due to lack of the quantitative and/or quantitative data the case studies were often not able to assess if the ex-ante expected overall and specific impacts had actually materialised or not for each of the stakeholders, i.e. EU workers and their families, employers (public and private) national authorities and other stakeholders. The table below provides an overview of these expected, but in many cases unverified, impacts per stakeholder.

Table 26: Ex-ante expected impacts on each stakeholder

| Policy option | EU workers and their families | Employers (public and private) | National authorities (all levels of government) | Other stakeholders |
|---|---|--|--|---|
| | <u>Specific impacts:</u> | <u>Specific Impacts:</u> | <u>Specific Impacts:</u> | <u>Specific Impacts:</u> |
| Policy option 2 <u>Overall impacts:</u> <i>Increased awareness of rights of EU migrant Workers</i> | <ul style="list-style-type: none"> Increased awareness of EU and national anti-discrimination legislation Decrease in the level of discrimination | <ul style="list-style-type: none"> Increased awareness of EU and national anti-discrimination legislation | <ul style="list-style-type: none"> Increased awareness of EU and national anti-discrimination legislation | <ul style="list-style-type: none"> Increased awareness of EU and national anti-discrimination legislation <u>among the media</u> |
| Policy option 3a <u>Overall impacts:</u> <i>Improved legal certainty about non-discrimination and rights of EU workers</i> | <ul style="list-style-type: none"> Increased number and frequency of legal action; Increased compensation, administrative and substantive costs, due to increased legal action Reduced level of discrimination (long-term) | <ul style="list-style-type: none"> Increased number and frequency of legal action; Increased compensation, administrative and substantive costs, due to increased legal action | <ul style="list-style-type: none"> Increased number and frequency of legal action; Increased compensation, administrative and substantive costs, due to increased legal action | <ul style="list-style-type: none"> Increased number and frequency of legal action (stakeholders offering legal support/representation) |
| Policy option 3b <u>Overall impacts:</u> <i>Increased awareness of rights of EU migrant Workers</i> | <ul style="list-style-type: none"> Increased access to job opportunities and training Improved working conditions Increased access to support from national employment offices Reduced level of discrimination | <ul style="list-style-type: none"> Legal claims, legal costs, financial costs (e.g. compensation costs) Benefits of employers | <ul style="list-style-type: none"> Administrative and substantive costs (e.g. personnel costs) | <ul style="list-style-type: none"> On social dialogue (e.g. collective agreements) |
| Policy option 3c <u>Overall impacts:</u> 1) <i>Providing EU workers with means to claim their rights</i> 2) <i>Increasing awareness</i> | <ul style="list-style-type: none"> Increased access to job opportunities and training Improved working conditions Increased access to | <ul style="list-style-type: none"> Administrative and substantive costs (e.g. personnel costs) in complying with obligation Legal claims, legal costs, financial costs (e.g. | <ul style="list-style-type: none"> Procedural impacts, such as more informed legislation Administrative and substantive costs (e.g. personnel costs of | <ul style="list-style-type: none"> Costs for non-profit associations offering legal representation |

| | | | | |
|---|--|--|--|--|
| <p><i>about rights of EU migrant workers</i></p> | <p>legal representation</p> <ul style="list-style-type: none"> • Reduced level of discrimination | <p>compensation costs)</p> | <p>Equality Ombudsman in monitoring</p> <ul style="list-style-type: none"> • Financial costs (compensation costs of the Equality Ombudsman/public employers in lost cases) | |
| <p>Policy option 3d <u>Overall impacts:</u> <i>EU migrant workers have means to claim their rights to free movement and non-discrimination</i></p> | <ul style="list-style-type: none"> • Increased willingness to take legal actions in case of nationality-based discrimination • Reduced administrative costs/burdens associated with the argumentation in court proceedings | <ul style="list-style-type: none"> • Potentially increased number of discrimination cases in court • Increased administrative costs/burdens associated with the argumentation in court proceedings | <ul style="list-style-type: none"> • Potentially increased financial costs (court fees) | |
| <p>Policy option 3e <u>Overall impacts:</u> <i>Improved availability of means to claim rights as regards free movement of workers</i></p> | <ul style="list-style-type: none"> • Reduced level of discrimination • Increased frequency of legal action against nationality-based discrimination | <ul style="list-style-type: none"> • Increased awareness of obligations through increased number of cases • Increased frequency of legal claims • Increased financial costs in terms of compensation and settlement costs | <ul style="list-style-type: none"> • Administrative processes/procedural impacts for the equality body, which can assign fines • Substantive costs (i.e. personnel or similar costs) • Financial costs, e.g. compensation or settlement costs | |
| <p>Policy option 3f <u>Overall impacts:</u> <i>Increased awareness of rights of EU migrant Workers</i></p> | <ul style="list-style-type: none"> • Improved working conditions, including salary, working time etc. • Improved access to housing • Reduced level of discrimination | <ul style="list-style-type: none"> • Increased willingness to improve working conditions • Decreased willingness to hire EU workers | <ul style="list-style-type: none"> • Increased pressure to implement measures to improve the situation of EU workers | <ul style="list-style-type: none"> • Increased incentives for social partners to fight against nationality-based discrimination |

| | | | | |
|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

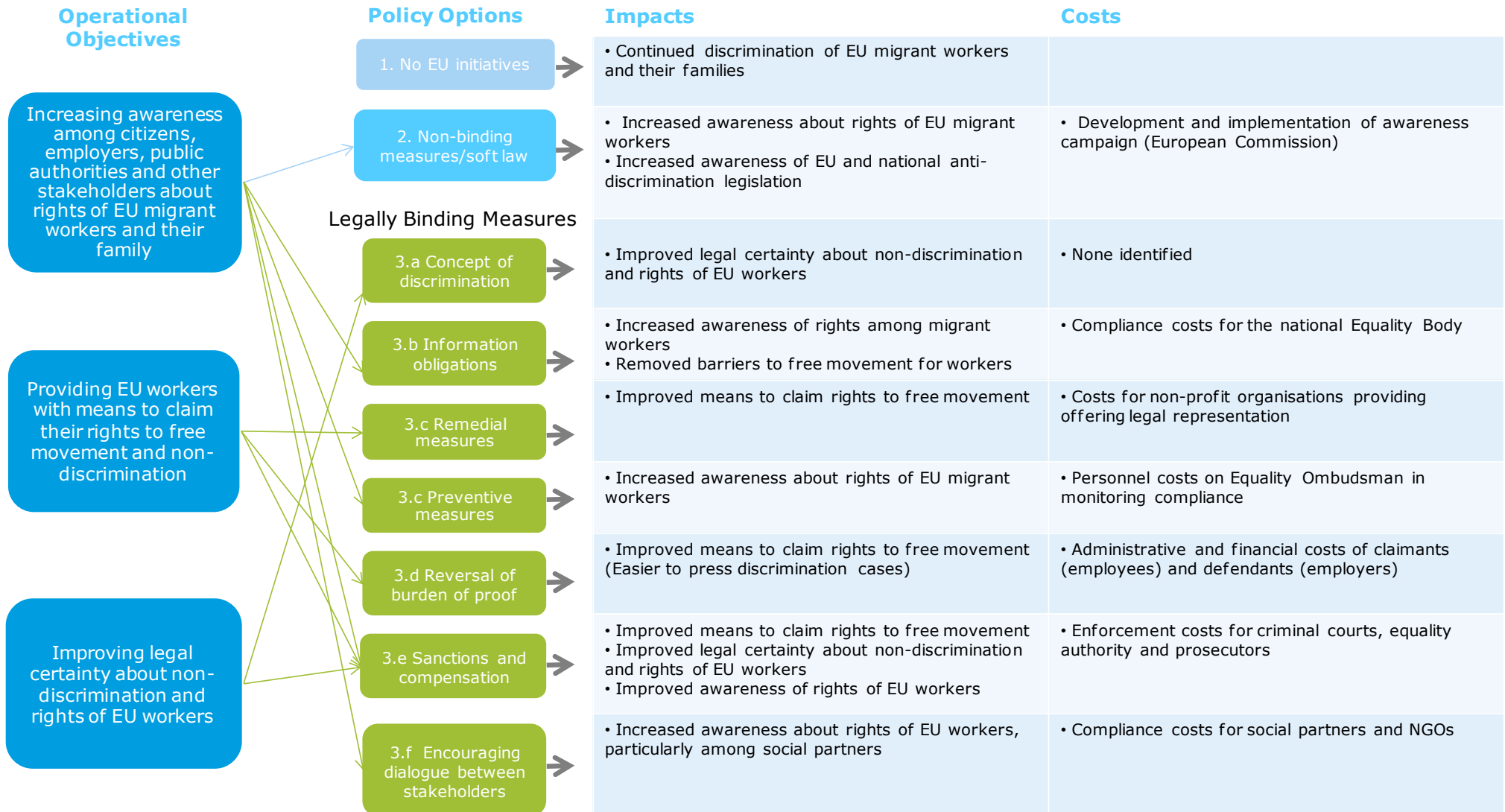
It should not come as a surprise that the above table of ex-ante expected specific impacts per stakeholder showed that EU workers and their families were expected to benefit most from any of the policy options should they be implemented as an EU intervention. The contractor did not identify any potential negative impacts on EU migrant workers and their families.

As the only one, policy option 2 was expected to reach positive impacts for all stakeholders, namely increased awareness of EU and national anti-discrimination legislation.

Based on the ex-ante assessments, employers and national authorities are expected to face additional costs of different kinds for the remaining policy option.

In the figure on the following page, we have summarised the types of impacts and costs for each policy option that we have identified based on both qualitative and quantitative data sources analysed. Furthermore, the figure also shows the links between the policy options and the operational objectives for an EU intervention that we have been able to prove through our analysis of primary and secondary data.

Figure 33: Ex-post assessment of impacts and costs per policy option



First, looking at the identified impacts, the analysis indicated that 5 policy options (2, 3b, 3c – preventive measures, 3e and 3f) would increase the awareness about rights of EU migrant workers although each policy option may be only or primarily targeting specific target groups, e.g. policy option 3f is primarily targeting social partners and NGOs. Furthermore, the findings showed that two policy options (3e and 3a) would improve the legal certainty about non-discrimination and rights of EU migrant workers, while three policy options (3d, 3e, 3c – remedial measures) would provide EU workers and their families with improved means to claim their rights.

Secondly, with regards to the costs it should be noted that implementation costs for Member States associated with the general legislative procedure to implement new legislation, i.a. one or more policy options, are not considered as being part of the costs of a given policy option. Rather, the identified costs are specific to each policy option and the findings show that they are rather diverse with regards to who will be carrier of the costs. In example, the analysis only documented direct costs on employers resulting from one policy option, namely 3d – reversal of burden of proof.

Finally, it should be noted that although the contractor was not able to confirm all ex-ante identified impacts and costs for each policy option, it cannot be excluded that these impacts and/or costs could occur should a policy option be implemented as an EU intervention.

8. COMPARISON OF POLICY OPTIONS

This section combines the findings of the impact analysis into an option appraisal largely using the results of the policy option case studies and the impact assessment. The assessment has further been elaborated with the use of the country profiles and the problem definition presented in this report.

8.1 Refining the policy options

An important first step of this comparison section is to highlight any changes made to the options that have been examined on the basis of the results or specifications to the details of the options.

The case study results generally support the options as they have been defined. On a more detailed level, several of the case studies support an approach that ensures the active engagement of social partners and other relevant stakeholders in specific activities, e.g. in spreading responsibilities to conform the enforcement of citizens' rights as regards freedom of movement of workers across national, regional or local authorities.

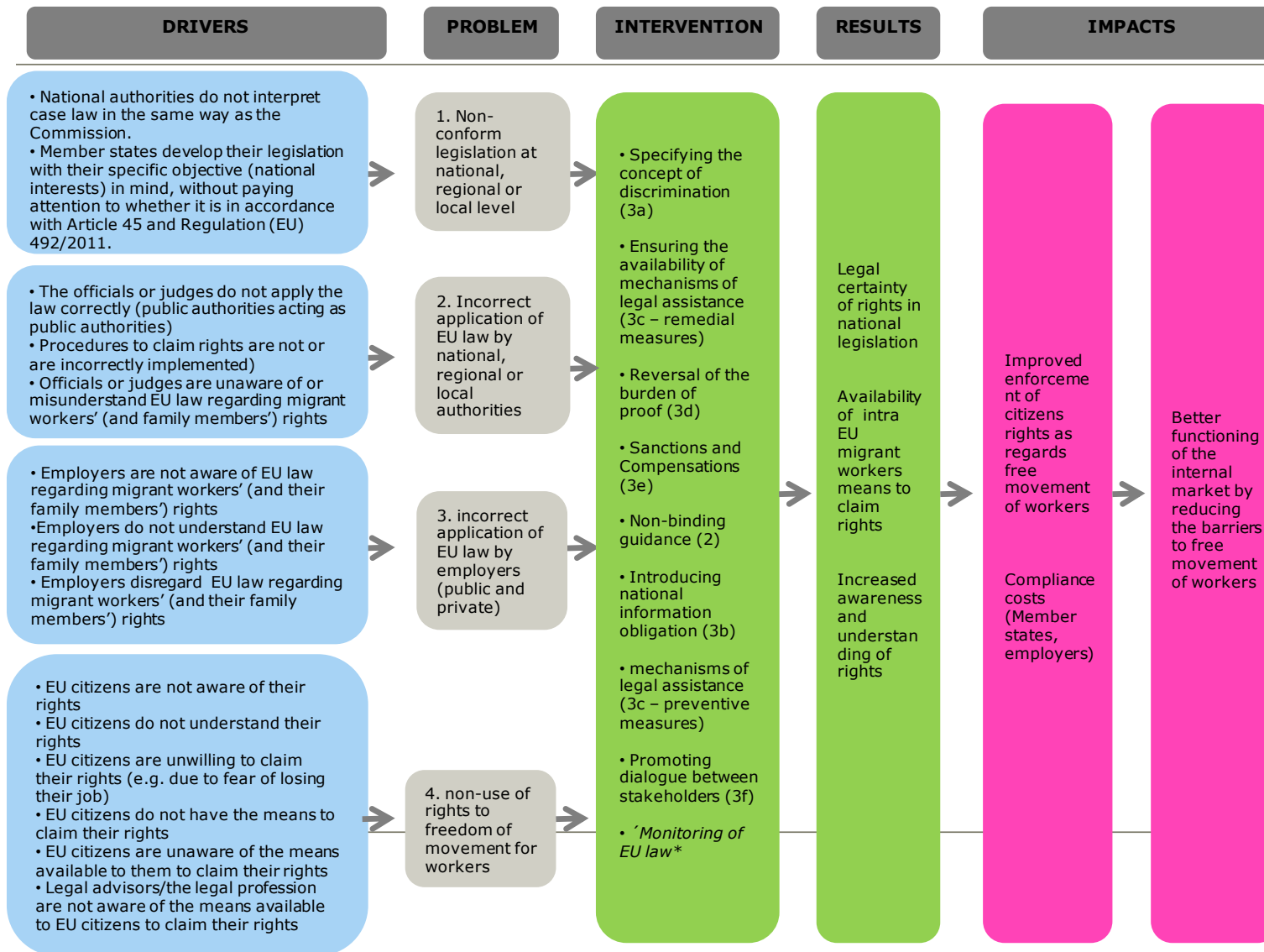
Furthermore, several of the options can build on existing structures of the Member States' equality bodies. Based on the results of the case studies, it would be advisable to specify this in the preferred option if relevant.

8.2 Comparison of total costs and benefits for each option

This impact assessment explores seven policy options directed towards eliminating barriers to the free movement of workers related to the enforcement of EU migrant workers' rights. The assumption is that with clear legal rights, means to claim EU migrant workers' rights, and increases in the awareness of their existence, discrimination against EU migrant workers will decrease. This will thus improve the enforcement of citizens' rights as regards free movement of workers, and ultimately support a better functioning of the internal market by reducing barriers to free movement of workers. This section compares the seven policy options and their expected impacts on the identified problem, which serves as the grounds of comparison and final selection of policy option(s).

As a reminder, the below figure highlights the coherence between the identified drivers and problems, the set objectives and the intended impacts as described in the previous chapters. This intervention logic has been used to structure the subsequent comparison of options, with a focus on the identified results and impacts.

Figure 34: Ex-post assessment of impacts of each policy option



8.2.1 Clear legal rights or means to claim existing legal rights

The intervention logic above highlights the following policy options as relevant for results linked to legal certainty of rights in national legislation and availability for EU migrants to means to claim rights:

- Specifying the concept of discrimination (3a)
- Ensuring the availability of mechanisms of legal assistance (3c – remedial measures)
- Reversal of the burden of proof (3d)
- Sanctions and compensations (3e)

These policy options all have in common their aim towards strengthening the rights of EU migrant workers in national legislation, or providing EU migrant workers with better means to claim their rights. The detailed discussions on the impacts of the policy options are found in Chapter 7. For the purposes of this discussion, impacts will only be presented in an aggregated format.

The previous sections have shown how the objective of **policy option 3a** is to give nationality-based discrimination the same legal status as discrimination on other grounds – in practice, by including a definition of nationality-based discrimination in EU law. The case study concluded that the policy option in itself had little impact on providing improved enforcement of EU citizens' rights as regards the freedom of movement of workers. As a stand-alone-initiative, this policy option is therefore not very effective. However, it can be assessed that including a definition of nationality-based discrimination in EU law would be necessary for providing clearer rights and more legal certainty as well as to ensure equal treatment across all Member States. Consequently, this policy option can be regarded as a reinforcing factor for many of the other proposed policy options. Moreover, as there are no direct compliance costs for this policy option, it is concluded that the option is relatively efficient. Moreover, as stressed by experts in the field, there is an important symbolic value of doing this,

The objective of **policy option 3c** is to ensure the availability of five mechanisms of legal assistance to EU migrant workers. Two of the five measures (obligation on employers and equality body) actually serve a purpose of preventing discrimination by affecting awareness of the issue and are thus included in the comparison of options which aim towards the objective of raising awareness. The case study could not quantify impacts in terms of increased number of court cases, but based on qualitative assessments of experts interviewed, concluded that the policy option reaches the objective of providing EU migrant workers with means to claim their rights. In particular, the aspect of (increased) access to legal representation was considered important and a specific impact of the introduction of the Swedish Discrimination Act. According to the findings of policy option 3d, this aspect can also be regarded as a measure for increasing the effectiveness of other policy options, such as introducing reversed burden of proof, since it addresses an (unforeseen) obstacle to achieving the expected impact of more court cases – the extensive costs of a legal procedure. Since the case study findings showed evidence of direct costs of the remedial measures of option 3c, it can be concluded that these elements of the policy option are moderately efficient.

The objective of **policy option 3d** is to make it easier for EU migrants to file complaints about discrimination on the basis of nationality by reversing the burden of proof. The case study revealed no empirical evidence on how many cases this affected or number of successful cases, but based on qualitative assessment of experts interviewed concluded that the reversed burden of proof made it easier in theory for the EU migrant workers to bring forward claims about discrimination. However, it is concluded that this policy option is expected to have a limited impact on the baseline scenario, although it can prove to be more effective in combination with other measures, such as ones concerned with awareness raising and perhaps access to legal representatives. As the policy option does not involve compliance costs, efficiency is assessed to be moderate.

The objective of **policy option 3e** is to ensure that real and effective compensation or reparation is available to victims of discrimination on the grounds of nationality. The case study could not quantify any direct effects in terms of increased frequency of legal action, but concluded, based on qualitative assessment of the experts interviewed, that the policy was likely to have preventive effects. It is therefore concluded that the policy option will impact the baseline

scenario to some extent both in clusters 1 and 2. The policy would only involve low costs. It is therefore concluded that the policy option has moderate efficiency.

The table below summarises the impacts of the four policy options, primarily on the basis of a qualitative assessment.

Table 27: Impacts of the four policy options

| Intervention | Impact | | | |
|--|---|--|---|--|
| | Effectiveness | Efficiency | Coherence | |
| Policy option 3a: – concept of discrimination | Low effectiveness as a stand-alone-initiative, but more effective in combination with other initiatives | No direct costs. The policy option is therefore relatively efficient when successfully implemented in combination with other initiatives | Moderately positive impacts, but low costs. Therefore a net positive impact | |
| Policy option 3c: legal assistance mechanisms (remedial measures) | Low effectiveness as a stand-alone-initiative, but more effective in combination with other initiatives | No direct costs. The policy option is therefore relatively efficient when successfully implemented in combination with other initiatives | Moderately positive impacts, but low costs. Therefore a net positive impact | |
| Policy option 3d: reversed burden of proof | To some extent effective | Low costs. The policy option is therefore moderately efficient. | Some positive impacts, low costs. The net effect is positive | |
| Policy option 3e: sanctions and compensations | The policy is to some extent effective, as preventive impacts are expected. | Low costs. The policy option is therefore moderately efficient. | Some positive impacts, low costs. The net effect is positive | |

A full overview of expected (ex-ante) and ex-post (documented) impacts, including costs, per stakeholder group is included in Table 26 (ex-ante) and Figure 33 (ex-post) in section 7.8

Furthermore, the level of proportionality should be considered. Moreover, to what extent are the expected impacts proportionate with costs involved in implementing and enforcing a given policy option. However, due to difficulties in quantifying both costs and impacts, it would be premature of the contractor to draw firm conclusions on this.

This impact assessment study concluded that carrying out a specific analysis on sectoral competitiveness was not required as it was deemed that none of the suggested policy options would have a significant impact on industry. Moreover, the proposed policy options are not targeted specific sectors but the industry and labour market as a whole, hence the policy options are not predicted to have a significant impact on cost/price competitiveness, innovative competitiveness, effective market competition or specific sector's market share on the international market.

8.2.2 Increased awareness

These policy options all have in common their aim towards raising awareness of EU migrant workers' rights among EU migrant workers themselves and other important stakeholders. Detailed discussions of the, primarily qualitative, impacts of the policy options are found in Chapter 7. For the purposes of this discussion, impacts are only presented in an aggregated format.

The objective of **policy option 2** is to raise awareness of the rights of EU migrant workers among EU migrant workers themselves and important stakeholder groups, such as employers, national authorities, employees' and employers' organisations. The case study concluded that the campaign used as a case example was effective to some extent in raising awareness among journalists. Moreover, it had the effect of bringing stakeholder associations together in working for a common goal. It is therefore concluded that the option is potentially effective, if the specific target groups and the ways of reaching them are defined. This policy option also implies substantial costs, mostly at the EU level (EUR 3 million per year). Although costs and effects cannot be directly compared, it is concluded that the initiative is moderately efficient.

The objective of **policy option 3b** is to raise awareness among EU citizens of their rights as migrant workers by making raising awareness a national obligation. All interviewed stakeholders believed that the link between access to information on rights and the actual exercise of rights is strong, which leads to the assumption that the initiative would probably lead to better understanding of legal rights among EU migrant workers and their families. As the impact assessment concludes that administrative costs do not seem to be significant, this policy option is assessed as relatively efficient.

As described in the above, two of the five elements of **policy option 3c** – obligation on employers to prevent discrimination and the equality body - are preventive measures that aim to increase awareness of discrimination issues among employers and the general public (through the work of the equality ombudsman). The case study showed no significant impacts of the obligation on employers in Sweden. Moreover, the public discourse in Sweden on discrimination issues and the level of awareness are assumed to be important factors in explaining the small impact on the level of discrimination, and the most important factor encouraging employers to work actively with discrimination issues is pressure from the public to show social responsibility. The level of and effects of such pressure may also be different in other Member States without the same history of debating discrimination issues as in Sweden. Furthermore, this measure comes with a cost (~15 EUR per employee/year on average), and the efficiency of this element of the policy option is therefore assessed to be low. In terms of the work of the equality ombudsman, there is no concrete empirical evidence of its impacts, but qualitative assessments point towards a contribution by the work of the ombudsman's office towards raising awareness of discrimination issues. The case study was not able to provide a complete assessment of the costs of the equality ombudsman's work, but they are considered relatively small compared to the broad reach achieved via networks with other stakeholder organisations. Together the preventive measures of policy option 3c are assessed as moderately efficient.

The objective of **policy option 3f** is to improve the knowledge and correct enforcement of the rights of EU migrant workers by encouraging dialogue between organisations concerned with the free movement of workers and between social partners. The case study showed that the initiative is potentially effective in increasing awareness among social partners, national authorities and the members of employers' organisations. The impact assessment concluded that the policy option would impact the overall baseline to a limited extent by improving the worsening curve in the baseline scenario. The initiative would also involve some compliance costs for the social partners and NGOs. The policy option is therefore assessed to be moderately efficient. The table below summarises the impacts of the four policy options, primarily on the basis of a qualitative assessment.

Table 28: Impacts of the four policy options

| Intervention | Impact | | | |
|--|---|--|--|--|
| | Effectiveness | Efficiency | Coherence | |
| Policy option 2: non-binding guidance | Potentially effective in raising awareness among journalists and stakeholder associations | Substantial costs. Moderately efficient | Positive effects, but also substantial costs. Overall positive impact. | |
| Policy option 3c: legal assistance mechanisms (preventive measures) | Moderate effectiveness, but may strengthen other initiatives. | Low costs. The option is therefore relatively efficient in so far as it strengthens other initiatives. | Moderate positive impacts, but low costs. Therefore an overall positive impact | |
| Policy option 3b: information obligations | Potentially effective in raising awareness among EU migrant workers, employers and other stakeholders | Some costs. Moderately efficient. | Some positive effects, but also costs. Overall the impacts are assessed as positive. | |
| Policy option 3f: dialogue between stakeholders | Potentially effective in raising awareness among social partners and NGOs | Some costs. Moderately efficient. | Some positive effects, but also costs. Overall the impacts are assessed as positive. | |

A full overview of expected (ex-ante) and ex-post (documented) impacts, including costs, per stakeholder group is included in Table 26 (ex-ante) and Figure 33 (ex-post) in section 7.8

As mentioned above, due to difficulties in quantifying both costs and impacts, it would be premature of the contractor to draw firm conclusions on to what extent are the expected impacts proportionate with costs involved in implementing and enforcing a given policy option.

8.3 Feasibility of policy options

An important element to consider when assessing feasibility is the current status of implementation: to what extent are similar policies already implemented in the Member States? Policy options with a low degree of current implementation will require more resources in order to reach full implementation across the EU. On the reverse side of this argument, policy options with low degree of current implementation are potentially more effective and more likely to contribute to positive impacts at an EU level. The table below summarises current implementation for the seven policy options considered.

Table 29: Summary of current implementation of the seven policy options

| | Yes | Partly | No/Not known |
|---|-----|--------|--------------|
| Policy option 2 – non-binding guidance | 6 | 19 | 2 |
| Policy option 3a – concept of discrimination | 13 | 7 | 7 |
| Policy option 3b – information obligations | 5 | 0 | 22 |
| Policy option 3c – legal assistance mechanisms | 2 | 25 | 0 |
| Policy option 3d – reversed burden of proof | 7 | 14 | 6 |
| Policy option 3e – sanctions and compensations | 23 | 0 | 4 |
| Policy option 3f – dialogue between stakeholders | 5 | 1 | 21 |

As the table demonstrates, policy option 3e (sanctions and compensations) has the highest level of current implementation, with 23 Member States already having similar policies in place. Policy option 3b (information obligations) and 3f (dialogue between stakeholders) have the lowest levels of current implementation, each with five Member States already having similar policies in place. These two are consequently the two options that would require the most Member States to implement changes although the already existing equality bodies may actually serve as the national body responsible for implementation of policy option 3b (information obligations) and thereby bridge some of the gap between the current situation in the Member States and the objectives of policy option 3b.

Feasibility cannot, however, be exclusively assessed based on aggregate numbers. Some policy options would only require minor changes from the Member States, whereas others would require major changes. The added value of an EU intervention will also vary across the seven options, thus influencing the comparative analyses leading to a preferred option (or combination of options). Below, the feasibility of the seven options is discussed one by one.

Policy option 2 – non-binding guidance

There are no direct obstacles relating to implementation of this policy option. However, it should be noted that the “For Diversity. Against Discrimination” campaign (the case study for this policy option) was strengthened by the European Year of Equal Opportunities of 2007 and the PROGRESS programme (see section 0 for details). These contributed toward placing more focus on discrimination issues and helped strengthen the impacts of the “For Diversity. Against Discrimination” campaign.

Policy option 3a – concept of discrimination

This policy option includes a definition of nationality-based discrimination (direct and indirect) in EU law. It is the assessment of the contractor that implementation of this policy option would be relatively straightforward. It is therefore concluded that the feasibility of this policy option is high.

Policy option 3b – information obligations

This policy option would oblige Member States to disseminate information to EU migrant workers. Five Member States currently have similar obligations in place through national law. The remaining 22 Member States would have to implement the policy. In Ireland, the information is distributed by the Equality Authority. All Member States are currently required (by EU law) to have an equality body. The institutional structure for implementing this policy option is therefore already in place. Implementation of this policy option would thus only require the 22 Member States to redirect the work and mandate of the equality bodies to include information activities related to nationality-based discrimination. The cost for national authorities is estimated to be around EUR 400,000 and 600,000, annually.

As the Member States already have an institutional structure in place for implementing this policy option, it is the assessment of the contractor that the feasibility of this policy option is high.

Policy option 3c – legal assistance mechanisms

This policy option intends to ensure the availability of five legal assistance mechanisms to EU migrant workers. Four of the five elements of this policy option are already in place (in some form or another) in approximately half of the Member States, although not linked to nationality-based discrimination in all cases. These four are:

- means of redress
- legal representatives
- provisions on victimisation
- equality bodies

Feasibility of implementing these four is therefore considered high. Implementation of the last mechanism of putting a legal obligation on employers to work to prevent discrimination would require more effort by the Member States. Something similar to this mechanism currently only exists in two Member States.

Furthermore, it should be noted that effects of implementation may vary across the Member States. For example, the role and status of labour unions in the Member States is a critical factor in this context.

Policy option 3d – the reversal of burden of proof

Implementation of this policy option would require a fundamental change for six Member States from putting the burden of proof on the plaintiff to putting it on the accused. 14 of the remaining Member States would need to change from a system with shared burden of proof to a system where the burden of proof is put on the accused.

The main concern when considering feasibility of this policy option is resistance from the employers. This may lead to some political controversy.

Policy option 3e – sanctions and compensation

23 of the Member States already have a similar policy in place. Concerning implementation in the remaining Member States, no country specific elements have been identified through the case study. In other words, there are no country specific factors that may modify expected impacts when transferred to another country. Furthermore, all Member States are already obliged to have an equality body in place. As the administration of this policy option may be allocated to an equality body, the institutional structure already seems to be in place. Thus, in terms of institutional implementation, this policy option primarily requires an extension of the powers of each equality authority (in addition to the legal prohibition and penalisation on the grounds of nationality).

Policy option 3f – dialogue between stakeholders

For the potential impacts of this policy option to materialise, the relevant Member States would need to have a tradition of active dialogue between the different social partners. The willingness of social partners to reach common conclusions is an important enabling factor.

Furthermore, making social dialogue a legal obligation may meet resistance from the social partners. In the Dutch case, this was particularly expressed by the employer organisations. Moreover, the varying degrees of unionisation across Member States may also result in different levels of impact, as the potential target group through this measure would be smaller in countries with low unionisation.

8.3.1 Conclusions on the comparison of policy options

The seven policy options and their potential impacts in terms of (1) strengthening legal rights or means to claim these, and (2) increasing awareness of rights were discussed above. None of the case studies found any significant quantifiable impacts from existing initiatives similar to the proposed policy options. On the other hand, qualitative assessments put forward in interviews with experts shed more light on the links between the proposed policy options and the objective of improved enforcement of citizens' rights as regards free movement of workers and, in effect, an improved functioning of the internal market. Furthermore, there are strong indications that some policy options are more effective than others as is being discussed below.

As for the policy options related to providing clarity of legal rights or means to claim these rights, all options are expected to impact the baseline to only a limited extent, especially if implemented separately. Meanwhile, all of the options (except the element of a legal obligation on employers under option 3c) are associated with quite low direct costs. Moreover, there appear to be some links between the legal measures in terms of increasing their expected impacts. As such, policy option 3d on the reversal of burden of proof may not have a big impact in itself, but the potential for impact is expected to be bigger if combined with options 3a and the element of legal representation under 3c, as well as perhaps an initiative to raise awareness.

When it comes to the policy options related to strengthening awareness, all the assessed options have expected impacts. Impacts are, however, not measurable. Ranking the options in terms of effectiveness and efficiency is therefore not possible. It is furthermore important to note that the results of the impact case studies showed that in terms of impacts, the policy options (2, 3b, 3c and 3f) supplement each other to some extent, as they target different groups. The campaign studied in relation to policy option 2 primarily reached journalists (as well as other stakeholder groups), policy option 3b targets citizens, policy option 3c targets employers (least effectively) and citizens (through the work of the equality body), and policy option 3f targets social partners and NGOs. As all of these are important groups, it is not possible to rank one option above the other on the basis of the impact assessment, but rather conclude by noting that they can all be expected to have some (although not measurable) impacts on important stakeholder groups.

9. CONCLUSIONS AND RECOMMENDATIONS

9.1 Conclusions

9.1.1 Identifying the problem

This impact assessment study clearly revealed that discrimination on the grounds of nationality against EU migrant workers does take place. Examples were found of both direct and indirect discrimination, but the problem definition concluded that the main problems were discrimination of an indirect nature, meaning that the rules or regulations applied did not concretely exclude nationals of other EU Member States, but the way these rules were written or applied, favoured the nationals of the host country.

Discrimination happens everywhere in the European Union: examples were presented from almost all Member States²³⁷. A clear trend could however be seen: discrimination towards EU migrant workers from the newer EU Member States, and in particular Romania and Bulgaria, which are still subject to transitional schemes, is more common than discrimination towards EU migrant workers from elsewhere in Europe. Most examples of underpayment and poor working conditions were related to workers from the newer EU Member States. Likewise, Bulgarian and Romanian citizens have felt most discriminated against of all EU nationalities when working abroad. The Your Europe Advice-feedback report²³⁸ concluded that “most cases of direct discrimination affect nationals from countries which are or were the object of transitional restrictions in access to employment. There is therefore a “spill-over” effect of such restrictions.” Even though the transitional measures are no longer in place in EU8, it seems that EU migrant workers from EU8 still experience problems. These findings are also supported by the 2010 Annual Report on monitoring the application of EU law, which showed that a “recurring topic of queries” was the application of transitional arrangements for workers from EU8 and EU2²³⁹.

The overview provided in Chapter 5 “identifying the problem (and more detailed in Annex K) gave a good indication of the different types of barriers and the main trends. Meanwhile, these examples cannot be considered an exhaustive list of the problems that EU migrant workers might face; many more examples are likely to be found if a more in depth study of the enforcement of EU free movement legislation (or lack thereof) was undertaken in all Member States. The fact that there is not sufficient data available to establish a precise account of the actual situation of enforcement, especially at the practical level, within the scope of this impact assessment study is an important finding in itself, which implies that there is a need for more data and perhaps tools to monitor the situation and development in this field.

The examples of barriers to free movement of workers and (direct or indirect) discrimination on the basis of nationality can roughly be divided into three different types or levels of problems:

1. Non-conformity of legislation at national, regional or local levels (problem 1);
2. Incorrect application of EU law by national, regional or local authorities (problem 2);
3. Incorrect application of EU law by employers (problem 4)
4. Non-use of rights to freedom of movement for workers

²³⁷ The examples cannot be considered exhaustive, which is why it should not be stated that no barriers for free movement of workers exist in Hungary and Romania.

²³⁸ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

²³⁹ Commission staff working paper: Situation in the different sectors, accompanying the document “Report from the Commission – 28th Annual Report on monitoring the application of EU law (2010); Brussels 29.9.2011.

The study showed that around half of the Member States have legislation which is not in conformity with the current legal framework at EU level (problem 1). Most often this concerns legislation on study grants where non-nationals are facing additional requirements or simply do not have access to them; or social advantages in general where non-nationals would have to be permanent residents or have lived in the Member State for a specified period to access certain social advantages. Other recurring issues among the examples were related to restricted access to posts in the public service and non-proportionate language requirements (often also in relation to public sector employment). In these cases of discrimination of EU migrant workers related to non-conformity with EU legislation (i.e. problem 1) the European Commission is, under the Treaties, responsible for ensuring that EU law is correctly applied. Consequently, when a Member State fails to comply with EU law, the Commission has powers of its own (action for non-compliance) to try to bring the infringement to an end and, where necessary, may refer the case to the European Court of Justice.

The fact that examples of non-conformity were found in half of the Member States may seem like a lot, considering that the Commission as mentioned has the infringement procedure instrument at its use to tackle these issues. Meanwhile, statistics show that for instance in 2009, the Commission handled 2889 infringement cases in total across all policy areas²⁴⁰, so issues clearly persist in all fields in spite of continuous efforts to eliminate the problems of non-conformity and bad application of EU law in the Member States. Moreover, the examples of problems of non-conformity concerned in most cases discrimination of an indirect nature. These are arguably more difficult to detect, and related to what could be called the "gray areas" of the EU free movement legislation (social advantages, public sector employment and language requirements), which are not clearly specified in the Regulation but rather defined through case law. This provides a risk that Member States' interpretations of the ECJ rulings are different from the Commission's.

Incorrect application of EU law by national, regional or local authorities (problem 2) and incorrect application of EU law by employers (problem 3) were found in almost all Member States. These were found in particular in rules and regulations concerning the free movement of workers in general and definition of EU workers and in different topics related to eligibility for employment, and employment.

A clear trend could be seen with respect to in particular problems 2 and 3: discrimination towards EU migrant workers from the newer EU Member States, in particular Romania and Bulgaria, still subject to transitional schemes is more common than discrimination towards EU migrant workers from elsewhere in Europe. Most examples of underpayment and poor working conditions were related to workers from the newer EU Member States. Likewise, Bulgarian and Romanian citizens have felt the most discriminated against of all EU nationalities when working abroad. The Your Europe Advice-feedback report²⁴¹ concludes that "most cases of **direct discrimination** affect nationals from countries which are or have been the object of transitional restrictions in access to employment. There is therefore a "spill-over" effect of such restrictions." Even though the transitional measures are no longer in place for EU-8, it seems that EU migrant workers from EU-8 still experience problems. The report concludes that there is an impression that local authorities feel that they have the right to treat EU migrant workers from newer EU Member States as "second-class EU citizens". The Your Europe Advice cases reveal that the negative consequences of transitional measures can be seen broadly. They are often related to Bulgarians and Romanians, but also to other nationalities, such as Poles, Lithuanians and Hungarians. The cases include workers and students, "who are employed in total ignorance of their rights (working time, minimum wages), if not simply illegally (undeclared work), often without suspecting it. They find out about their precarious situation when dismissed (often unfairly and without the last payments) or leaving their job, namely when claiming unemployment benefits, or simply when in need of healthcare. They also discover that they do not really have a right to remain in the host country because they had failed to register (or had not been registered by their employer) as workers."²⁴²

²⁴⁰ European Commission, DG Environment: <http://ec.europa.eu/environment/legal/law/statistics.htm>

²⁴¹ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

²⁴² Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011. Examples: 83998, 86187, 70979, 68292, 78153, 83492, 86508, 83881, 61738, 70575, 68902, 80636, 82127, 68442, 86687, 77423, 53570, 67111, 64585, 81595, 64022, 73898, 61693, 65378, 63793, 64591, 65082, 65969, 64591, 65082, 65969, 68477.

While the majority of the examples found in the problem definition represent the public sector, it should be kept in mind that the collection of examples is by no means complete, which is why this does not suggest that there are no challenges in the private sector. Concerning the private sector, the examples presented are, among others, related to the field of sport, to underpayment and poor working conditions and to non-proportionate language requirements. This is supported by the results of previous reports on the application of EU law, which showed that besides the problems related to migrant workers from EU8 and EU2 and the reminiscences of transition schemes, the main issues concerned the rights of job-seekers and retaining the status as worker (especially in the context of the economic crisis), as well as violation of migrant workers' rights by private employers in terms of discriminatory treatment in access to work and working conditions²⁴³.

The violation of EU migrant workers' rights by private employers is more difficult to detect, and can only be identified when EU migrant workers complain to the court, to an equality body or other designated authority. The cases concerning private sector always fall under problem 3, which is also the level that is the most difficult one for the Commission to address. The Commission does not have similar tools and power to intervene in cases against private employers as in relation to the Member States' public sectors. For example, the Commission would not have the right to take proceedings against a private employer who demands excessive language requirements to be eligible for a given position, whereas an identical case in the public sector would provide the Commission with the possibility of taking action for non-compliance against the Member State for failing to fulfil its obligations under EU law. In this case the term State is taken to mean the Member State which infringes EU law, irrespective of the authority – central, regional or local – to which the compliance is attributable.

It is therefore worth noting, as outlined in the *general scale of the problem*, that many of the workers who had felt discriminated against did not take steps towards enforcement of their rights to equal treatment. Moreover, the majority of the migrant workers who responded to the public consultation did not feel that the current level of protection of EU migrant workers and their rights is sufficient, either because they are not aware of the means available to them for protection and enforcement of their rights or because they do not find that there are sufficient means available to them.

The data collected for this study showed that the information provided to EU workers was very scarce and that problems often occur due to the lack of information. This goes for both the potential EU workers who are planning to move abroad, and to those EU migrant workers who are already working in an EU Member State other than the one they come from. It can thus be assumed that there are cases, where the main driver behind the problem is that EU citizens are either not aware, or do not understand their rights with respect to free movement. This is supported by evidence from the broader anti-discrimination policy field, which indicates that awareness is indeed an issue, but while there is progress in awareness and promotion of fundamental rights, there is not an equivalent awareness of the availability of means to claim these rights when discrimination occurs²⁴⁴.

The study also showed that lack of awareness concerning EU migrant workers' rights did not only apply to EU migrant workers, but also to the public authorities, employers and legal advisors. Several of the examples relating to problem 2 and 3 could be explained by non-awareness or lack of understanding of rights by the employers, judges, legal advisors or by the public authorities. This is supported by findings from other sectors, where it was found that "difficulties with reversing the burden of proof in practice result from limited awareness among judges and other members of the legal profession with respect to the requirement as well as the means of its application"²⁴⁵.

²⁴³ Commission staff working paper: Situation in the different sectors, accompanying the document "Report from the Commission – 28th Annual Report on monitoring the application of EU law (2010); Brussels 29.9.2011.

²⁴⁴ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011.

²⁴⁵ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011

9.1.2 The policy options

Within its remit of competence, the Commission had put forward specific policy options to tackle the problem of nationality-based discrimination against EU migrant workers and their families. The policy options put forward by the Commission are summarised in the table below.

Table 30: Outline of the seven policy options

| Policy Option | Description |
|---|---|
| Policy option 1: Taking no specific action at EU level | The first option is to maintain the status quo and let things run their course without the introduction of further initiatives (neither binding nor non-binding) at EU level. |
| Policy option 2: Non-binding guidance | This policy option entails the introduction of non-binding guidance on the rights of EU workers exercising their right to freedom of movement. The tools used for this purpose can take the form of soft law instruments such as communications or recommendations, information campaigns, exchange of good practice, measures for promoting dialogue between social partners – or a combination of several instruments. |
| Option 3: Binding legislative initiatives at EU level | The third option is to introduce legally binding measures at EU level, such as provisions on legal advice, legal assistance and information for EU migrant workers, to improve the enforcement of the rights conferred under Regulation 492/11. Policy option 3 contains six different sub-options. |
| Sub-option 3a: Concept of discrimination | The sub-option 3a aims to prevent discrimination on the grounds of nationality by introducing elements that would help the understanding of the concept and give nationality an equal legal status (in practice) compared to other grounds for discrimination (ethnicity, gender, etc). This can be achieved by including a definition of (direct and indirect) discrimination on the basis of nationality in EU law. |
| Sub-option 3b: Information obligations | This policy option would contribute to raising awareness among EU citizens on their rights as migrant workers, by making awareness-raising a national obligation. The policy option would also contribute towards raised awareness amongst employers. However, full impact can only be obtained in close collaboration with other stakeholders. |
| Sub-option 3c: Legal assistance mechanisms | This policy option intends to ensure the availability of mechanisms of legal assistance to EU migrant workers and their families at Member State level by imposing an obligation on Member States, through EU law, to provide: <ul style="list-style-type: none"> ➤ Means of redress: administrative or judicial procedures are available to EU migrant workers if they find that their rights have been violated. ➤ Legal representatives: EU migrant workers who have been victims of discrimination can have organizations or legal entities represent them in administrative/judicial procedures concerning violations of obligations under Regulation (EU) 492/11. ➤ Provisions on victimization: EU migrant workers are protected from dismissal or similar adverse treatment by an employer on the basis of a complaint of discrimination on the grounds of nationality. ➤ Prevention of discrimination by employers: obligation on employers to engage actively in preventing discrimination on the basis of nationality. ➤ Equality bodies: Member States would be required to set up bodies or contact points for the promotion of equal treatment on the basis of nationality and covering all aspects of Regulation (EU) 492/11. |
| Sub-option 3d: Reversed burden of proof | The objective of this sub-option is to make it easier and less burdensome for EU migrant workers to file complaints of discrimination by reversing the burden of proof, putting it on the defendant (alleged discriminator) |

| | |
|---|---|
| | rather than the plaintiff to prove that there has been no breach of the principle of equal treatment. |
| Sub-option 3e: Sanctions and compensations | This sub-option aims to ensure that real and effective compensation or reparation is available to victims of discrimination on the grounds of nationality in all Member States, by introducing a legal obligation on them to make sure that sanctions are applied and compensation payments made upon violations. |
| Sub-option 3f: dialogue with stakeholders | The objective of this sub-option is to increase dialogue between social partners and NGOs, and consequently improve the knowledge of and correct enforcement of the rights of EU migrant workers and the aspect of equal treatment on the basis of nationality. |

The overarching objective of a potential EU intervention and all of the proposed policy options is to improve the enforcement of EU workers' rights as defined by Regulation 492/11 and Article 45 TFEU and eliminate barriers to free movement and discrimination on the basis of nationality.

For the purpose of clarifying the logic behind a potential EU intervention in general and each of the policy options more specifically, the general, specific and operational objectives were identified as follows:

General objective: Contributing to the better functioning of the internal market by reducing the barriers to free movement of workers

Specific objective: Improving the enforcement of citizens' right as regards free movement of workers (Art 45 TFEU and Regulation 492/2011)

Operational objectives:

4. Increasing awareness among citizens, employers, public authorities and other stakeholders about rights of EU migrant workers and their family
5. Providing EU workers with means and/or instruments that have the purpose of facilitating intra-EU migration for workers and their family
6. Improving legal certainty about non-discrimination and rights of EU workers.

9.1.3 Impact analysis of policy options

In the baseline scenario and the impact assessment the option of doing nothing (policy option 1) and the seven policy options for an EU intervention and their potential impacts were analysed and discussed in terms of their ability to (1) strengthen/create certainty about the legal rights of EU migrant workers and their families, or improve citizens' accessibility to means to claim their rights (sub-options 3a, 3c, 3d and 3e), and (2) increasing awareness of these rights (options 2, 3b, 3c and 3f). The assumption was that with clear legal rights, means to claim these, and awareness of their existence, discrimination against EU migrant workers will decrease thus improving the enforcement of citizens' rights as regards free movement of workers, and ultimately supporting a better functioning of the internal market by reducing barriers to free movement of workers.

The baseline scenario established on the basis of the problem definition assessed the future situation for EU migrant workers with the prospect of no EU intervention (policy option 1). The baseline scenario showed that the number of intra-EU migrant workers is expected to increase in the future. This means that the risk of discrimination cases is expected to increase for all clusters of Member States, as even in the Member States with a lower number of EU migrant workers, the total number of EU migrants is expected to increase between now and 2020.

The problems faced by EU migrant workers were different for each country cluster; while in some Member States there are mainly formal barriers to discrimination; in others the barriers are mainly informal. Formal barriers will continue to hinder migration without intervention. The case of informal barriers is considered more sensitive to other trends within the clusters. A change of public attitude towards migration may affect informal barriers to migration in a positive or

negative way. Moreover, the study showed that in several Member States there were legal or other initiatives in the pipeline concerning barriers to intra-EU migration. Hence, it is possible that the situation will change without an EU intervention, due to Member States' own initiatives. Meanwhile, in the context of the economic crisis, many of these initiatives have been postponed (some indefinitely) and there are even other initiatives in the pipeline aiming towards more protection of the national labour markets. This is supported by the abovementioned findings of the 2010 Annual Monitoring Report, which showed that problems relating to job-seekers and retaining the status of worker seemed to have increased in the context of the economic crisis²⁴⁶.

The evidence thus suggested that there is a need for action at EU level. This corresponds well with results from the *public consultation on EU initiatives for the enforcement of EU rules on the free movement of workers*. The majority of EU citizens responded that the best way of achieving protection of workers is by adopting EU legislation reinforcing the rights of EU migrant workers. Information campaigns were rated as the second most important initiative. Similarly, 50% of the organisations responding to the public consultation indicated that the adoption of EU legislation reinforcing workers' rights was the most important initiative. Information campaigns enjoy second strongest support also in this group.

The impact assessment of the proposed policy options for EU intervention (Policy options 2 and 3 – including individual assessments for each sub-option) concluded that none of the proposed policy options stood out from the others in terms of producing significant (economic and social) impacts. All of the proposed policy options were expected to produce impacts to a limited or to some extent in all Member States, except the ones in cluster 1 (the group with the least barriers), which were expected to experience no change or impacts to a limited extent. Due to the lack of, especially quantitative, data available, the impact assessment could not provide solid conclusions as to the expected specific impacts on each stakeholder group. The study however assessed that EU migrant workers and their families are the ones most likely to benefit from any of the proposed policy options (in terms of improved legal certainty about rights, increased awareness of rights and improved access to means to claim rights), while employers (public and private) and national authorities are most likely to be negatively affected by increased costs. Besides policy option 2, the costs of all proposed policy (sub-) options were however assessed as insignificant. Meanwhile, policy option 2 was the only option expected to provide positive impacts for all stakeholders; however, the extent to which the different stakeholders would be affected in terms of increased awareness could not be determined.

The study did not find any specific or substantial environmental impacts of any of the proposed policy options.

The comparison of the policy options, which due to the lack of significant quantifiable impacts relied heavily on qualitative assessments established through the case studies, concluded that there were strong indications that some policy options and particularly a combination of (sub-) options would be more effective than others.

As for the policy options related to providing certainty concerning legal rights or means to claim these rights, all options are expected to impact the baseline only to a limited extent, especially if implemented separately. Meanwhile, all of the options (except the element of a legal obligation on employers under option 3c) are associated with relatively low direct costs. Moreover, there appear to be some links between the legal measures in terms of increasing their expected impacts. As such, policy option 3d on the reversal of burden of proof may not have a large impact in itself, but the potential for impact is expected to be bigger if combined with options 3a and the element of legal representation under 3c, as well as perhaps an initiative to raise awareness.

These findings are supported by a study on access to justice in gender equality and anti-discrimination law. The EU Directives on gender equality (in employment) and discrimination on other grounds²⁴⁷, which have served as inspiration for the formulation of most of the policy options analysed in this study, include provisions on, among other things, reversal of burden of proof (sub-option 3d), victimisation (one element of 3c), social dialogue (3f) and sanctions (3e).

²⁴⁶ Commission staff working paper: Situation in the different sectors, accompanying the document "Report from the Commission – 28th Annual Report on monitoring the application of EU law (2010); Brussels 29.9.2011.

²⁴⁷ Directives 2000/43/EC and 2000/78/EC

The study on access to justice showed that, while the reversed burden of proof is considered a key factor setting apart discrimination cases from others, its practical implementation is problematic. This is because there is still a need to provide *prima facie* evidence to establish a case and discriminatory conduct is seldom formulated on paper, it is not always clear (from the transposition into national law), when the reversal of the burden should come into force, and judges' and legal experts' lack of awareness and understanding of the provisions and when it should be applied often means that it is not enforced²⁴⁸. Moreover, both the case study on sub-option 3d and the study on access to justice found that the costs of legal representation is one of the most important issues preventing victims of discrimination from claiming their rights or inducing them to settle more quickly and accept reduced damages. Access to legal aid and/or representation is therefore considered important. Another key point from the study on access to justice was the importance of having sanctions and compensations in place if citizens are to embark on legal proceedings, considering the substantive costs involved. Meanwhile, the sanctions need to be effective, proportionate and dissuasive, and this is currently not always the case. The low amount of compensation generally awarded could dissuade victims of discrimination from bringing their cases forward²⁴⁹.

When it comes to the policy options related to strengthening awareness, all the assessed options have expected impacts. Impacts are, however, not measurable. Ranking the options in terms of effectiveness and efficiency is therefore not possible. It is furthermore important to note that the results of the impact case studies showed that in terms of impacts, the policy options (2, 3b, 3c and 3f) supplement each other to some extent, as they target different groups. The campaign studied in relation to policy option 2 primarily reached journalists (as well as other stakeholder groups), policy option 3b targets citizens primarily, policy option 3c targets employers (least effectively) and citizens (through the work of the equality body), and policy option 3f targets social partners and NGOs. As all of these are important groups, it is not possible to rank one option above the other on the basis of the impact assessment, but rather conclude by noting that they can all be expected to have some (although not measurable) impacts on important stakeholder groups.

9.2 Recommendations

The conclusions of this study rule out policy option 1, as the findings showed that there is a need for an EU intervention to achieve the objective of an improved enforcement of the rights of EU migrant workers and their families with regards to freedom of movement and non-discrimination. Barriers persist (on all "problem levels" and across the European Union) and the situation is not likely to improve on Member States' own initiatives. Moreover, considering the main trends found in the problem definition, the context of the economic crisis and the upcoming termination of the transition schemes for EU2 there will probably be an increased need for action.

It is furthermore recommended that the EU intervention takes the form of legally binding measures (policy option 3). This recommendation is based on several considerations:

- d) From the findings of the case study on policy option 2 there is no substantial evidence of impacts of the campaign. This holds true for the other policy options too, meanwhile the campaign was considered to be rather ambitious and dispersed in terms of its target groups, rendering it less efficient considering the relatively large costs of carrying out such an extensive campaign. A similar campaign concerning EU migrant workers' rights would in principle have an equally large scope, since problems appear to exist in relation to many different stakeholders (employers, workers, national authorities) and at many different levels, which can all in different ways be linked to lack of awareness and/or understanding.
- e) Many of the barriers found related to the so-called "gray areas" of the existing legislation, namely social advantages, language requirements and public sector employment, which are mainly defined through case-law. This indicates that there is a need for some sort of clarification in these areas perhaps through an amendment of the Regulation codifying the relevant case-law.
- f) Experts in the field have argued the importance of the so-called "signal value" of having (clear) legislation prohibiting discrimination on the basis of nationality in place (also at

²⁴⁸ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011.

²⁴⁹ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011.

national level), as a basis for discussions about the issue and for creating awareness. This is underlined by the abovementioned finding in relation to anti-discrimination legislation that there is an increased awareness among EU citizens of their fundamental rights but not an equivalent awareness of their access to means to claim these rights. Meanwhile, before an attempt is made to raise awareness of the latter, it must be ensured that these means are in place and effective.

The scope of each sub-option under policy option 3 (legally binding measures) is for the most part (except 3c) rather narrow, and the policy options seem to be quite closely linked. It is thus recommended to implement a combination of the sub-options under policy option 3. Firstly, sub-option 3a is recommended for the sake of creating clarification and legal certainty about what is meant by (direct and indirect) discrimination on the basis of nationality. This is considered an important basis and reinforcing factor for the implementation of other policy options. Furthermore, it is recommended to address the lack of awareness and understanding, which seem to be a prominent driver behind many of the barriers identified and at all three problem levels. To this end, sub-option 3b is also recommended because the impact assessment indicates policy option 3b (and the element of the equality body in 3c) to be the most likely policy option to produce positive impacts in terms of raising awareness. As opposed to e.g. an information campaign which only runs for a certain time, equality bodies are (or should be) a permanent institution, which will not only provide information and raise awareness (like a campaign) but will also function as a contact point for information both about rights and access to means to claim these rights. Equality bodies (like the Swedish Ombudsman) are able to reach many different stakeholders for instance by establishing strategic networks and cooperation with e.g. social partners. Moreover, equality bodies already exist in all Member States stemming from the transposition of the EU directives on discrimination on other grounds. The costs of implementing policy option 3b are therefore considered relatively small, as it in many cases will be a question of extending the mandate and obligation of the existing equality bodies in the Member States in which the equality bodies do not already cover all issues of Regulation (EU) 492/2011. This also substantiates the argument of implementing 3b in combination with 3a, since it needs to be clear from a legal point of view what nationality-based discrimination is and what it implies for equality bodies to provide advice to citizens on the issue. This is supported by statements by NGOs working with providing information and advice on discrimination issues, who pointed out the importance of clarifying the concept on nationality-based discrimination and making it on par with other grounds (as opposed to now when it is distinctly exempt from the EU anti-discrimination legislation), as basis for equality bodies' awareness-raising and information work.

If the Commission decides to move forward with the recommendation to introduce legally binding measures and a directive is chosen as the preferred policy instrument, the equality bodies can also be applied as a means of implementation, providing information and advice on the understanding and application of the legal provisions – similar to the role intended for the equality bodies in the EU anti-discrimination legislation. If a directive is chosen, it could also be considered to include more sub-options to more or less mirror the existing directives on gender equality and discrimination on other grounds. This is supported by the findings of the impact assessment, which indicated that the sub-options would have a bigger impact if combined. In addition to the provisions mirroring the anti-discrimination directives, it could be recommended to include the element of legal representation of policy option 3c to address the important obstacle related to the substantive costs of taking legal action. Moreover, in combination with option 3b, the equality bodies could be given the mandate to act as legal representatives similar to the Swedish case.

This study will not provide a specific recommendation on whether the legally binding measures should take the form of a directive or a regulation. This will have to be a political decision taken by the Commission in their impact assessment. Meanwhile, the advantages and disadvantages of both options, considering the above conclusions and recommendations are discussed in the following.

The first advantage of a directive is that it could, as mentioned, mirror the already existing ones on discrimination on other grounds. Moreover, if part of a directive the provisions must be transposed into the national legislation. Since national legislation is mostly used as the first point of reference for regulation in different fields by both administrators and employers, having prohibition of nationality-based discrimination and related provisions integrated into national law could make it more relatable to people applying the law. It could also be considered an

advantage that the provisions on nationality-based discrimination could in many Member States quite easily be transposed into the existing national anti-discrimination legislation, especially if the EU directive is similar to the ones already transposed.

On the contrary, there may be a risk that the aspect of nationality-based discrimination would in a sense disappear between the other grounds for discrimination and the intention of creating awareness about the issue would not be achieved. Moreover, the risk with directives is always that it will be badly or even wrongly transposed and that the procedure can be quite lengthy. It is therefore recommended to put effort and thought into the aspect of implementation, if a directive is chosen. Inspiration could for instance be taken from the Services Directive and its provisions on screening, mutual evaluation and peer review backed up by a handbook on implementation. The screening provisions in the Services Directive provided that during the transposition period Member States first had to conduct a screening of their legislation. They were then obligated to submit a report on the results of this screening, at the latest by the end of the transposition period, which would then enter into a process of mutual evaluation between the Member States²⁵⁰. According to the Council of the European Union, this process proved to be “a useful and effective tool to evaluate Member States’ performance in implementing specific parts of this Directive and to considerably enhance transparency amongst Member States and the Commission”²⁵¹. According to experts in the field, the handbook on implementation, drafted by legal experts, was an important and useful tool in the transposition and implementation process.

The advantages of choosing an amendment of the existing regulation over a directive would firstly be exactly that the existing legislation already takes the form of a regulation. The recommendation could be, as mentioned above, to codify the existing case law, providing more clarity on the understanding of specific issues and concepts. The advantage of a regulation is, moreover, that it is directly and horizontally applicable, meaning that there will be no interpretation of different concepts (such as direct and indirect discrimination on the basis of nationality) in the different Member States and in different languages due to a transposition exercise. Finally, the time lapse, delays etc. often related to a transposition procedure will be avoided.

The disadvantages of a regulation are on the other hand what constitute the advantages of a directive: because there is no transposition process, Member States will not be required to check the compliance of their national legislation, which could be required through a screening provision in a directive. In practice national law is, as mentioned above, most often the first point of reference for most people (administrators, employers), and there is a risk that any provisions not included here – though directly applicable by means of an EU Regulation – will not be taken into account. It should therefore be considered what tools the Commission might have at their use to make the regulation more “present” in the national legislative context. One could consider the possibility of a requirement of Member States to refer and/or link to the EU legislation in their national laws or perhaps include the EU regulation in an annex to the relevant legal texts.

No matter which policy instrument is chosen, it is recommended to introduce a combination of hard and soft law, maybe even a “package” of a directive/regulation in combination with e.g. a handbook or other type of guidance for instance through a website or similar. This recommendation is based on advice from experts in the field as well as the European Governance White Paper, which advocates the effectiveness of combining policy instruments, i.e. “combining formal rules with other non-binding tools such as recommendations, guidelines, or even self-regulation”²⁵². In terms of guidance/handbook, inspiration could potentially be found in the handbook for the Services Directive, as mentioned above, and/or the handbook recently published by the European Fundamental Rights Agency on EU non-discrimination law, which also provides guidance on the case law established in the field and already covers some of the issues related to discrimination on the basis of nationality and the EU legislation on free movement of workers²⁵³.

²⁵⁰ Rambøll Management Consulting for the European Parliament (2010): “Implementation of the Services Directive”; p. 62

²⁵¹ Council of the European Union: Conclusions on a better functioning Single Market for services – mutual evaluation process of the Services Directive; Brussels, 10 March 2011

²⁵² Commission of the European Communities: “European Governance – a White Paper”; Brussels, 25.7.2001; p. 20

²⁵³ European Union Agency for Fundamental Rights (2010): “Handbook on European non-discrimination law” (http://fra.europa.eu/fraWebsite/attachments/handbook-non-discrimination-law_EN.pdf)

9.3 Monitoring and evaluation

In adopting the proposed combination of policy options above a multi-purpose monitoring framework is proposed.

The conclusion above stated that Member States should be required to set up bodies or contact points for the promotion of equal treatment on the basis of nationality and covering all aspects of Regulation (EU) 492/11. By extension, it would be advisable to delegate monitoring responsibilities to the same agencies, such as national compliance with EU legislation (e.g. through numbers of cases of intra-EU nationality-based discrimination). This would mean that the Member States would need to take responsibility for implementing at least a part of the preferred policy option. Secondly, the equality bodies would carry the responsibility of making awareness-raising a national obligation. Monitoring awareness levels would possibly entail considerable monitoring costs (if this is not easily integrated into existing e.g. annual census). It would therefore be advisable that monitoring of this intervention is limited to activity and output based data, e.g. numbers of events / activities and participants at events / activities, as well as query topics and numbers - for future evaluation purposes. The query topics and numbers should also take into account whether the query concerns direct or indirect discrimination. It is acknowledged that the division is not always straightforward, which is why it is relevant to get a professional assessment (by the equality body) on the types of queries.

The conclusions of this study also explained that data on the current level of enforcement of EU legislation is in some occasions not readily available, which is to a large extent judged to be due to the nature of the problem. Moreover, readily available data would only show the top of the iceberg, i.e. the discrimination cases that had been reported by workers and their families. However, data on instances of discrimination where workers have for one or reason another decided against filing a formal complaint have been extremely difficult to come about. It is the view of the contractor that it would a very demanding task to get a full overview of all instances of nationality-based discrimination of workers in EU-27, however, two different solutions could be recommended to provide move in that direction: on the one hand, it would be relevant to create a regular "free movement of workers-survey", which would measure the developments in terms of EU workers' experiences on existing barriers in the different Member States. On the other hand, a living (as opposed to static) database of the enforcement of EU legislation, barriers, legal cases and positive developments could supplement the findings from the free movement of workers-survey. Together these two instruments could form a free movement of workers-barometer, where the views of EU workers could be combined with the facts of the database in order to show, whether the situation of EU workers has improved, deteriorated or remained constant in each of the Member States since the last measurements were made. A monitoring system in the form of a database and a survey demand a relatively high investment up-front for the collection of baseline information from each of the Member States. The findings in this study could provide a very preliminary baseline, but more information is needed. Once a survey questionnaire has been developed, a survey consisting of same questions can be carried out on a regular basis with relatively little effort, apart from the data analysis. While the funding would have to come from the Member States through the European Union's budget, the more practical development could be bought from external experts.

It is the assessment of the contractor that these monitoring arrangements would not place disproportional administrative obligations or burdens on employers, public authorities or individuals. To ensure equal practice across all Member States it is advisable that coordinating responsibilities are assigned to an appropriate party (e.g. European Foundation for the Improvement of Living and Working Conditions). If the proposed instrument is a directive, and if inspiration is taken from the Services Directive, as suggested above in the recommendations, it could be useful to include provisions on a mutual evaluation procedure into the directive. This would entail a sharing of the evaluation and monitoring responsibility between the Member States and the Commission, as the Member States would mutually evaluate each other's transposition of the directive, with the participation of the Commission. With respect to the Services Directive, this was found to enhance transparency amongst Member States and the Commission as to the requirements and authorisation schemes applicable in Member States²⁵⁴.

²⁵⁴ Council of the European Union: Conclusions on a better functioning Single Market for services – mutual evaluation process of the Services Directive; Brussels, 10 March 2011

ANNEX A: QUESTIONNAIRE – SURVEY AMONG EU WORKERS

Introduction to the study

Ramboll Management Consulting and Userneeds are conducting a survey on behalf of the European Commission on barriers to the free movement of workers in the European Union. This survey is part of a broader study to assess whether it may be necessary to introduce new initiatives to improve the enforcement of EU legislation and in that way make movement of workers within the European Union easier.

We would like to ask you about your thoughts and experiences with moving to another EU Member State to work or look for work. With EU Member States we mean one or more of the following countries:

| | | | | | |
|---|----------------|---|------------|---|-------------|
|  | Austria |  | Germany |  | Netherlands |
|  | Belgium |  | Greece |  | Poland |
|  | Bulgaria |  | Hungary |  | Portugal |
|  | Czech Republic |  | Ireland |  | Romania |
|  | Cyprus |  | Italy |  | Slovakia |
|  | Denmark |  | Latvia |  | Slovenia |
|  | Estonia |  | Lithuania |  | Spain |
|  | Finland |  | Luxembourg |  | Sweden |
|  | France |  | Malta |  | UK |

All responses will be treated anonymously.

It takes approximately 10-15 minutes to respond to all the questions.

How to fill in the questionnaire:

Respond to the questions by selecting the option that best describes your situation and thoughts. Unless it is specifically mentioned, you should only choose one option.

Background information

Please tick the relevant boxes to provide us with some basic information about yourself.

1. Please indicate your gender

- Male
 Female

2. Please state your age.

3. Please indicate your marital status

- Single (not married)
 Married or registered partnership
 Living with partner (not married)
 Divorced/separated
 Widowed
 Prefer not to state

4. How many children under the age of 18 are living in your household?

- None
 1
 2
 3

- 4 or more
5. How many adults over the age of 18 are living in your household?
- None
 - 1
 - 2
 - 3
 - 4 or more
6. How would you describe your occupational status?
- Self-employed
 - Employed on a temporary contract
 - Employed on a permanent contract
 - Civil servant status
 - Looking for work (unemployed)
 - Looking after the home
 - Retired or disabled
 - Student or trainee
 - Other
7. What is the highest level of education that you have completed?
- I have not completed any formal education
 - Primary school
 - Secondary school
 - Vocational training
 - University degree
 - I don't know
8. How would you describe your standard of living compared to other people in your country of residence? On the following scale, step 1 corresponds to "the lowest level of living standard in society"; step 5 corresponds to "the highest level of living standard in society". Please indicate on which step you would place yourself?
- 1 The lowest level of society
 - 2
 - 3 The middle level of society
 - 4
 - 5 The highest level of society
 - Don't know
9. Did you ever live and/or work in another EU Member State than your country of origin, or have you come from another EU Member State to live and/or work in the country in which you are residing now?
- 1 I have experience of living and working in another EU Member State [*continue to question 10*]
 - 2 I have lived/live in another EU Member State but did/do not (yet) work there [*continue to question 10*]
 - 3 I worked/work in another EU Member State but did/do not live there (i.e. commuted) [*continue to question 10*]
 - 4 I have considered moving to and/or working in another EU Member State, but have not done it [*jump to question 11*]
 - 5 I have not considered living or working in another Member State [*jump to question 12*]
10. When did you last live and/or work in another EU Member State than your country of origin? (*respondents question 9, boxes 1-3*)
- I am currently living and/or working in another EU Member State
 - Less than one year ago
 - 1-5 years ago
 - 6-9 years ago
 - More than 9 years ago
- [*Jump to question 24*]
11. How likely do you think it is that you will move to another EU Member State to live/work or look for work? (*respondents question 9, box 4*)
- 1 I am sure I will move
 - 2 It is likely I will move

- 3 It is not likely I will move
 4 I am sure I will not move
 5 I don't know

[Jump to question 13]

12. Why did you not consider moving to another EU Member State? Please choose up to 3 reasons

(Respondents question 9, box 5)

- I appreciate the direct contact with family or friends at the place where I live right now
 I benefit from support from family or friends, which I think would not be possible if I went to another Member State.
 I believe I would have a higher household income where I currently live
 I believe I would have access to better health-care facilities where I currently live
 I would be afraid of losing my job or the one of my partner
 I believe I would have better housing conditions where I currently live
 I would have to learn a new language
 I believe I would have better working conditions where I currently live
 I believe I would have access to better local environment and amenities where I currently live
 I would have to adapt to a new school system
 I believe I would have shorter commuting or better public transport where I currently live
 I don't know

[Continue to question 13]

13. Has anyone of your family or friends ever gone to live and/or work in another EU Member State than their home country? (Multiple answers possible) (respondents question 9, boxes 4 and 5)

- Yes, family member or friend living/lived, but not working/worked in another EU Member State (e.g. study visit)
 Yes, family member or friend living/lived and working/worked in another EU Member State
 Yes, family member or friend living/lived in the home country, but commuting/commuted to work across the border to another EU Member State
 No
 Don't know

[Respondents who have *not considered moving*, box 5 question 9, *continue to question 14*]

[Respondents who have *considered moving*, box 4 question 9, *jump to question 19*]

Respondents who have not considered moving (respondents' question 9, box 5):

14. If you had to recommend to a member of your family or to a friend to move to and/or work in another EU Member State, which Member State would it be?
 Please choose up to five Member States you would like to recommend in the order of attractiveness by marking with 1-5, 1 being the most attractive.

| | | | | | |
|---|----------------|---|-----------|---|-------------|
|  | Austria |  | Germany |  | Netherlands |
|  | Belgium |  | Greece |  | Poland |
|  | Bulgaria |  | Hungary |  | Portugal |
|  | Czech Republic |  | Ireland |  | Romania |
|  | Cyprus |  | Italy |  | Slovakia |
|  | Denmark |  | Latvia |  | Slovenia |
|  | Estonia |  | Lithuania |  | Spain |



Finland



Luxembourg



Sweden



France



Malta



UK

15. Please state up to 3 main reasons behind your selection of the recommended Member States in the previous question.

- Language is familiar
- Higher household income
- Better working conditions
- Better weather
- Family or friends reside their
- Better housing conditions
- Better local environment and amenities
- Access to better health care facilities
- Better support from family or friends
- Access to a better school system
- Shorter commuting time
- I don't know

16. Below, we have listed examples of different obstacles that migrant workers sometimes experience. Which of these do you find most important when considering whether to move and or/work in another Member State?

Please choose up to 5 options, in order of importance. Please write 1 by the option most important to you, 2 by the second most important option etc. - up to 5 options).

- Lack of language skills
- Difficulties finding a job
- Difficulties finding suitable housing
- Difficulties adapting to a different culture
- Difficulties dealing with the necessary administrative formalities
- Difficulties accessing health care
- Difficulties accessing social advantages (e.g. study grants, transport fare reductions, minimum subsistence payments)
- Difficulties finding a job for my partner/spouse
- Difficulties having my educational and professional qualifications recognized
- Difficulties having my pension rights transferred
- Difficulties to return home and reintegrate into professional or private life after having been abroad
- Difficulties with income taxes or similar
- Difficulties accessing child care, school or university for your children
- Being discriminated against in the sense of being treated differently on the labour market compared to citizens of the host Member State because I have a different nationality

17. Below, we have listed different types of issues that migrant workers sometimes face because they are not nationals of the Member State where they live and/or work. In your view, how important are these different potential issues when taking the decision whether to move and/or to work in another Member State?

Please tick the relevant box for each issue.

| | Very important barrier | Somewhat important barrier | Neither important nor unimportant barrier | Less important barrier | Not important barrier | Don't know |
|---|------------------------|----------------------------|---|------------------------|-----------------------|------------|
| Difficult access to employment | | | | | | |
| Lack of assistance from national employment | | | | | | |

| | | | | | | |
|--|--|--|--|--|--|--|
| offices | | | | | | |
| Lack of access to financial support intended to facilitate access to employment | | | | | | |
| Unfavourable working conditions in comparison with the nationals of the host Member State | | | | | | |
| Lack of access to social advantages, such as study grants, transport fare reductions, minimum subsistence payments | | | | | | |
| Unequal access to tax advantages with the nationals of the host Member State | | | | | | |
| Lack of access to training (including vocational training) | | | | | | |
| Difficult access to membership of trade unions | | | | | | |
| Difficult access to housing | | | | | | |

18. If you have any further comments or suggestions, please detail them here:

I have no further comments

[End of questionnaire for respondents who have not considered moving, box 5 question 9]

Respondents who have considered moving (respondents box 4, question 9)

19. You mentioned above that you have considered moving to/working in another EU Member State but have not (yet) done it. If you did move to and/or worked in another EU Member State, which Member State would it be?

Please choose up to five Member States you would prefer moving to in the order of attractiveness by marking with 1-5, 1 being the most attractive.



Austria



Germany



Netherlands



Belgium



Greece



Poland



Bulgaria



Hungary



Portugal




Czech Republic



Ireland



Romania

| | | | | | |
|---|---------|---|------------|---|----------|
|  | Cyprus |  | Italy |  | Slovakia |
|  | Denmark |  | Latvia |  | Slovenia |
|  | Estonia |  | Lithuania |  | Spain |
|  | Finland |  | Luxembourg |  | Sweden |
|  | France |  | Malta |  | UK |

20. Please state up to 3 main reasons behind your selection of the preferred Member States in the previous question.

- Language is familiar
- Higher household income
- Better working conditions
- Better weather
- Family or friends reside there
- Better housing conditions
- Better local environment and amenities
- Access to better health care facilities
- Better support from family or friends
- Access to a better school system
- Shorter commuting time
- I don't know

21. Below, we have listed examples of different obstacles that migrant workers sometimes experience. Which of these do you find most important when considering whether to move and/or work in another Member State?

Please choose up to 5 options, in order of importance. Please write 1 by the option most important to you, 2 by the second most important option etc. - up to 5 options.

- Lack of language skills
- Difficulties finding a job
- Difficulties finding suitable housing
- Difficulties adapting to a different culture
- Difficulties dealing with the necessary administrative formalities
- Difficulties accessing health care
- Difficulties accessing social advantages (e.g. study grants, transport fare reductions, minimum subsistence payments)
- Difficulties finding a job for my partner/spouse
- Difficulties having my educational and professional qualifications recognized
- Difficulties having my pension rights transferred
- Difficulties to return home and reintegrate into professional or private life after having been abroad
- Difficulties with income taxes or similar
- Difficulties accessing child care, school or university for your children
- Being treated differently on the labour market compared to citizens of the host Member State because I have a different nationality

22. Below, we have listed different issues that migrant workers sometimes face because they are not nationals of the Member State where they live and/or work. In your view, how important are these different potential issues when taking the decision whether to move and/or to work in another Member State?

Please tick the relevant box for each issue.

| | | | | | | |
|--|------------------------|----------------------------|-----------------------------------|------------------------|-----------------------|------------|
| | Very important barrier | Somewhat important barrier | Neither important nor unimportant | Less important barrier | Not important barrier | Don't know |
|--|------------------------|----------------------------|-----------------------------------|------------------------|-----------------------|------------|

| | | | barrier | | | |
|--|--|--|---------|--|--|--|
| Difficult access to employment | | | | | | |
| Lack of assistance from national employment offices | | | | | | |
| Lack of access to financial support intended to facilitate access to employment | | | | | | |
| Unfavourable working conditions in comparison with the nationals of the host Member State | | | | | | |
| Lack of access to social advantages, such as study grants, transport fare reductions, minimum subsistence payments | | | | | | |
| Unequal access to tax advantages with the nationals of the host Member State | | | | | | |
| Lack of access to training (including vocational training) | | | | | | |
| Difficult access to membership of trade unions | | | | | | |
| Difficult access to housing | | | | | | |

23. If you have any further comments or suggestions, please detail them here:

I have no further comments

[End of questionnaire for respondents who have considered moving, box 4 question 9]

Respondents who are/have been living/working in another Member State (respondents boxes 1 to 3, question 9)

24. Below, we have listed obstacles that migrant workers sometimes experience. In your experience, what are the most important barriers for moving to and or/working in another EU Member State?

Please choose up to 5 options, in order of importance. Please write 1 by the option most important to you, 2 by the second most important option etc. - up to 5 options.

- Lack of language skills
- Difficulties finding a job
- Difficulties finding suitable housing
- Difficulties adapting to a different culture

- Difficulties dealing with the necessary administrative formalities
- Difficulties accessing health care
- Difficulties accessing social advantages, such as study grants, transport fare reductions, minimum subsistence payments
- Difficulties finding a job for my partner/spouse
- Difficulties having my educational and professional qualifications recognized
- Difficulties having my pension rights transferred
- Difficulties to return home and reintegrate into professional or private life after having been abroad
- Difficulties with income taxes or similar
- Difficulties accessing child care, school or university for your children
- Being treated differently on the labour market compared to citizens of the host Member State because I have a different nationality

25. Based on your experience, would you say that something is missing in the previous question which is/was particularly important to you?

26. Below, we have listed different issues that migrant workers sometimes face because they are not nationals of the Member State where they live and/or work. To what extent did you experience the following when moving to/working in another EU Member State? Please tick the relevant box for each issue.

| | This was a very important barrier | This was a somewhat important barrier | This was neither an important nor an unimportant barrier | This was a less important barrier | This was not an important barrier | Don't know |
|--|-----------------------------------|---------------------------------------|--|-----------------------------------|-----------------------------------|------------|
| Difficult access to employment | | | | | | |
| Lack of assistance from national employment offices | | | | | | |
| Lack of access to financial support intended to facilitate access to employment | | | | | | |
| Unfavourable working conditions in comparison with the nationals of the host Member State | | | | | | |
| Lack of access to social advantages, such as study grants, transport fare reductions, minimum subsistence payments | | | | | | |
| Unequal access to tax advantages with the nationals of the host Member State | | | | | | |
| Lack of access to training (including | | | | | | |

| | | | | | | |
|--|--|--|--|--|--|--|
| vocational training) | | | | | | |
| Difficult access to membership of trade unions | | | | | | |
| Difficult access to housing | | | | | | |

27. If you have any further comments or suggestions, please detail them here:

I have no further comments

[End of questionnaire for respondents who have moved, boxes 1-3 question 9]

ANNEX B: SUMMARY REPORT – PUBLIC CONSULTATION AMONG CITIZENS

European Commission, DG EMPL

Summary report

November 2011

ANNEX B:

**FREE MOVEMENT OF WORKERS PUBLIC CONSULTATION
CITIZENS**

CITIZENS

CONTENTS

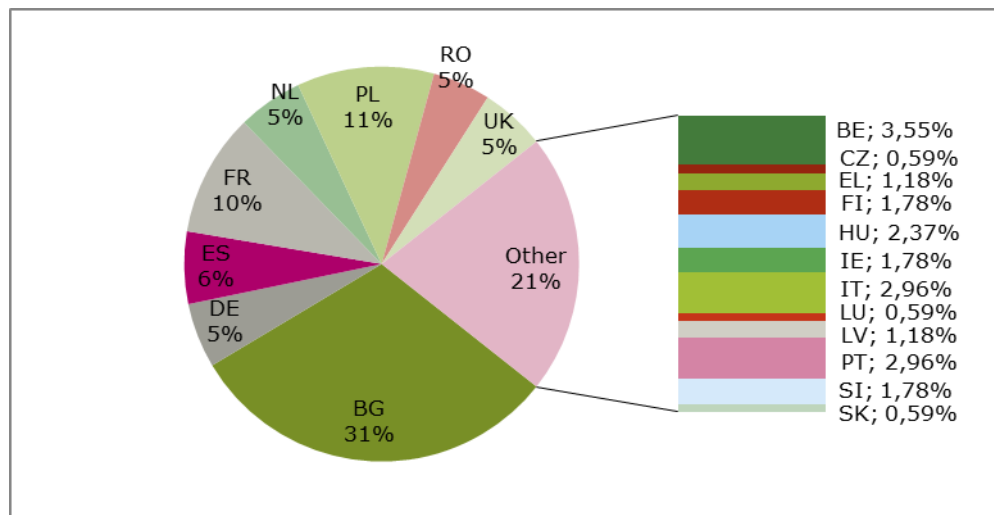
| | | |
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| 1. | Introduction | 1 |
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1. INTRODUCTION

In total, **169 EU citizens** responded to the public consultation on *EU initiatives for the enforcement of EU rules on the freedom of movement of workers*. Respondents were from all Member States except Austria, Cyprus, Denmark, Estonia, Lithuania, Malta and Sweden.

Figure 35 shows the percentage dispersion of nationalities among the respondents. Approximately one-third (31%) of the respondents were Bulgarian, 11% were Polish, and 10% were French. In other words, more than 50% of the respondents were one of these three nationalities. The *Other* category includes the remaining 12 Member States, each of which with a share of less than 5% of the respondents. The seven Member States not represented among the respondents are not included in the figure.

Figure 35: What is your country of nationality? (n=169)



As seen in Table 31, 69% (117) of the respondents worked in an EU Member State other than the one of their nationality. Of these, 28 respondents worked in two or more Member States²⁵⁵.

A few of the respondents applied – with no success –for a job while studying in another Member State. Some of these answered that they had *not* worked in another Member State (technically they had not), but since they still encountered many of the issues EU migrant workers face, they were included in the category of respondents who have worked in another EU Member State. In relation to this, eight of the respondents stated that they had not worked in another Member State, yet they had felt discriminated against. Five of these respondents made explicit comments about the country they lived/studied in while applying for a job. Therefore, they were included in the category of respondents who have worked in another Member State. The three remaining respondents did not indicate the country or situations in which they felt discriminated against. For this reason they were not considered as having worked in another EU Member State in the analysis.

Table 31: Have you ever worked in a country of the European Union other than the one of which you are a national? (n=169)

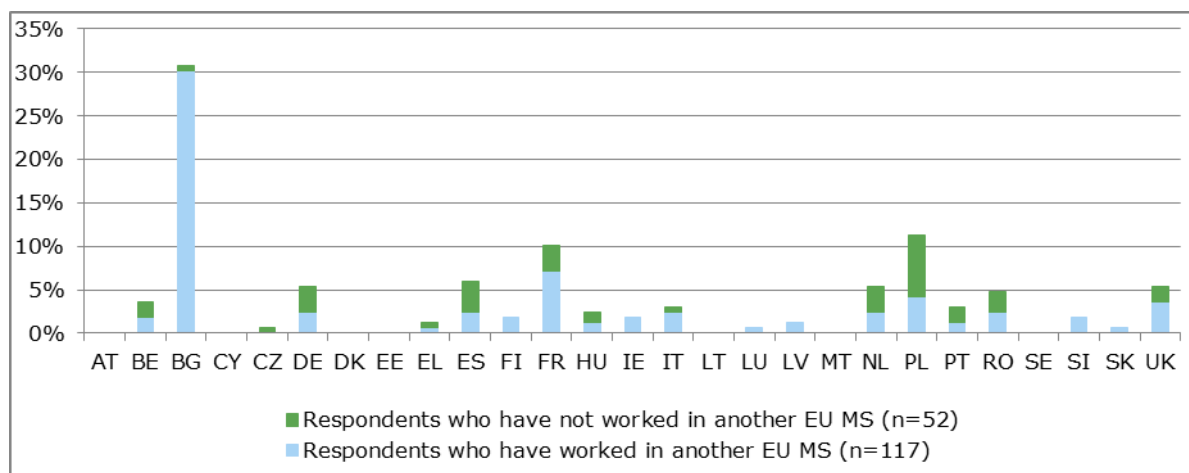
| | | |
|-----------------------------------|----|-------|
| No | 52 | 30.8% |
| Yes, in one other EU Member State | 89 | 52.6% |

²⁵⁵ 21 respondents have worked in two Member States; 5 respondents have worked in three Member States; 1 respondent has worked in seven Member States; 1 respondent has worked in 20 Member States. Added to the 89 respondents who have worked in one other Member State, this gives a total number of 173 occurrences.

| | | |
|--------------------------------------|-----|-------|
| Yes, in two or more EU Member States | 28 | 16.6% |
| Total | 169 | 100% |

Figure 36²⁵⁶ specifies the division of respondents by nationality according to whether they have worked in another EU Member State or not. It is noticeable that e.g. 98% of the Bulgarian respondents (51 out of 52) have worked in another Member State, while only 37% (7 out of 19) of the Polish respondents have worked in another Member State.

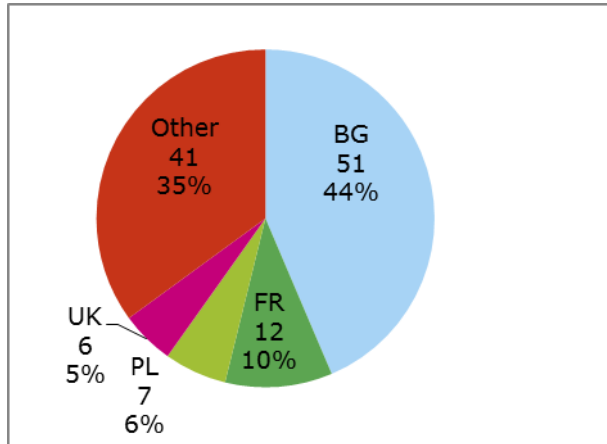
Figure 36: By nationality: Have you ever worked in another EU Member State than the one of which you are a national? (n=169)



This is seen more clearly when the respondents who have *not* worked in another Member State are extracted. This puts the focus instead on the 117 respondents who have worked abroad. In Figure 37, the shares change compared to those in Figure 35, especially for Bulgaria (from 31% to 44%) and Poland (from 11% to 6%). As with Figure 36, this indicates that a relatively large share of Bulgarian respondents have worked in another EU Member State, while a smaller share of the Polish respondents have worked abroad.

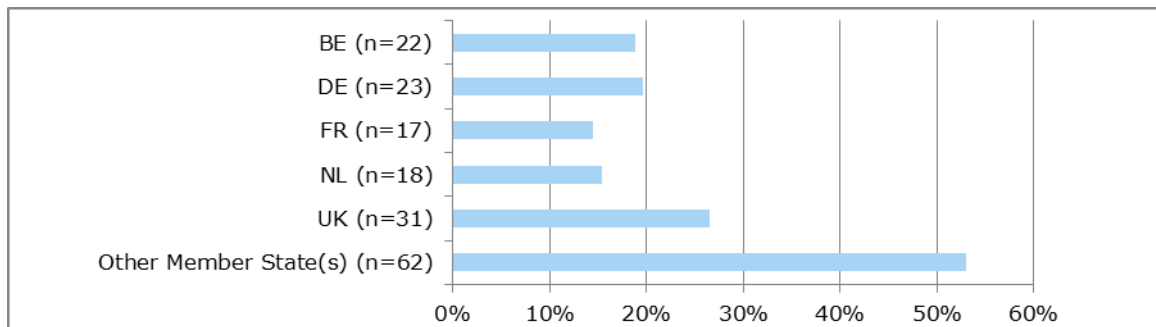
²⁵⁶ The reason why Romania does not equal 5%, as in Figure 35, is that the pie chart does not include decimals and the Romanian share has thus been rounded up from 4.73% to 5%.

Figure 37: Of which nationality are the respondents who have worked in another EU Member State? (n=117)



There are important differences between the Member States concerning their attractiveness to EU workers. Based on the survey responses, the most popular destinations among EU workers are western European Member States. The UK is the most popular destination; 27% of the respondents not of UK nationality have worked in the UK. Other Member States where the respondents have worked are Germany (20%), Belgium (19%), France (15%), and the Netherlands (15%) (see Figure 38).

Figure 38: In which Member State(s) have you worked? (n=117)²⁵⁷



²⁵⁷ The total percentage is higher than 100% because some of the respondents have worked in more than one Member State

2. WORKING IN ANOTHER EU COUNTRY

Approximately two-thirds (65.8%) of the 117 respondents who have worked in another EU Member State were not informed about their rights under European law when they moved to the country. Of the 34.2% of respondents who were informed about their rights, 7.7% were informed by the national authorities, 2.6% were informed by a labour union, and 5.1% were informed by their employers. 18.8% of the respondents were informed through other sources, mainly friends, universities, or by searching on the internet, e.g. five respondents found information on EU web pages (see Table 32).

Table 32: When moving to another EU country for work, by whom were you informed of your rights under European law? (n=117)

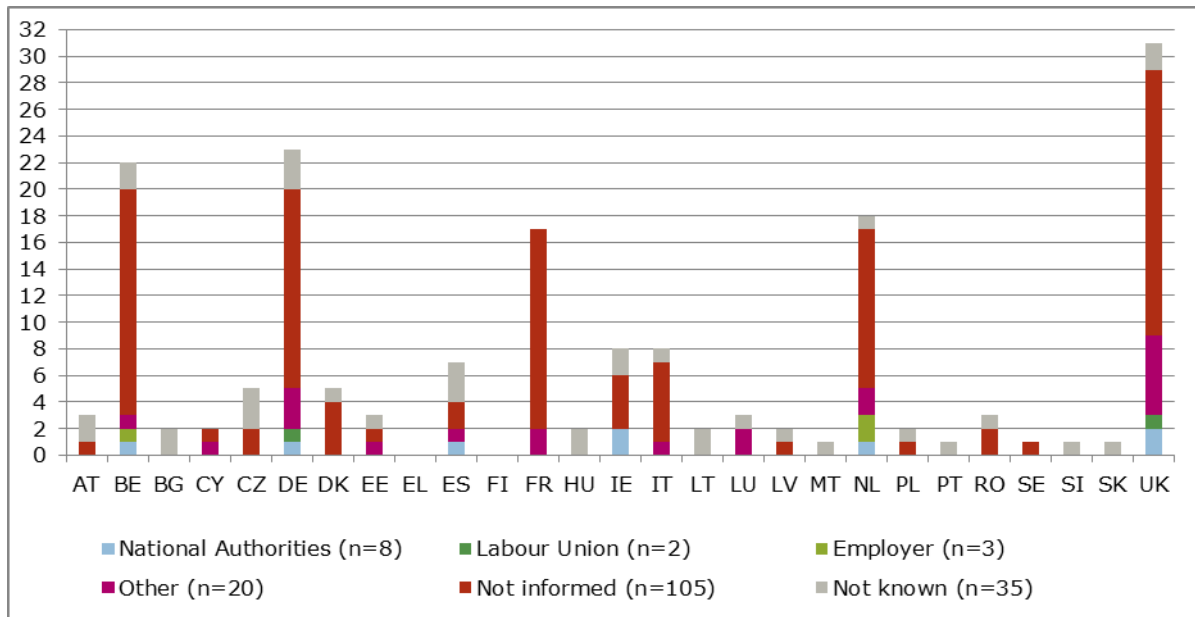
| | | |
|----------------------|-----|-------|
| National authorities | 9 | 7.7% |
| Labour union | 3 | 2.6% |
| Employer | 6 | 5.1% |
| Other | 22 | 18.8% |
| Total informed | 40 | 34.2% |
| Not informed | 77 | 65.8% |
| Total | 117 | 100% |

12 respondents were informed about their rights without having worked in another Member State. Eight were informed by national authorities, two were informed by employers, one respondent was informed by a labour union, and another respondent found information on the internet. It is noticeable that national authorities informed 66.7% of the respondents informed in their own country, while only 22.5% of the respondents informed while working in another Member State were informed by national authorities in the host country. This might indicate that the respondents chose different information sources depending on whether they were in their own country or in another Member State. Furthermore, the 12 respondents were from 10 different nationalities, which might also imply that national authorities in EU Member States, in general, provide information when a citizen considers moving to another EU Member State to work. Figure 39 specifies how respondents were informed in different Member States. As mentioned in Table 32, 40 of the respondents stated that they were informed about their EU rights.²⁵⁸ The figure also shows the respondents who claimed that they were not informed and in which countries they worked.²⁵⁹

Figure 39: By host country: By whom were you informed of your rights under European law? (n=173)

²⁵⁸ Seven of these respondents have worked in more than one Member State and we cannot see from the questionnaire in which of the countries they were informed. The responses of these seven respondents are categorized as "not known" in Figure 39.

²⁵⁹ The reason why $n=105$, and not 77 as in Table 32, is that some of the respondents have worked in more than one Member State. However, since they claim *not* to have been informed, we can assume that they have not been informed in any of the Member States, in which they have worked, and they can, thus, be included in the figure.



The five Member States where most respondents have worked²⁶⁰ stand out in the figure. According to the respondents, it seems that none of them paid sufficient attention to informing EU migrant workers about their rights. For example, in France, only two respondents received information, and that was by using EU information sources and by searching the internet. In general, most respondents found the information themselves, e.g. by searching the internet. It is not possible to estimate whether this was because the respondents *prefer* to find the information themselves, or if the information was absent in some of the Member States.

Of the 40 respondents who received information, only two (5%) did not find the information in a language understandable to them (see Table 33). This indicates that there are no major language issues concerning the understanding of the information provided to EU migrant workers. Even the respondents who have worked in multiple EU Member States did not seem to have had any issues with the language in which the information was provided.

Table 33: Was the information provided in a language understandable to you?

| | | | | |
|---------------------------------------|----|-----|---|----|
| Based on number of respondents (n=40) | 38 | 95% | 2 | 5% |
|---------------------------------------|----|-----|---|----|

²⁶⁰ BE, DE, FR, NL, and the UK

3. DISCRIMINATION ON THE BASIS OF NATIONALITY

Figure 40 shows that 63% of the 117 respondents who have worked in another EU Member State have felt discriminated against because of their nationality.

Figure 40: Have you ever felt discriminated against because of your nationality when working in another EU country? (n=117)

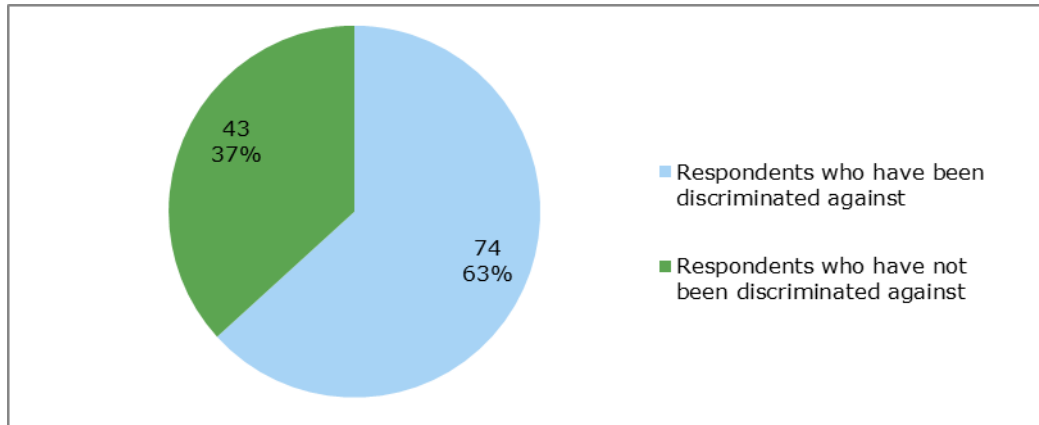
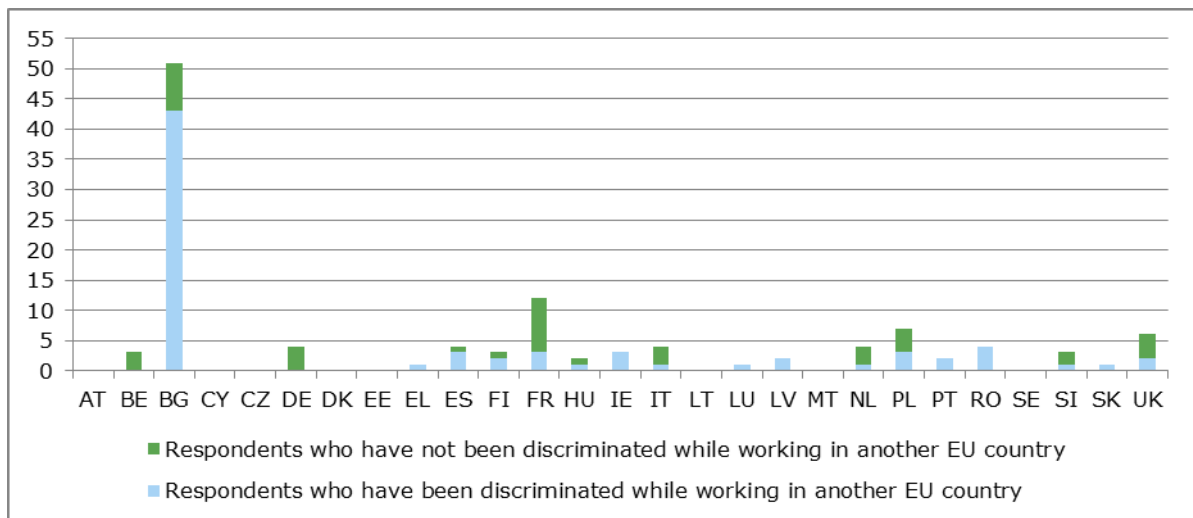


Figure 41 groups the respondents according to their nationality. The figure shows important variations between nationalities in terms of occurrence of discrimination on the grounds of nationality. For example, 84% of the Bulgarians who have worked in another Member State felt discriminated against because of their nationality at some point. This percentage is much higher than the one of the total number of respondents (63%), especially considering that the high number of Bulgarian respondents pulls the average up²⁶¹. When looking at the other nationalities with a share equal to or higher than 5% of the respondents²⁶², it is seen that the percentage of respondents who have felt discriminated against is much below the average (63%). Only 25% of the French respondents, 43% of the Polish, and 33% of the UK respondents felt discriminated against while working in another EU Member State.

Figure 41: By nationality: Have you ever felt discriminated against because of your nationality when working in another EU country? (n= 117)



²⁶¹ If all Bulgarian respondents were excluded from the questionnaire, the share of respondents who have been discriminated against would be 48%

²⁶² FR, PL, and the UK (cf. Figure 37)

Figure 15: *Situations where discrimination occurs* shows the situations in which respondents felt discriminated against. 47% of the respondents felt discriminated against when applying for a job in another Member State, while 31% of the respondents experienced discrimination in relation to their working conditions. The third most common situation where respondents were discriminated against was when applying for social benefits (16%). The respondents who felt discriminated against in other situations than the ones specified mentioned bank related issues, such as acquiring a national credit card in the host country or obtaining a loan. Other discrimination issues stated by respondents related to the acquisition of residence permits to third-country national family members.

Figure 42: In which situations did you feel discriminated against? (n=74)

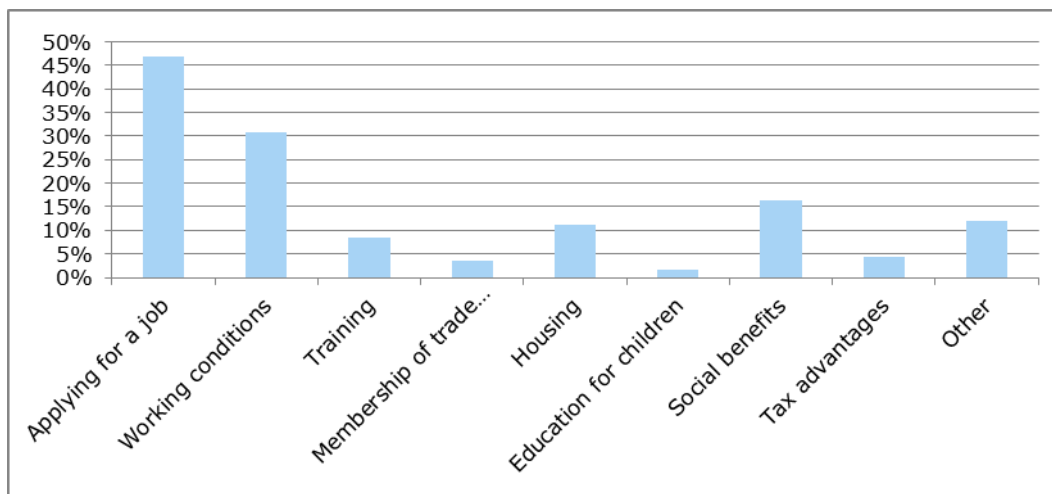


Table 34 illustrates the situations in which respondents from the four most frequent nationalities felt discriminated against. As seen in Figure 41, a high percentage of the Bulgarian respondents felt discriminated against because of their nationality when working in another EU country. Compared to the average (47%), the number of Bulgarians discriminated against when applying for a job (78%) is very high. Some of the Bulgarian respondents mentioned the transition schemes as a factor, which complicated the procedure of applying for a job because EU2 citizens were required to have a working permit when they applied for a job in another EU Member State. According to the Bulgarian respondents, employers often found too many bureaucratic obstacles when they wished to employ a EU2 citizen, and therefore they often gave the job to a person of another European nationality. For this reason, it seemed nearly impossible to Bulgarian and Romanian respondents to find a job in other Member States, and some of them found it necessary to work in the informal sector. They, therefore, sometimes felt treated like third-country nationals, or worse. For example, one Bulgarian respondent referred to a fine of GBP 1,000, applicable only to Romanians and Bulgarians caught working without a work permit. Other situations where many of the Bulgarian respondents felt discriminated against were with respect to working conditions (39%), social benefits (29%), and housing (20%). In most of the situations, the number of Bulgarian respondents discriminated against was above average. The only situations in which the number of Bulgarian respondents was equal to or below the average were access to training, education for children, and the “other” category.

Table 34: By nationality: In which situations did you feel discriminated against? (nationalities with >5 respondents) (n=76)²⁶³

²⁶³ The values in some cases add to more than *n* because some of the respondents have felt discriminated against in more than one situation

| | | | | |
|---|-------------|------------|------------|------------|
| Applying for a job | 40 (78%) | 0 | 3 (43%) | 0 |
| Working conditions | 20 (39%) | 2 (17%) | 3 (43%) | 1 (17%) |
| Training | 4 (8%) | 1 (8%) | 0 | 0 |
| Membership of trade unions | 3 (6%) | 0 | 0 | 0 |
| Housing | 10 (20%) | 0 | 1 (14%) | 0 |
| Education for children | 1 (2%) | 0 | 0 | 0 |
| Social benefits | 15 (29%) | 1 (8%) | 0 | 0 |
| Tax advantages | 4 (8%) | 0 | 0 | 0 |
| Other | 4 (8%) | 0 | 1 (14%) | 1 (17%) |
| Total respondents who have felt discriminated against | 43 (84%) | 3 (25%) | 3 (43%) | 2 (33%) |
| Total respondents who have not felt discriminated against | 8 (16%) | 9 (75%) | 4 (57%) | 4 (67%) |

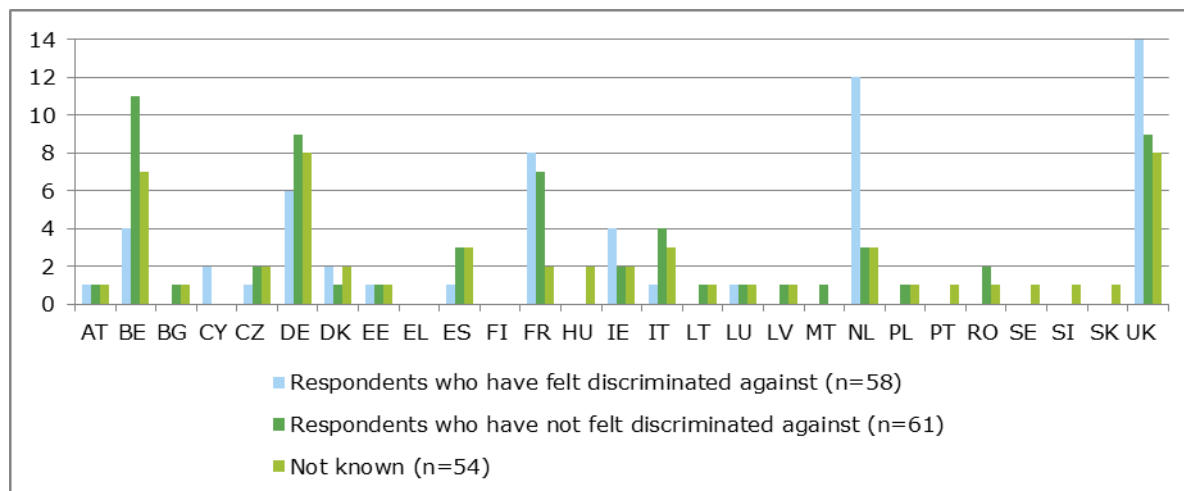
Relatively few French and UK respondents have felt discriminated against. The few who claimed to have been discriminated against mostly dealt with issues related to working conditions, bureaucratic procedures related to social benefits, or other issues, e.g. third-country national family members who were not always treated according to EU law.

Three out of seven Polish respondents have been discriminated against, mainly when applying for a job or with respect to working conditions. The Polish respondents stated that Polish workers were often paid a lower salary than nationals of the host country. Furthermore, they found that there was sometimes a discriminative attitude towards Polish workers.

Figure 43 shows the Member States where the respondents were discriminated against. Of the five most popular Member States for EU migrant workers (among the respondents), the Netherlands is the country with the highest percentage of nationality based discrimination. 66.7% of the respondents who have worked in the Netherlands felt discriminated against, while only 16.7% have not²⁶⁴. In the UK, the corresponding figure is 45%, in France 47%, in Germany 26%, and in Belgium 18%. These shares may seem small compared to the total percentage of respondents who have been discriminated against (see Figure 40). However, the amount of respondents in the "not known" category is relatively high, so the true percentage of respondents who have been discriminated against may be higher for some Member States.

²⁶⁴ The remaining 16.7% are respondents who have been discriminated against but who have worked in other countries, besides the Netherlands.

Figure 43: By host country: Have you ever been discriminated against because of your nationality when working in another EU country? (n=173)²⁶⁵



In order to gain a clear picture of the situations where discrimination occurs, the five Member States where more than 10 respondents worked have been looked at more closely. As seen from Table 35, EU workers were mainly discriminated against when applying for a job (35%), with respect to working conditions (20%), and with respect to social benefits (9%).

Table 35: By host country: In which situations were respondents discriminated? (host countries with > respondents) (n=111)²⁶⁶

| | | | | | | |
|---|---------------------|--------------------|--------------------|---------------------|---------------------|---------------------|
| Applying for a job | 4 (18%) | 4 (17%) | 6 (35%) | 11 (61%) | 14 (45%) | 39 (35%) |
| Working conditions | 0 | 3 (13%) | 6 (35%) | 3 (17%) | 10 (32%) | 22 (20%) |
| Training | 0 | 2 (9%) | 0 | 1 (6%) | 3 (10%) | 6 (5%) |
| Membership of trade unions | 0 | 0 | 0 | 0 | 1 (3%) | 1 (1%) |
| Housing | 0 | 1 (4%) | 2 (12%) | 2 (11%) | 3 (10%) | 8 (7%) |
| Education for children | 0 | 1 (4%) | 1 (6%) | 0 | 0 | 2 (2%) |
| Social benefits | 0 | 1 (4%) | 2 (12%) | 3 (17%) | 4 (13%) | 10 (9%) |
| Tax advantages | 0 | 0 | 2 (12%) | 0 | 1 (3%) | 3 (3%) |
| Other | 0 | 0 | 0 | 1 (6%) | 4 (13%) | 5 (5%) |
| Total did feel discriminated | 4 (18%) | 6 (26%) | 8 (47%) | 12 (67%) | 14 (45%) | 44 (40%) |
| Total did not feel discriminated | 11 (50%) | 9 (39%) | 7 (41%) | 3 (17%) | 9 (29%) | 39 (35%) |
| Not known (n=15) | 7 (32%) | 8 (35%) | 2 (12%) | 3 (17%) | 8 (26%) | 28 (25%) |

²⁶⁵ "Respondents who have felt discriminated against" only includes respondents who have worked in one single Member State.

"Respondents who have not felt discriminated against" includes all respondents who have worked in another Member State

"Not known" includes respondents who have worked in multiple Member States and felt discriminated against in one or more of the host countries. However, we cannot see from the questionnaire, in which country/countries they were discriminated against.

²⁶⁶ Some of the respondents, who have been discriminated against, have worked in more than one Member State, and we cannot know for sure, which of the host countries the respondent refers to, and, therefore, these respondents have been categorised as "Not known". Likewise, the values in some cases add to more than *n* because some of the respondents have felt discriminated against in more than one situation.

All four of the respondents who experienced discrimination in Belgium were discriminated against when applying for a job. The four respondents were either Bulgarian or Romanian nationals, and they all mentioned the special need of a working permit as their biggest obstacle. Other respondents mentioned unjustified, bureaucratic obstacles when trying to create a bank account, as well as problems with the Belgian system of calculating vacation days.

In Germany, 17% of the respondents felt discriminated against when applying for a job, and 13% with respect to working conditions. The discrimination issues (which are not related to transition schemes) included the need for university studies from another Member State to be approved, as well as lower salaries and worse working conditions for migrant workers (including EU migrant workers) compared to the German employees.

In France, EU2 nationals also experienced discrimination issues related to the transition schemes. One Bulgarian respondent had to find a job as a posted worker. However, posted workers do not work under the same regulations as national workers, and the respondent claimed that the salary and working conditions were not as good as the ones for French nationals.

12 out of 14 of the respondents who worked in the Netherlands were of Bulgarian or Romanian nationality. Thus, the main issues regarding discrimination were the transition scheme and the bureaucratic obstacles when applying for the required work permit. This might explain why the Netherlands was the Member State with the highest share of respondents discriminated against (67%²⁶⁷).

In the UK, EU2 nationals also felt discriminated against because of the transition scheme. Apart from these issues, an Irish respondent was discriminated against when requesting holiday pay, and in another occasion was rejected access to training even though she had the rights to training according to EU law.

²⁶⁷ The true percentage is possibly higher since some of the respondents categorised as "not known" may have been discriminated in the Netherlands

4. RECOURSE AGAINST DISCRIMINATION

Of the 74 respondents discriminated against while working in another EU Member State, only 10.8% (8 respondents) were able to seek recourse under national law (see Table 36). One respondent obtained a successful response, while five did not. The respondents were also asked whether national authorities applied European law (Regulation 1612/68 on freedom of movement for workers) when the respondents challenged the discrimination at the national level. Two respondents answered “yes” while three answered “no”, and three respondents left the question unanswered. Two of the eight respondents stated that they were supported by an organisation. However, none of them specified what kind of organisation they were supported by.

Table 36: Respondents who have been discriminated against while working in another EU Member State

| | | | | |
|--|---|-------|----|-------|
| Recourse under national law (n=74) | 8 | 10.8% | 66 | 89.2% |
| Successful response (n=8)* | 1 | 12.5% | 5 | 62.5% |
| Was Regulation 1612/68 applied? (n=8)* | 2 | 25% | 3 | 37.5% |
| Supported by organisation (n=8) | 2 | 25% | 6 | 75% |

* Some of the eight respondents did not answer this question

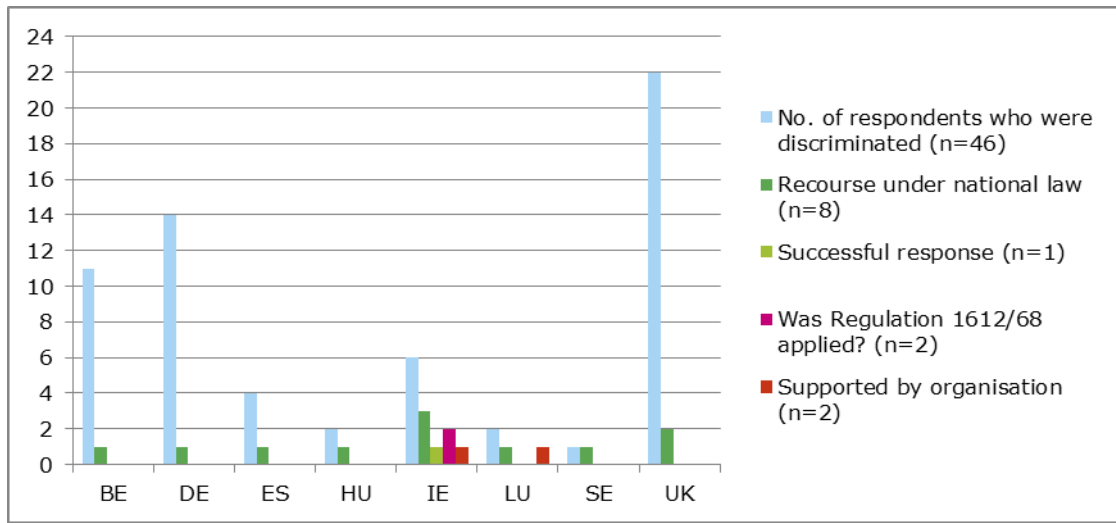
Figure 44 illustrates the eight Member States where respondents were able to seek recourse under national law (BE, DE, ES, HU, IE, LU, SE, UK)²⁶⁸. The figure also shows the number of respondents who were discriminated against in these Member States. In four of the eight Member States (BE, DE, ES and UK), the number of discriminated respondents is significantly higher than the number of respondents who were able to seek recourse. This could indicate that many of the respondents discriminated against have not taken the case any further, e.g. by reporting the act of discrimination. Based on the responses, it is not possible to make any conclusions on why this is the case; i.e. whether the legal recourse is not possible due to the lack of relevant legislation, or whether the explanation has to be found elsewhere. Based on the answers from the respondents, Ireland seems to be the Member State where it is easiest for EU migrant workers to seek recourse under national law and to obtain a successful response.²⁶⁹

Figure 44: Were you able to seek recourse under national law (n=46)

²⁶⁸ Based on the Member States where respondents, who have been able to seek recourse under national law, have worked.

NB: Two of the respondents have worked in more than one Member State

²⁶⁹ However, one has to bear in mind that the number of respondents is very low (n=8), and, thus, it cannot be considered very representative.



5. REMOVING OBSTACLES TO FREE MOVEMENT OF WORKERS

After identifying the respondents who have been discriminated against on the grounds of nationality while working in another EU Member State, the questionnaire turned to possible solutions for removing obstacles to the free movement of workers. In general, the respondents were not satisfied with the level of protection against nationality-based discrimination in their host countries, even though many respondents stated that they consider the level of protection to be an important factor when making the decision on whether or not to go to another EU Member State for work (see Table 37).

Table 37: Removing obstacles to free movement of workers (n=117)

| | No. | % | No. | % | No. | % | No. | % | No. | % |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Does your host country protect workers? | 6 | 5% | 30 | 26% | 16 | 14% | 40 | 34% | 25 | 21% |
| Does this influence your decision? | 49 | 42% | 36 | 31% | 9 | 8% | 18 | 15% | 5 | 4% |
| Should workers be better protected? | 78 | 67% | 30 | 26% | 2 | 2% | 6 | 5% | 1 | 1% |

According to most of the 117 respondents who have worked in another EU Member State, the host country where they worked did not adequately protect EU migrant workers (see Table 37 and Figure 45). Only about one-third (31%) of the respondents were satisfied with the level of protection of workers from other EU Member States, while 55% *disagreed* or *strongly disagreed* with this. Furthermore, many respondents (73%) either *agreed* or *strongly agreed* that the level of protection against discrimination on the grounds of nationality influenced their decision to go and work in another EU Member State. Almost all of the respondents (93%) believed that more should be done to protect workers in another EU Member State.

Figure 45: Removing obstacles to free movement of workers (n=117)

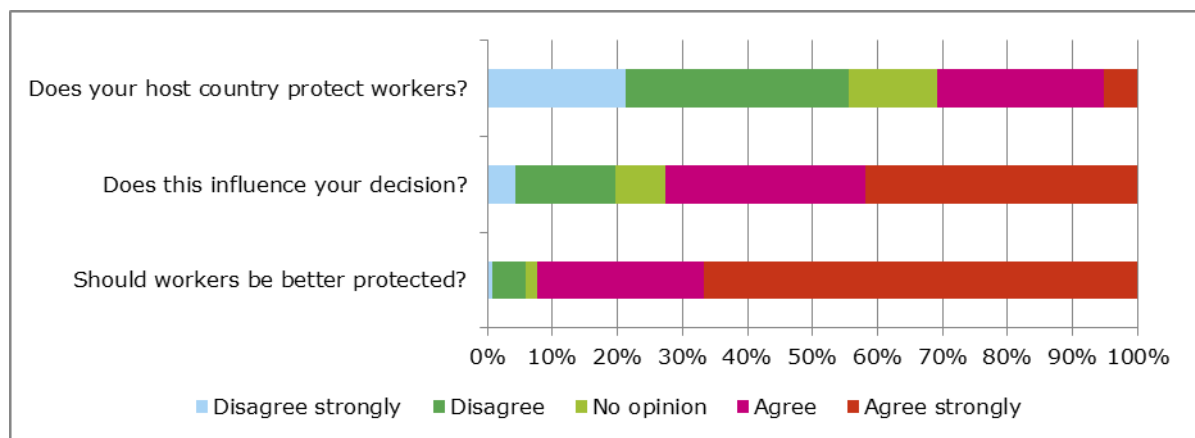


Figure 46 shows how the respondents perceived the level of protection of workers according to their nationality. The figure gives an assessment of whether, i.e., better protection of EU workers against nationality-based discrimination is more important to some nationalities than others. There is a clear tendency that many respondents were dissatisfied, regardless of their nationality. Close to two-thirds of the Bulgarian respondents (62%) were dissatisfied with the level of

protection. Likewise, five out of six UK respondents did not believe that workers were adequately protected in the EU Member States where they have worked. The figure corresponds to the conclusions presented above in Figure 41, which showed that 84% of the Bulgarian respondents have been discriminated against while working in another EU Member State. This matches the relatively high percentage of Bulgarian respondents who were dissatisfied with the level of protection in their host country.

Figure 46: By nationality: Does the host country adequately protect workers against discrimination on grounds of nationality? (n=117)

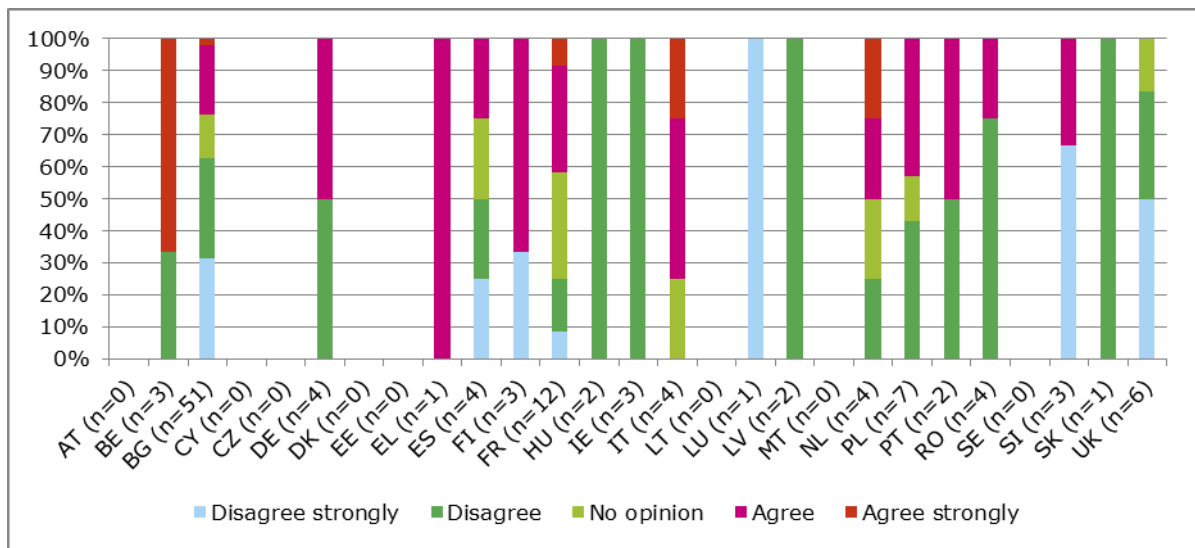


Figure 47 shows the level of satisfaction related to the protection against nationality-based discrimination in the EU Member States where respondents have worked. When looking at the five most frequent countries – BE, DE, FR, NL, and UK (see Figure 38) – it can be seen that most of the respondents who have worked in one or more of these countries were not satisfied with the level of protection. 70% of the respondents who have worked in Belgium either *disagreed* or *disagreed strongly* with the statement that the level of protection was adequate. The situation was clearly better in France, where only 27% of the respondents were dissatisfied, while in the Netherlands the corresponding figure was 86%, and in the UK 70%. Added to this, some of the respondents were neutral on these matters, therefore they stated that they did not have an opinion on the level of protection of workers.

Figure 47: By host country: Does the host country adequately protect workers against discrimination on grounds of nationality? (n=89)

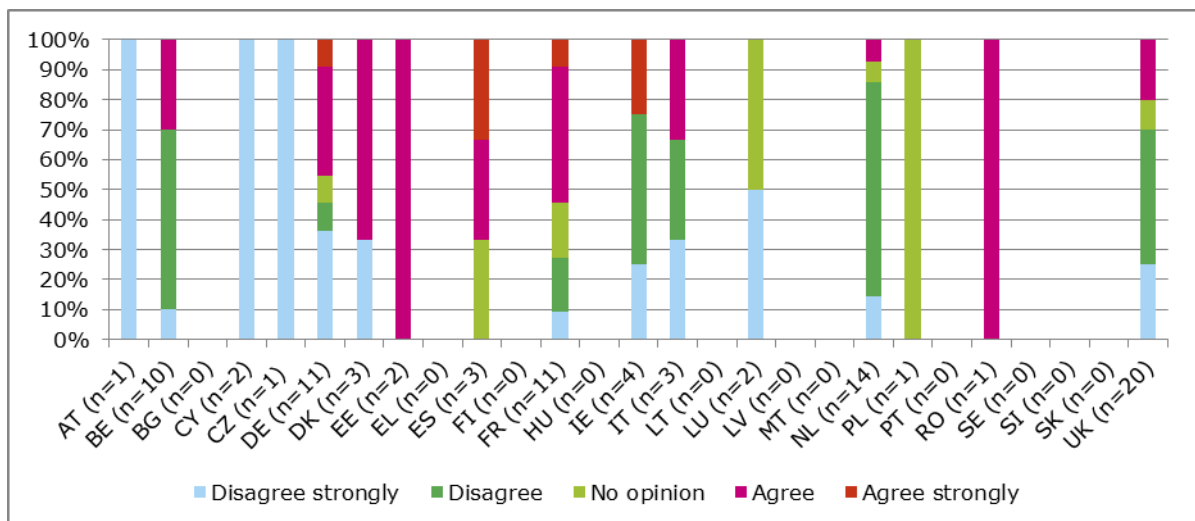
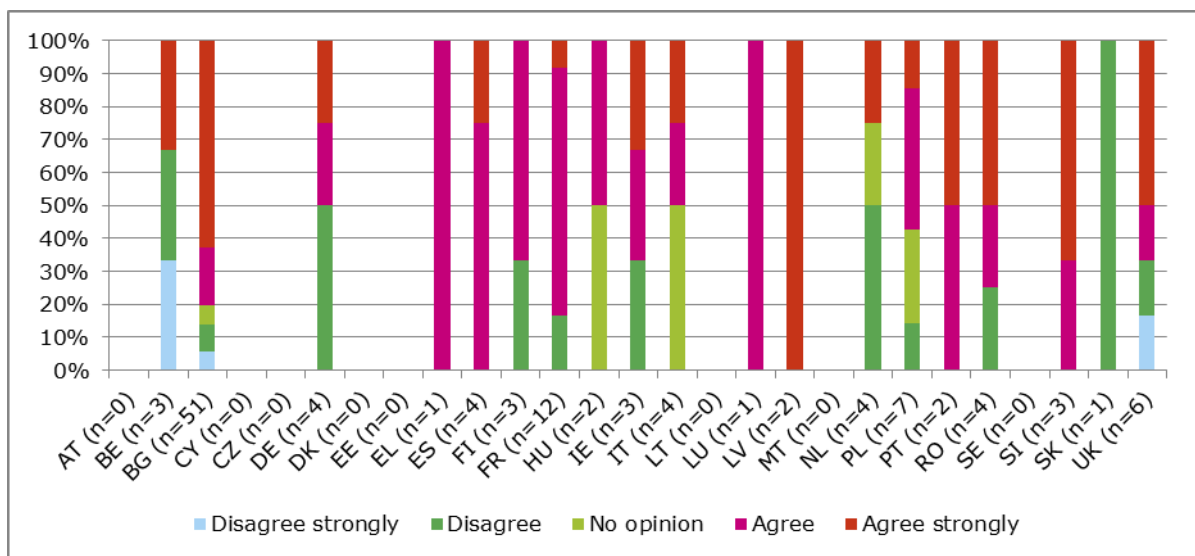


Figure 48 illustrates, based on the nationality of the respondent, whether the level of protection of workers would influence the respondents' decision to go to another EU Member State to work. In general, the respondents valued the protection of workers and found that the level of protection affected their decision to go to another Member State to work. As stated in Figure 37, the four most frequent nationalities were BG, FR, PL and the UK. 80% of the Bulgarian respondents *agreed* or *agreed strongly* that their decision to go to another EU Member State to work would be affected by the level of protection in the given Member State. The figure is even higher for the French respondents (83%), while it is considerably lower for the respondents from Poland (57%), and the UK (67%).

Figure 48: By nationality: Would the level of protection of workers influence your decision to go to another EU Member State to work? (n=117)



Turning to the most frequent host countries, it is noticeable that many of the respondents who have worked in these countries considered the level of protection of workers important when deciding to go to another EU Member State to work (see Figure 49). The percentages of respondents who either *agreed* or *strongly agreed* that the level of protection influenced their decision show no clear differences between the countries, as all are somewhere between 60-82%. The percentages, to some degree, match the ones in Figure 15. This might be because of the respondents' experiences with the level of protection of workers when working in the respective countries, and, therefore, they believed that the level of protection would influence their decision when going to other EU Member States to work.

Figure 49: By host country: Would the level of protection of workers influence your decision to go to another EU Member State to work? (n=89)

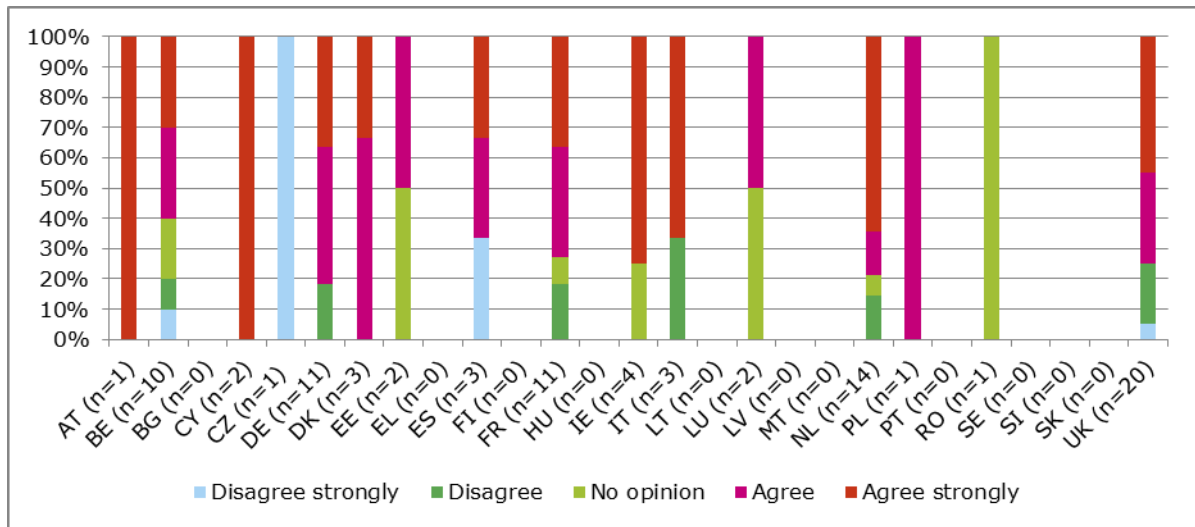


Figure 50 shows, according to the nationality of the respondents, whether the respondents believed that workers should be better protected when working in another EU Member State. 93% of the respondents either *agreed* or *strongly agreed* with this. Only seven (out of 117) respondents *disagreed* or *strongly disagreed* that workers should be better protected. Although there are significant percentage variations, some of the nationalities were represented by very few respondents and it is, therefore, not possible to make any valid conclusions on whether the way in which respondents have answered the question can be related to the nationality of the respondents. However, the high percentage of respondents who believed that workers should be better protected when working in another EU Member State is a strong indication of the existence of hindering factors for the free movement of EU workers.

Figure 50: By nationality: Should workers be better protected when working in another EU Member State? (n=117)

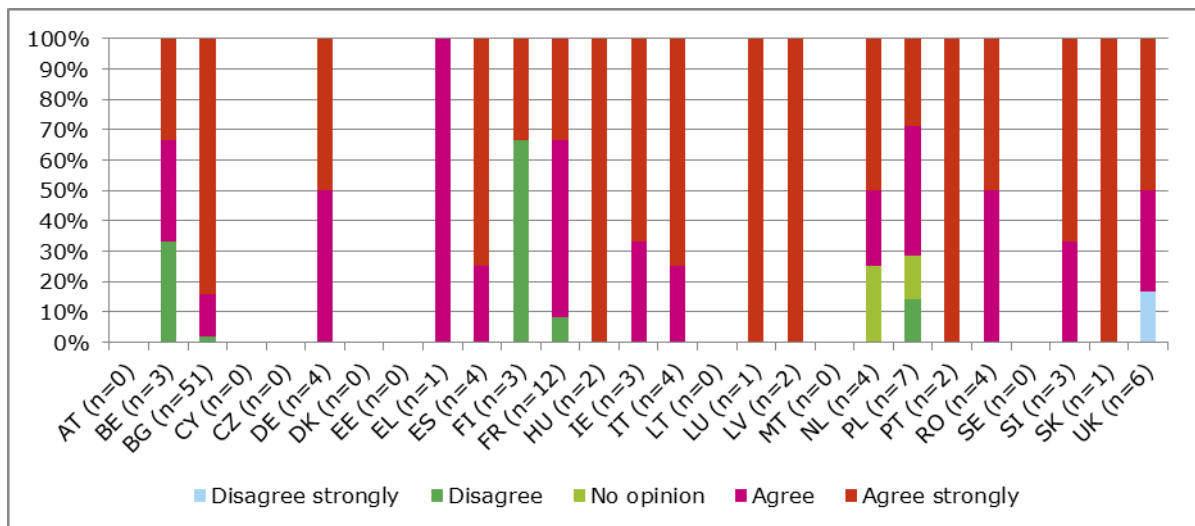
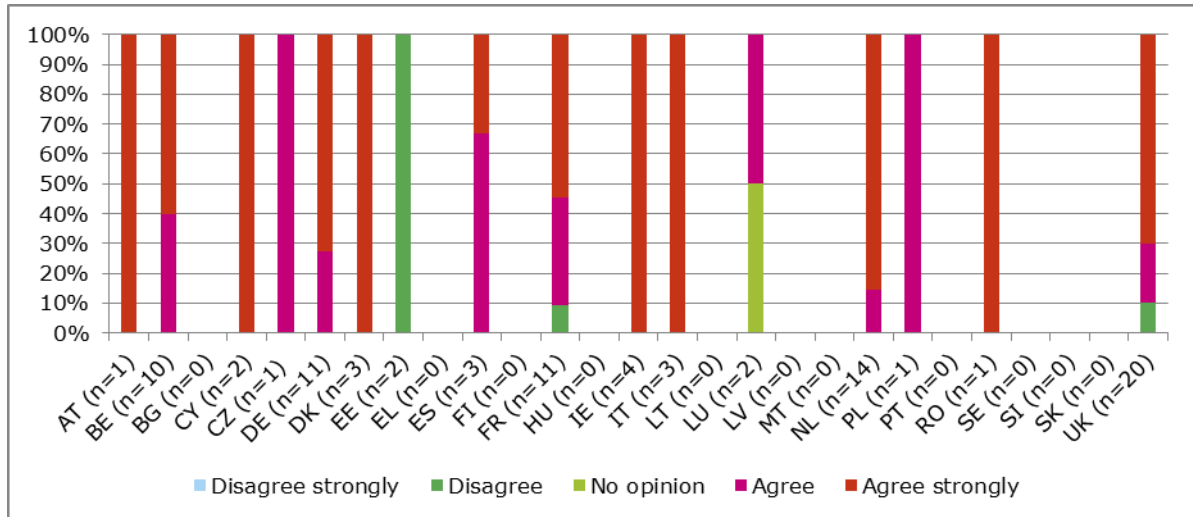


Figure 51 is based on the Member States where respondents have worked. It clearly shows that a high share of the respondents believed that the protection of workers in other EU Member States should be improved. In most of the host countries²⁷⁰, all of the respondents *agreed* or *agreed strongly* that there was a need to improve the protection of EU migrant workers.

²⁷⁰ With the exception of EE, FR, LU, and the UK.

Figure 51: By host country: Should workers be better protected when working in another EU Member State? (n=89)

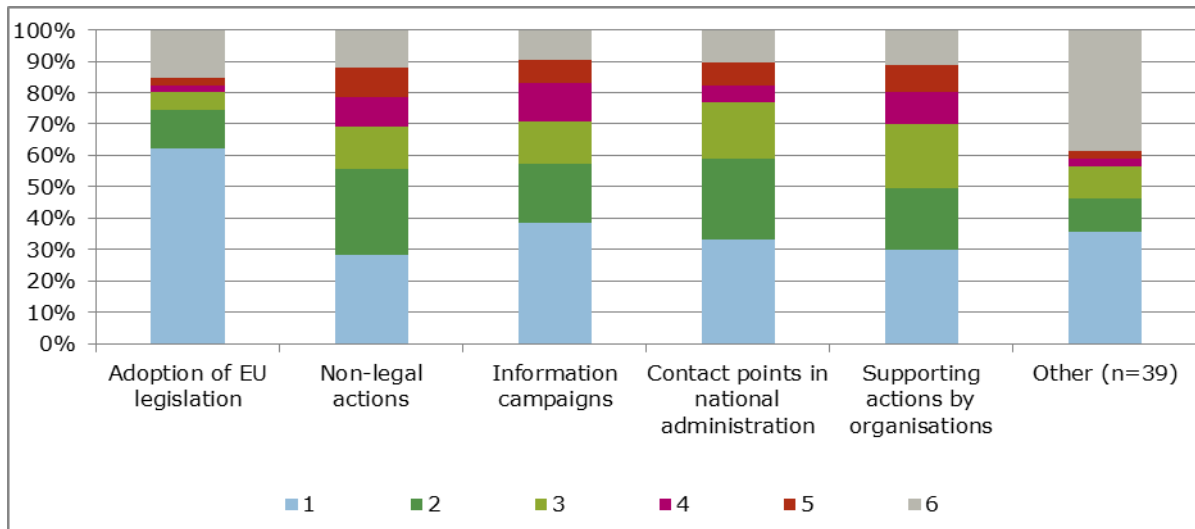


The above analysis clearly indicates that the respondents believed more should be done to protect workers when they work in another EU Member State. All respondents were likewise requested to comment on possible measures, as well as their importance, they thought could be taken in order to improve the protection against nationality based discrimination.

According to the respondents, the best way to achieve better protection of workers was by the *adoption of EU legislation* that reinforces the rights of EU migrant workers (see Figure 52). 62% of the respondents gave this measure first priority. This is clearly higher than the remaining measures, which are all supported by approximately one-third of the respondents²⁷¹. The *other* category contains various suggestions, e.g. some Bulgarian and Romanian respondents suggested that the transition scheme be removed so that EU2 nationals could have the same rights as all other EU nationals. One respondent suggested that registration of EU nationals and their family member be made optional, as has been done in the UK. Others believed that the whole legislation should be changed and/or that strong action should be taken against countries who fail to transpose EU law. Another suggestion was to make a personal EU registration number for all citizens in order to ease administrative matters concerning EU migrant workers. Furthermore, one of the respondents believed that contact points in national authorities should speak at least one of the official EU languages.

Figure 52: How could workers be better protected when working in another EU Member State? (n=117) (1 = most important, 6 = least important)

²⁷¹ The percentages do not add to 100% because some of the respondents have considered more than one measure as first priority.



ANNEX C: SUMMARY REPORT – PUBLIC CONSULTATION AMONG ORGANISATIONS

European Commission, DG EMPL

Summary report

November 2011

ANNEX C:

FREE MOVEMENT OF WORKERS PUBLIC CONSULTATION

ORGANISATIONS

**FREE MOVEMENT OF WORKERS PUBLIC CONSULTATION
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ORGANISATIONS

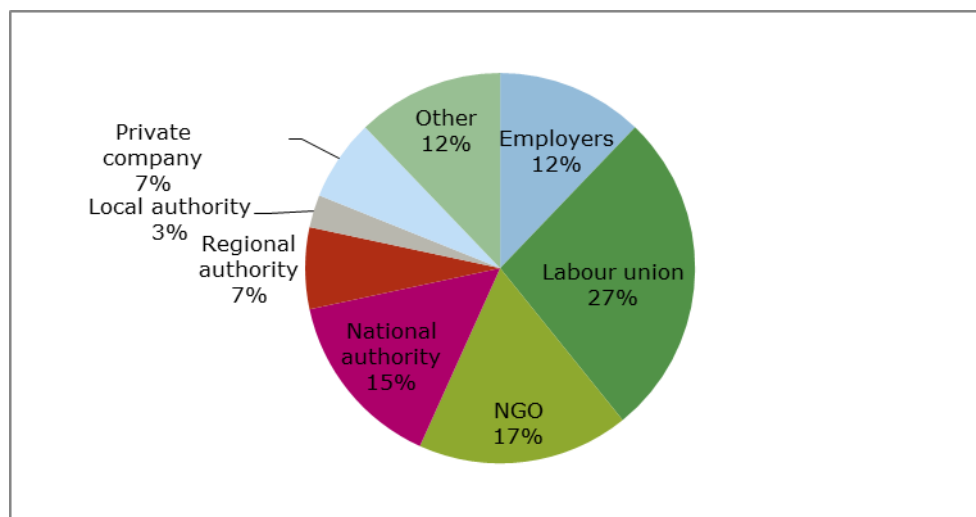
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1. INTRODUCTION

In total, **74 organisations** responded to the public consultation on *EU initiatives for the enforcement of EU rules on freedom of movement for workers*, which was available from 17/06/2011 to 12/08/2011 on the website of the European Commission, DG Employment, Social Affairs and Inclusion. Figure 53 illustrates the share of the respondents by organisation type. Labour unions were the most active in contributing to the consultation and represent roughly one-fourth (27%) of the respondents, while NGOs (17%), national authorities (15%) and employer organisations²⁷² (12%) were also widely represented. Respondents also included private companies (7%) and regional and local authorities (7% and 3%, respectively). A large share of the respondents (12 %) belongs to other types of organisations than those mentioned above. These other organisations include non-profit organisations, an association representing independent professionals, a trade association and a national church²⁷³.

Figure 53: What kind of organisation do you represent? (n=74)



The organisations were based in 23 different Member States, excluding *Ireland, Lithuania, Luxembourg* and *Romania*.²⁷⁴ Figure 54 shows that organisations from Germany (14%) represented a large share of the respondents. Other Member States with a minimum of five organisations contributing to the consultation were Poland (10%), Belgium (8%), Spain (8%),

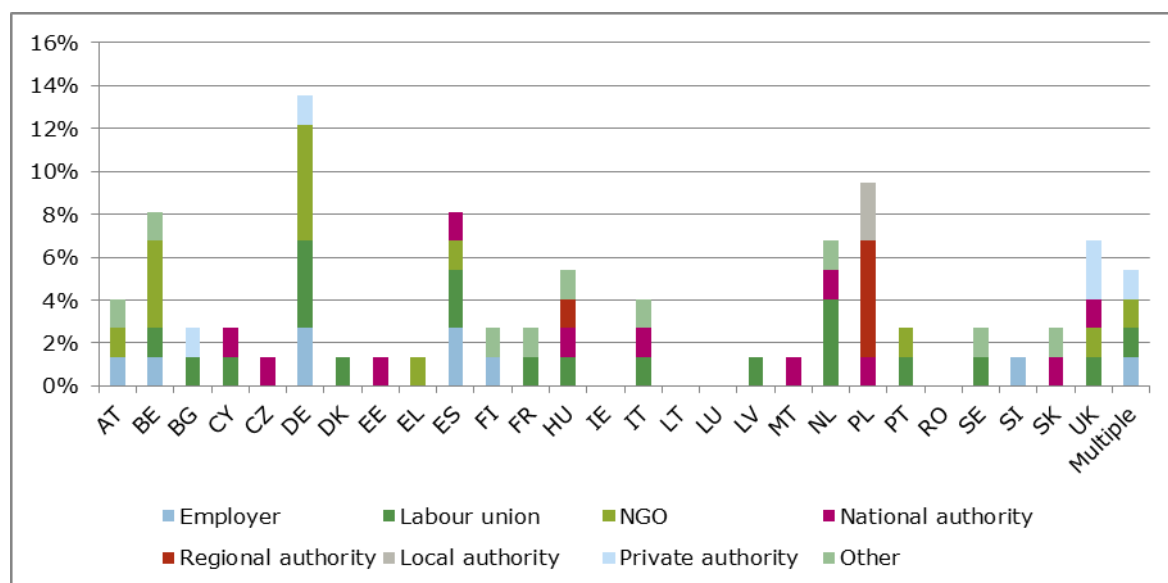
²⁷² A private company, a state owned company and a hospital were removed to more suitable categories.

²⁷³ An employers' organisation, a national labour inspectorate and national employment offices were removed to more suitable categories.

²⁷⁴ One of the respondents is based in several Member States without further specifying the respective countries. Therefore this respondent is not included below in *figure 2* or other tables concerning respondents by country. Also three other organisations based in Belgium are clearly European/worldwide rather than national and therefore included in the category multiple countries

the Netherlands (7%) and United Kingdom (7%). When more than one organisation responded to the consultation from a Member State, the types of organisations varied in all the Member States. However, it is worth noting that all the organisations based in Poland represented the public sector.

Figure 54: In which country of the European Union is your organisation based? (n=74)



As presented in Table 38 below, almost half of the respondents (45%) were listed in the Register of Interest Representatives, while 29% of them did not consider this question to be applicable. Finally, 26% of respondents were not listed in the register.

Table 38: Is your organisation listed in the Register of Interest Representatives? (n=73)

| Member of Register of Interest Representatives | No. of respondents | % of respondents |
|--|--------------------|------------------|
| Yes | 33 | 45% |
| No | 19 | 26% |
| Not applicable | 21 | 29% |
| Total | 73 | 100% |

3. AWARENESS OF THE RIGHTS OF FREE MOVEMENT OF WORKERS

All 74 of the respondents were aware of workers' rights under European legislation when they move to another country of the European Union. Table 39 shows that 70% of these organisations provided information to the EU workers about their free movement rights. Only one German labour union stated that it did not provide its information in a language understandable to the worker, while one of the organisations did not specify if the information it provided online could be understood by workers involved.

Table 39: Awareness of workers' rights and provided information

| Question | No. of YES answers | % of respondents | No. of NO answers | % of respondents |
|---|--------------------|------------------|-------------------|------------------|
| Are you aware of workers' rights under European legislation when they move to another country of the European Union? (n=74) | 74 | 100% | 0 | 0% |
| Does your organisation provide information to EU workers about their free movement rights? (n=74) | 52 | 70% | 22 | 30% |
| Is this information understandable to the worker? (n=51) | 50 | 98% | 1 | 2% |

The channels used to provide information to EU workers about their free movement rights are presented in Figure 55. Information was most commonly provided at the workplace (25%) and on the internet (23%). Brochures were disseminated in 10% of the organisations that provided information, and only 2% of respondents used the intranet for this purpose. In addition to the above-mentioned channels, a large share of information was provided by other means, such as telephone consultation, seminars, trainings, membership publications and personal meetings.

Figure 55: Please specify how your organisation provides information? (n=74)

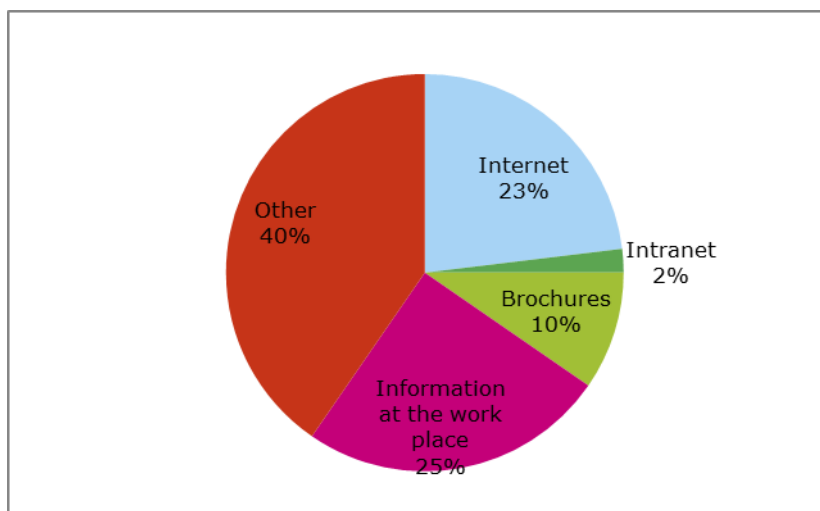


Figure 56 illustrates the differences between the organisation types who provided information. It can be noted that, while all the respondents from regional and local authorities provided information, 95% of labour unions²⁷⁵ and 90% of national authorities also disseminated information to EU workers about their free movement rights. The channels used to provide information were the most diverse among labour union organisations. These organisations provided information at the workplace and through internet, brochures, and intranet, as well as by other means such as personal consultation, flyers, articles in newspapers and member publications. In addition to labour unions, information at the workplace was widely provided across other types of organisations, including regional and local authorities, private companies and other types of organisations (non-profit organisations, employment offices, a national church). However, respondents from employer organisations, NGOs and national authorities did not provide information at the workplace. Moreover, internet was indicated as a source of information by various types of organisations, including national and local authorities and NGOs. Employer organisations disseminated information the least (33%), and most of this information was provided by brochures. A large share of labour unions, NGOs, national and local authorities, as well as private companies used various other ways to provide information to EU workers. For example, many of the NGOs organised personal meetings where legal advice was provided.

Figure 56: By organisation type: Please specify how your organisation provides information? (n=74)

²⁷⁵ When we refer to a specific type of respondents, we always refer to the organisations who responded to the questionnaire.

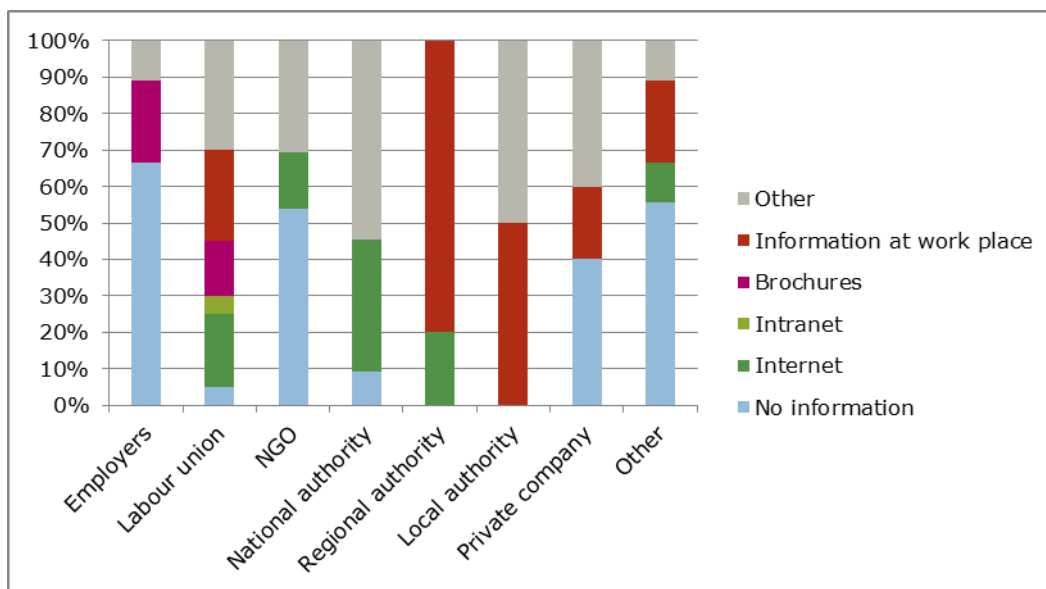
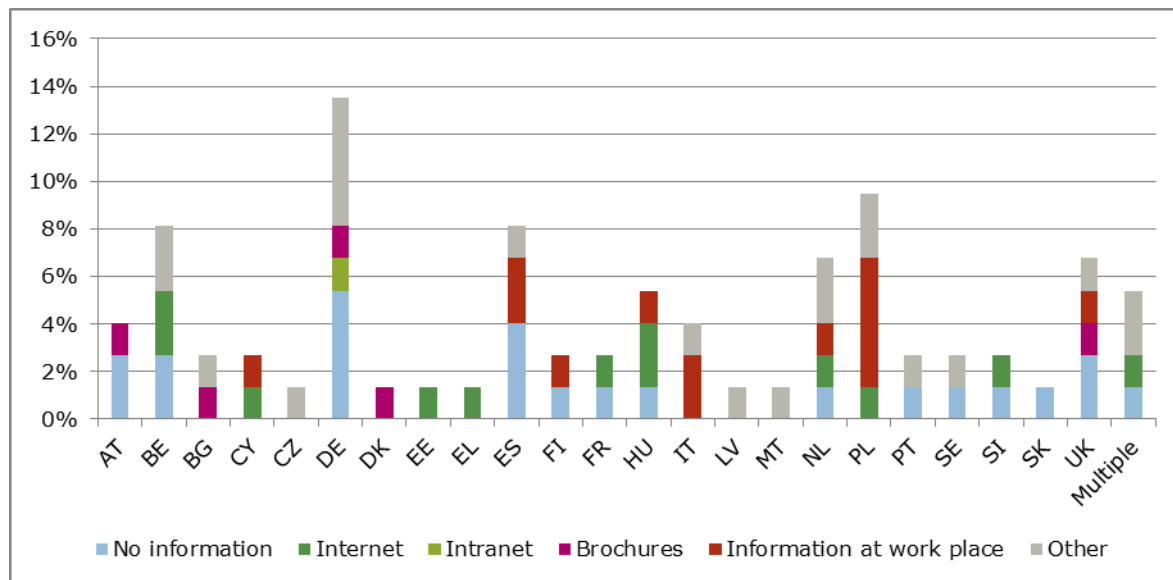


Figure 57 concentrates on differences between the Member States who provided information. In ten Member States,²⁷⁶ all of the respondent organisations provided information to EU workers on the free movement of rights. On the other hand, 50% or less of the organisations in seven Member States²⁷⁷ provided information to the EU workers, although the amount of respondents was limited in most of these countries. Both Germany and Spain had a relatively high number of respondents. All of the labour unions provided information but none of the employer organisations did. In Germany, other respondents that provided information included a private company and a NGO. In Spain, a respondent from a NGO provided information, while a national authority did not.

²⁷⁶ BG, CY, CZ, DK, EE, EL, IT, LV, MT, PL.

²⁷⁷ AT, ES, FI, FR, PT, SI, SK, SE.

Figure 57: By Member State: Please specify how your organisation provides information? (n=74)



4. LEGAL SUPPORT TO MIGRANT WORKERS

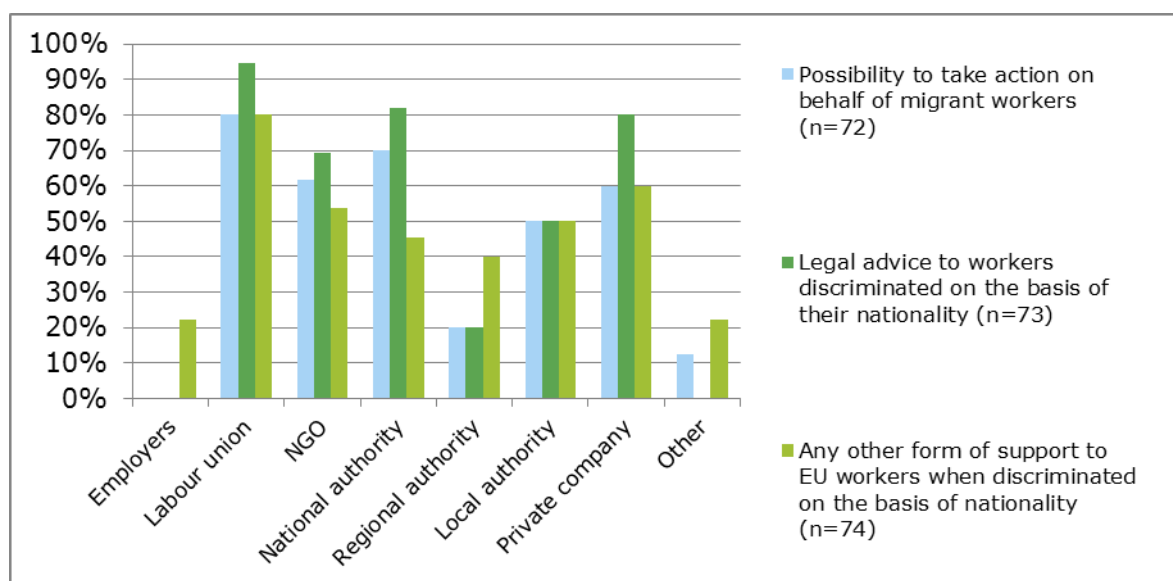
Table 40 and Figure 58 compare the answers regarding the possibility to take action on behalf of migrant workers in the country where the organisations were based, and the actual support that the organisations provided. It can be seen that more organisations provided legal advice to workers discriminated against on the grounds of their nationality (58%) than claimed to have the possibility to take action on behalf of migrant workers in the Member State where they were based (51%). Also, around half (51%) of the organisations provided other forms of support to EU workers discriminated against on the grounds of nationality.

Table 40: Legal/non-legal support to migrant workers

| Support to migrants workers | Yes | No |
|---|-----|-----|
| Possibility to take action on behalf of migrant workers (n=72) | 51% | 49% |
| Legal advice to workers discriminated against on the basis of their nationality (n=73) | 58% | 42% |
| Any other form of support to EU workers when discriminated against on the basis of nationality (n=74) | 51% | 49% |

Taking a closer look at the answers by different types of organisations presented in Figure 58, it can be seen that labour unions claimed the most often to have the possibility to take action on behalf of migrant workers in the country where they were based. These organisations also provided legal advice the most often, as well as other support to migrant workers. Moreover, around 80% of the national authorities and private companies and 70% of NGOs took action; even more of these organisations provided legal advice. Half of the local authorities had the possibility to take action, and these also provided legal and other support to workers. It should be noted that all of the employer organisations denied having a possibility to take an action on behalf of migrant workers, and only around 20% of the organisations provided any kind of support to EU workers discriminated against on the grounds of nationality.

Figure 58: Support to migrant workers by type of the organisation

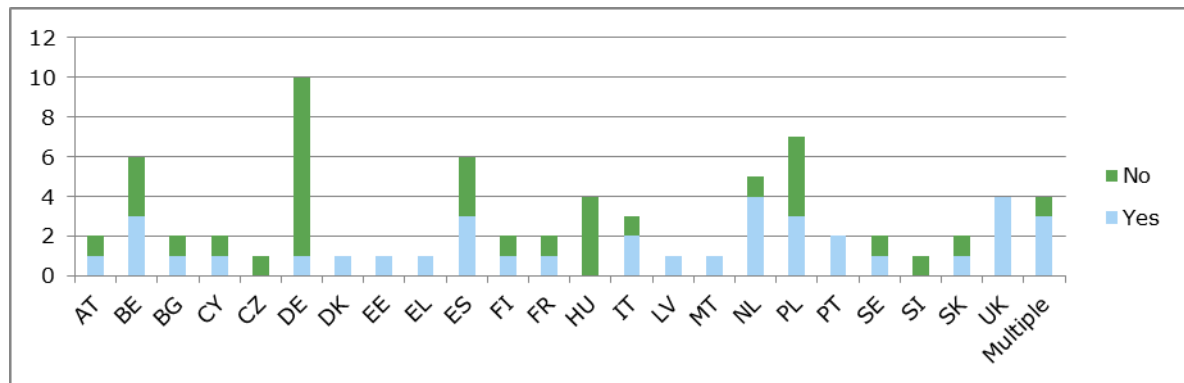


The three questions presented above are analysed one by one in the following.

4.1 Does your organisation have the possibility to take an action on behalf of migrant workers in the country of the European Union where you are based? Please specify.

When looking at the corresponding figures in terms of Member States presented in Figure 18, it can be seen that in several Member States²⁷⁸ the majority of the organisations had the possibility to take an action on behalf of migrant workers. However, this was not possible in the Czech Republic, Hungary or Slovenia.²⁷⁹ Also, nine out of ten organisations denied having the possibility to take action in Germany²⁸⁰, where labour unions have different views on the issue. Among other Member States with at least five respondents, less than half of the organisations were able to take an action in Poland and Spain, whereas half of the organisations had the possibility to act in Belgium²⁸¹. As in Germany, some of the labour unions stated they had the possibility to take an action in Spain, whereas some did not. In the case of Poland, it clearly depended on the type of public authority on whether the organisation could take action.

Figure 59: Possibility to take an action on behalf of migrant workers in the country of the European Union where you are based by Member State (n=72)



Actions the organisations could take included various measures, mainly dependent on the type of organisation. Legal advice was mentioned by 10²⁸² out of 14 labour unions. However, half of these organisations based in Germany, Latvia and the Netherlands specifically mentioned restrictions if workers were not members of these unions. Other commonly mentioned measures among labour unions included engaging in social dialogue, informing the national labour inspectorate, and providing other advice to migrant workers. National authorities that contributed to the consultation mentioned the possibility to raise infringement proceedings and make proposals for amending legislation. Five²⁸³ out of seven NGOs specified that the organisations were able to provide legal advice. Another specified possibility among NGOs included advocacy work on providing help on issues concerning access to housing and access to emergency accommodation. Moreover, one of the NGOs explained that some of its member organisations set up transnational projects to assist migrant workers. As part of these projects, advice on general rights and labour laws and assistance in negotiating decent working contracts was provided prior to the departure. After arrival, a contact person was assigned to the migrant, and migrants also received practical assistance with tax issues and registration with the local authorities. In another example, the Finnish Evangelical Lutheran Church provided financial aid, legal and other consultation. Finally, a

²⁷⁸ DK, EE, EL, IT, LV, MT, NL, PT, UK.

²⁷⁹ These organisations include national authority in Czech Republic; labour union, national authority, other organisation in Hungary; and employers' organisation in Slovenia.

²⁸⁰ Organisation not having the possibility to take action include: employers' organisations, labour unions, NGOs, a private company, while a labour union claims to have the possibility.

²⁸¹ Organisations having the possibility to take action include: NGOs and a labour union, while an employers' organisation, a NGO and a non-profit organisation do not.

²⁸² These organisations are based in BE, DE, ES, FR, LV, NL, UK.

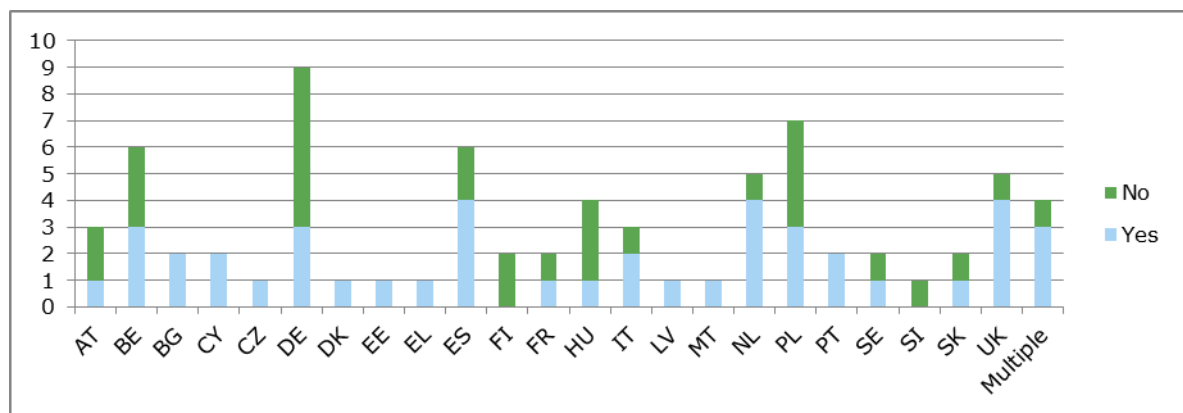
²⁸³ These organisations are based in BE, AT, UK, PT.

private company in the United Kingdom provided support by offering guidance on access to the labour market.

4.2 Does your organisation provide legal advice to workers who have been discriminated against on the basis of their nationality?

As seen in Figure 19, the majority of the respondents provided legal advice in most of the Member States. However, in Finland and Slovenia, none of the organisations provided legal advice to workers who have been discriminated against on the basis of nationality.²⁸⁴ Among Member States with at least five respondents, a clear majority of Spanish, Dutch and British organisations provided legal aid, while in Belgium²⁸⁵ half of them did. In Germany and Poland, less than half of the organisations provided legal advice for those discriminated against²⁸⁶.

Figure 60: Legal advice to workers who have been discriminated against on the basis of their nationality by Member State country (n=72)



4.3 Does your organisation provide any other form of support to EU workers when discriminated against on the basis of nationality?

In most Member States, other forms of support than legal advice were provided, as shown in Figure 20. There were, however, some Member States²⁸⁷ where such support was not provided. Among those Member States where a minimum of five respondents were based (Germany, Poland, Spain, the Netherlands and United Kingdom), at least half of the organisations provided other forms of support, while in Belgium²⁸⁸ only two out of six organisations claimed to do that.

Figure 61: Any other form of support to EU workers when discriminated against on the basis of nationality by Member State (n=73)

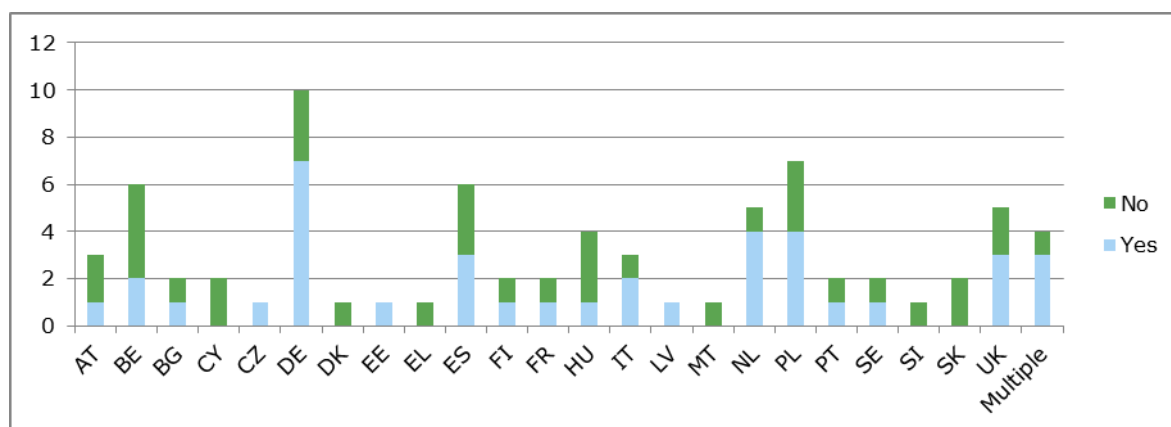
²⁸⁴ These organisations include employers' organisation and a national church in Finland and employers' organisation in Slovenia.

²⁸⁵ Organisations providing legal advice include: a labour union and most of NGOs, while an employers' organisation, a NGO and a non-profit organisation do not.

²⁸⁶ Organisations providing legal advice in Germany include: labour unions and a NGO, while employers' organisations, most of NGOs and a private company do not. In case of Poland it depends on the type of public authority.

²⁸⁷ CY, DK, EL, MT, SI, SK.

²⁸⁸ Organisation providing other form of support include: a labour union and a NGO, while employers' organisation, a NGO and a non-profit organisation do not.



In other cases, the nature of support varied according to the type of organisation rather than the country where respondents were based. For national authorities, other support included support from employment offices and labour inspectorates. Other organisations specified the provision of practical support and consulting as other support. The support and consulting usually consisted of providing information about the workers' rights, as well as advising what action could be taken in case of discrimination. In addition to providing practical support and consulting in a number of Member States²⁸⁹, labour unions were involved with awareness-raising campaigns or similar activities²⁹⁰, general advocacy work²⁹¹ and referring to an equality body²⁹². NGOs were involved with general advocacy work²⁹³ and referred to an equality body²⁹⁴ in addition to practical support and consulting²⁹⁵. Employer organisations were involved in awareness-raising campaigns or similar activities on the rights of freedom of movement of workers²⁹⁶ as well as in general advocacy work²⁹⁷. The national church in Finland was involved in general advocacy work in addition to providing practical support and consulting. General advocacy work mentioned above included producing reports, supporting collective agreements, public relations towards the media and lobbying. Awareness-raising campaigns consisted mainly of providing or supporting a website.

²⁸⁹ BG, DE, ES, IT, an European wide organisation.

²⁹⁰ DE, FR.

²⁹¹ DE.

²⁹² NL.

²⁹³ BE, DE, a worldwide organisation.

²⁹⁴ BE.

²⁹⁵ DE, ES, PL, UK, a worldwide organisation.

²⁹⁶ UK.

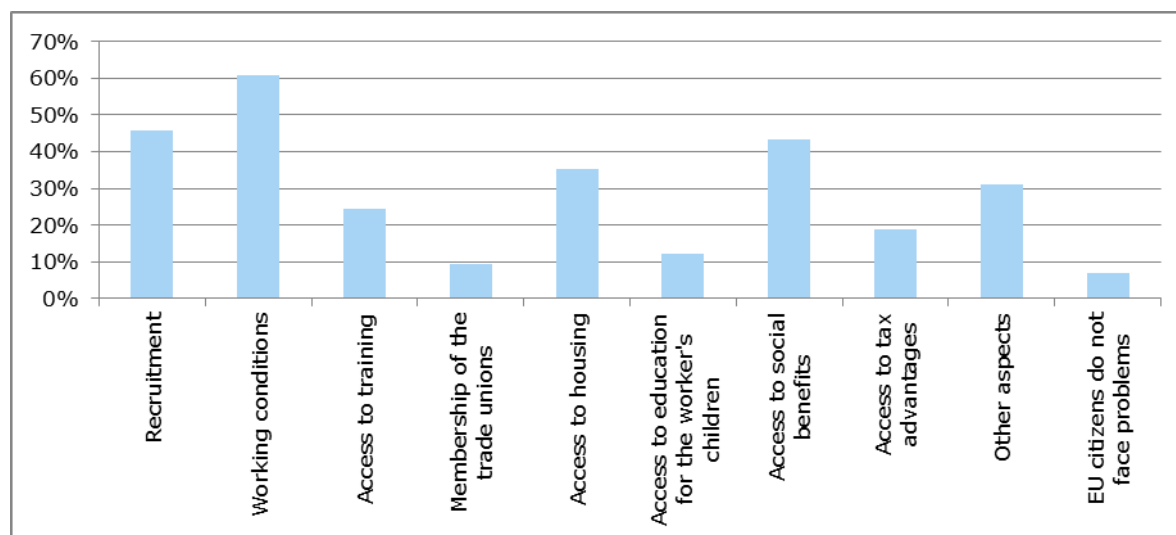
²⁹⁷ DE.

5. REMOVING OBSTACLES TO FREE MOVEMENT OF WORKERS

5.1 According to your experience what are the main problems that EU citizens face when working in another country of the European Union?

As can be seen from Figure 62, the majority of the respondents (61%) considered working conditions (e.g. different pay, different career development) as one of the main problems EU citizens faced when working in another country of the European Union. This is clearly more than those who considered recruitment (e.g. different recruitment criteria) (46%) and access to social benefits (e.g. study grants, transport fare reductions, minimum subsistence payments) (43%) as main obstacles. Problems in terms of access to housing were recognised by 35% of the respondents, while 24% considered access to training and 19% access to tax advantages (e.g. non deductibility of living expenses incurred abroad, alimony payments or contributions to private medical insurance abroad, taxation on gross instead of net income or higher taxation of foreigners in the host Member State) among main problems. Problems regarding access to education for the workers' children in the educational system of the country where they work (12%) and membership of the trade unions (9%) were the least indicated obstacles. In addition to the above mentioned problems, other aspects included lack of adequate information and personal consultation, language barriers, time-consuming procedures and recognition of qualifications. The minority of 7% thought EU citizens do not face problems.

Figure 62: Main problems that EU citizens face when working in another country of the European Union (n=74)



When looking at the share of responses separately per each organisation type, it can be seen from Table 41 that labour unions, as well as local, regional and national authorities, commonly considered working conditions as the main problem. In fact, all of the labour unions and local authorities considered this as one of the main problems, while a minimum 20% of all other types of organisations considered this a problem. Recruitment was also seen as an obstacle by all organisation types, but the local authorities (100%) experienced these types of problems the most. Respondents from NGOs most commonly considered recruitment as one of the main problems together with access to social benefits. 44% of respondents from private companies and 40% of private companies considered the same. In fact, with the exception of local authorities, access to social benefits was seen as an important problem regardless of the organisation type. Finally, 22% of the employer organisations and 20% of the private companies felt that EU citizens do not face problems. 9% of the national authorities and 8% of NGO shared

this view s, but none of the labour unions, regional and local authorities agreed with it. Almost half of the NGOs saw other aspects as the main problems. These included lack of sufficient information concerning the workers' rights and differences between countries as regards e.g. taxes, health insurance costs, healthcare fees, provisions etc, lack of resources to personal consultation for border workers, lack of legal requirements in particular for posted workers, lack of information about vacancies, ineligibility for social and health insurances and unregulated working conditions.

Table 41: Main problems that EU workers face by organisation type (% of the total respondents in each organisation category)

| Type of problem | Employers | Labour union | NGO | National | Regional | Local | Private | Other |
|--|------------|--------------|------------|------------|-----------|-----------|-----------|------------|
| Recruitment ²⁹⁸ | 44% | 55% | 54% | 18% | 60% | 100% | 40% | 33% |
| Working conditions ²⁹⁹ | 33% | 100% | 38% | 55% | 80% | 100% | 20% | 44% |
| Access to training | 22% | 40% | 46% | 9% | 0% | 0% | 20% | 0% |
| Membership of the trade unions | 0% | 25% | 8% | 9% | 0% | 0% | 0% | 0% |
| Access to housing | 11% | 50% | 38% | 36% | 20% | 0% | 20% | 44% |
| Access to education for the worker's children ³⁰⁰ | 0% | 15% | 23% | 0% | 20% | 0% | 20% | 11% |
| Access to social benefits ³⁰¹ | 44% | 40% | 54% | 45% | 40% | 0% | 40% | 44% |
| Access to tax advantages ³⁰² | 22% | 25% | 23% | 18% | 0% | 0% | 0% | 22% |
| Other aspects | 33% | 25% | 46% | 36% | 0% | 0% | 40% | 33% |
| EU citizens do not face problems | 22% | 0% | 8% | 9% | 0% | 0% | 20% | 0% |
| % of all answers | 10% | 35% | 21% | 12% | 5% | 2% | 5% | 10% |

As presented in Table 42, the majority of the recurrent cases the organisations mentioned most dealt with working conditions. These include wage dumping and precarious working conditions without following collective agreements and legal minimum requirements. According to the respondents, migrant workers that come from Eastern European countries in particular received lower salary compared to nationals for the same positions, and also experienced more pressure to work unofficially without contributions to the social security by employers. Language problems were mentioned as one reason why these exploitative working conditions existed, as workers were not aware of their rights. Some organisations specifically mentioned home care workers and posted workers.

²⁹⁸ e.g. different recruitment criteria

²⁹⁹ e.g. different pay, different career development

³⁰⁰ in the educational system of the country where he works

³⁰¹ e.g. study grants, transport fare reductions, minimum subsistence payments

³⁰² e.g. non deductibility of living expenses incurred abroad, alimony payments or contributions to private medical insurance abroad, taxation on gross instead of net income or higher taxation of foreigners in the host State

In the case of home care workers, the employees worked as "domestic helpers with additional maintenance tasks," resulting in a situation where they provided basic care. In many countries, these workers that came from new Member States were often not offered a work contract and therefore did not receive proper protection or working conditions, nor access to social security and training. Respondents stated that due to legal gaps, this undeclared employment was not perceived as an unlawful activity as domestic care work is not considered as "regular" work with all related workers' rights.

Problems with the situation of posted workers were mentioned by German and Swedish labour unions. For these workers, equal treatment regarding working conditions was only partially guaranteed. For example, even if posted workers were guaranteed a minimum salary, deductions (e.g. accommodation, transportation, meals, poor performance) often resulted in a low pay. At the same time, these workers needed to work more hours per week. German labour unions criticised the authorities in the country for not putting out enough effort to control and prevent this phenomenon. To mention a few more examples regarding working conditions, Dutch labour unions mentioned difficulties in appropriate working conditions and housing in the agriculture sector and among Polish workers. There was also discrimination in pay for seafarers embarked under a European flag different that of his/her residence.

Organisations also pointed out challenges regarding access to social benefits. This was often a result from situations where the workers were not properly reported to the authorities by their employer and adequate contributions were not made. There was also a lack of information about benefits and schemes that should be followed. Furthermore, there was a risk that migrant workers would fall between the social security schemes of different countries, or have too short periods of employment to be properly covered by the social security schemes. Organisations also mentioned recurrent cases in regards to recruitment. Problems mentioned dealt with the recognition of diplomas and experience, which also resulted in differing working conditions. For example, one of the Spanish employer organisations explained that because of language problems it was hard to certify and recognise the foreign drivers' licences and training needed to work as a professional driver. Bulgarians and Romanians encountered discrimination regarding recruitment because work permits were required. Problems regarding housing issues mostly dealt with the provision of bad and/or expensive housing by employers. Furthermore, a lack of information and knowledge of different procedures in different countries were often pointed out, along with the administrative burden that working in another Member State causes to employers and employees, particularly frontier workers and independents. In addition, other challenges mentioned dealt with access to services of employment offices, lack of information of job offers, lack of language skills and, more specifically in the case of Denmark, the Danish International Ship Register was not open for migrant workers.

Table 42: Recurrent cases

| Problems | No. of cases |
|---|--------------|
| Recruitment | 9 |
| Working conditions | 30 |
| Access to training | 3 |
| Membership of trade unions | 0 |
| Access to housing | 7 |
| Access to education for the workers' children | 2 |
| Access to social benefits | 11 |
| Access to tax advantages | 3 |
| Other | 12 |

5.2 Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality?

The majority of 61% either agreed or strongly agreed that the country where the organisation was based adequately protected workers against discrimination on the grounds of nationality, while 32% either disagreed or strongly disagreed. 7% of respondents did not have an opinion on this issue. Table 43 below presents the respondents' answers more in detail.

Table 43: Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=74)

| Opinion | No. of respondents | % of respondents |
|-------------------|--------------------|------------------|
| I agree strongly | 9 | 12% |
| I agree | 36 | 49% |
| Disagree | 20 | 27% |
| Disagree strongly | 4 | 5% |
| No opinion | 5 | 7% |

As seen in Figure 63, in 11 of the Member States,³⁰³ all of the organisations based in these countries and expressing an opinion considered the country to adequately protect its workers. Organisations specified that relevant provisions ensuring equal rights existed in the national legislation in Austria and Poland. A labour union in Portugal mentioned the promising work of the national agency ACIDI, which worked with communities and social partners on immigrant/minority issues, as well as provided information and a wide range of services. The Czech national authority referred to the labour inspection and labour office, which monitored/controlled the observance of non-discrimination legislation regarding the access to employment in the labour market.

In six Member States (BG, CY, DK, EL, FR, SE), the situation was the opposite; none of the respondents based in these countries and expressing their opinion considered the protection as adequate. However, it should be noted that the number of respondents from these countries was very limited. Nevertheless, in Cyprus, a labour union specified that the implementation was failing even though the state provided adequate legal protection against discrimination based on ethnic origin. A Danish labour union provided an example of the Danish International Ship Register, which placed restrictions on non-domiciled workers. One French labour union explained that employees from other countries encountered less favourable working conditions than nationals. A Swedish labour union referred to the situation where trade unions did not always have a representative of the foreign company to negotiate working conditions with or practices in public procurement. This led to the possibility of dumping through the search for lower costs without taking into account the social aspects. In addition, a labour union that strongly disagreed with the fact that Italy adequately protects workers against discrimination stated that the Italian government does not provide enough information to immigrants regarding their rights. Rather, immigrants were considered more as a problem for national security than as EU citizens.

When looking at the situation in the Member States with a minimum of five respondents, it can be noted that the opinions are more diverse, with the exception of Poland³⁰⁴. In Germany, four³⁰⁵ out of ten respondents agreed, while five disagreed. German organisations referred to the anti-discrimination legislation in the country, more specifically to the General Equal Treatment Act, while labour unions criticised the implementation of the legislation and an NGO called for further measures at the European level, such as introducing social progress clauses in the European Treaties and improving information practices. In Spain, where four out of six³⁰⁶ respondents either agreed or strongly agreed, organisations also referred to the regulatory framework protecting organisations, but the implementation was similarly criticised because of lack of adequate mechanisms for compliance. Discrimination on the grounds of nationality or race was sanctioned in only a few cases. It was also reported that many services assisting migrants have been removed or their budgets reduced in Spain, meaning that charity organisations had to step in to

³⁰³ AT, CZ, EE, FI, HU, LV, MT, PL, PT, SI, SK.

³⁰⁴ All the respondents represent public authorities.

³⁰⁵ Agree: employers' organisations, NGOs; disagree: labour unions, a NGO, a private company.

³⁰⁶ Strongly agree: a national authority; agree: employers' organisations, a labour union; disagree: a labour union, a NGO.

provide these services. In the Netherlands, where three out of five³⁰⁷ respondents either agreed or strongly agreed, a labour union that disagreed specified that despite the possibility to complain to the Equal Opportunities Commission or start court proceedings, migrant workers often found themselves in vulnerable positions due to language differences, temporary labour contracts and other issues. These workers did not even start proceedings before the Commission because they were afraid of losing their jobs.

Figure 63: Answers by Member State: Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=73)

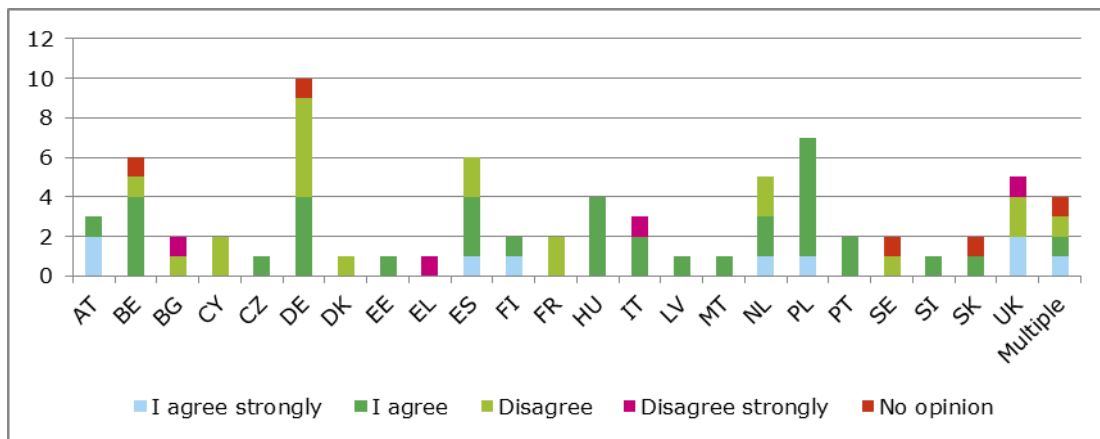
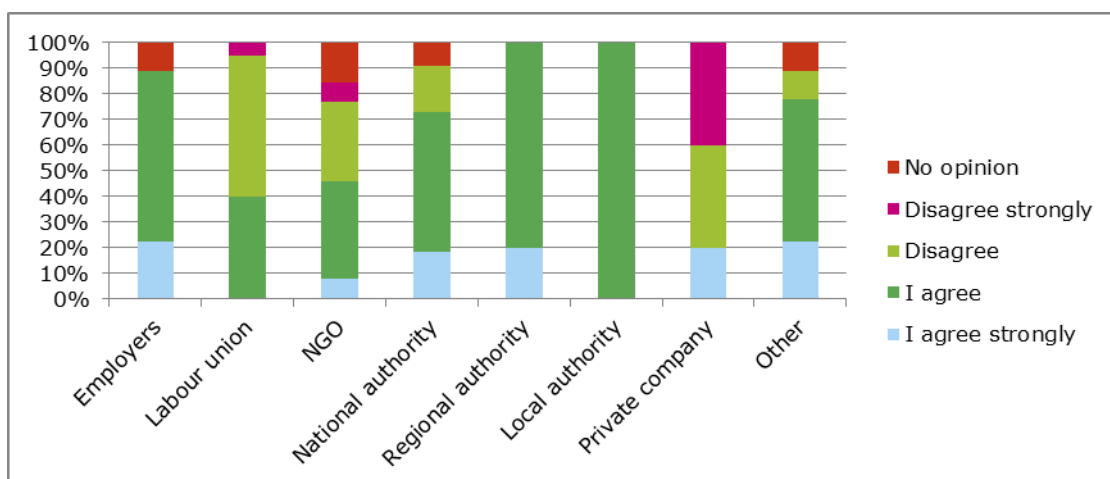


Figure 64 allows a closer look at whether different types of organisations share the same views regardless of the country they are based in. It seems to be clear that private companies, labour unions and NGOs were the most negative towards their countries' ability to protect migrant workers. More than 70% of other types of organisations considered the protection adequate, while all of the employer organisations and regional and local authorities expressing their opinion shared this view.

Figure 64: By organisation type: Do you think that the country your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=74)



5.3 Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of the European Union?

³⁰⁷ Strongly agree: an employers' organisation; agree: a labour union; disagree: a labour union, a NGO.

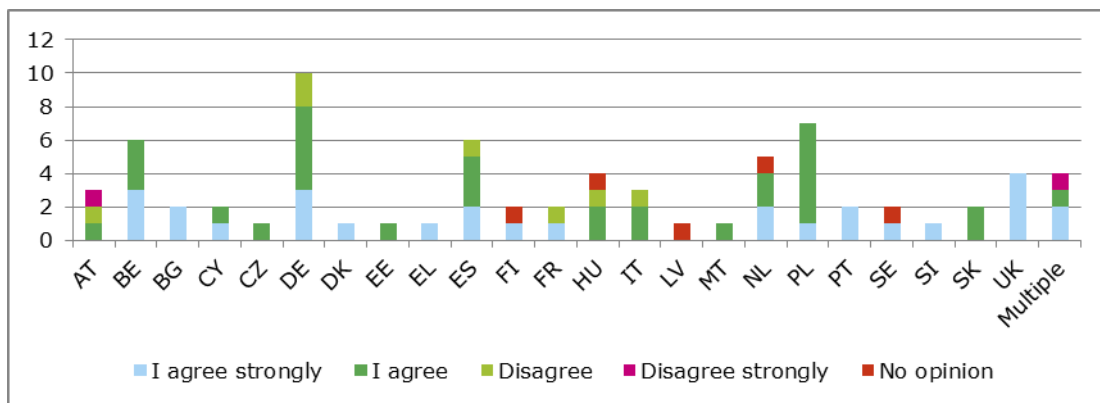
As Table 44 presents, 80% of the respondents either agreed or strongly agreed that workers should be better protected from discrimination on grounds of nationality when working in a different country of the European Union; 38% of respondents strongly agreed. Only 13% disagreed or strongly disagreed.

Table 44: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=73)

| Opinion | No. of respondents | % of respondents |
|-------------------|--------------------|------------------|
| I agree strongly | 28 | 38% |
| I agree | 31 | 42% |
| Disagree | 7 | 10% |
| Disagree strongly | 2 | 3% |
| No opinion | 5 | 7% |

Figure 65 illustrates the situation according to the country the respondents were based. There are 13 Member States³⁰⁸ where all organisations either agreed or strongly agreed that workers should be better protected. Austria is the only case where the majority of the respondents did not share this view.

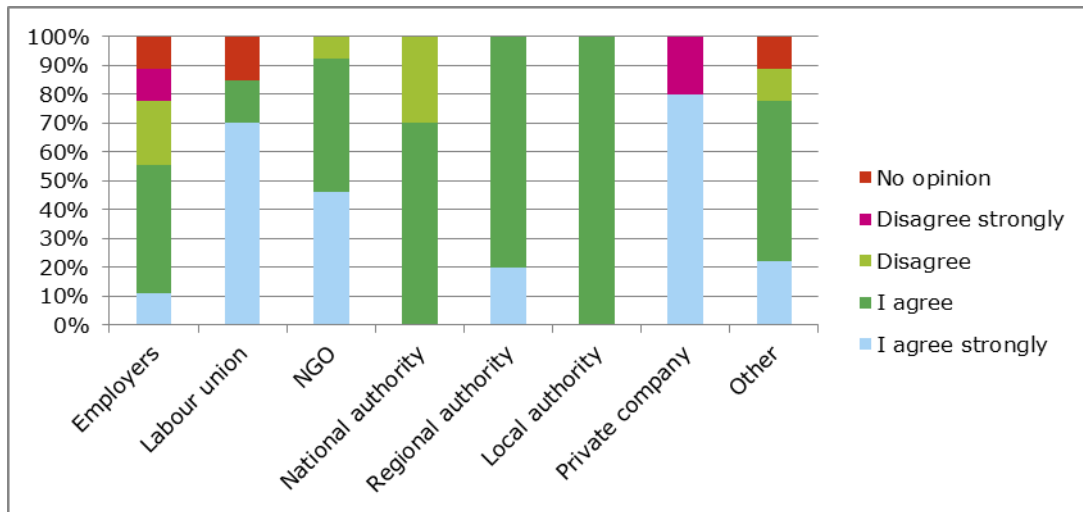
Figure 65: By Member State: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=72)



As Figure 66 illustrates, regardless of the organisation type, the majority of respondents either agreed or strongly agreed that workers should be better protected from discrimination on the grounds of nationality when working in a different Member State. All local and regional authorities agreed, and 70% of labour unions and 80% of private companies strongly agreed. Employer organisations (55%) agreed the least compared to other types of organisations.

Figure 66: By organisation type: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=73)

³⁰⁸ BE, BG, CY, CZ, DK, EE, EL, MT, PL, PT, SK, SL, UK



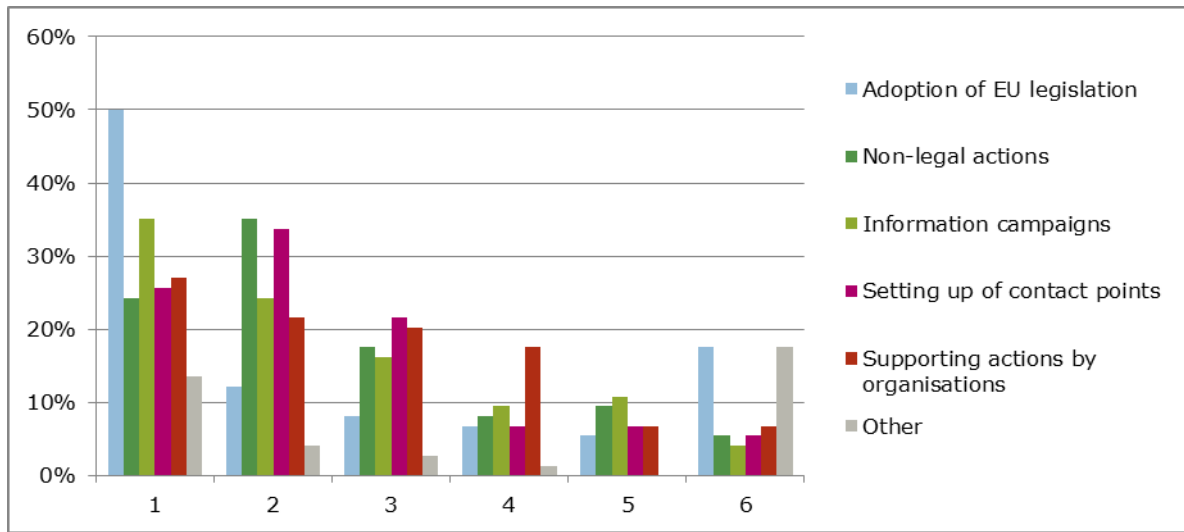
5.4 How do you think that it could be best achieved that workers could be better protected from discrimination on grounds of nationality when working in a different country of European Union?³⁰⁹

As Figure 67 illustrates, 50% of respondents indicated adoption of EU legislation that reinforces workers’ rights as the most important measure to better protect workers from discrimination on the grounds of nationality when working in a different country of the EU. However, this question clearly divides opinions, as it was also rated as the least important option by 18% of the respondents. Information campaigns enjoyed the second strongest support, while 35% of the respondents chose it as the most important option. All of the other options (non-legal actions, e.g. exchange of good practices between EU countries, enterprises, labour unions; setting up of contact points in national administration and supporting actions by organisations with an interest in fighting against discrimination on grounds of nationality) were ranked highest by roughly 25% of the respondents. Non-legal actions and the establishment of a contact point were indicated as the second important action by approximately one-third of the respondents.

Other measures included EU level actions, such as establishing a clearing house to clarify the social status of EU citizens, and approving European regulations that ensure equality in the country of work, regardless of the country where the recruitment took place and whether the worker was temporarily displaced. At the same time, better implementation of existing legislation was seen as important. It was also stated that it was crucial for migrants to receive clear information about their rights, free legal advice and other support. Trade unions should also have access to work places and enhanced contacts between countries.

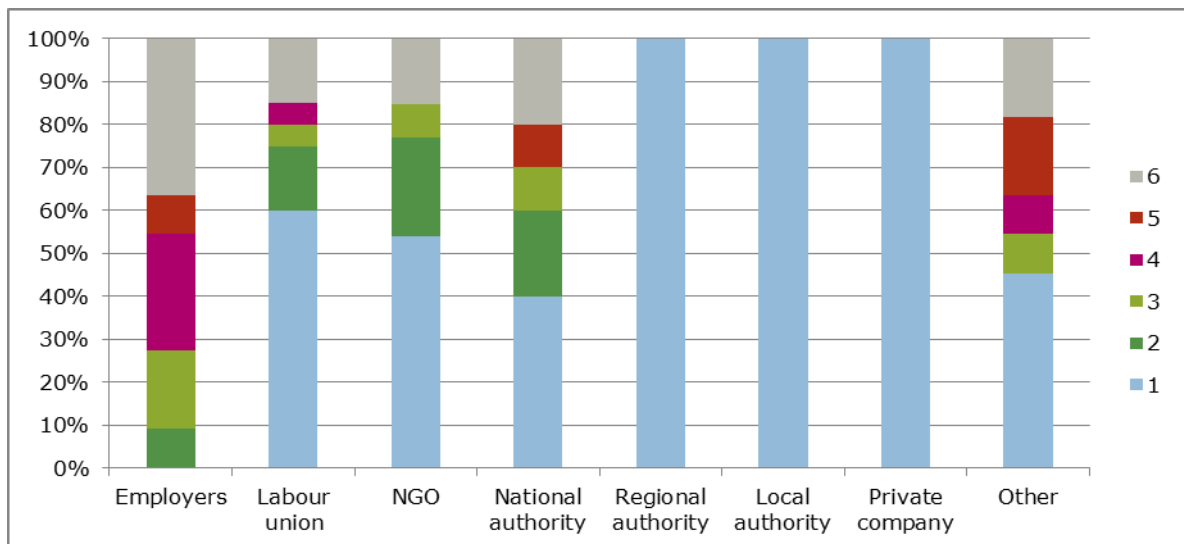
Figure 67: How do you think that it could be best achieved that workers could be better protected from discrimination on grounds of nationality when working in a different country of European Union? (1=most important, 6=least important) (n=74)

³⁰⁹ The respondents were asked to, in order of importance, rank the different options to better protect workers from discrimination on the grounds of nationality. Only 27 % of the respondents listed in order of importance the different options, while the rest placed several options in the same place. Nevertheless, all the answers are analysed and therefore answers rated from 1 to 6 do not equal to 100% in the figure 22.



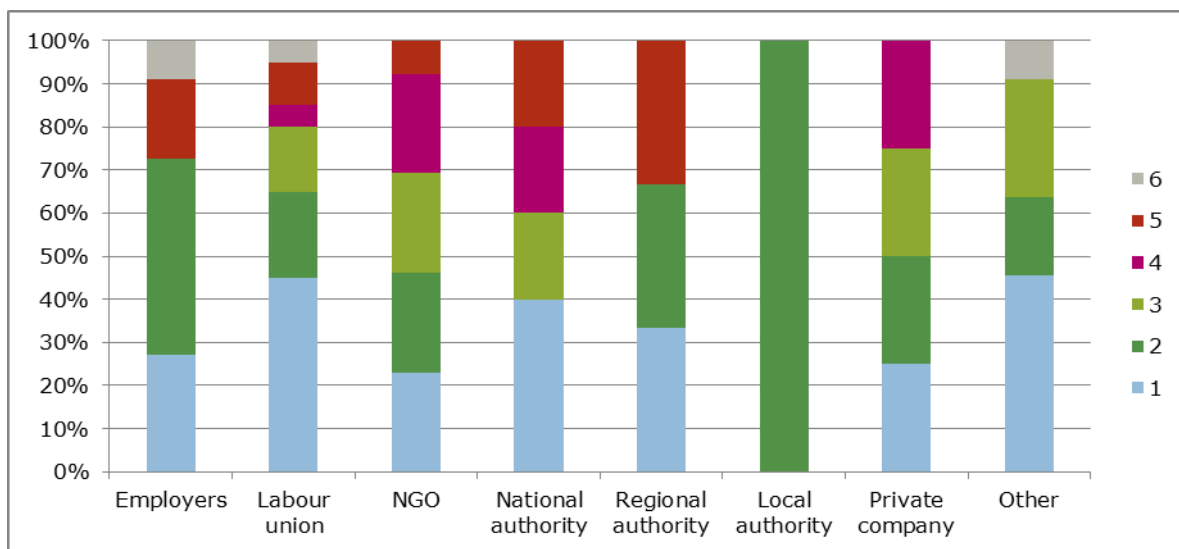
The following five figures (Figure 68, Figure 69, Figure 70, Figure 71, and Figure 72) look at the popularity of different options per organisation type. Figure 68 shows that adoption of EU legislation reinforcing workers rights was stated as the most important action among all of the respondents from private companies, regional and local authorities. This view was shared by the majority of respondents from labour unions and NGOs. Among national authorities, 40% of the respondents considered it the most important, while 20% claimed it to be the least important action. It is clear that compared to other types of organisations, the respondents from employer organisations considered the action to be less important. In fact, 36% of employer organisations considered the action to be the least important, while none of the organisations considered it to be the most important.

Figure 68: Adoption of EU legislation reinforcing their rights (1=most important, 6=least important) (n=74)



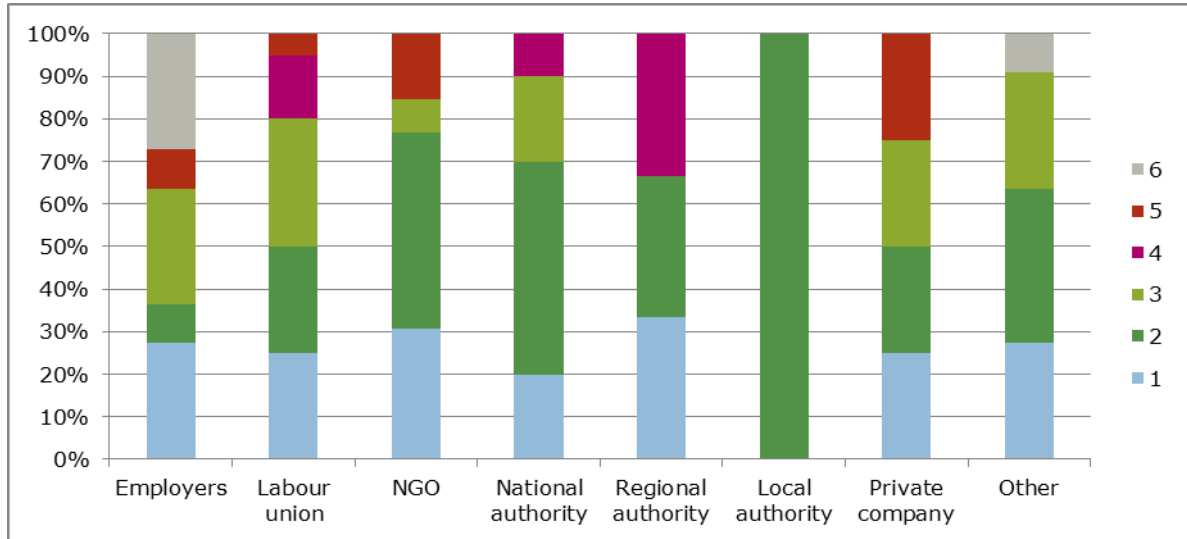
Information campaigns received fairly even support regardless of the organisation type. It can be seen that the respondents from employer organisations as a whole considered information campaigns more important than adoption of EU legislation.

Figure 69: Information campaigns (1=most important, 6=least important) (n=74)



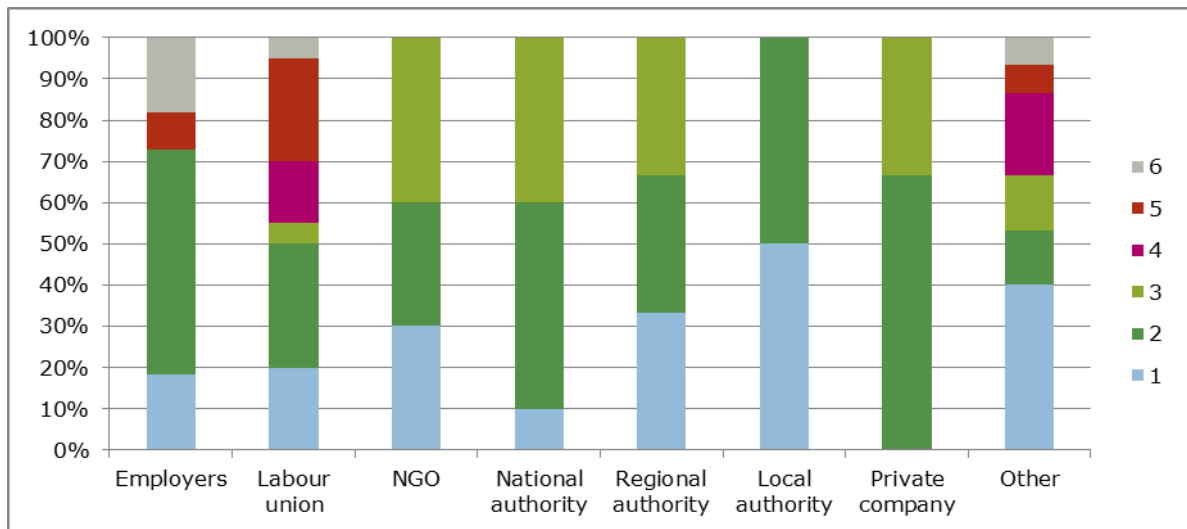
Similarly setting up contact points in national administration was considered important regardless of the organisation type. However, 27% of employer organisations considered this action the least important. Compared to information campaigns, NGOs and national authorities considered setting up contact points as more important.

Figure 70: Setting up of contact points in national administration (1=most important, 6=least important) (n=74)



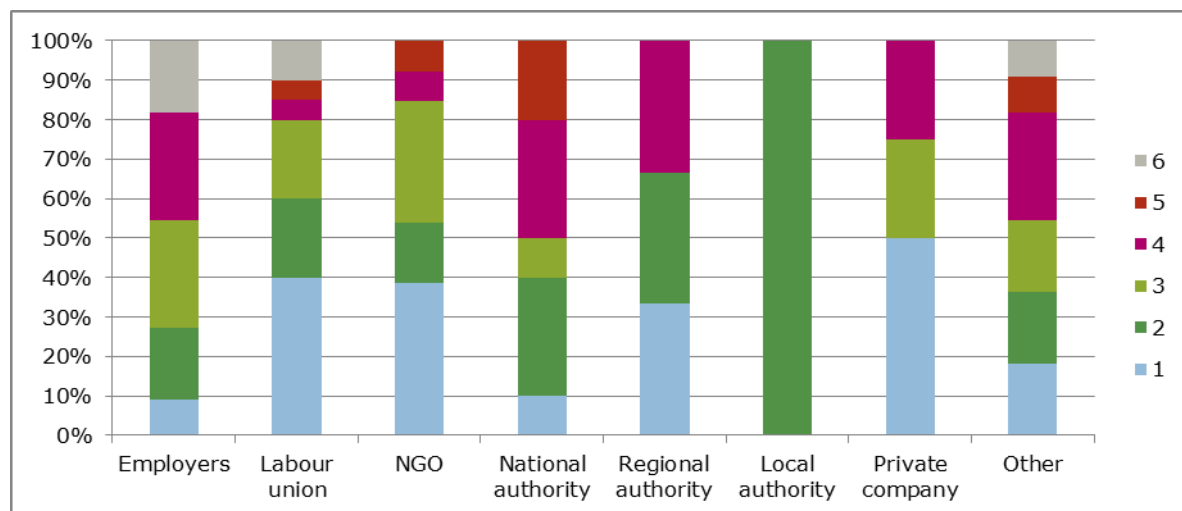
Non-legal actions were supported most by respondents from local authorities. Overall, employer organisations, NGOs, national and regional authorities and respondents from private companies considered non-legal actions more important than setting up contact points. Respondents from NGOs and regional authorities also clearly considered these actions as more important than information campaigns.

Figure 71: Non-legal actions (e.g. exchange of good practices between EU countries, enterprises, labour unions) (1=most important, 6=least important) (n=74)



Finally, the support of actions by organisations with an interest in fighting against discrimination on grounds of nationality was considered among the respondents as the most important regardless of the type of organisation. The support was strongest among private companies, labour unions, NGOs and regional authorities.

Figure 72: Supporting actions by organisations with an interest in fighting against discrimination on grounds of nationality (n=74)



SUPPLEMENT 1: LIST OF RESPONDENTS³¹⁰

| |
|---|
| Wirtschaftskammer Österreich, Austria |
| Fedustria (Belgian Federation of the textile, woodworking and furniture industry's companies), Belgium |
| CEETTAR - European Organisation of Agriculture and Rural Contractors - Confédération Européennes des Entreprises de Travaux Techniques, Agricoles, Ruraux et Forestiers |
| Zentralverband Gartenbau e.V (ZVG), Germany |
| ZDH - The German Confederation of Skilled Crafts, Germany |
| Federation of Finnish Enterprises, Finland |
| Asociación Nacional de Transportes Colectivos Urbanos de Viajeros de Superficie -Spanish Urban Transport Association - (TU), Spain |
| Spanish Federation of Transport by Bus -Federación Nacional Empresarial de Transporte en Autobús (Fenebus), Spain |

| |
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³¹⁰ List includes only those organisations that gave the permission to display their name. Therefore 12 respondents are not included.

| |
|---|
| ACV binnenvaart, Belgium |
| European Transport Workers' Federation |
| KNSB - KHCB, Bulgaria |
| The Cyprus Workers Confederation-SEK - Συνομοσπονδία Εργαζομένων Κύπρου- ΣΕΚ, Cyprus |
| Faglig Faelles Forbund (3F), Denmark |
| syndicat des transports CGT de Normandie, France |
| Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU), Germany |
| Deutscher Gewerkschaftsbund - DGB - The German Confederation of Trade Unions, Germany |
| Industriegewerkschaft Metall, Germany |
| VDSZSZ-Free Trade Union of railway Workers, Hungary |
| CGIL (Confederazione Generale Italiana del Lavoro), Italy |
| Latvian Railway and transport industry trade union, Latvia |
| FNV Bondgenoten, Netherlands |
| FNV Bondgenoten, Netherlands |
| CNV Vakmensen, Netherlands |
| União Geral de Trabalhadores, Portugal |
| Confederación Sindical de Comisiones Obreras CCOO, Spain |
| UNION GENERAL DE TRABAJADORES, Spain |
| LO, The Swedish Trade Union Confederation, Sweden |
| NASUWT, United Kingdom |

| |
|--|
| |
| Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern - Litigation Association of NGOs Against Discrimination, Austria |
| Fraternité Belgo-Roumaine, Belgium |
| ENAR, Belgium |
| Federation of National Organisation Working with the Homeless (FEANTSA), Belgium |
| Caritas Europa |
| Workers' Welfare Association (AWO), Germany |
| TaskForceNet, Germany |
| HALMA, the European network of literary centers, Germany |
| European Center Young South Europe (E.C.Y.S.E.), Greece |
| Liga Portuguesa dos Direitos do Homem-Civitas, Portugal |
| 50plus Employment Link, United Kingdom |

| |
|---|
| |
| Public Employment Services, the Department of Labour, Ministry of Labour and Social Insurance, Cyprus |
| Ministry of Labour and Social Affairs – in consultation with other government institutions involved, in particular – Ministry of Education, Youth and Sports, Ministry of Health and Ministry of Interior, Czech Republic |
| Ministry of Social Affairs, Estonia |
| EURES, Hungary |
| MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI - Ministry of Labour and Social Policies, Italy |
| Government of Malta |
| UWV, Netherlands |
| Państwowa Inspekcja Pracy, Główny Inspektorat Pracy - National Labour Inspectorate, Poland |
| Dirección General de la Inspección de Trabajo y Seguridad Social - Labour and Social Security Inspectorate, Spain |
| interested Ministries of national government (Department for Work and Pensions, Department of Health, HM Revenue and Customs, Home Office), United Kingdom |

| |
|---|
| |
| Powiatowy Urząd Pracy w Pyrzycach (employment office), Poland |
| WOJEWÓDZKI URZĄD PRACY W TORUNIU (employment office), Poland |

| |
|---|
| |
| POWIAT - JEDNOSTKA ORGANIZACYJNA, Poland |
| Powiatowy Urząd Pracy (employment office), Poland |

| |
|---|
| |
| CORRECT-CONSULT BULGARIA EOOD, Bulgaria |
| ECONT-Institut, Germany |
| Vocational Rehabilitation Consultants, United Kingdom |
| Sunshine World LTD, United Kingdom |

| |
|--|
| |
| Finnish Evangelical Lutheran Church, Finland |
| The European of Independent Professionals (EFIP), France |
| Jpassociation, Italy |
| Letove prevadzkoie sluzby SR š.p., Slovakia |

ANNEX D: SYNTHESIS OF THE COUNTRY PROFILES

European Commission, DG EMPL

Summary report

April 2012

ANNEX D:

SYNTHESIS REPORT

COUNTRY PROFILES

SYNTHESIS REPORT
COUNTRY PROFILES

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COUNTRY PROFILES

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1. SYNTHESIS – COUNTRY PROFILES

This document presents a synthesis of the 27 country profiles that were completed as the first step in the data collection. The objective of the country profiles is to build on and add to the preliminary problem definition and baseline presented in the inception report. The country profiles provide the study team with additional information on the current application of the initiatives included in the policy options, and thus provide background data for the impact case studies. The country profiles have also been used in the selection of the countries to be included in the impact case studies.

The 27 country profiles provide information on the application and enforcement of Article 45 TFEU, Regulation 492/11 (1612/68) and national legislation. The information is on additional initiatives that exist in the Member States to ensure freedom of movement of EU workers, on existing barriers to freedom of movement of EU workers, and on future developments. The country profiles also include quantitative information, mainly on the EU migrant worker population in each Member State.

The country profiles are based on secondary data, including reports on the free movement of workers in each Member State, on application of Regulation 1612/68, descriptions of ECJ cases, and other Member State specific reports. While this synthesis report summarises the findings of the country profiles without specifying references other than the country profiles, more specific sources are identified in each country profile.

1.1 Application and enforcement of Article 45 TFEU and Regulation 492/11 (codifying Reg. 1612/68) in national administration/legislation

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The enforcement of free movement rules has been undertaken in the context of the general legislation applicable to foreigners in most of the Member States, but separate primary legislation exists in six Member States (*BG, , EE, HU, IT, PL, PT*). In four of these countries (*BG, IT, PL, PT*), discrimination on the grounds of nationality is specifically addressed in their national legislation. In addition, there are eight other Member States (*CZ, FI, IE, LT, LU, NL, RO, SI*) that specifically address discrimination on the basis of nationality in their legislation. In Spain, nationality is included in Spanish laws prohibiting discrimination in employment and other fields, but it is not included in the anti-discrimination provisions of its constitution. In fact, in most of the countries where nationality is not included as an independent category in anti-discrimination provisions, means of redress are available to victims of discrimination on the grounds of nationality. For example, the list of prohibited grounds of discrimination is not exhaustive (*EE, FR, LV*) or ethnic origin is considered to cover nationality (*SE, UK*). In Germany, labour laws and agreements between the trade unions and employers guarantee equal working conditions for every worker without distinction as to nationality (or by other law prohibited criteria such as sex, ethnicity etc.). Nevertheless, in the countries lacking clear legislation, more effort is often needed from those alleging nationality-based discrimination to prove that the existing national legislation indirectly includes nationality, or to show that the discriminatory treatment fits another category explicitly covered by the legislation (such as race or ethnic origin). In *Slovakia*, where national legislation prohibits discrimination based on nationality, the term "nationality" does not mean the same as citizenship, but instead refers to ethnic origin.

Direct reference to *Article 45* or *Regulation 492/11* (or *1612/68*) was only identified in the Czech Republic. *Law No. 435/2004 Coll. on Employment, Section 103*, explicitly refers to Regulation 1612/68 regarding "authorisation to adopt national measures on employment." In the national legislations of Finland, Spain and Poland, *Regulation 1612/68* is referred to only in the context of *Directive 2004/38/EC*.

National and ECJ cases relating to the enforcement of the EU provisions for free movement of workers have had an impact on the national legislation and practices. Nevertheless, the lack of concrete cases brought before the courts on discrimination on the grounds of nationality is stated to be a problem in the *Czech Republic, Romania, Italy* and *Bulgaria*, where the legislation is not adequately tested.

Information on national impact assessments or evaluations concerning the effects of the enforcement of the free movement provisions was not found for the majority of the Member States.

1.2 Additional initiatives to improve the enforcement of EU workers' rights to free movement

There have been no specific **awareness-raising campaigns or other activities** on nationality based discrimination in most of the Member States. While seminars take place on an irregular basis in some of the countries, EU workers' rights to free movement were more debated and more profound activities identified in four Member States. In *Ireland, Latvia* and *Portugal*, national plans and programmes have been launched in recent years. Similarly, in the case of five Member States (*IE, PT, SK, SE, UK*), **information obligations** on public authorities, employers, trade unions and/or employment

COUNTRY PROFILES

agencies to disseminate information on EU workers' rights under Regulation 492/11 (or 1612/68) or contact points for providing information to citizens on EU workers' rights under Regulation 492/11 (or 1612/68) were clearly identified.

Available **legal assistance mechanisms** can only be considered to cover cases of nationality based discrimination if the law in the relevant Member State prohibits discrimination on the grounds of nationality, if individuals can claim that the discrimination they suffered falls into another category covered by law (e.g. race or ethnic origin), and/or if the following remedies apply in cases where individuals directly invoke EU law:

- In all Member States, **means of redress** are available to EU migrant workers. In the case of *Malta*, where no other legal assistance mechanisms were identified in relation to Regulation 1612/68 (now 492/11), any EU citizen or family member may seek redress for any decision taken by the Director for Citizenship and Expatriate Affairs in respect to his/her right of free movement. They can then submit it to the Appeals Board established under Section 25A of the Immigration Act. Means of redress may vary from an equality body or a mediator to labour, civil or criminal courts depending on the country concerned; several means are available for proceedings in most of the Member States. However, employment tribunals in *Austria* have exclusive jurisdiction on discrimination matters in relation to labour affairs. In *Greece*, only the courts have the power to examine and provide remedies for discrimination claims, although individuals can receive guidance from other bodies.
- While in most of the Member States, **associations, organisations or legal entities with a legitimate interest can provide administrative or judicial support** to workers in cases related to Regulation 1612/68, this is not possible in three Member States (*EE, DE, MT*). In some of the countries there are specific rules concerning the type of organisation that is allowed to engage in the procedures (*AT, BE, FR, IT, LT* particularly), as well as the type of proceeding (e.g. *LU*: criminal cases, *SE*: labour court). Trade unions are the organisations mostly allowed to take actions. In fact, in *Finland, Sweden* and *Spain*, trade unions are the only organisations with the permission to be engaged, while in *Denmark* the Danish Institute for Human Rights is also allowed to intervene.
- **Provisions on victimisation** in national legislation exist in 17 Member States (*AT, BE, BG, CY, ES, FI, FR, DE, IT, LV, LT, PL, PT, SI, SE, NL, UK*). In *Hungary*, no distinct means of redress is available for retaliation. However, it is possible to bring a new complaint before the Equal Treatment Authority following retaliation. *The Netherlands* instead prohibits victimisation and provides penalties for such treatment. Nevertheless, recent research has revealed that the effectiveness of such provisions is inadequate, meaning that those who make accusations of discrimination do not receive sufficient protection.
- **A body dealing with equal treatment** exists in all Member States but nationality discrimination is not always covered. In *Spain*, the situation is unclear, as the Council for the Promotion of Equal

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Treatment and Non Discrimination of People only deals with discrimination based on race or ethnic origin. In *Germany*, an organisation has not been set up to promote equal treatment on the grounds of nationality or to assist victims. However, the trade unions play a role in protecting EU migrant workers. Also, in *Luxembourg*, the equality body does not deal with complaints about discrimination on the grounds of nationality. The National Data Protection Commission and the NGOs Caritas Luxembourg and the Luxembourg Open and Joint Action-Human Rights League provide assistance in the case of EU law violations.

In regards to the **provisions on the reversal of burden of proof** and on **sanctions and compensation or reparation of damages**, the application of these can only be considered in cases of nationality discrimination where the requirements set above concerning legal assistance mechanisms are met.

- In seven of the Member States (*BE, EE, FI, LV, PL, PT, SE*), there is a **reversed burden of proof** in discrimination cases and in another 14 Members States (*AT, BG, DK, EL, ES, FR, HU, IE, LT, NL, RO, SK, SI, UK*) a system of shared burden of proof is in place. In *Hungary*, the burden of proof depends on where the case is being brought. In labour or private law cases, the burden of proof is on the party making an allegation, but before the Equal Treatment Authority, the burden is on the party who allegedly committed the discriminatory act. In *Germany*, it has been stated that no particular rules are in place.
- In all the Member States except *Denmark, Germany, Greece* and *Malta*, there are **provisions on sanctions and compensation or reparation of damages**. In 11 countries, no minimum or maximum penalties have been set. The amount of financial penalties depends on the proceedings taken (e.g. administrative offence vs. criminal case). In five Member States (*BE, ES, FI, FR, LU*), discrimination can lead to a prison sentence. In fact, in *Spain* fixed penal and administrative penalties are not in terms of damages awarded, but rather in prison terms of disqualification.

Trade unions play an active role in the field of free movement and workers' rights in general in 12 Member States (*CZ, FI, FR, DE, HU, IE, IT, PL, PT, SE, NL, UK*). In three Member States (*PL, PT, NL*), as well as Spain, employer organisations are specifically referred to. In four other Member States (*DE, EE, LU, SI*), activities combating nationality-based discrimination have been organised by **social partners**. However, these activities have been limited and not necessarily targeted to EU nationals. In some Member States (*AT, FR, IE, LU, PL*), **NGOs** have been identified as especially active in the field.

In many Member States there are **other additional initiatives** in place to improve the enforcement of EU workers' rights to free movement. *Bulgaria* provides an interesting example, as a network of Labour and Social Affairs Offices of the Ministry of Labour and Social Policy was established in the Bulgarian embassies in other Member States. This network contributes to the practical implementation of the free movement of Bulgarian and EU nationals and helps them exercise their rights in the field of free movement of workers as EU citizens.

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Clear conclusions on whether the initiatives mentioned above have been **implemented with the removal of barriers to workers' movement in mind** cannot be drawn based on the data collected for the country profiles. Also, it remains unclear to what extent **impact assessments or evaluations of the effects of these initiatives** have been produced. A very limited amount of directly linked impact assessments could be identified. Examples of a few in the field include:

- Thorough legal research on the rights of migrant workers published in *Bulgaria* in 2008;
- A study by the Berlin Institute for Population and Development on migrants in *Germany*, where, on average, the best integrated in society are the roughly two million persons stemming from the other EU-25 countries (without Southern Europe);
- In *the UK*, the Parliamentary Ombudsman published a critical report in 2009/10 on the UK Border Agency's (UKBA) delivery of services. A number of High Court judgments confirmed damage claims by EU nationals against UKBA for treatment incompatible with rights in the Citizen's Directive.

1.3 Barriers to immigration of EU workers from other Member States

There is not a Member State where an EU worker from another country would not encounter barriers to immigration. The disadvantaged situation of registered partners/*de facto* partners and same-sex family members is often referred to because they do not benefit from the rights to free movement or the situation is unclear in several Member States. Also, there have been complaints on the requirement of legalised and official documents to prove family ties which results in time-consuming and costly application procedures.

There are no significant barriers in most of the Member States regarding the **access to employment in the private sector**. Nevertheless, language requirements may cause difficulties, and in some Member States (FR, BG, CY, EE, LV, LT, LU, RO, PL), formal or practical language requirements can be identified for certain regulated professions, often related to the areas of public interest (e.g. health, education, communications, transport). **Access to employment in the public sector** is, on the other hand, regulated in all Member States, leaving managerial level positions related to public powers or functions intended to safeguard the interest of the state open only for nationals. In practice, it is often difficult to access public posts as e.g. language requirements cause a barrier, or there is a lack of recognition of professional qualifications obtained in another Member State. It seems that in seven Member States (AT, CY, CZ, HU, LV, LT, RO), a situation exists where only a limited number of positions are open to EU nationals from other Member States. In *Bulgaria, France, Luxembourg and Poland*, legislative changes have taken place in recent years aiming to open their public sector to EU nationals. Nevertheless, the effectiveness of these actions is not yet clear.

EU nationals have wide **access to assistance at the national employment offices** in other EU Member States. Registration as a jobseeker is often required in order to access the services. Nevertheless, in many cases there seems to have been a lack of information on which services were available to EU migrants. In *Cyprus* and *Latvia*, jobseekers may encounter language problems as the services are provided only in the national languages of the country. In *Finland*, some employment services, such as labour market

COUNTRY PROFILES

training, are only available to those with a home municipality in Finland, which EU citizens obtain once they have registered their residence. Consequently, these services are not available to EU jobseekers because it is not possible to register residence on the basis of jobseeking alone. In the case of *Slovenia*, although EU citizens and their family members are formally entitled to public employment services, including assistance of employment agencies, there are practical problems regarding the registration of EU job-seekers for this assistance.

The situation regarding **access to benefits of a financial nature intended to facilitate access to employment** varies greatly from one Member State to another. Nevertheless, it seems that discrimination on the grounds of nationality does not take place in most of the countries, and the same rules are applied to the EU jobseekers as to the nationals of the Member State. This can however cause challenges to the jobseekers entering the country, e.g. in eight Member States (*AT, CY, DK, EE, LT, PT, NL, UK*) it is specifically stated that financial benefits are contribution-based. In six Member States (*BE, FR, DE, LT, SE, IE*), different practices compared to nationals were identified in terms of EU jobseekers.

Legislation is in place to ensure equal **working conditions** to EU workers in many of the Member States. In five Member States (*BG, CY, DK, IE, FR, IT*), changes have taken place in recent years regarding recognition of qualifications and professional experience. Nevertheless, in *Ireland* agreements apply only when adjusting pay and do not affect seniority, while in *Cyprus* barriers are still reported when accessing certain professions. Most of the specific cases mentioned in the country profiles concern citizens from the new Member States.

As stated above regarding benefits intended to facilitate access to employment, the legislation and practices vary greatly concerning **access to other financial and non-financial social advantages**. In eight Member States (*BE, BG, CY, HU, RO, SI, SE, ES*), no remarkable discrimination against EU nationals was identified. Instead, frontier workers and job-seekers seem to especially be in a vulnerable position in several Member States. For example, the condition of residence is required in five Member States (*CZ, FR, IE, PL, EL* in the case of maternity benefit; *LU* in the case of study grants), and jobseekers are not entitled to non-contributory public benefits in *Austria* and *Estonia*. In addition, specific problems were identified in several countries (e.g. *EL, FI, IT, LU, UK*). In *Greece*, direct discrimination against nationals of other Member States exists regarding special pensions and access to free medical care for persons over 68 years.

Frontier workers encountered the most barriers in regards to **tax advantages**. This issue is specifically addressed in the profiles of *Germany, Latvia, Poland* and *Slovakia*. Changes have taken place in tax legislation in recent years in *Bulgaria* and *Spain*, while *Belgium* and *France* have made an agreement on the application of local taxes. In the *UK*, Child Tax Credits and Working Tax Credits, which are social benefits administered under the tax system, are only available to EEA nationals who have a right to reside.

Barriers in relation to **access to training** have only been identified in *Finland*. As mentioned above, labour market training is only available to those with a home municipality in *Finland*, which EU citizens obtain once they have registered their residence. Similarly, no barriers related to **membership of**

COUNTRY PROFILES

trade unions were found, which may be due to a lack of available information on whether all trade unions accept EU nationals. This is also the case with respect to **housing**, where the available information was limited. However, *Malta* is a special case because it negotiated and obtained a permanent arrangement retaining restrictions on the acquisition of property in *Malta* by non-Maltese residents. In addition, in *Portugal* a competition for a house subsidised by the State was only open for *Portuguese* citizens. In the *UK*, there is an issue where EU nationals are excluded from housing assistance under section 17 of the Children Act 1989. Also in *Belgium*, there are obligations to learn Flemish in some areas in order to access housing.

Among **other barriers** that EU workers may encounter, special rules in the sport sector are often referred to. Quotas and other rules for foreign players in certain sports exist in many of the Member States that exclude EU nationals to take part in the teams. Many other potential barriers identified are related to a situation where EU nationals may be treated with the same rules applying to third-country nationals.

Transition schemes are in place for workers from Bulgaria and Romania (EU-2) in ten Member States (*AT, BE, DE, IE, FR, IT, LU, MT, NL, UK*). Simplified procedures are available rather than the need to obtain a work permit. In Spain, where transitional measures concerning EU-2 workers were lifted in 2009, the European Commission authorised Spain to temporarily impose restrictions on Romanians on 11 August 2011. These restrictions may apply until 31 December 2012.

1.4 Future Developments

In ten of the Member States (*BG, CZ, DK, EE, LT, PL, PT, SK, NL, UK*), legal or other initiatives in the pipeline related to barriers to immigration of EU workers were identified. In regards to the initiatives, there seems to be two main trends. On the one hand, countries are looking to ensure a qualified labour force in the future. On the other hand, due to the current economic situation or political situation in a Member State, many of the initiatives in the field have been postponed or initiatives in the pipeline have been aimed at protecting the national labour markets. For example, in Estonia the National Reform Programme "Estonia 2020" mentions the following measures to promote its labour market: to produce English-language information materials for promoting the hiring of the workforce, to simplify the use of www.eesti.ee as a single contact, to develop a comprehensive talent programme and to improve the availability of foreign-language education in Estonia.

METHODOLOGICAL APPROACH

ANNEX E: METHODOLOGICAL APPROACH

European Commission, DG EMPL

November 2011

ANNEX E:

METHODOLOGICAL APPROACH

METHODOLOGICAL APPROACH

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1. METHODOLOGICAL APPROACH

This document provides an overview of the methodological approach used when carrying out the *Study to analyse and assess the socio-economic and environmental impact of possible EU initiatives in the area of freedom of movement for workers, in particular with regard to the enforcement of the current EU provisions (in particular, Art. 45 TFEU and Regulation (EEC) 1612/68)*.

This annex is a longer version of the methodological approach, presented in the draft final report, Chapter 2. This more specific description of the methodological approach is divided into the following chapters:

1. Client meetings and key deliverables
2. Desk research
3. Country profiles
4. Survey among EU workers
5. Public consultation
6. Impact case studies
7. Assessment of compliance costs
8. Impact analysis

1.1 Client meetings and key deliverables

As illustrated by the figure below the study was divided into three main phases. The meetings and key deliverables of each phase are described shortly below.



Kick-off meeting

The kick-off meeting took place in Brussels on 21 June 2011. The main focus of this first meeting between the client (DG EMPL) and the contractor was to clarify the project objectives and methodology, define and align expectations for the project management arrangements (including timetable and dates for meetings and deliverables) and discuss the inception report to be submitted subsequently.

Inception Report

On 6 July (15 calendar days after the kick-off meeting), the inception report was submitted to the Commission. The purpose of the inception report was primarily to serve as an operational document to guide the research team in its data collection and analysis activities. As such, the report consisted of a refinement of the project methodology described in the proposal, in accordance with discussions at the kick-off meeting and additional knowledge gained from preliminary studies and desk research. At the same time, the report also provided the Commission with an update on the progress of the study, obstacles encountered so far and proposed solutions for overcoming these obstacles.

Review meeting

On the review meeting on 12 July 2011, the contractor met for the first time with the Impact Assessment Steering Group (the steering group for this study) to discuss the content of the inception report and the expectations for the next steps of the project. The client also presented to the IA steering group the state of play of their preparatory work of initiating the public consultation, revising the road map according to the comments made by the steering group at the last meeting, and contacting Your Europe Advice for a report on relevant cases.

Revised inception report

On the basis of the discussions and feedback at the review meeting, the contractor revised the inception report and submitted the final version to the Commission on 10 August 2011. The inception report was subsequently approved by the client.

Interim report

The interim report was submitted on 16 September 2011 (within three months of signing the contract). The Interim Report provided an update on the activities undertaken to date as well as the next steps in the data collection, any issues encountered during the project, the solutions adopted and the quality criteria for the study. With the interim report, the 27 country profiles were submitted. It also included the questionnaire for the EU workers survey, which had at this point already been initiated upon approval of the questionnaire by the client, and the report templates for the case studies to be conducted subsequently.

Review Meeting

At the review meeting between the contractor and the Steering Group on the interim report on 13 October 2011, the discussions mainly concerned the information gathered through the 27 country profiles. The Steering Group had some requests for further research and analysis, which the contractor promised to include in the last phase of the project and in the draft final report. As there were no requests for further revisions of the interim report, the report was subsequently approved by the client and a revised interim report was thus not submitted.

Draft Final Report

Before submitting the first draft of the final report, the contractor held a workshop with experts in the field of freedom of movement of workers in Brussels on 18 November 2011. The purpose of this workshop was to discuss the preliminary findings, draft conclusions and recommendations and to get a validation of these and/or some new views from the experts. On the basis of the

discussions and feedback from the workshop, the draft final report was finalised and submitted on 22 November 2011.

Comments from the Commission

After a round of comments and feedback from the Commission, Ramboll will revise the report accordingly and submit a revised version of the draft final report.

Revised draft final

The revised version of the draft final will be submitted to the Commission no later than 15 December 2011 (within 5 months of signing the contract).

Review Meeting

In January, the contractor and the Steering Group will meet again to discuss the findings and recommendations of the draft final report, and any additional tasks or revisions to be carried out before submission of the final version of the report.

Final report

The last task in Phase 3 will be to incorporate Commission feedback from the review meeting on the draft final report. We expect most Commission feedback at this stage to centre on findings and recommendations drawn by the research team. It will be important to take all such feedback into account and, where applicable, provide clear explanations about the reasons for including or not including comments.

1.2 Desk research

As a first step, a review of existing literature and secondary data related to the migration of EU workers was carried out. The purpose was to identify relevant existing secondary data to inform the study and, in particular, to identify important data gaps that Ramboll's collection of primary data could potentially fill. The initial desk research and data review furthermore formed the basis for the first draft of the problem definition and a (very initial) baseline scenario, which were to be further developed later based on information acquired through the primary data collection

The secondary data collected and employed in the impact assessment consists of both qualitative and quantitative information which, besides the problem definition and initial baseline scenario, have also fed into the country profiles and impact case studies. The secondary qualitative data used in the study is mainly comprised of³¹¹:

- Legislation (EU and national) relating to the freedom of movement of workers (including discrimination on the grounds of nationality);
- Documents concerning the implementation of Article 45 TFEU and Regulation (EEC) 1612/68 (now 492/11), as well as other relevant Directives (i.e. Directive 2004/38/EEC and Directive 98/49/EEC);
- Reports and studies on barriers to free movement and discrimination of EU migrant workers (e.g. report from Your Europe Advice and studies/journals by the European network on free movement of workers).

In terms of quantitative data, multiple sources were used in particular with respect to labour market mobility trends. The priority for quantitative data collection was on datasets at the

³¹¹ For a full overview of sources, see bibliography in Annex F.

European-level for data comparability reasons, but to the extent that useful data at the European level was not available or relevant, national data was employed (e.g. in the impact case studies). The secondary quantitative data sources used include (mainly):

- Eurostat;
- European Union Labour Force Survey;
- National statistics and databases;
- Eurobarometer surveys;

1.3 Country profiles

Secondly, country profiles were compiled for all EU Member States. They are based on secondary data and mainly provide information on the legal, institutional and policy characteristics of each Member State regarding the freedom of movement of workers as established in Article 45 TFEU and Regulation (EU) 492/11. They also provide data on the concrete situation in the Member States by presenting examples of areas where discrimination on the basis of nationality may take place, as well as statistics on the numbers and types of EU migrant workers in each Member State.

The country profiles are mainly considered internal working documents. Their role in the study was to provide input on the remaining data collection activities, in particular by:

- Providing examples of non-conformity with EU legislation, incorrect application of EU law and general administrative practices or specific individual cases disregarding EU law to be used in the development of the problem definition, including the scale of the problem
- Acting as input for the categorisation of the Member States in the development of the baseline based on their level of enforcement
- Providing background information for the selection of Member States to be included in the impact case studies

All country profiles are enclosed in Annex G.

1.3.1 Survey among EU workers

An internet-based survey was carried out among citizens in eight different Member States to identify the barriers for workers to move and/or work in another Member State. The selected Member States are presented in Table 2 below. They were selected on the basis of geography, age of EU membership (EU15/EU8³¹²/EU2), inflow and outflow of migrants (high/low/medium)³¹³ and size of population (large/small/medium).

Table 45: Member States selected for the survey among EU workers

| | |
|-----------------------|---|
| France | South-Western; EU15; low-medium inflow/low outflow, large |
| United Kingdom | North-Western; EU15; high inflow/medium outflow; large |
| Portugal | Southern; EU15; low inflow/medium outflow; medium |
| Sweden | Northern; EU15; low-medium inflow/low outflow; small |
| Poland | Central-Eastern; EU8; low inflow/high outflow; large |
| Estonia | North-Eastern; EU8; low inflow/low-medium outflow; small |
| Romania | South-Eastern; EU2; low inflow/high outflow; medium |

³¹² The ten new Member States of 2004 minus Cyprus and Malta, which have not been subject to transition schemes

³¹³ Based on data from European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities: Employment in Europe 2008

| | |
|-----------------|--|
| Slovenia | South-Eastern; EU8; inflow/outflow data is too small to be reliable; small |
|-----------------|--|

The survey targeted three types of respondents: workers who have considered moving to/working in another EU Member State, workers who have moved to/worked in another EU Member State (or are still working there), and workers who have not considered moving to/working in another EU Member State.

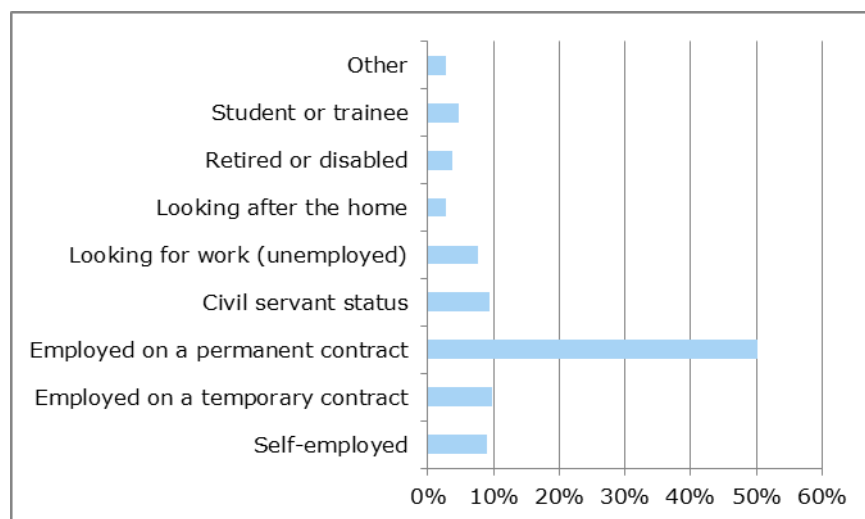
The survey was carried out as a *panel survey*³¹⁴ in the above eight Member States. A total of **4007 respondents** replied to the survey questionnaire (500 respondents from all other Member States except for Portugal, which had 507 respondents). The sample was distributed representatively according to the respondents' age, gender and geographical location. The selected panellists received an e-mail with a link to the questionnaire, which was hosted on the website of the subcontractor implementing the survey. The panellists were asked to respond to the questionnaire within two weeks.

51% of the respondents were women and 49% men. All the respondents were 15-64 years old, with a highest representation in the category of 15-34 year-olds (40%), followed by 35-49 year-olds (32%) and 50-64 year-olds (28%). Almost half of the respondents (48%) are married or in a registered partnership.

A clear majority (58%) of the respondents live in households where there are no children, or only one child (23%). Only 19% of the respondents have two or more children.

Half of the respondents are currently employed on a permanent contract, but there are respondents from all types of occupational statuses (see Figure 73).

Figure 73: Occupational status of respondents (n=4007)



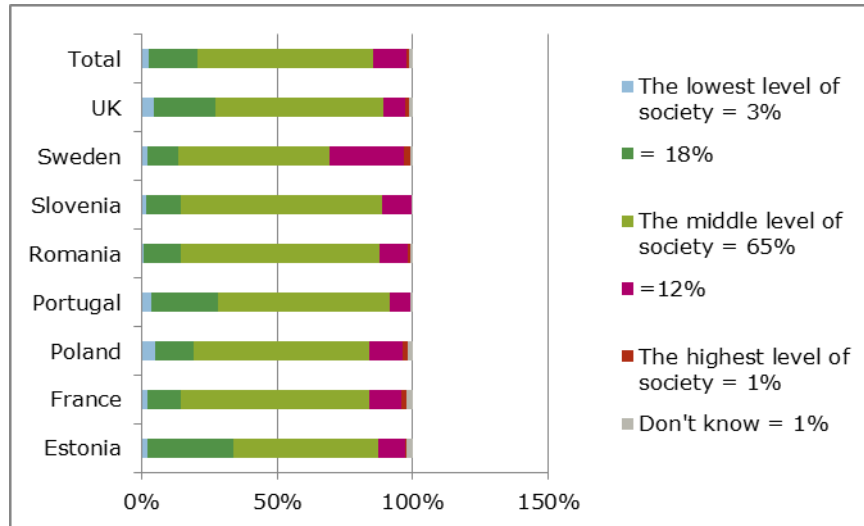
Almost all the respondents have completed some form of formal education, and almost half of them (45%) have a university degree or equivalent. This is a relatively high share of highly educated respondents, when the EU27 average in 2008 was 20.4 percent.³¹⁵ 32% of the respondents have a secondary school education, and 19% vocational training. The remaining 5 percent have either a primary school education, no formal education or they do not know.

³¹⁴ A panel survey is a survey, where the subcontractor responsible for the implementation of the survey uses its already existing panels of voluntary respondents to select a sample of 500 people. These panels usually have up to 50,000 registered voluntary respondents.

³¹⁵ Source: Eurostat

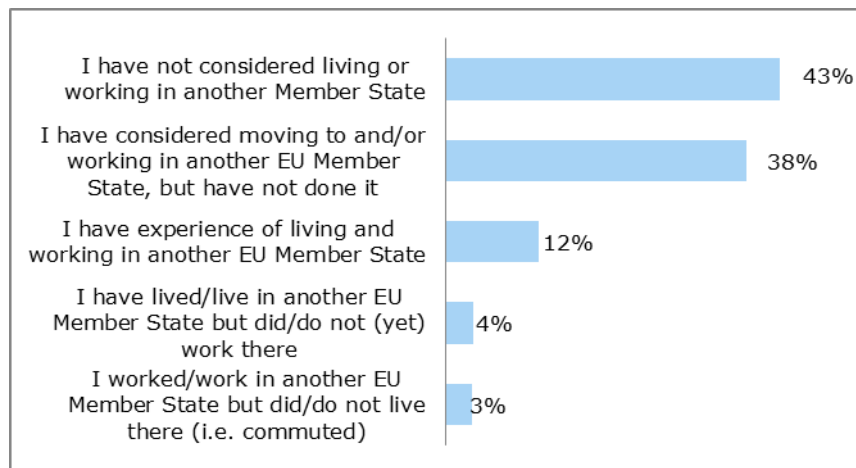
An interesting finding concerns the level of society, where the respondents consider themselves to be placed. As can be seen from Figure 74 concerning the standard of living of the respondents, 65% of the respondents place themselves in the middle level of the society.

Figure 74: The perceived standard of living among the respondents (n= 4007)



The respondents were asked to comment on their potential plans and experience of living and/or working in another EU Member States. While the biggest share of respondents (43%) have not considered living or working in another Member State, 19% of the respondents have lived and/or worked in another EU Member State, or are currently doing it (see Figure 3).

Figure 75: Respondents' experience of living and/or working in another EU Member State



It is interesting to see that 38% of the respondents have in fact considered moving to and/or working in another EU Member State, but have not done it. These respondents were asked to comment on their plans for the future. 43% of the 1359 relevant respondents said that it is not likely they will move to another EU Member State, while 32% said that it was likely they would move. Only 7% were sure they would not move, while 4% were sure they would move.

7% of the 19% (753 persons) of the respondents who have lived and/or worked in another EU Member State are currently living abroad, while the biggest share of respondents (36%) did it 1-5 years ago. Interestingly, 26% of the respondents were living and/or working in another EU Member State more than 9 years ago.

1.4 Public consultation

In accordance with the Impact Assessment Guidelines, the European Commission launched a public consultation on *EU initiatives for the enforcement of EU rules on the freedom of movement of workers* in June 2011.

The responses to the public stakeholder consultation have been analysed and summarised by Ramboll. As such, the public consultation has served as the stakeholder consultation required in the Impact Assessment Guidelines. The information gained from the answers to the public consultation has contributed towards the development and completion of the problem definition and the baseline scenario.

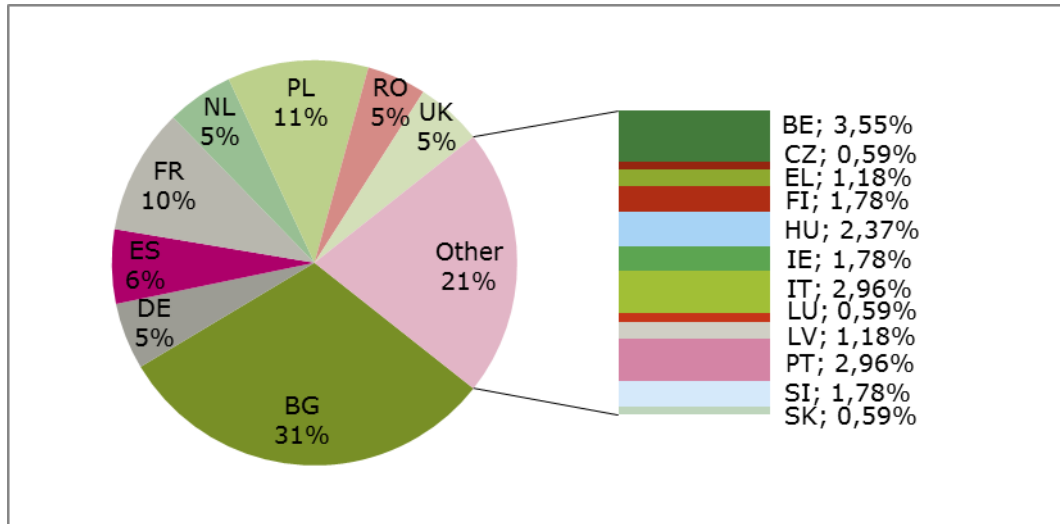
The public consultation was launched on the European Commission website in the form of two online questionnaires – one for citizens and one for organisations (answers could also be submitted via email). The questionnaires were composed of a series of background questions about the individual or organisation followed by specific questions on the awareness of the right of free movement of workers, legal support to migrant workers, experience with discrimination on the basis of nationality, and removal of obstacles to free movement.

Public consultation among citizens

In total **169 EU citizens** have responded to the public consultation. Respondents come from 20 different Member States - all others except Austria, Cyprus, Denmark, Estonia, Lithuania, Malta and Sweden

Figure 35 shows the percentual dispersion of nationalities among the respondents. Approximately one third (31%) of the respondents are of Bulgarian nationality, 11% are Polish, and 10% are French, i.e. more than 50% of the respondents are of one of these three nationalities. The *Other* category includes the remaining 12 Member States, which each have a share of less than 5% of the respondents. The seven Member States, which are not represented among the respondents, are not included in the figure.

Figure 76: What is your country of nationality? (n=169)



69% (117) of the respondents have worked in another EU Member State than the one of their nationality. Of these, 28 respondents have worked in two or more Member States³¹⁶. Especially the Bulgarian respondents have for a large part (44%) worked in another EU Member State. Other large shares come from France with 10% (12 persons), Poland with 6% (7 persons) and UK with 5% (6 persons) of respondents who have worked in another EU Member State.

Based on the survey responses, the most popular destinations among EU workers are Western European Member States. The UK is the most popular destination, since 27% of the respondents, who are not of UK nationality, have worked in this Member State. Other Member States, where the respondents have worked, are Germany (20%), Belgium (19%), France (15%), and the Netherlands (15%).

Public consultation among organisations

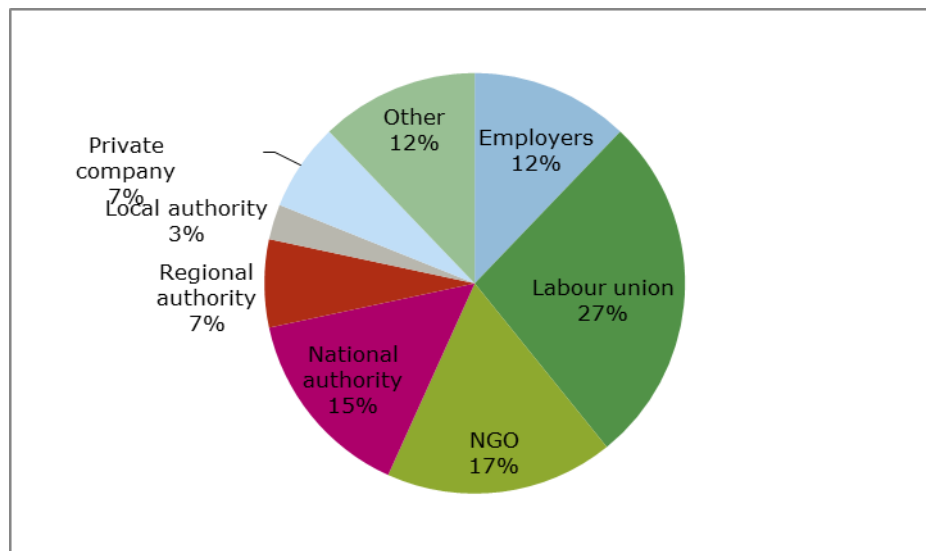
In total **74 organisations** responded to the public consultation. Figure 53 illustrates the share of the respondents by organisation type. Labour unions were the most active in contributing to the consultation and represent roughly one fourth (27 %) of the respondents, while NGOs (17 %), national authorities (15 %) and employers' organisations³¹⁷ (12 %) are also widely represented. Respondents also include private companies (7 %), regional and local authorities (7% and 3% respectively). A large share of the respondents (12 %) belongs to other types of organisations than those mentioned above. These other organisations include non-profit organisations, an association representing independent professionals, a trade association and a national church³¹⁸.

³¹⁶ 21 respondents have worked in two Member States; 5 respondents have worked in three Member States; 1 respondent has worked in seven Member States; 1 respondent has worked in 20 Member States. Added to the 89 respondents who have worked in one other Member State, this gives a total number of 173 occurrences.

³¹⁷ A private company, a state owned company and a hospital were removed to more suitable categories.

³¹⁸ An employers' organisation, a national labour inspectorate and national employment offices were removed to more suitable categories.

Figure 77: What kind of organisation do you represent? (n=74)



The organisations are based in 23 different Member States, excluding *Ireland, Lithuania, Luxembourg* and *Romania*.³¹⁹ Organisations from Germany (14 %) represent a large share of the respondents. Other Member States, where a minimum of five organisations contributed to the consultation are Poland (10 %), Belgium (8 %), Spain (8 %), the Netherlands (7 %) and United Kingdom (7 %). When more than one organisation responded to the consultation from a Member State, the types of organisations vary in all the Member States. However, it is worth noting that all the organisations based in Poland represent the public sector.

1.5 Impact case studies

All in all seven impact case studies were carried out, one for each policy option and sub-option.³²⁰ The purpose of the impact case studies was to look closer at examples of initiatives similar to the proposed policy options already implemented in some Member States, and use the information gathered on impacts (effects, costs, etc) in the overall assessment and subsequent comparison of the proposed policy options.

The case studies were developed in close coordination with all data sources and data collection activities, particularly the country profiles. Each case study builds upon all available information collected in these profiles. The Member States were selected on the basis of ensuring the case studies included a full set of country profiles.

The purpose of the case studies was furthermore to inform and support data collected through the other activities. The case study framework and requirements were therefore developed in close coordination with e.g. the administrative burden/ compliance cost survey, the panel survey among EU workers and the public stakeholder consultation.

More specifically, the case studies have (primarily) served the following purposes:

³¹⁹ One of the respondents is based in several Member States without further specifying the respective countries. Therefore this respondent is not included below in *figure 2* or other tables concerning respondents by country. Also three other organisations based in Belgium are clearly European/worldwide rather than national and therefore included in the category multiple countries

³²⁰ While the impact case study for policy option 2 was carried out on the EU level, the remaining six case studies were carried out in one Member State each: 3a in Finland, 3b in Ireland, 3c in Sweden, 3d in Finland, 3e in France and 3f in the Netherlands.

- **Refining the policy options:** an initial focus was paid to the differences between the proposed policy option and the identified MS examples. On the basis of these differences some adjustments were made to the policy options to increase the validity of the impact analysis.
- **Validation of expected impacts:** there are a number of hypotheses on the types of impacts that the policy options are likely generate in the MS (ref. problem definition and policy objectives), and the case studies were used to validate or dismiss these (e.g. impact on awareness of citizen rights, access to legal support, cost to employers etc).
- **Exploring non-expected impacts:** in addition to the expected impacts above, the case studies took a more explorative approach and mapped out any other impacts that the option may have had. This was done based on a two step approach – first by asking *who* have been affected by the policy option, and secondly *how* they have been affected.
- **Quantification of impacts:** to support available data and to fill possible data gaps, the case studies attempted to quantify identified impacts as far as possible. Where quantitative data was not available, the interviews were used for more qualitative assessments of perceived impact.
- **Identifying drivers and barriers:** the interviews were also used to explore the drivers and barriers to successful implementation of each of the policy options.

The case study activity was primarily an interview-based exercise in order to respect the wide stakeholder landscape of each of the policy options. Each case study included all relevant stakeholders as far as resources allowed, including e.g. national authorities, social partners and third-sector organisations. In practice, this has not always been possible due to time restraints on both the data collection process and the eligible interviewees. Much of the data found was qualitative in nature, which is why the quantitative assessment of impacts is limited in all impact case studies. The main findings are to a high extent presented as qualitative rather than quantitative conclusions.

Besides difficulties with reaching the relevant interviewees, the case study researchers also experienced challenges in terms of assessing the impacts of the initiatives, especially in quantitative measures. This was a general issue but especially applied to those initiatives which concern legal provisions and are supposed to have a preventive effect. In an attempt to compensate for the lack of information in the Member States, the contractor has researched more general studies and articles on preventive impacts of legislation, however, the material available was only related to criminal law and not very recent. This means that the impact assessment, both the overall and the ones in the individual case studies, is to a large extent based on qualitative assessments using several different sources to view the issues from different angles and to support conclusions.

The case study monographs are included in annex.

1.6 Assessment of compliance costs

To assess the various costs connected with the proposed policy options, the contractor carried out a data collection activity on compliance costs following the completion of the impact case studies.

In accordance with the Annexes to the EU Impact Assessment Guidelines³²¹, the assessment of compliance costs was based on the basic principles outlined in the 'Handbook for measuring compliance costs'³²² and the EU Standard-Cost-Model (Annex 10 to the Guidelines). Inspired by these sources, (regulatory) compliance costs are understood as consisting of financial costs,

³²¹ http://ec.europa.eu/governance/impact/commission_guidelines/docs/ia_guidelines_annexes_en.pdf

³²² Bertelsmann Foundation; http://www.bertelsmann-stiftung.de/bst/de/media/xcms_bst_dms_29011_29012_2.pdf

substantive (compliance) costs and administrative costs/burdens for workers, employers and the voluntary sector. For the public authorities in the Member States, compliance costs are comprised of implementation and enforcement costs, substantive (compliance) costs and administrative costs.

The following definitions were used as a basis for the cost assessment within this assignment:

Box 1: Definitions of cost terms

Financial costs are created by **legal obligations to pay fees or duties**. These costs can be incurred by workers, businesses and the voluntary sector as employers.

Substantive (compliance) costs are created by **legal obligations to act** others than obligations to pay fees or duties and information obligations. For businesses and the voluntary sector these can be specified as the costs spent on adapting the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards (e.g. the purchase of new equipment, training of staff, additional investments to be made).

Administrative costs are defined as the costs incurred by businesses, the voluntary sector, public authorities and citizens in meeting **legal obligations to provide information** on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including labeling, reporting, registration, monitoring and assessment needed to provide the information.

Recurring substantive (compliance) and administrative costs and, where significant, **one-off** substantive (compliance) and administrative costs are taken into account.

The administrative costs consist of two different cost components: the business-as-usual (BAU) costs and administrative burdens. While the **BAU costs** correspond to the costs resulting from collecting and processing information which would be done by an entity even in the absence of the legislation, the **administrative burdens** stem from the part of the process which is solely because of a legal obligation.

Implementation costs for Member States/public authorities are understood as the costs of implementing new legal provisions and provide the ground for their application, as e.g. the costs associated with the preparation and passage of the provision within the legislative procedure. Implementation costs, consisting of man-hour and infrastructure costs are mostly one-off costs.

Enforcement costs for public authorities are understood as the costs incurred by public authorities resulting from the enforcement of legal provisions as e.g. running administrative or judicial procedures. Enforcement costs consist of man-hour potentially involving outsourcing costs and infrastructure costs; they are generally recurring.

On this basis and in accordance with the tender specifications the following types of compliance costs per target group were assessed within this assignment:

Table 46: Types of compliance costs per target group

| Types of compliance costs | Target groups | | | |
|--------------------------------|--------------------|---|--|-----------------------------------|
| | Public authorities | Enterprises - micro/small - medium-sized - large | Voluntary sector | Workers and their family |
| Financial costs | | X (description but no quantification) | X (description but no quantification) | Description but no quantification |
| Substantive (compliance) costs | X | X | X | Description but no quantification |
| Administrative costs/burdens | X | X | X | Description but no quantification |

| | | | | |
|--------------------------------------|--|--|--|--|
| Implementation and enforcement costs | X (description but no quantification) | | | |
|--------------------------------------|--|--|--|--|

The assessment consisted of the following steps:

- Identification and mapping of obligations, target groups and cost types,
- Telephone interviews,
- Calculating the costs, and
- Collecting quantities for EU-27, i.e. the numbers of targeted subjects.

Mapping of obligations, target groups and cost types

As the first step of the assessment, the sub-options of option 3 were analysed in order to identify and categorise the obligations, target groups and costs types. In line with our initial understanding of option 2 (non-binding initiatives at EU level) not involving any obligation and therefore no compliance costs, option 2 was not part of the analysis. The table below provides an overview of the mapping results.

Table 47: Mapping of obligations, target groups and cost types

| Sub-option | Description | Imposing obligation to act? (yes/no) | Cost types on target groups | | | | |
|------------|--|--------------------------------------|-----------------------------|-----------------------------|---|---|--|
| | | | Implementation costs | Enforcement costs | Financial costs | Substantive compliance costs | Administrative costs |
| 3a | Introduce the principle of equal treatment in terms of nationality into national legislation | no | Member States/authorities | | | | |
| 3b | Provide information on the free movement of workers (Information Obligation) | yes | Member States/authorities | | | | Equality Authorities |
| 3c | Establish judicial and/or administrative procedures for persons who consider themselves wronged by failure to apply the principle of equal treatment to them | no | Member States/authorities | <i>(Authorities/courts)</i> | <i>(Migrant workers as claimants / employers as defendants)</i> | | <i>(Migrant workers as claimants)</i> |
| 3c | Make sure that associations, organisations or other legal entities engage, either on behalf or in support of the complainant, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive | no | Member States/authorities | | | | <i>(Associations, organisations and/or other legal entities)</i> |
| 3c | Introduce provisions on victimisation | no | Member States/authorities | <i>(Authorities/courts)</i> | <i>(Migrant workers as claimants / employers as defendants)</i> | | <i>(Migrant workers as claimants / employers as defendants)</i> |
| 3c | Take effective measures to prevent all forms of discrimination on grounds of nationality (obligation to act) | yes | Member States/authorities | | | Employers - Businesses - Public authorities - voluntary sector organisations | |
| 3c | Set up equality bodies or contact points for the promotion of equal treatment or make sure that existing equality bodies cover nationality discrimination | no | Member States/authorities | <i>(Equality Body)</i> | | | |
| 3d | Introduce provisions on the reversal of the burden of proof | no | Member States/authorities | | | | |
| 3e | Introduce sanctions and compensation payments made upon violations and make sure that they are applied | no | Member States/authorities | <i>(Authorities/courts)</i> | <i>(Employers)</i> | | |
| 3f | Increase dialogue between social partners and NGO's regarding the correct enforcement of EU migrant workers' rights (obligation to act) | yes | Member States/authorities | | | Social partners and NGO's | |

Three sub-options were categorised as obligations leading to direct compliance costs on the target groups: 3b, 3c (one of the elements: to 'Take effective measures to prevent discrimination based on nationality') and 3f. Except for sub-options 3a and 3d also the other sub-options would lead to costs on their target groups. However, as they are not imposing (direct) obligations, the associated costs were not quantified via interviews but only assessed qualitatively (see italics in the table above).

Telephone interviews

In order to assess the compliance costs associated with the relevant three sub-options imposing obligations, nine telephone interviews with the target groups (equality authority, private, public and third sector employers, and social partners) were carried out in the case study Member States (Ireland, Sweden and the Netherlands). The main purpose of the interviews was to complete the data basis to calculate the costs incurred by the target groups associated with the baseline scenario and shed light on the differences between baseline scenario and the proposed policy options in terms of costs for the various elements of option 3. As a rule of thumb, three

interviews per target group of each relevant obligation associated with compliance costs per relevant Member State were required to collect cost data that is sufficient in the sense of the cost model. In terms of the private sector employers, it was planned to consult businesses of different sizes (micro, small, medium-sized, large) in order to shed light on possible differences in impacts on SME’s and large companies (“SME test”³²³). Despite contacts with 102 potential interviewees, the contractor only succeeded to book and carry out nine interviews.

The competent public authorities, public/private employment agencies and social partners were identified via desk research; the employers to interview were selected from publicly available business registers.

The table below details the numbers of interviews per sub-option and Member State.

Table 48: Number of telephone interviews

| Sub-options / MS | Businesses | | | | Public authorities | Associations | Other third sector organisations |
|------------------|------------|-------|--------------|-------|--------------------|--------------|----------------------------------|
| | Micro | Small | Medium-sized | Large | | | |
| 3b -IE | | | | | 1 | | |
| 3c - SE | 1 | | | | 3 | 1 | 2 |
| 3f - NL | | | | | 1 | | |

Scheduling interviews proved difficult, especially regarding businesses in Sweden to cover the element in sub-option 3c - ‘prevention of discrimination by employers’. Hardly any of the contacted businesses were interested in participating or they did not consider the topic relevant to them as they did not have any employees with non-Swedish background. The table below provides for the numbers of contacted businesses and organisations per sub-option.

Table 49: Number of recruitment contacts

| Sub-options / MS | Businesses | | | | Public authorities | Associations | Other third sector organisations |
|------------------|------------|-------|--------------|-------|--------------------|--------------|----------------------------------|
| | Micro | Small | Medium-sized | Large | | | |
| 3b -IE | | | | | 1 | | |
| 3c - SE | 12 | 16 | 13 | 22 | 15 | 5 | 15 |
| 3f - NL | | | | | 2 | | |

The interviews were carried out on the basis of an interview-guide “tailored” specifically for each sub-option in the sense that the generic guide was supplemented by the specific information on the sub-option as implemented in the case study Member State. The following information was captured during the interviews:

- Labour costs
 - activities that need to be performed
 - labour time needed to perform the activities
 - the employees performing the actions and their hourly pay³²⁴
 - outsourcing costs
 - share of BAU costs
 - opportunity costs
- Equipment and supplies costs
- Financial costs
- Irritation effects
 - Comprehensibility of the obligation
 - Implementability of the obligation

³²³ See Annex 8.4 of the EU Impact Assessment Guidelines, p. 32-34.

³²⁴ The hourly pay corresponds to the gross salary plus overhead costs (25% by default). In order to ensure overall consistency the overall tariff (all Member States and nine qualification segments) used for the EU SCM baseline measurement was used (see page 53 of the Annexes to the EU Impact Assessment Guidelines).

- Acceptance of the obligation

Calculating costs

Based on the information collected in the interviews, the compliance costs per case study Member State were calculated. The labour costs for complying with the legal requirements are calculated as the product of the man-hours spent and the hourly pay of the person performing the action.

The tariffs/wage rates used for the calculation are based on the International Standard Classification of Occupations (ISCO) developed by the International Labour Organization (ILO)³²⁵. ISCO groups jobs together in occupations and more aggregated groups mainly on the basis of the similarity of skills required to fulfil the tasks and duties of the jobs. It delivers data for EU-27. ISCO is structured in ten major groups at the top level of aggregation of which the first four are deemed relevant for this assessment. The groups are:

1. Legislators, senior officials and managers
2. Professionals
3. Technicians and associate professionals
4. Clerks
5. Service workers and shop and market sales workers
6. Skilled agricultural and fishery workers
7. Craft and related trades workers
8. Plant and machine operators and assemblers
9. Elementary occupations
10. Armed forces

Collecting quantities (Qs)

In order to “extrapolate” the costs for the Member States where a sub-option is not yet implemented the size of the target groups had to be determined.

| Sub-option | Target group sub-option | Description |
|----------------------|---|---|
| 3b | Equality Authorities | One per Member State |
| 3c – active measures | All employers | Private Sector - Businesses Public sector employers/authorities Third sector organisations |
| 3f | Employers' organisations and trade unions | One council per Member State consisting of members of employer’s organisations and trade unions |

As regards the number of employers per Member State (relevant for sub-option 3c), extensive research was carried out in order to quantify the three employer groups for EU-27.

Comparable and reliable figures for EU-27 are available only for the private sector/businesses, however even these are not covering the entire sector. Eurostat provides ‘key figures on European businesses’³²⁶, listing all enterprises operating in the non-financial business economy in EU-27. However, in testing this data with the case of Germany as an example, it became clear that a very high number of enterprises are excluded from the Eurostat statistics. According to the Eurostat data Germany has 1.88 million enterprises³²⁷ operating in the non-financial business economy. The German business register on the contrary lists 3.57 million businesses in total (2009)³²⁸ and includes voluntary sector employers as well. In terms of using national data, other

³²⁵ <http://www.ilo.org/public/english/bureau/stat/isco/isco88/intro.htm>

³²⁶ Eurostat, 2008, Key Figures on European Business.

³²⁷ Eurostat, 2008, Key Figures on European Business.

³²⁸ See ‘Civil Society in figures’ (ZIVIZ), German Federal Statistical Office – Destatis, and Centre for Social Investment on behalf of Bertelsmann Foundation, Stifterverband for German Science and Fritz Thyssen Foundation, Final Report Module 1, p. 51;

challenges of comparability present themselves. For example, not all Member States provide data on the number of enterprises in different sectors.

The scope of the *public sector* is defined in a variety of ways in the EU 27. The composition of the public sector varies heavily between the countries. Due to the different internal structures within the countries some services are included in the public sector of one country, while they are excluded in another country. Furthermore there are diverse ways of financing public expenditure between the central government, regions, provinces and municipalities, and – in some cases – between a federal government and states.³²⁹ The determination of the public sector and quantification of the number of public sector employers hence would require an in-depth research in each of the Member States, which would be a very time- and resource-consuming task not covered by the present study and without a guarantee of comparable results.

Regarding the *voluntary or third sector* there exist neither a statutory definition of a voluntary organisation, nor is there even any agreed definition in common use.³³⁰ The problem to define the number of employers in the voluntary sector is compounded by the use of a variety of overlapping terms in the different Member States, each with somewhat different connotations such as 'non-governmental organizations', 'non-profit sector', 'the third sector', 'associations', 'charities' and the broader term 'civil society'. Due to the different definitions and use of the terms, the 'voluntary sector' varies in each of the Member States.

Meanwhile, the interviews with Swedish employers on compliance costs did not provide sufficient evidence to support a thorough assessment of the compliance costs related to the obligation. For those employers who did provide some information, the costs were considered unsubstantial. This in combination with the lack of solid and comparable data on the number of employers in different sectors in different Member States led to the assessment that there was not substantial basis for carrying out an extrapolation of the costs on the impact case studies.

1.7 Impact analysis

Following the impact case studies, the impact of each policy option and sub-option was identified and compared. The methods for doing so are presented in this section.

The baseline scenario, which represents policy option 1³³¹, was developed with respect to five parameters in each Member State:

5. The level of integration of EU migrant workers' rights into the national legislation – rather level of protection of EU rights in national legislation
6. the level of enforcement (in practice)
7. the number of EU migrant workers - present and future
8. The share of EU migrant workers of the total working population
9. the actual scale of the problem

Part of the purpose of the baseline scenario was to cluster the Member States into similar groups in order to facilitate the impact assessment. Each Member State was therefore assigned a value for each of the four parameters and clustered according to the scores.

For each cluster of Member States, the likely development without public intervention was discussed. The approach was mainly qualitative as opposed to the quantitative method of clustering. Since many parameters, besides the four mentioned, were likely to affect the

http://www.stifterverband.info/statistik_und_analysen/dritter_sektor/veroeffentlichungen/zivilgesellschaft_in_zahlen_abschlussbericht_modul_1.pdf

³²⁹ OECD, 1997, *Measuring Public Employment in OECD Countries: Sources, Methods and Results*, OECD, Paris

³³⁰ The RUSSELL-COOKE VOLUNTARY SECTOR LEGAL HANDBOOK, 2009, Russell-Cooke Solicitors, Directory of Social Change, Directory of Social Change, London

³³¹ The baseline scenario is defined as the current situation and expected future developments of parameters in relation to the enforcement of EU migrant workers' right to free movement.

development of the situation of EU migrant workers, the baseline scenario includes a number of other trends, e.g. the expected general macroeconomic development within EU27.

Consequentially, not all trends and parameters affecting the development of migration could be identified and therefore applied in the development of the baseline scenario. The described method for the development of the baseline scenario is believed to be the best pragmatic approach when assessing a development which is, without question, affected by a wide array of parameters.

The policy options and the case studies were used as the basis of **the impact analysis of policy options 2 and 3** (and sub-options). The impacts of policy options 2 and 3, which were to a high extent qualitative rather than quantitative, were assessed in relation to the baseline scenario, i.e. policy option 1. As a first step, the potential impacts of the policy options as well as the target group of each policy option were identified. These include both the beneficial impacts, such as increased awareness, and to some extent the economic costs and potential compliance costs of the policy options.

Subsequently, the impacts at cluster and EU levels were assessed. The actual impacts in each cluster, Member State, and therefore also EU level are generally dependent on:

- The number of Member States with a measure similar to the proposed policy option currently in place, *and* whether the Member States without the policy option in place are likely to comply with the policy option if implemented, as well as the speed with which they are expected to do so.
- The future number of EU migrant workers in the Member States that could potentially benefit from the policy options

The number of Member States that currently have measures similar to the policy options in place is based on information in the country profiles. However it is not possible to say with certainty how many of the Member States without the policy option in place would comply if it were implemented and how long time they would take to do so. Information about barriers to migration in each cluster was used as an indicator of whether the proposed policy option can be expected to be correctly implemented and administrated. Another indication used was the future share of EU migrant workers of the total working population in Member States and clusters. In relation to this, it is assumed that Member States and clusters where EU migrant workers constitute a rather large share of the working population will have more incentives to comply with any policy option that could ease the free movement of the EU migrant workers.

The future number of EU migrant workers who may potentially benefit from the policy options is not known. However the impact case studies and the expected future number of EU migrant workers in 2020 were used as an indicator of this, as it is realistic to assume some sort of correlation between the actual number of EU migrant workers and the EU migrant workers who would benefit from the implementation of the proposed policy options.

The impacts of the policy options are also dependent on other trends briefly mentioned in Chapter **Error! Reference source not found.**. The impact assessment cannot possibly take all parameters into account. The conclusion about the impacts at each Member State, cluster and EU level should therefore be considered a *ceteris paribus*, i.e. all else equal, assessment.

The conclusions about impacts were finally used to compare and rank the policy options with respect to which policy options and combinations show the greatest potential of beneficial impacts on intra EU migration.

ANNEX F: BIBLIOGRAPHY

Annual European Report on the Free Movement of Workers in Europe in 2009-2010; December 2010

Bertelsmann Foundation (2009), Handbook for measuring compliance costs
http://www.bertelsmann-stiftung.de/bst/de/media/xcms_bst_dms_29011_29012_2.pdf

Carlier, J.; Jacques, J.(2010), Report on the Free Movement of Workers in Belgium in 2009-2010
Report on the Free Movement of Workers in Cyprus in 2009-2010, 2010

Commission staff working paper: Situation in the different sectors accompanying the document report from the Commission. 28th Annual Report on Monitoring the Application of EU law (2010). SEC (2011) 1093 final, 29.9.2011. (http://ec.europa.eu/justice/gender-equality/files/final_report_access_to_justice_final_en.pdf)

Commission of the European Communities: "European Governance – a White Paper"; Brussels, 25.7.2001

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions; Reaffirming the free movement of workers: rights and major developments; COM(2010)373 final; Brussels, 13.7.2010

Consolidated version of the treaty on the functioning of the European Union; Official Journal of the European Union, C115/47; 9.5.2008 & Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:180:0022:0026:EN:PDF>

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF>

Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF>

Council of the European Union: Conclusions on a better functioning Single Market for services – mutual evaluation process of the Services Directive; Brussels, 10 March 2011

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF>

Discriminations affecting mobility in the Internal Market (2011), A Your Europe Advice feedback report

Dupate, K. (2010), Report on the Free Movement of Workers in Latvia in 2009-2010

Gender equality plans at the workplace (2004)

<http://www.eurofound.europa.eu/eiro/2004/02/study/tn0402101s.htm>

Eurobarometer Qualitative Studies (2011), Obstacles citizens face in the Internal Market

Eurofound (2009), The Netherlands: Industrial relations profile

http://www.eurofound.europa.eu/eiro/country/netherlands_1.htm

European Commission (2009), Impact Assessment Guidelines; SEC(2009) 92

European Commission, DG Employment, Social Affairs and Equal Opportunities (2008), Employment in Europe

European Commission, DG Employment, Social Affairs and Inclusion (2011), Roadmap: Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers.

European network on free movement of workers in cooperation with Adam Weiss: Thematic report – Application of Regulation 1612/68, January 2011

European Report on the Free Movement of Workers in Europe in 2008-2009, May 2010

European Union Agency for Fundamental Rights (2010): "Handbook on European non-discrimination law" (http://fra.europa.eu/fraWebsite/attachments/handbook-non-discrimination-law_EN.pdf)

Eurostat, EU Labour Force Survey

http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_unemployment_ifs/data/database.

Eurostat, European Economic Forecast:

http://ec.europa.eu/economy_finance/eu/forecasts/2011_autumn/statistical_en.pdf

Eurostat, News release, Euroindicators, October 2011

Feik, R. (2010), Report on the Free Movement of Workers in Austria in 2009-2010

Finnish Equality Act 20.1.2004/21 <http://www.finlex.fi/fi/laki/ajantasa/2004/20040021>

French Penal Code

<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719&dateTexte=20111102>

French Labour Code

<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072050&dateTexte=20111121>

Groenendijk, K.; Fernhout, R.; Guild, E.; Cholewinski, R.; Oosterom-Staples, H.; Minderhoud, P. (2010), European Report on the Free Movement of Workers in Europe in 2008-2009

Holland, D. et al (2011): Labour mobility within the EU - The impact of enlargement and the functioning of the transitional arrangements. Final report. National Institute of Economic and Social Research

International Labour Organization, the International Standard Classification of Occupations (ISCO) <http://www.ilo.org/public/english/bureau/stat/isco/isco88/intro.htm>.

Jakuleviciene, L.; Czekaj, A., Conference report Lithuania-Poland Free Movement Conference, 28 October 2010

Keel, Robert (2005), Rational Choice and Deterrence Theory <http://www.umsl.edu/~keelr/200/ratchoc.html>

Lamassoure, Alain (2008), The citizen and the application of Community law; Report to the president of the Republic

Latraverse, Sophie (2009), Report On Measures To Combat Discrimination. Directives 2000/43/EC and 2000/78/EC. Country report France, 2009. European network of experts in the non-discrimination field

Letter of Dutch Minister of Social Affairs and Employment, Henk Kamp, to the Dutch House of Representatives of the States General, 2011

Loi No 2006-396 du 31 mars 2006 pour l'égalité des chances
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000268539>

Milieu for DG Justice (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011

Monti, Mario (2010), A New Strategy for the Single Market, Report to the President of the European Commission, José Manuel Barroso

National fiches 2010-2011 – Free movement of workers (2011) (internal document by Advisory Committee)

Nieuwsbericht: Resultaten SNCU 2010 (2011) www.SNCU.nl

Pace, G (2010), Report on the Free Movement of Workers in Malta in 2009-2010

Piçarra, N.; Francisco Borges, F., Conference report, Portugal-Spain Free Movement Seminar, 7-8 October 2010

Quarterly National Household Survey produced by the Irish Central Statistics Office, June 2011

Rambøll Management Consulting for the European Parliament (2010): "Implementation of the Services Directive"

Record of Proceedings: Seminar on Key Issues in Free Movement in Ireland, Law Society of Ireland, 5 November 2010.

Regulation (EEC) 1612/68 of the Council of 15 October 1968 on Freedom of movement for workers within the Community; Regulation 492/11 which codifies Regulation (EEC) 1612/68.

Special Eurobarometer 337 (2010), Geographical and labour market mobility

The Equality Authority and the Economic Social Research Institute (forthcoming) "2003 and 2009 National Workplace surveys"

The Labour Foundation (2010), Labour Foundation in brief

Vedsted-Hansen J.; Iben Jensen U. (2010), Report on the Free Movement of Workers in Denmark in 2009-2010

Weiss, Adam (ed.), Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

ANNEX J: SYNTHESIS OF EU WORKERS SURVEY

European Commission, DG EMPL

Summary report

December 2011

ANNEX J:

SURVEY AMONG EU WORKERS

SURVEY AMONG EU WORKERS

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SUPPLEMENTS

Supplement 1

Background information of the respondents

1. INTRODUCTION

An internet-based survey was carried out among citizens in eight different Member States to identify the barriers for workers to move and/or work in another Member State. The selected Member States are presented in Table 2 below. They were selected on the basis of geography, age of EU membership (EU15/EU8³³²/EU2), inflow and outflow of migrants (high/low/medium)³³³ and size of population (large/small/medium).

Table 50: Member States selected for the survey among EU workers

| Member State | Selection criteria |
|-----------------------|--|
| France | South-Western; EU15; low-medium inflow/low outflow, large |
| United Kingdom | North-Western; EU15; high inflow/medium outflow; large |
| Portugal | Southern; EU15; low inflow/medium outflow; medium |
| Sweden | Northern; EU15; low-medium inflow/low outflow; small |
| Poland | Central-Eastern; EU8; low inflow/high outflow; large |
| Estonia | North-Eastern; EU8; low inflow/low-medium outflow; small |
| Romania | South-Eastern; EU2; low inflow/high outflow; medium |
| Slovenia | South-Eastern; EU8; inflow/outflow data is too small to be reliable; small |

The survey targeted three types of respondents: workers who have considered moving to/working in another EU Member State, workers who have moved to/worked in another EU Member State (or are still working there), and workers who have not considered moving to/working in another EU Member State.

The survey was carried out as a *panel survey*³³⁴ in the above eight Member States. A total of **4007 respondents** replied to the survey questionnaire (500 respondents from all other Member States except for Portugal, which had 507 respondents). The sample was distributed representatively according to the respondents' age, gender and geographical location. The selected panellists received an e-mail with a link to the questionnaire, which was hosted on the website of the subcontractor implementing the survey. The panellists were asked to respond to

³³² The ten new Member States of 2004 minus Cyprus and Malta, which have not been subject to transition schemes

³³³ Based on data from European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities: Employment in Europe 2008

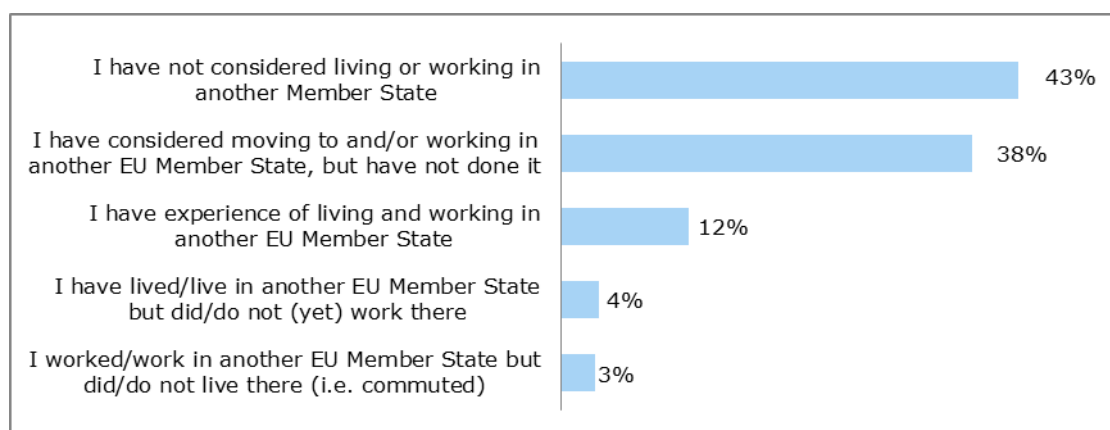
³³⁴ A panel survey is a survey, where the subcontractor responsible for the implementation of the survey uses its already existing panels of voluntary respondents to select a sample of 500 people. These panels usually have up to 50,000 registered voluntary respondents.

the questionnaire within two weeks. Responses are summarised in the following, while more tables and figures are available in a separate document.

2. EXPERIENCE OF LIVING AND/OR WORKING IN ANOTHER EU MEMBER STATE

As presented in the Figure 78 below, a large majority of the respondents (81%) did not have experience of living or working in another EU Member State. The largest share of all the respondents (43%) had not considered living or working in another Member State, while almost as many (38%) had considered, but not yet done it. The majority of respondents who had experience of living or working abroad had done both (12%), while 4% of the respondents had lived/lived currently in another Member State but had not/did not work there. Finally, 3% of the respondents had worked/worked currently in another Member state without living there.

Figure 78: Experience and consideration of living and/or working in another EU Member State (n=4007)

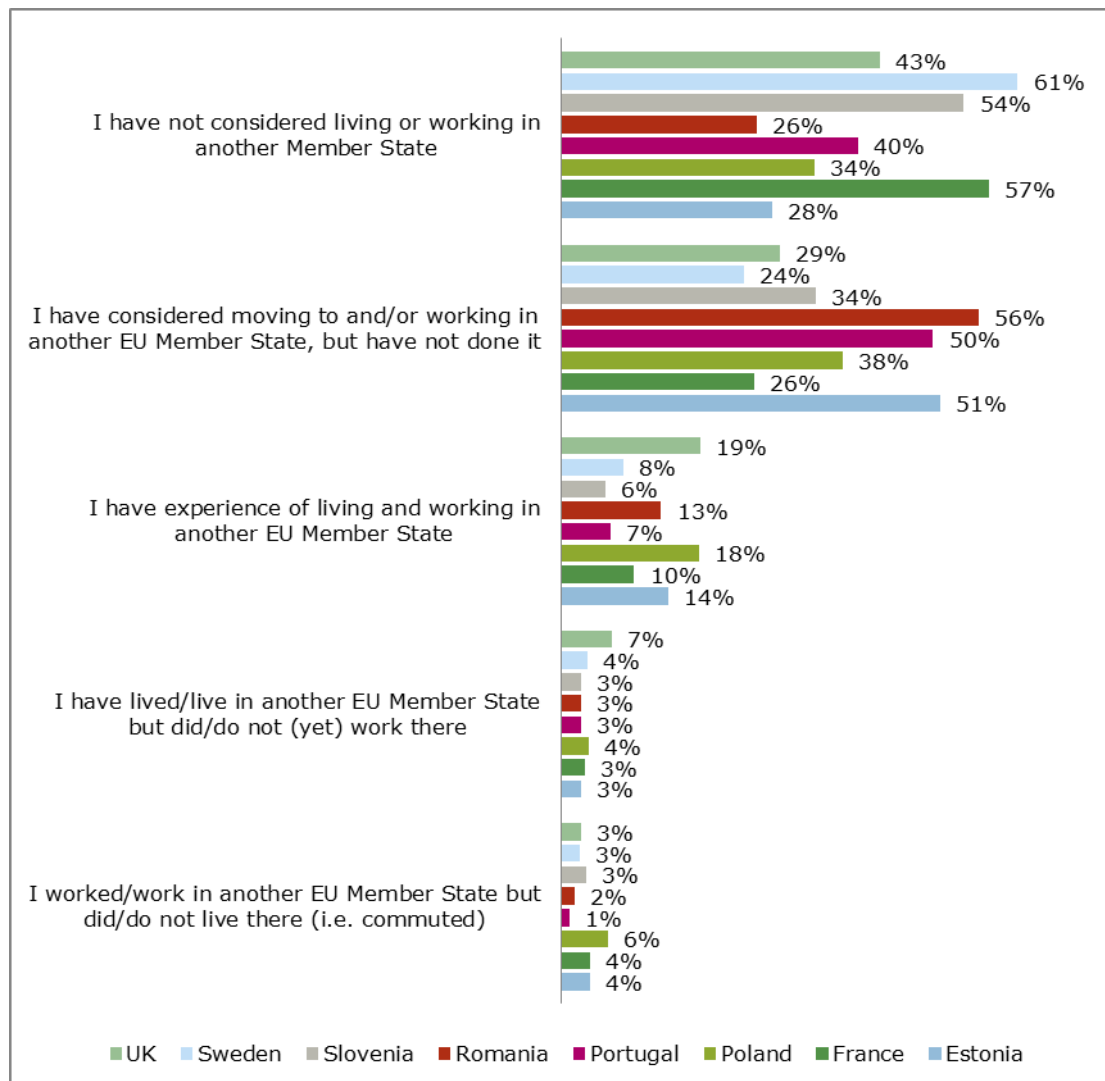


Responses varied significantly according to the Member State. Figure 79³³⁵ shows that the Member States with the largest share of respondents who had lived and/or worked in another EU Member State were Poland (29%) and UK (28%), where 18% and 19% of the respondents had both lived and worked in another EU Member State. Living in another Member State without working there was also the most common among the respondents in the UK (7%), while working in another Member State without living there was the most common among the respondents in Poland (6%). However, there was a great difference between the Polish and British respondents who had not lived/worked in another Member State. While in Poland most of those respondents (38% of all the Polish respondents) had considered moving to and/or working in another Member State, in UK the situation was the opposite with only 29% of the respondents having done it.

³³⁵ In the figure the percentages are approximate numbers and therefore differ from the actual percentages presented in the text.

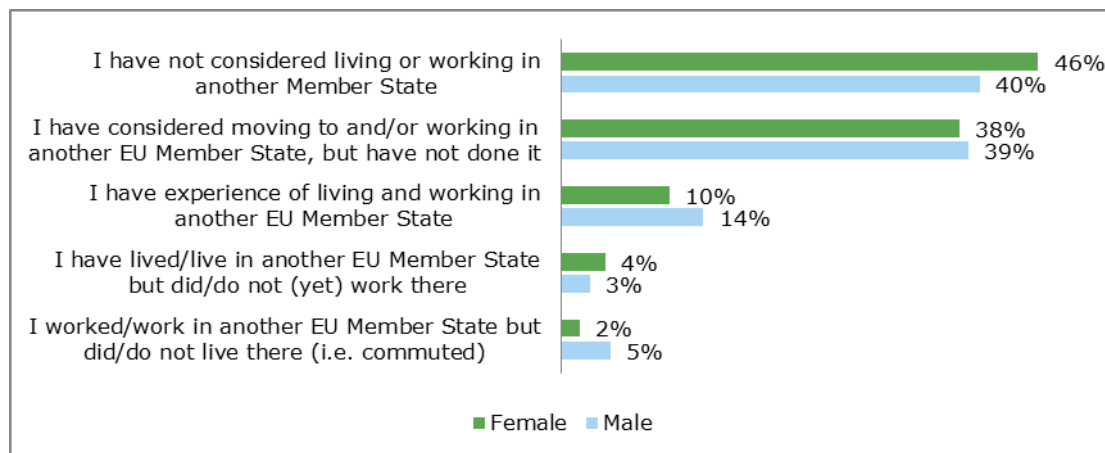
The Member States where the smallest share of respondents had lived and/or worked abroad were Portugal (11%) and Slovenia (12%). Also regarding these two Member States the shares of the answers of the respondents without any experience from other EU Member States look very different. Whereas in Portugal half of the respondents (50%) had considered moving to and/or working abroad, only one-third of the respondents (34%) in Slovenia had done it. This difference is even greater among the rest of the Member States. In fact, the four Member States can be categorised in two different groups, where the patterns are very similar. In Romania (56 %) and Estonia (51%) more than half of the respondents had considered moving to and/or working in another Member State, while in Sweden (24%) and France (26%) only roughly one-fourth had done it.

Figure 79: Experience and consideration of living and/or working in another EU Member State by Member State (n=4007)



Men (22 %) were slightly more experienced in living and/or working in another EU Member State than women (16 %). As the Figure 80 below also shows, around half of the men who had not lived and/or worked in another Member State considered it. Among women it was more likely not to consider moving to and/or working abroad (difference of 8 percentage points).

Figure 80: Experience and consideration of living and/or working in another EU Member State by gender (n=4007)



When looking at the patterns between the different age groups presented in Figure 81 it is seen that almost the same share of the 15-34 years (21 %) and 35-49 years (20 %) old respondents had lived and/or worked in another EU Member State. This share was smaller among the 50-64 years old respondents (14 %). It is also clear that the older the respondents were, the less they had considered living and/or working in another Member State.

Figure 81: Experience and consideration of living and/or working in another EU Member State by age (n=4007)

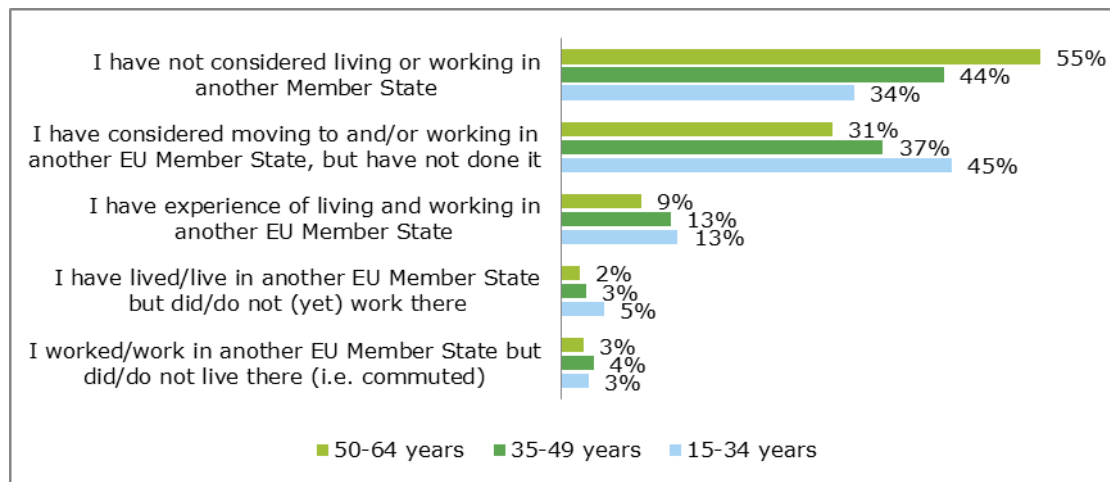


Figure 82 below specifies the situation by marital status. Leaving without further consideration the respondents who had widowed and preferred not state as they only represent 1 % of the respondents, it can be seen that regardless of the marital status the respondents had lived and/or worked in another Member State fairly to the same extent. It is nevertheless clear that respondents, who were not married but either single (44 %) or living with a partner (41%) considered moving to and/or working in another Member State more commonly, while only 35 % of respondents who were married, in a registered partnership or divorced/separated considered it.

Figure 82: Experience and consideration of living and/or working in another EU Member State by marital status (n=4007)

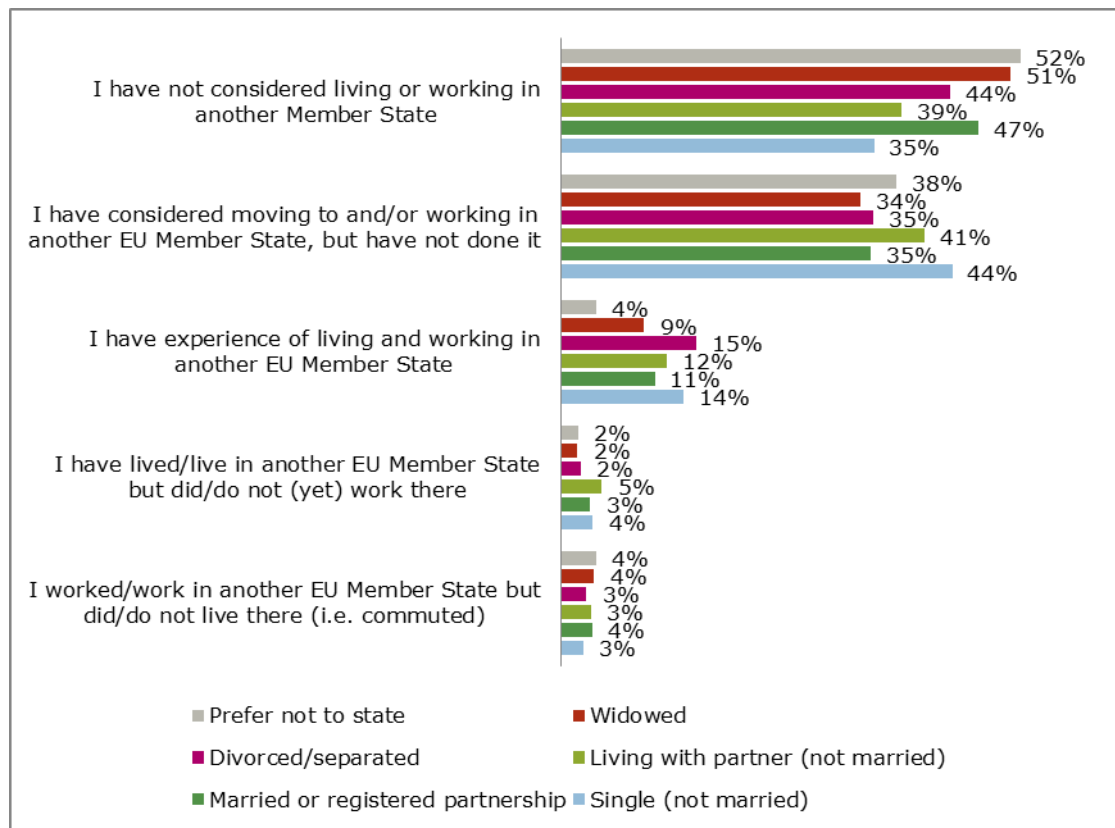


Figure 83 and Figure 84 take into consideration the household size. As Figure 83 shows, the number of children under the age of 18 living in the same household did not directly correlate to whether the respondent had experience of living and/or working in another Member State. In fact, respondents without having children (17 %) in their household had roughly as often experience as the ones with three (17 %) or more children (16 %). Those having one or two children were the most experienced of living and/or working in another Member State. Similarly, also those respondents with one or two children were more likely to consider moving to and/or working in another Member State compared to the other respondents. On the other hand, the respondents with several adults over the age of 18 living in the household had less experience of living and/or working abroad. The lower level of experience among those with several adult in the household is correlated with higher level of those who have considered moving to and/or working in another Member State rather than not having considered.

Figure 83: Experience and consideration of living and/or working in another EU Member State by number of children (n=4007)

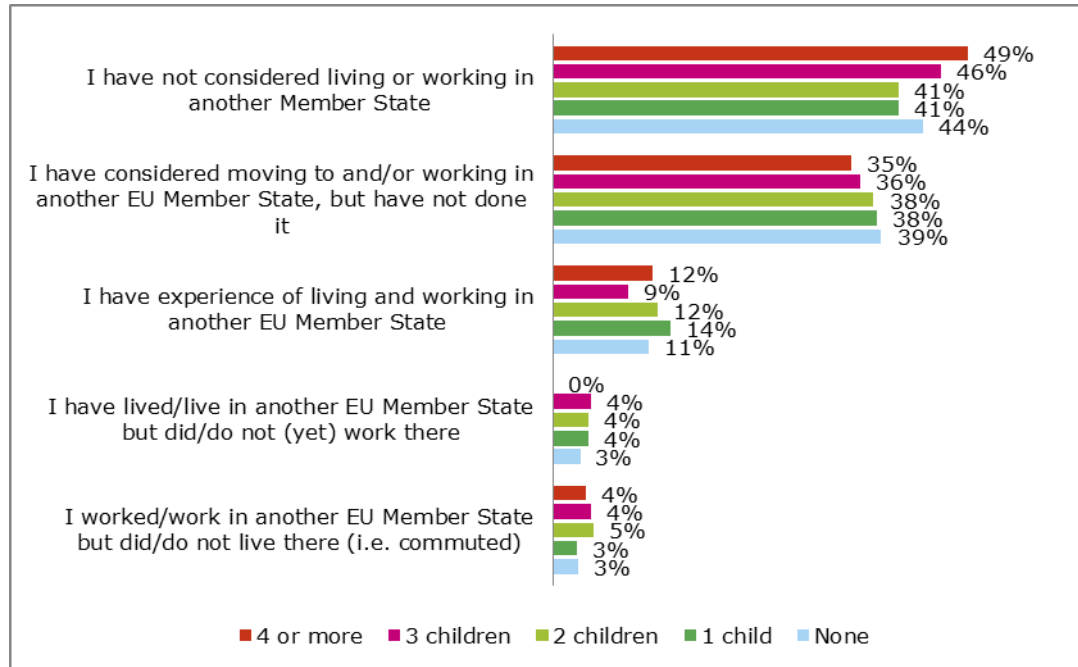
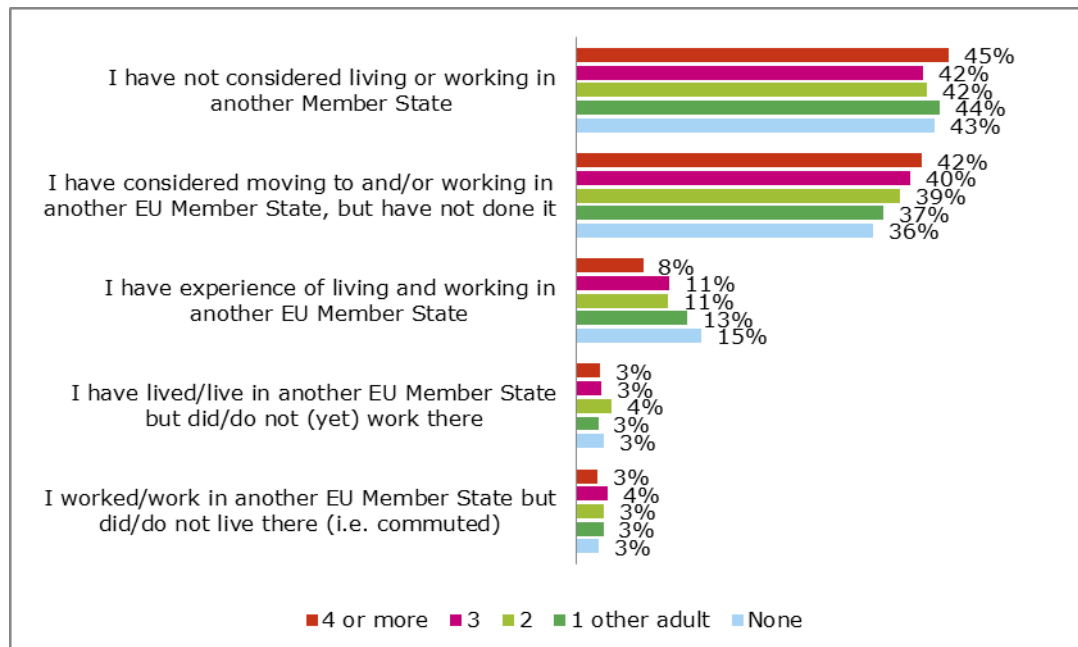


Figure 84: Experience and consideration of living and/or working in another EU Member State by number of adults (n=4007)

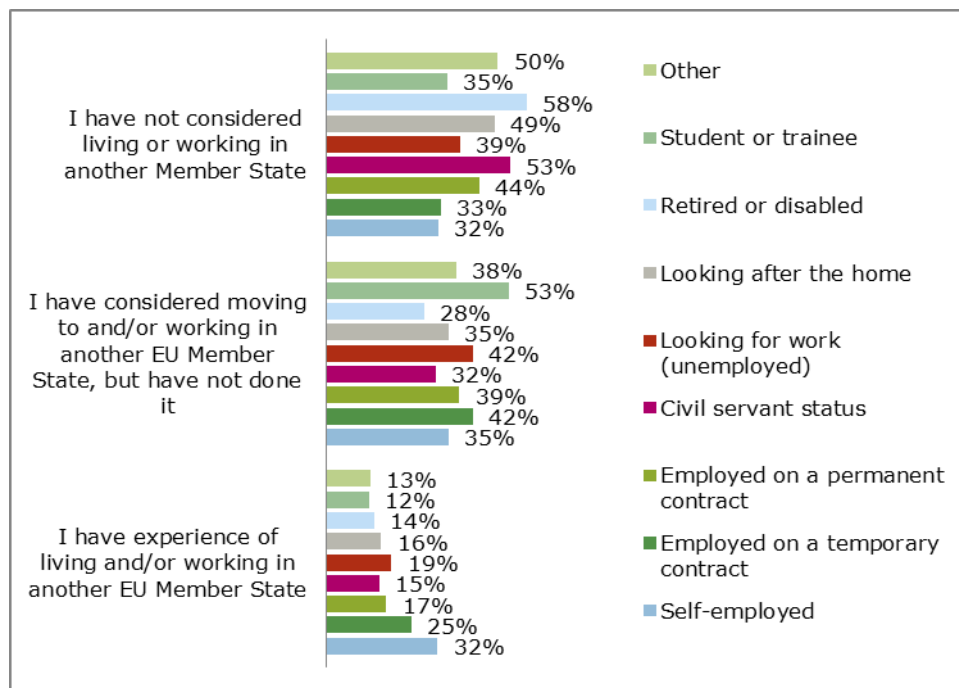


Those who were self-employed had the most often experience of living and/or working in another EU Member State, as shown in Figure 85. Compared to the average of 19% of all the respondents, 32% of the self-employed had experience of living and/or working in another EU Member State, while 20% of them had done the both. Interestingly, the respondents who were self-employed belonged rather evenly to the three types of workers who had considered moving to/working in another EU Member State, who had moved to/worked in another EU Member State, and workers who had not considered moving to/working in another EU Member State. Also those respondents who were employed on a temporary contract stood out with the 25% share of those

who had experience of living and/or working in another EU Member State. Majority (53%) of the respondents in this category without any experience had considered moving to and/or working abroad.

Perhaps not surprisingly, students and trainees had the least experience of living and/or working in another Member State (12%), but considered it the most commonly (53%). In addition, 42% of respondents who were looking for work considered moving to and/or working in another Member State. Respondents who are retired or disabled (58%) and with civil servants status (53%) stated the most often not having considered the option.

Figure 85: Experience and consideration of living and/or working in another EU Member State by occupational status (n=4007)

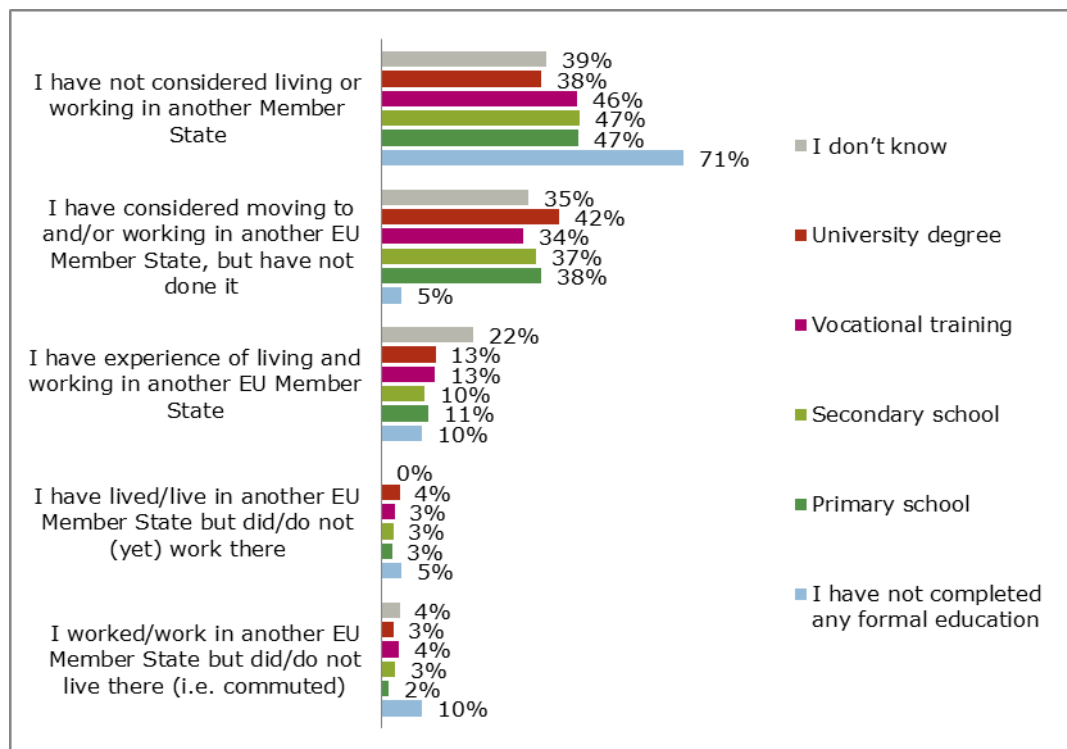


Leaving without further consideration the respondents who stated not knowing the highest level of education they have completed and those without having completed any formal education as these categories each represent only 1 % of the respondents, only small differences can be found based on the educational background of the respondents.

Figure 86 shows that 20 % of those respondents who had completed a university degree and a vocational training had lived and/or worked abroad, while 16 % of the respondents who had completed secondary or primary school as the highest level of education had done so. In

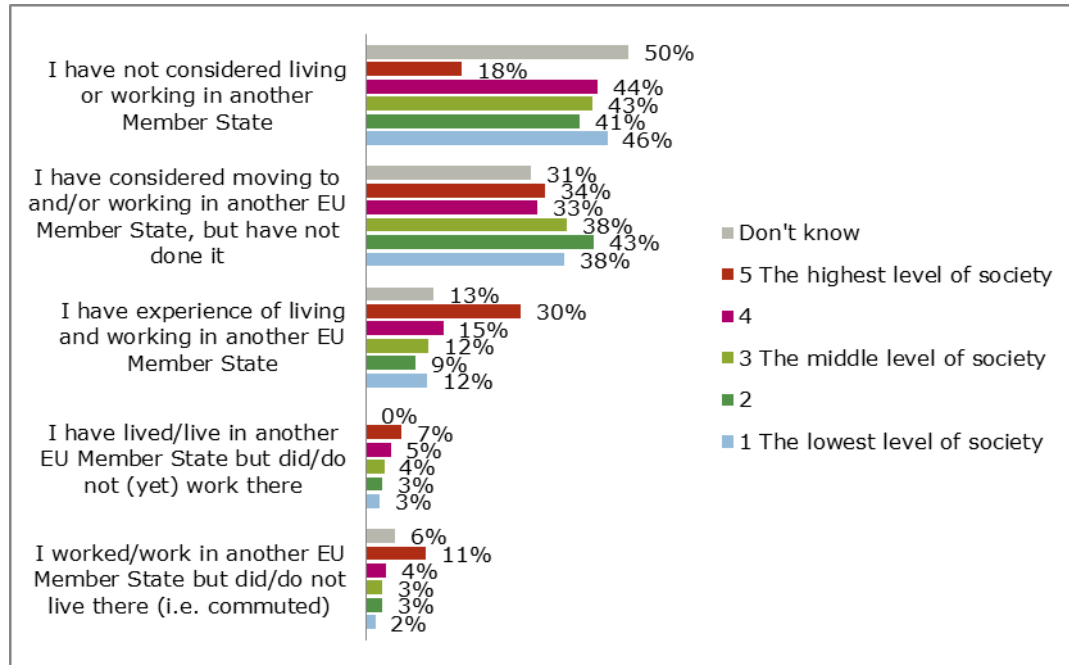
addition, it is worth noting that among those respondents without experience of living and/or working in another Member State, majority of respondents with university degree have considered it, while in the other categories majority had not.

Figure 86: Experience and consideration of living and/or working in another EU Member State by educational background (n=4007)



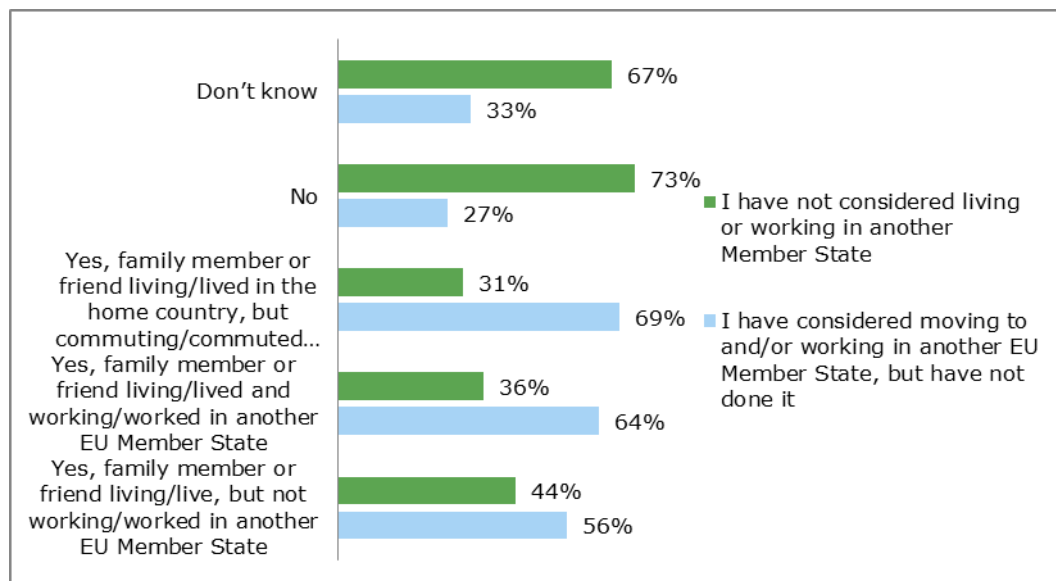
Leaving without further consideration the respondents who stated having the highest level of standard of living in the society as they only represent 1% of the respondents, it can be seen that the differences according to the educational background of the respondents are not significant. However, Figure 87 is providing indications that the higher the standard of living the more commonly respondents had lived and/or worked abroad (e.g. difference of 7 percentage points between the second highest level of society and the lowest). However, compared to other respondents, those who placed themselves on the second level of society (1 being the lowest) seem to have rather considered moving and/or living abroad than actually have yet done it.

Figure 87: Experience and consideration of living and/or working in another EU Member State by level of society (n=4007)



Those respondents who had not lived or worked in another EU Member State were asked if their family member or a friend had done it. 64% of the respondents whose family member or friend had lived and/or worked in another Member State had themselves considered the option. As Figure 88 shows those respondents who knew a person who had commuted to work across the border to another EU Member State had more likely considered (69%) living and/or working in another Member State, while the difference was the smallest among those with a family member or a friend who had lived in another Member state but not had worked there.

Figure 88: Family member or a friend who has lived and/or worked in another EU Member State³³⁶ (n=3254)



³³⁶ Respondents were allowed to choose more than one answer.

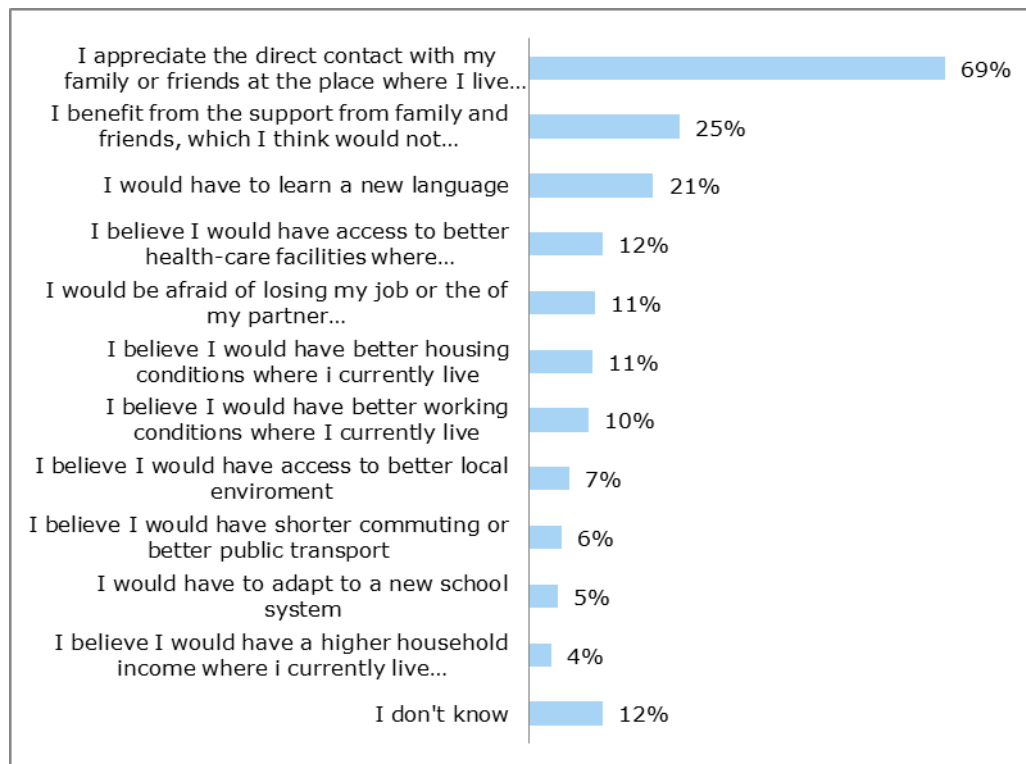
2.1 Respondents who have not considered moving

As illustrated in

Figure 89 below, for those who had not considered moving abroad, direct contact with family and friends (69%) and the support from family and friends (25%) were the main reasons why they had not considered moving to another EU Member State. The third most important reason was the need to learn a new language (21%). The direct contact with family and friends is the main reason among the respondents in all the eight Member States. In Sweden access to better health-care facilities (31%) and better working conditions (22%) are seen more often as a reason to stay than support from family and friends (20%). In addition, need to learn a new language is seen as the second important reason in Estonia (35%), France (26%) and Poland (27%) instead of the support from family and friends.

Figure 89: Reasons why not to consider moving to another EU Member State³³⁷ (n=1715)

³³⁷ Respondents were allowed to choose up to 3 reasons.



The respondents were asked that if they had to recommend to a family member or to a friend to move to and/or work in another EU Member State, which Member State they would recommend. Up to five Member States were asked to be chosen and placed in order of attractiveness. The respondents were also asked to state up to 3 main reasons behind the selection. The answers are presented in tables 2, 3 and 4.

Table 51 shows that 17% of the respondents chose UK as the most attractive Member State to recommend, followed by Germany with 13% and Sweden with 12%. In fact, UK and Germany were placed among the five most attractive Member state in all the eight countries that took part in the survey. UK was chosen as a first choice among the respondents in Poland and UK, whereas respondents in Slovenia chose Germany. UK and Germany were equally popular among respondents from Romania. A large share of the respondents in Estonia chose Finland as the first choice. It is interesting to notice that in France, Sweden and UK respondents choose the country where they are currently residing as their first choice to recommend. This need to be considered in the light that the respondents had not themselves considered living and/or working in another EU Member State.

Table 51: The most attractive Member State to recommend to family or friends to move and/or work (n=1628)

| Priority 1 | EE | FR | PL | PT | RO | SI | SE | UK | Total |
|----------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Austria | 2% | 2% | 6% | 3% | 9% | 17% | 1% | 4% | 6% |
| Belgium | 0% | 5% | 1% | 5% | 5% | 5% | 1% | 0% | 3% |
| Bulgaria | 0% | 0% | 0% | 1% | 0% | 0% | 0% | 0% | 0% |
| Cyprus | 0% | 0% | 1% | 0% | 2% | 1% | 1% | 2% | 1% |
| Czech Republic | 1% | 0% | 0% | 1% | 0% | 1% | 0% | 1% | 0% |
| Denmark | 5% | 3% | 1% | 11% | 5% | 4% | 15% | 2% | 6% |
| Estonia | 12% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 1% |
| Finland | 45% | 3% | 6% | 2% | 4% | 4% | 5% | 3% | 7% |
| France | 1% | 32% | 7% | 4% | 4% | 2% | 2% | 9% | 9% |
| Germany | 6% | 14% | 17% | 13% | 20% | 18% | 9% | 11% | 13% |
| Greece | 2% | 0% | 1% | 1% | 1% | 1% | 1% | 2% | 1% |
| Hungary | 0% | 0% | 1% | 1% | 0% | 0% | 0% | 0% | 0% |
| Ireland | 1% | 3% | 4% | 1% | 2% | 1% | 3% | 10% | 3% |
| Italy | 0% | 2% | 2% | 3% | 2% | 2% | 3% | 4% | 2% |
| Latvia | 0% | 0% | 1% | 1% | 0% | 0% | 0% | 0% | 0% |
| Lithuania | 0% | 0% | 0% | 1% | 0% | 0% | 0% | 0% | 0% |
| Luxembourg | 2% | 6% | 6% | 18% | 5% | 3% | 2% | 0% | 5% |
| Malta | 1% | 0% | 1% | 0% | 0% | 1% | 0% | 0% | 0% |
| Netherlands | 1% | 2% | 7% | 3% | 1% | 5% | 1% | 3% | 3% |
| Poland | 0% | 0% | 5% | 0% | 0% | 1% | 0% | 0% | 1% |
| Portugal | 0% | 1% | 1% | 5% | 0% | 0% | 1% | 2% | 1% |
| Romania | 0% | 1% | 1% | 0% | 4% | 1% | 1% | 0% | 1% |
| Slovakia | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| Slovenia | 0% | 0% | 1% | 0% | 0% | 3% | 0% | 0% | 1% |
| Spain | 1% | 6% | 5% | 5% | 8% | 3% | 2% | 11% | 5% |
| Sweden | 11% | 5% | 10% | 8% | 10% | 14% | 26% | 4% | 12% |
| UK | 8% | 11% | 18% | 17% | 20% | 12% | 24% | 28% | 17% |

As presented in the Table 52, the main reason behind the above mentioned selection was better working conditions (22%), followed by higher household income (20%). These two reasons were seen as the main ones in all the other Member States except for Sweden and the UK. When comparing the reasons with the selection, it can be seen that better working conditions were the main reason for selecting UK, Finland, Luxembourg and Germany. The familiarity of language also referred to UK. Higher household income was mentioned as regards the selection of Finland and Germany.

Table 52: Main reasons behind the selection of the Member States (n=1628)

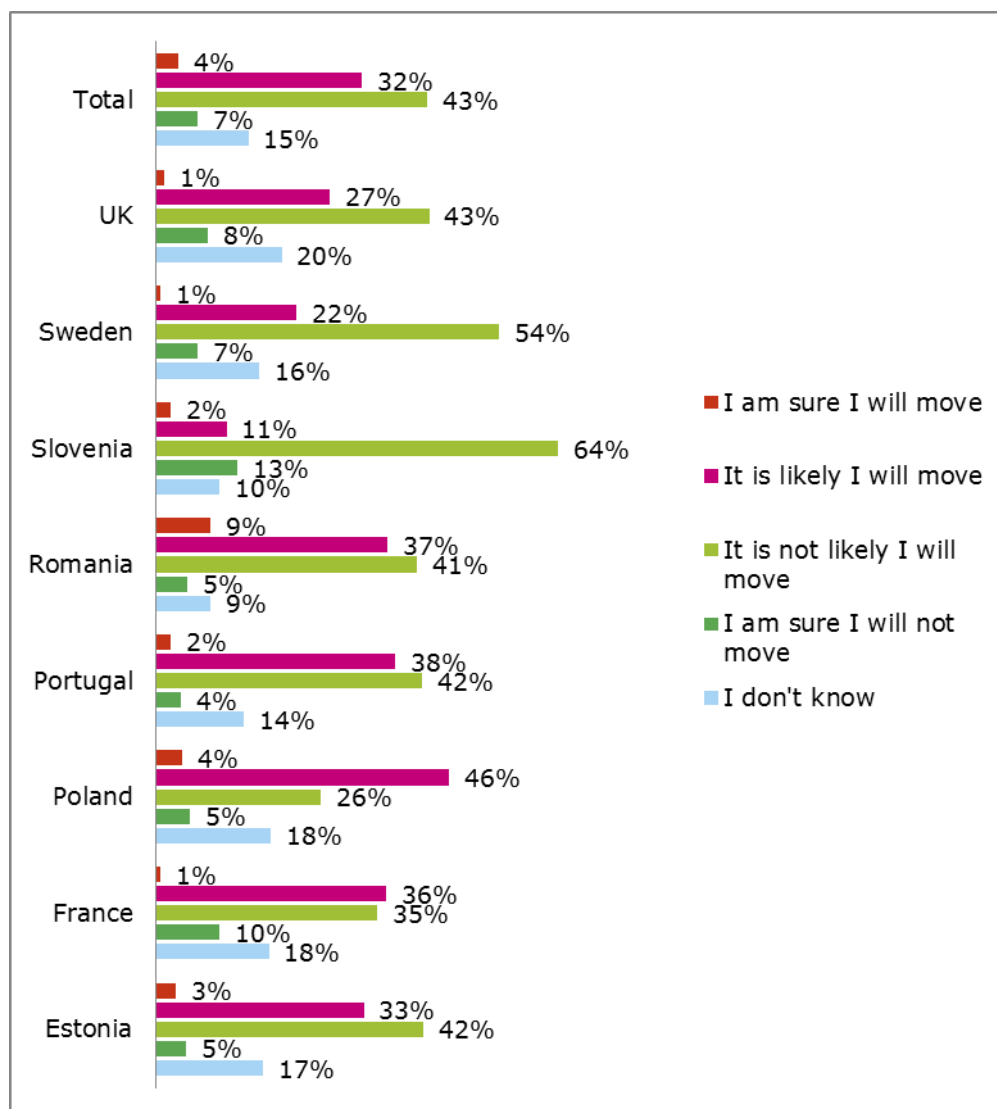
| Main reasons | EE | FR | PL | PT | RO | SI | SE | UK | Total |
|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Language is familiar | 15% | 12% | 9% | 7% | 9% | 2% | 32% | 14% | 12% |
| Higher household income | 18% | 21% | 23% | 24% | 18% | 33% | 12% | 7% | 20% |
| Better working conditions | 18% | 21% | 28% | 29% | 28% | 30% | 7% | 14% | 22% |
| Better weather | 7% | 13% | 6% | 1% | 2% | 1% | 14% | 21% | 8% |
| Family or friends reside their | 4% | 7% | 9% | 6% | 2% | 2% | 6% | 7% | 5% |
| Better housing conditions | 7% | 5% | 8% | 4% | 9% | 7% | 2% | 7% | 6% |
| Better local environment and amenities | 15% | 11% | 6% | 8% | 14% | 6% | 10% | 13% | 10% |
| Access to better health care facilities | 3% | 1% | 6% | 11% | 12% | 6% | 6% | 5% | 6% |
| Better support from family or friends | 2% | 1% | 1% | 1% | 0% | 2% | 3% | 3% | 2% |
| Access to a better school | 2% | 5% | 3% | 7% | 5% | 8% | 2% | 3% | 4% |

| | | | | | | | | | |
|------------------------|----|----|----|----|----|----|----|----|----|
| system | | | | | | | | | |
| Shorter commuting time | 9% | 1% | 1% | 0% | 0% | 2% | 3% | 3% | 2% |
| I don't know | 1% | 3% | 1% | 1% | 1% | 2% | 2% | 4% | 3% |

2.2 Respondents who have considered moving

As shown in Figure 90 below, 43% of those respondents who had considered moving to and/or working in another EU Member State did not consider it to be likely that they would move. At the same time 32% of the respondents were likely to move. However, respondents in Poland made an exception as the largest share of respondents (46%) were likely to move. In addition, the share of respondents who were sure or likely to move was the same (46%) as the share of respondents in Romania who were sure not or not likely to move. On the other hand, only small shares of the respondents were sure or likely to move from Slovenia (13%) and Sweden (23%).

Figure 90: Likelihood of moving to another EU Member State (n=1539)



The respondents were asked which Member State they would choose to move and/or to work. Up to five Member States were asked to be chosen and placed in order of attractiveness. The respondents were also asked to state up to 3 main reasons behind the selection. The answers are presented in tables 5, 6 and 7.

Table 53 shows that 19% of the respondents chose UK as the most attractive Member States, followed by Germany with 12%. These two countries were among the five most attractive destinations in all the eight Member States³³⁸. UK was chosen as a first choice among the respondents in Poland, Portugal, Romania and Sweden, whereas respondents from Romania and Slovenia chose Germany. Spain was considered as the first choice among respondents in France and also in UK together with France as a choice. A large share of the respondents in Slovenia chose Austria as their first choice as respondents Estonia.

Table 53: The most attractive Member State to move and/or work (n=1515)

| Priority 1 | EE | FR | PL | PT | RO | SI | SE | UK | Total |
|----------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Austria | 2% | 2% | 7% | 2% | 8% | 31% | 3% | 1% | 7% |
| Belgium | 0% | 11% | 1% | 0% | 6% | 3% | 3% | 2% | 3% |
| Bulgaria | 0% | 0% | 1% | 0% | 1% | 0% | 1% | 0% | 0% |
| Cyprus | 1% | 0% | 1% | 0% | 1% | 1% | 1% | 3% | 1% |
| Czech Republic | 2% | 1% | 1% | 0% | 0% | 1% | 0% | 1% | 1% |
| Denmark | 4% | 2% | 3% | 4% | 7% | 2% | 7% | 3% | 4% |
| Estonia | 2% | 0% | 1% | 0% | 0% | 0% | 1% | 0% | 0% |
| Finland | 43% | 3% | 2% | 4% | 2% | 0% | 3% | 1% | 9% |
| France | 1% | 7% | 4% | 7% | 9% | 3% | 8% | 19% | 7% |
| Germany | 9% | 5% | 19% | 8% | 13% | 17% | 12% | 14% | 12% |
| Greece | 0% | 1% | 1% | 1% | 2% | 1% | 2% | 2% | 1% |
| Hungary | 1% | 0% | 0% | 0% | 1% | 0% | 0% | 0% | 0% |
| Ireland | 2% | 3% | 2% | 2% | 4% | 3% | 3% | 6% | 3% |
| Italy | 1% | 9% | 4% | 4% | 5% | 4% | 8% | 8% | 5% |
| Latvia | 0% | 0% | 1% | 0% | 0% | 1% | 0% | 0% | 0% |
| Lithuania | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| Luxembourg | 0% | 4% | 5% | 20% | 3% | 4% | 1% | 1% | 5% |
| Malta | 1% | 0% | 1% | 0% | 0% | 1% | 2% | 2% | 1% |
| Netherlands | 2% | 2% | 6% | 4% | 3% | 5% | 1% | 5% | 3% |
| Poland | 0% | 2% | 1% | 0% | 0% | 0% | 1% | 1% | 0% |
| Portugal | 0% | 2% | 2% | 2% | 0% | 0% | 3% | 5% | 1% |
| Romania | 0% | 0% | 0% | 0% | 1% | 0% | 0% | 1% | 0% |
| Slovakia | 0% | 0% | 1% | 0% | 0% | 1% | 0% | 1% | 0% |
| Slovenia | 0% | 2% | 1% | 0% | 0% | 2% | 0% | 0% | 0% |
| Spain | 8% | 21% | 4% | 10% | 5% | 3% | 10% | 19% | 9% |
| Sweden | 7% | 5% | 7% | 7% | 7% | 8% | 5% | 3% | 6% |
| UK | 14% | 19% | 28% | 24% | 23% | 13% | 30% | 2% | 19% |

As presented in Table 54, the main reason behind the above mentioned selection was higher household income (21%), followed by better working conditions (20%). The language being familiar was also the main reason among 15 % of the respondents. Poland, Portugal, Romania where a large share of the respondents chose UK as the most attractive destination mention better working conditions as the main reason. Also language is familiar and higher household income is referred to by Swedish and Polish respondents as regards UK. Higher household income is appreciated by the Estonian and Slovenian respondent as regards Finland and Austria. Finally respondents in both France and the UK have chosen Spain as the most attractive because of a better weather.

Table 54: Main reasons behind the selection of the Member States (n=1515)

| Question 15 | EE | FR | PL | PT | RO | SI | SE | UK | Total |
|---------------------------|------------|-----|------------|------------|------------|------------|------------|-----|------------|
| Language is familiar | 18% | 17% | 14% | 16% | 18% | 4% | 31% | 10% | 15% |
| Higher household income | 22% | 14% | 24% | 25% | 19% | 31% | 13% | 9% | 21% |
| Better working conditions | 15% | 16% | 24% | 26% | 23% | 30% | 4% | 13% | 20% |

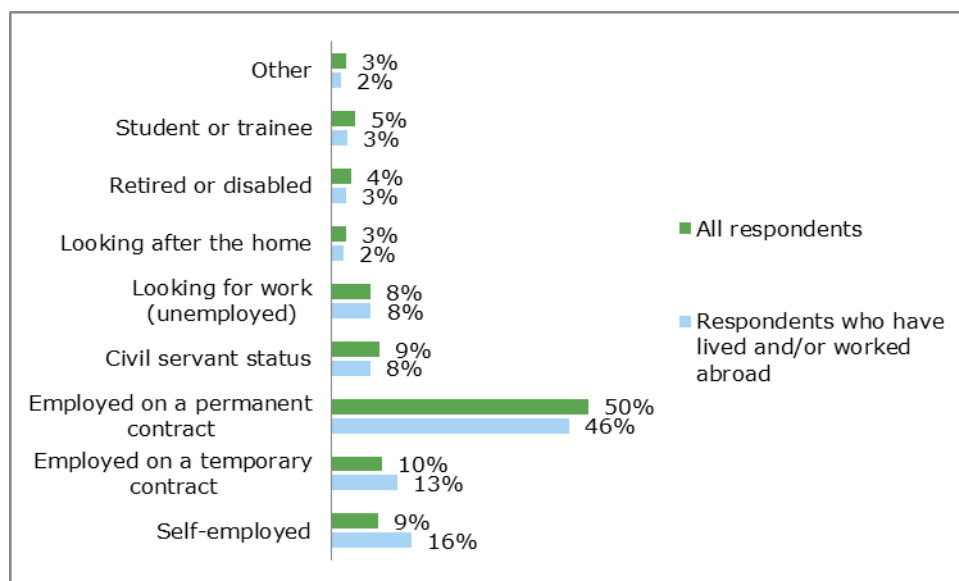
³³⁸ Respondents in UK are not taken into consideration as regards moving to UK.

| | | | | | | | | | |
|--|-----|------------|-----|----|-----|----|-----|------------|-----|
| Better weather | 11% | 18% | 7% | 1% | 2% | 3% | 18% | 27% | 9% |
| Family or friends reside there | 5% | 10% | 10% | 8% | 5% | 2% | 8% | 8% | 6% |
| Better housing conditions | 7% | 7% | 6% | 3% | 10% | 8% | 1% | 7% | 7% |
| Better local environment and amenities | 13% | 6% | 6% | 7% | 10% | 6% | 13% | 17% | 10% |
| Access to better healthcare facilities | 2% | 1% | 3% | 7% | 7% | 4% | 3% | 4% | 5% |
| Better support from family and friends | 0% | 2% | 4% | 2% | 2% | 1% | 0% | 1% | 2% |
| Access to a better school system | 0% | 3% | 1% | 4% | 4% | 8% | 1% | 1% | 3% |
| Shorter commuting time | 5% | 2% | 1% | 0% | 0% | 2% | 3% | 1% | 2% |
| I don't know | 0% | 4% | 0% | 1% | 0% | 1% | 6% | 2% | 1% |

2.3 Respondents who are/have been living/working in another member state

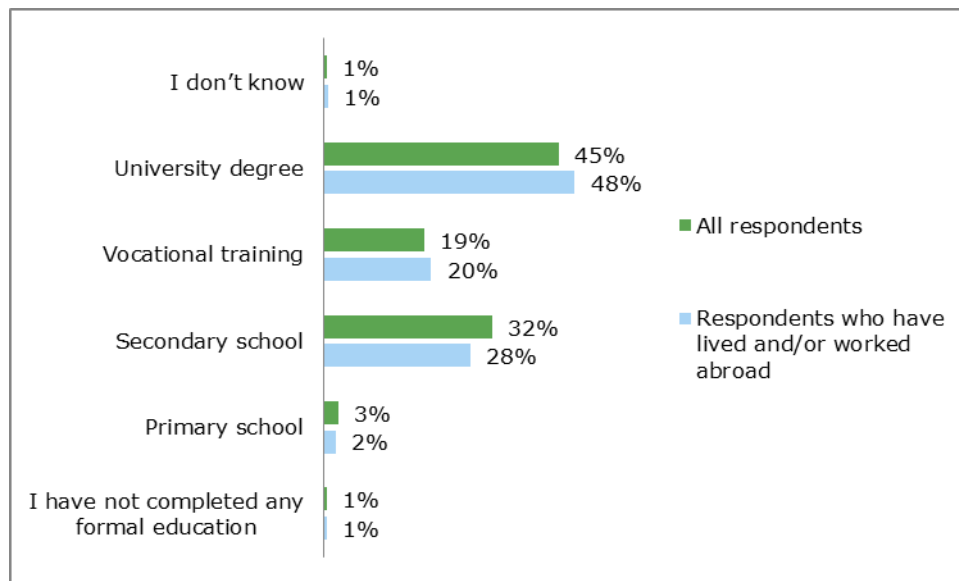
Almost half (46%) of the respondents who had experience of living and/or working in another EU Member States were employed on a permanent contract, as shown in Figure 91. This is followed by self-employed (16%) and those who were employed on a temporary contract (13%). It can be seen that the share of those who were self-employed and employed on a temporary contact is higher than in average among all the respondents.

Figure 91 : Respondents by occupational status (n=753)



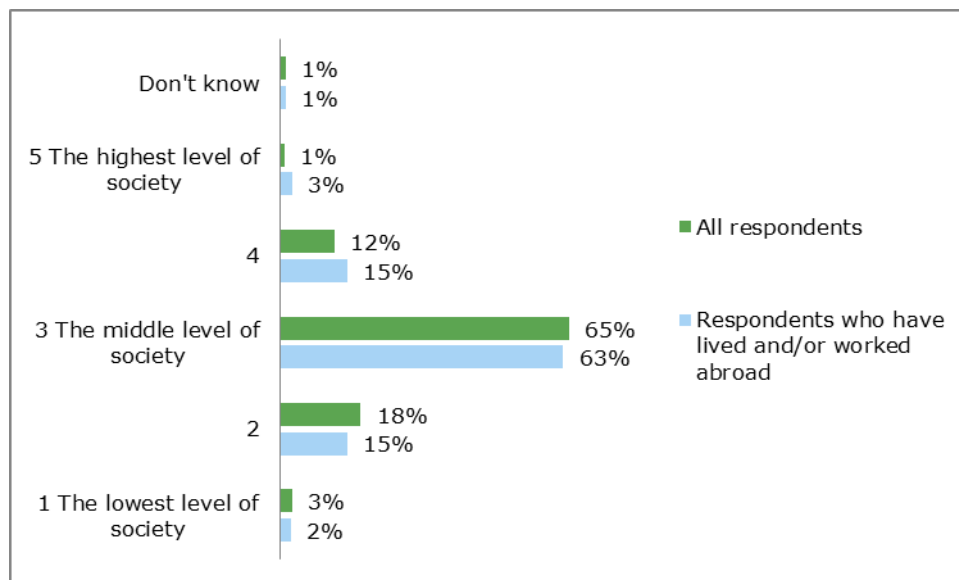
Error! Reference source not found. shows that 48 % of the respondents in the category had university degree, followed by 28 % of those who had finished secondary school as the highest level of education. 20% of the respondents had finished vocational training. The shares of those having university degree and those having finished vocational training were higher than in average among all the respondents.

Figure 92: Respondent by educational background (n=753)



A large share of the respondents (63%) described placing themselves on the middle level of the society. This was followed equally by one step higher and one step lower level of the society (15%). Figure 93 shows that a larger share of the respondents placed themselves on higher level of the society compared to the average of all the respondent.

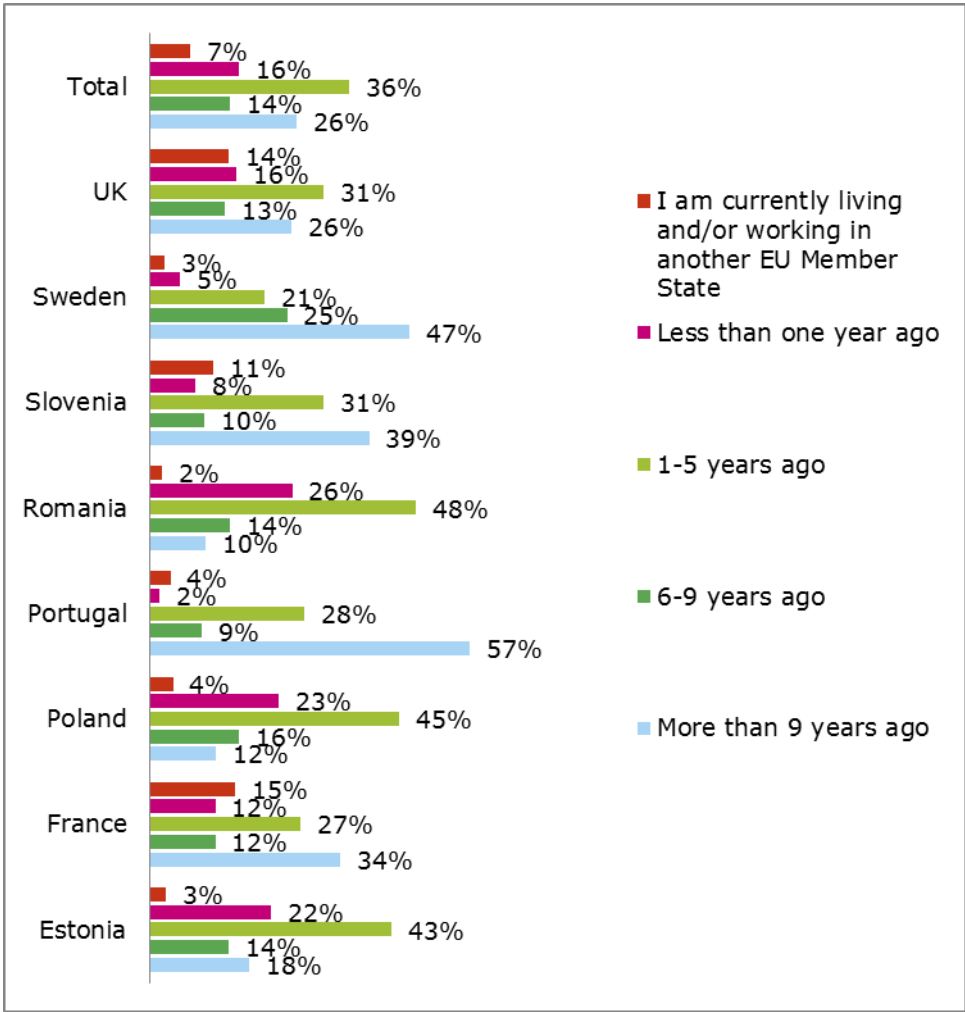
Figure 93: Respondents by standard of living (n=753)



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Figure 94 shows that those respondents that lived and/or worked in another EU Member States, most commonly (36%) had done it 1-5 years ago. Around one-fourth (26%) had lived in another Member State more than nine years ago. Only 7% of the respondents lived and/or worked by the time of the survey in another EU Member State. There is a great variation between the different Member States. The largest share of the respondents from Sweden, Slovenia, Portugal and France lived in another Member State more than 9 years ago, while in Romania, Poland and Estonia (EU2/EU8) the share of those respondents that lived in another Member State 1-5 years ago or less than one year ago is much larger than the average of all the respondents.

Figure 94: Living and/or working in another EU Member State last time (n=753)

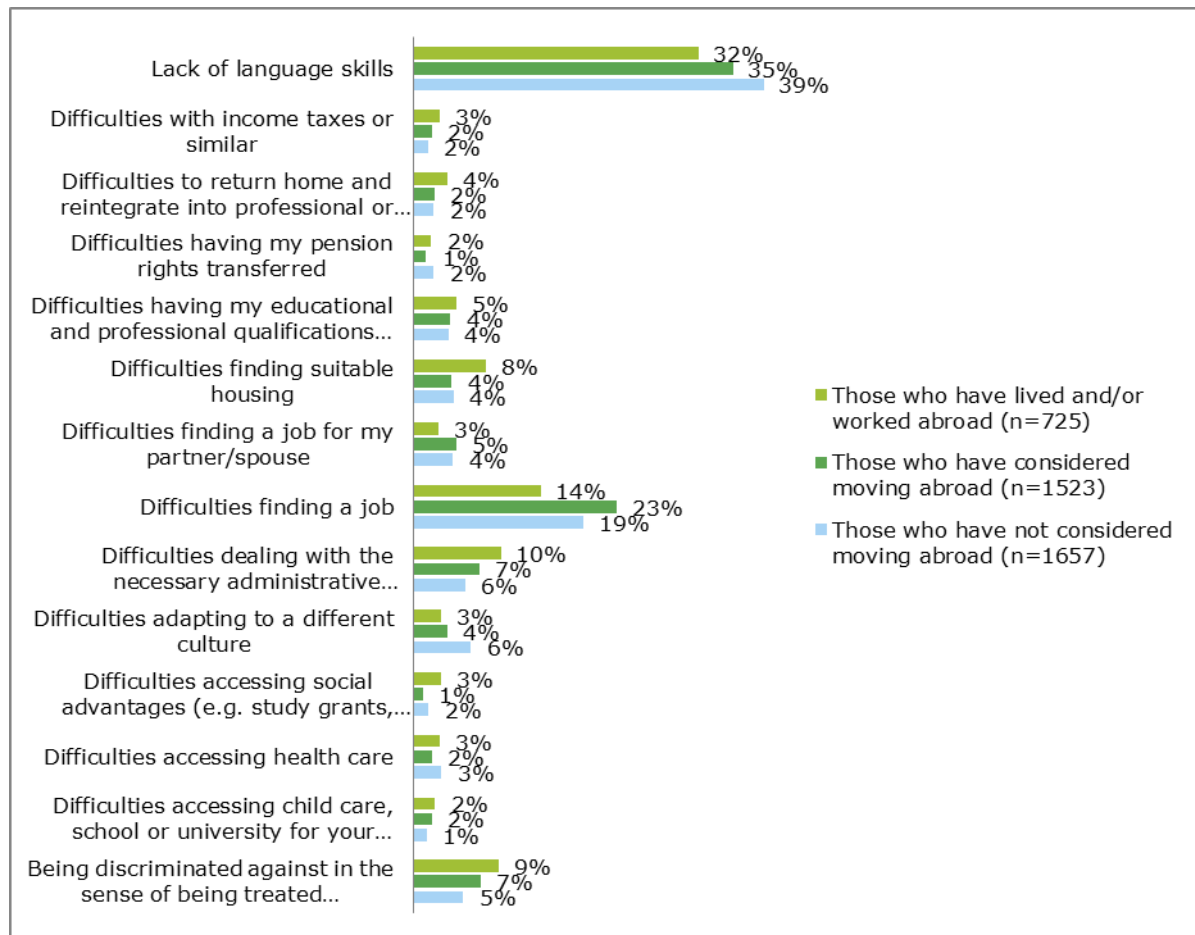


3. OBSTACLES TO MOVING

Respondents were asked to choose up to 5 most important obstacles that they found the most important when considering whether to move and/or work in another Member State. They were also asked to list them in order of importance. As illustrated in

Figure 14, regardless of the type of respondent lack of language skills was identified as the most important obstacle, followed by difficulties finding a job. A larger share of those respondents without experience of living and/or working in another Member State tended to consider these two issues as obstacles compared to those with experience. Difficulties dealing with the necessary administrative formalities and being discriminated against in the sense of being treated differently on the labour market compared to citizens of the host Member State because of nationality were also identified widely as obstacles among all types of respondents. In fact, those who had lived and/or worked in another EU Member State identified these two issues more often as obstacles compared to those who had not lived and/or worked abroad. This is interesting in particular because being discriminated against in the sense of being treated differently on the labour market compared to citizens of the host Member State is a clear barrier to free movement of workers, in the sense that it related to enforcement of the existing EU legislation in the Member States.

Figure 95: The most important obstacle that migrant workers sometimes experience



The following Table 55 presents by Member State which one of the obstacles was identified as the most important among the respondents who had experience of living and/or working in another Member State. It can be seen that lack of language skills were identified as the main problem in all the Member States except in Portugal and Sweden. In Portugal difficulties finding a job was expressed by 19% of the respondents whereas in Sweden 22% of respondents pointed out difficulties dealing with the necessary administrative formalities.

Table 55: The most important obstacle that migrant workers sometimes experience (n=725)

| Obstacles | EE | FR | PL | PT | RO | SI | SE | UK | Total |
|-----------|----|----|----|----|----|----|----|----|-------|
|-----------|----|----|----|----|----|----|----|----|-------|

| | | | | | | | | | |
|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Being treated differently on the labour market compared to citizens of the host Member State... | 7% | 1% | 12% | 13% | 17% | 15% | 1% | 8% | 9% |
| Difficulties accessing child care, school or university for your children | 2% | 4% | 1% | 2% | 2% | 2% | 4% | 2% | 2% |
| Difficulties accessing health care | 3% | 3% | 4% | 4% | 2% | 2% | 0% | 4% | 3% |
| Difficulties accessing social benefits (e.g. study grants, transport fare reductions, minimum subsistence payments) | 4% | 4% | 4% | 0% | 2% | 5% | 4% | 1% | 3% |
| Difficulties adapting to a different culture | 3% | 1% | 3% | 10% | 2% | 2% | 3% | 3% | 3% |
| Difficulties dealing with the necessary administrative formalities | 13% | 13% | 4% | 4% | 5% | 19% | 22% | 7% | 10% |
| Difficulties finding a job | 15% | 12% | 12% | 19% | 22% | 10% | 7% | 16% | 14% |
| Difficulties finding a job for my partner/spouse | 0% | 3% | 2% | 6% | 1% | 2% | 9% | 3% | 3% |
| Difficulties finding suitable housing | 13% | 10% | 5% | 12% | 2% | 7% | 12% | 7% | 8% |
| Difficulties having my educational and professional qualifications recognized | 6% | 5% | 4% | 8% | 7% | 2% | 6% | 2% | 5% |
| Difficulties having my pension rights transferred | 1% | 3% | 1% | 0% | 2% | 2% | 4% | 3% | 2% |
| Difficulties to return home and reintegrate into professional or private life after having been abroad | 4% | 6% | 4% | 6% | 6% | 2% | 3% | 1% | 4% |
| Difficulties with income taxes or similar | 2% | 4% | 2% | 2% | 2% | 3% | 7% | 2% | 3% |
| Lack of language skills | 29% | 32% | 42% | 15% | 27% | 29% | 15% | 41% | 32% |

The respondents were also asked to evaluate how important the different kinds of issues that migrant workers sometimes face because they are not nationals of the Member state are, when taking the decision whether to move and/or to work in another Member State³³⁹. The barriers included in this question relate to the existing EU legislation in the field of free movement of workers, and the question can thus provide an idea of the existence of legal barriers to free movement of workers. The Figure 96 presents which of the barriers were identified as somewhat important or very important. It can be concluded that those who had not lived and/or worked abroad were more likely to consider different barriers to be somewhat or very important than the respondents who had worked and/or lived in another EU Member State. Respondents without experience identified access to employment and housing as two most important barriers.

Those who had lived and/or worked in another Member State were asked to what extent they had experienced the following barriers when moving to/or working in another EU Member State. In line with those who had not lived and/or worked in another Member State difficult access to employment was identified as somewhat important or very important barrier the most commonly (44%). Lack of access to financial support (39%), unfavourable working conditions (38%) and lack of assistance from employment offices (38 %) were the three other largely identified barriers that the respondents had experienced in another EU Member State. Difficult access to

³³⁹ Respondents were asked to use a scale *this was a very important barrier...this was not an important barrier*.

membership of trade unions was the least identified as a somewhat important or very important barrier, but nevertheless 20% of respondents mentioned it.

Figure 96: Somewhat important or very important barriers for migrant workers (n=4007)



When looking at the most important barriers to free movement of workers, the patterns were the same as above. Difficult access to employment was identified as a somewhat or a very important barrier by 52% of those who had considered moving, followed by 33% of respondents who considered difficult access to housing as a very important barrier. 20% of those who had lived and/or worked in another Member State had experienced access to employment to be difficult and considered it as a very important barrier. Difficult access to financial support and unfavorable working conditions were experienced by 13% of respondents to the extent that they considered them to be very important barriers.

Figure 97: Very important barriers to free movement of workers (n=4007)

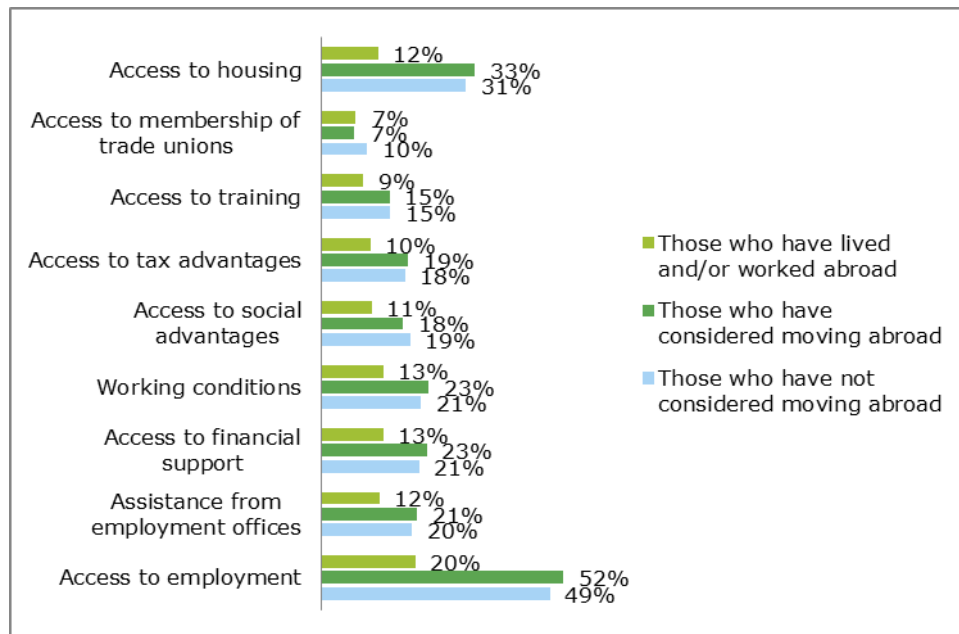


Table 2 presents by Member State what barriers the respondents had experienced when living in another Member State. Although the order of the barriers that were the most commonly identified as somewhat important or very important was very similar in most of the eight Member States, there was a significant difference how many of the respondents in each country had experienced them. It can be seen that respondents in Romania, Poland and UK considered all the barriers somewhat important or very important more than the respondents in the eight Member States in average, whereas in Romania the shares are especially high (up to 68%). On the other hand, only small shares of the respondents in Sweden had considered barriers as somewhat important or very important. In fact, difficult access to employment was considered four times less often as somewhat or very important barrier than in average.

Table 56: Somewhat important or very important barriers for migrant workers by nationality (n=753)

| Barriers | EE | FR | PL | PT | RO | SI | SE | UK | Total |
|--|------------|------------|------------|-----|------------|------------|-----|------------|-------|
| Difficult access to employment | 32% | 41% | 57% | 28% | 68% | 49% | 11% | 49% | 44% |
| Lack of assistance from national employment offices | 20% | 29% | 43% | 30% | 66% | 48% | 5% | 49% | 38% |
| Lack of access to financial support intended to facilitate access to employment | 32% | 40% | 42% | 35% | 54% | 49% | 5% | 43% | 39% |
| Unfavourable working conditions in comparison with the nationals of the host Member State | 42% | 31% | 45% | 28% | 52% | 43% | 5% | 40% | 38% |
| Lack of access to social advantages, such as study grants, transport fare reductions, minimum subsistence payments | 27% | 33% | 41% | 31% | 52% | 28% | 10% | 41% | 35% |
| Unequal access to tax advantages with the nationals of the host Member State | 24% | 31% | 36% | 28% | 39% | 33% | 5% | 38% | 31% |

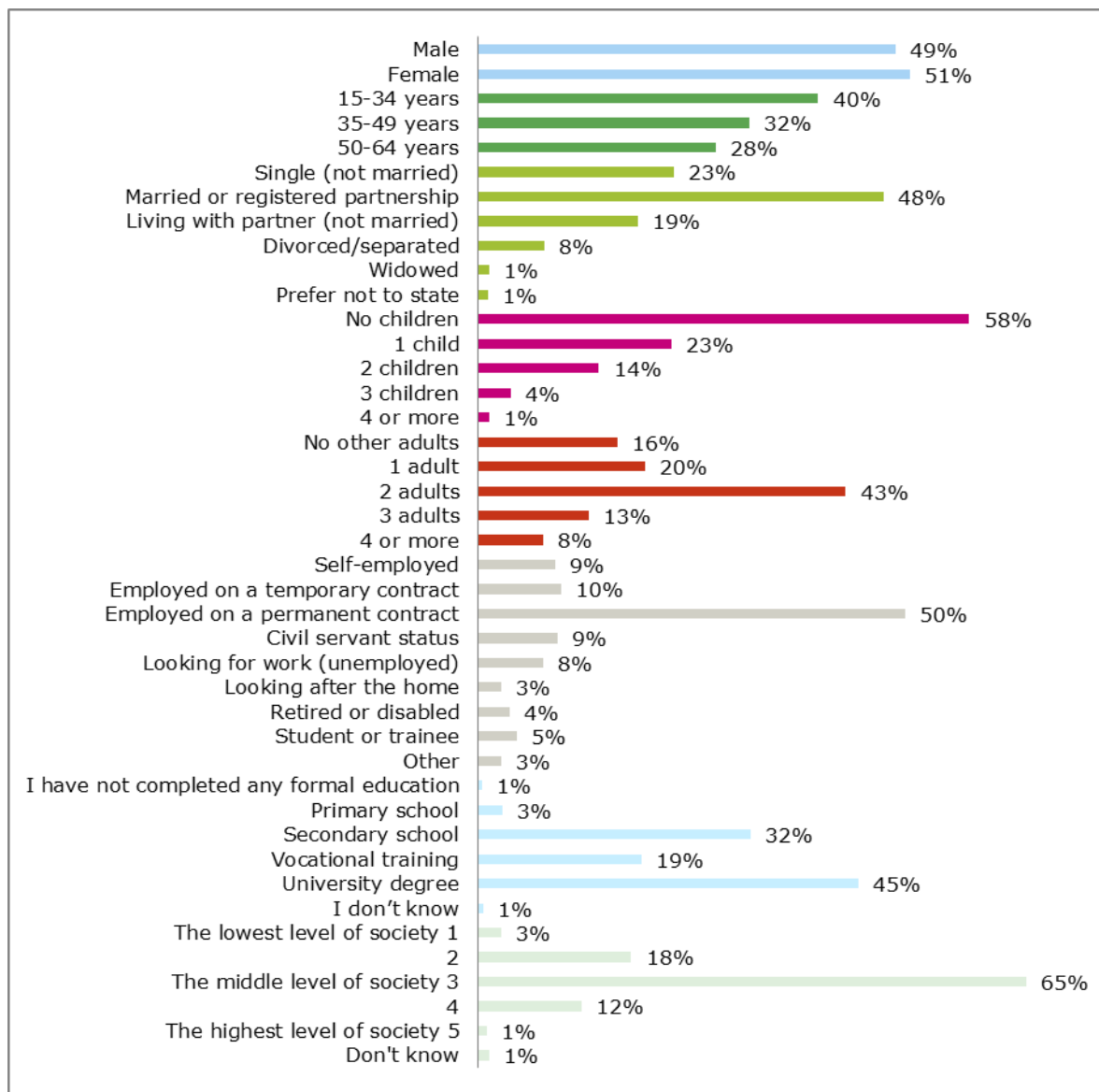
| | | | | | | | | | |
|--|-----|------------|------------|------------|------------|------------|-----|------------|-----|
| Lack of access to training | 17% | 32% | 36% | 22% | 41% | 30% | 1% | 38% | 29% |
| Difficult access to membership of trade unions | 16% | 16% | 24% | 15% | 30% | 11% | 3% | 29% | 20% |
| Difficult access to housing | 33% | 36% | 36% | 35% | 41% | 28% | 15% | 40% | 34% |

SURVEY AMONG EU WORKERS

**SUPPLEMENT 2
BACKGROUND INFORMATION ABOUT RESPONDENTS**

Ramboll
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SURVEY AMONG EU WORKERS



ANNEX K

ANNEX K: PROBLEM DEFINITION – FULL LENGTH VERSION

European Commission, DG EMPL

Summary report

November 2011

ANNEX K

PROBLEM DEFINITION: NATURE AND SCALE OF THE PROBLEM

FULL LENGTH VERSION

PROBLEM DEFINITION: NATURE AND SCALE OF THE PROBLEM

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1. PROBLEM DEFINITION

1.1 The nature of the problem³⁴⁰

The right to move freely between Member States for work purposes is one of the four fundamental freedoms of the Union, yet it is the least practised of the four³⁴¹. While the number of European citizens exercising this right at one point or another in their life appears to be growing, currently only around 2.3% of EU citizens reside in another Member State than where they are citizens, approximately 10% have practised the right to free movement in the past, and 17% intend to do so at some point in the future³⁴².

While (as outlined in Chapter 3) there are several de facto barriers to the movement of EU workers, such as concerns about leaving one's home and friends behind and language barriers³⁴³, some legal, administrative and practical barriers also seem to persist for those who wish to establish a working life in another Member State. Though the rights of EU migrant workers are strong and clear from a legal point of view, as outlined in Chapter 4, there are still problems related to the enforcement and practical implementation of these rights. Sometimes legislation adopted at a national, regional or local level is not in conformity with EU law, sometimes legislation is in conformity but there is an incorrect application by the national, regional and/or local authorities, and sometimes EU law is incorrectly applied or disregarded by employers. Sometimes it is a matter of blatant, direct discrimination against EU nationals from other Member States, and sometimes the discrimination is of a more indirect nature (conditions or demands which by effect lead to discrimination of other nationalities, including EU citizens).³⁴⁴

One example of such an issue from a legal perspective is the lack of separation between national immigration law and the implemented free movement rules. In some Member States, the free movement rules are integrated into the general immigration law. In these situations, the cases of EU nationals may be handled by the same immigration officers dealing with third-country nationals, keeping national immigration rules in mind. As a consequence, EU nationals may sometimes hold a status closer to that of third-country nationals rather than that of nationals of the Member State, meaning that demands are imposed on them to present the same types of documentation (e.g. proof of sufficient income) as required by third-country nationals³⁴⁵. This issue especially concerns the treatment of third-country national family members of EU migrants who are treated as third-country nationals rather than beneficiaries of EU free movement law in some Member States³⁴⁶.

³⁴⁰ The findings in this chapter are mainly based on the national fiches 2010-2011 for each EU Member State on the current situation with respect to free movement of workers, provided by the members of the Advisory committee on free movement of workers (internal documents).

³⁴¹ Mario Monti: "A new Strategy for the Single Market – at the service of Europe's economy and society"; report to the President of the European Commission, José Emanuel Barroso; 9 May 2010.

³⁴² Eurostat

³⁴³ Eurobarometer: "Geographical and labour market mobility – summary"; European Commission: Special Eurobarometer; published June 2010; p. 24.

³⁴⁴ See also European Commission, DG Employment, Social Affairs and Inclusion. Roadmap: Proposal for an initiative on enforcement of rights of EU migrant workers and members of their families in relation to the fundamental principle of free movement of workers. 15 June 2011.

³⁴⁵ Annual European Report on the Free Movement of Workers in Europe in 2009-2010; December 2010; p. 7

³⁴⁶ Ibid

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It seems that EU migrant workers face a wide variety of obstacles, such as different conditions applied to the recruitment of EU nationals from other Member States compared to nationals of the host country, less favourable working conditions (remuneration, career prospects, grade) compared to nationals of the host Member State, and restricted access to social advantages because they are subject to conditions more difficult for non-nationals of the Member State to meet.

The prohibition of discrimination on the grounds of nationality is in principle ensured by Regulation (EU) 492/11; however, studies show that nationality is not always included as an independent category in anti-discrimination provisions in Member States' national legislation. In practice this means that those alleging nationality-based discrimination must (if reliant on national legislation) either prove that the existing legislation indirectly includes nationality or show that the discriminatory treatment suffered fits explicitly into another category covered by the legislation (such as race or ethnic origin)³⁴⁷. This means that, though in principle protected by EU law, EU migrant workers who are victims of direct or indirect discrimination on the basis of nationality may in reality face obstacles in dealing with or challenging the discriminatory practice.

The table below presents an overview of some of the obstacles in relation to enforcement and application of EU law which EU migrant workers and their family members may face when exercising their right to free movement. The table overview is followed by a more in-depth analysis of the issues and the scope of the problem.

Table 57: Examples of obstacles to free movement and nationality-based discrimination of EU migrant workers across Member States³⁴⁸

| Main problem: Violation of EU citizens' free movement rights | |
|--|--|
| Obstacles to free movement | <p><u>Obstacles related to sports:</u></p> <ul style="list-style-type: none">Continued application of transfer fees in some sports <p><u>Administrative obstacles:</u></p> <ul style="list-style-type: none">delays in registration of EU migrant workers and their family members that may, for example, result in difficulties with respect to working contractsEU nationals assimilated into the system applied to third-country nationals rather than the one for national workers, so rather than registering with the employment agency, EU migrant workers are required to register with the authority responsible for issuing residence permits, where the procedure is lengthy). <p><u>Other:</u></p> <ul style="list-style-type: none">Difficulties giving up residence in Member State of origin fiscally (e.g. when still owning a residence in the Member State or when a young person moves directly from the parents' residence to pursue work in another Member State)Requirements to present documentation/official translations (for example for residence applications) in the language of the host Member State may constitute a practical barrierPart-time workers (working less than 40%) not considered workers and hence not beneficiaries of EU migrant workers' rightsRequirements for a licence for employment; in practice only a formality but nonetheless considered an administrative impedimentAdvertising some positions in newspapers in the language of the host Member State only.Worker registration numbers or similar not issued to foreign job |

³⁴⁷ European network on free movement of workers: Thematic Report – Application of Regulation 1612/68; January 2011

³⁴⁸ The examples are gathered from the national fiches provided by the members of the Advisory committee on free movement of workers (internal documents).

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| | <p>seekers, which may present practical obstacles (e.g. in opening a bank account).</p> |
| <p>Discrimination (direct or indirect) in eligibility for employment</p> | <p><u>Access to employment:</u></p> <ul style="list-style-type: none"> • <i>Non-proportionate language requirements</i> (e.g. excessive language requirements in the job descriptions; examination to attain the relevant professional diploma available only in the language of the Member State, even though there are no language requirements for the job; requirement of a diploma from a national high school of the host Member State as proof of sufficient linguistic skills). • <i>Excessive restrictions to posts in the public sector</i> (e.g. all posts in a public institution reserved for nationals regardless of the tasks to be performed and whether they involve exercising of powers conferred by public law and safeguarding general interests; residence requirements in the open competition for posts in the public sector; only recognition of professional experience obtained in public institutions of the host Member State). • <i>Administrative obstacles</i> (e.g. delays in registration of EU migrant workers and their family members that may, for example, result in difficulties with respect to working contracts; EU nationals assimilated into the system applied to third-country nationals rather than the one for national workers, making it so rather than registering with the employment agency, EU migrant workers required to register with the authority responsible for issuing residence permits, where the procedure is lengthy). <p><u>Assistance from national employment offices:</u></p> <ul style="list-style-type: none"> • Certain employment support measures for young persons dependent on access to social welfare, which may be subject to habitual residence conditions. <p><u>Access to financial benefits to facilitate employment:</u></p> <ul style="list-style-type: none"> • The access to job seekers' social allowances may be dependent on access to social welfare, which in turn is subject to a habitual residence condition, meaning that EU migrant job-seekers may be excluded from access to allowances. <p><u>Other:</u></p> <ul style="list-style-type: none"> • Restrictions on work permits issued to seasonal workers from EU-2 (decision incompatible with the accession treaties). • Quotas on the number of foreign players in teams and/or in competitions and higher participation fees for non-nationals in some sports (EU nationals are considered foreigners rather than nationals) |
| <p>Discrimination (direct or indirect) in employment</p> | <p><u>Working conditions:</u></p> <ul style="list-style-type: none"> • <i>Public sector:</i> management posts only accessed by nationals of the Member State, imposing a practical barrier to other EU nationals' prospects of promotion. • <i>Trainees in exchange programmes:</i> Employers who do not consider training as employment and do not live up to normal employment contract obligations in terms of working conditions. <p><u>Social advantages:</u></p> <ul style="list-style-type: none"> • <i>Frontier workers:</i> Requirements for permanent residency for entitlement to social assistance and social allowances. Children of frontier workers prevented from access to study grants, as they require residence and/or a higher education entrance qualification obtained in the host Member State. <p><u>Tax advantages:</u></p> <ul style="list-style-type: none"> • <i>Frontier workers:</i> only residents of the Member State have the |

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| | |
|--|--|
| | <p>advantage of tax deductions such as expenses related to having one's child in a state-owned child care facility.</p> <p><u>Access to training:</u></p> <ul style="list-style-type: none">• EU migrant workers denied the possibility to participate in a training programme offered to their colleagues who are nationals of the Member State. <p><u>Membership of trade unions:</u></p> <ul style="list-style-type: none">• Statutes of unions limit membership to those who are citizens or permanent residents of the Member State, a specific diploma etc. <p><u>Matters of housing:</u></p> <ul style="list-style-type: none">• Competitions for state administered housing only open to citizens of the Member State. <p><u>Other:</u></p> <ul style="list-style-type: none">• Limitations on numbers of non-residents to play in competitions and registration fees for non-resident trainers in some sports |
|--|--|

According to EU law, **family members** (including third-country nationals) of EU migrant workers have the right to work and reside with their spouse/partner/parent/child in the host Member State. As mentioned above, the rights of family members, especially third-country national family members, are not always enforced, which is considered an important obstacle to EU workers' movement. Another obstacle is the direct and indirect discrimination on the basis of nationality they face when exercising their rights to free movement within the Union.

To sum up the nature of the problem on the basis of the examples mentioned in the table above, in terms of **direct discrimination**, some of the most prominent examples of obstacles to EU citizens' free movement are the quotas applied in several sports in different Member States on the numbers of foreign players allowed to play in leagues and/or competitions. Where these quotas are also applied to nationals of other EU Member States, these practices go directly against the freedom of movement provisions³⁴⁹.

For **job-seekers** specifically, the issues of direct discrimination predominantly involve excessive (and unlawful) requirements for different permits in some Member States. These are considered obstacles to the right of EU citizens to move to and reside freely in another Member State to pursue opportunities for employment for up to three months. Other important issues of discrimination against EU nationals from other Member States are the (excessive) restrictions on access to certain posts (especially in the public sector) to nationals of the Member State.

The cases of direct discrimination against **workers** mainly concern unequal treatment regarding working conditions, such as restrictions on the possibilities for promotion of EU nationals from other Member States. This includes, for example, where management posts (in the public sector) are reserved for nationals of the host Member State. Employees that are nationals of other EU Member States may also experience unequal access to training compared to their colleagues who are nationals of the host Member State³⁵⁰.

Among the obstacles to free movement where the **discrimination is of an indirect nature**, important issues concern non-EU family members who are denied access to work in the host Member State³⁵¹. Such obstacles (or expectations of facing such obstacles) may prevent EU citizens from moving for employment opportunities in another Member State. Indirect discrimination against sports players from other EU Member States occurs when certain requirements for e.g. locally trained players in effect serve as a quota on the number of foreign players.

³⁴⁹ Regulation (EU) 492/11, Article 4

³⁵⁰ Feedback report from Your Europe Advice (internal document); p. 8.

³⁵¹ feedback report from Your Europe Advice (internal documents); p. 9.

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EU migrant **job-seekers** face indirect discrimination in terms of unclear information about the requirements they need to fulfil in order to work in the host Member State, excessive language requirements for access to certain posts, and lack of recognition of previous professional experience obtained in other Member States. Such measures may in effect keep nationals from other EU Member States from accessing the labour market or specific posts and favour citizens of the host Member State.

Issues of indirect discrimination faced by **workers** mainly concern unequal employment conditions (i.e. salary, seniority, and access to continued training) because experience or training acquired in another Member State is not taken into consideration³⁵². Other issues concern Member States or local authorities that impose residence requirements for certain permits or access to certain social advantages. Such inequalities mainly affect frontier workers and their family members. They also go against the principle in EU law that frontier workers qualify as migrant workers and must enjoy the same rights to equal treatment in matters of employment.

As can be seen from the above, there are many different issues related to the non-respect or wrong application of the rights of EU migrant workers. The issues, or barriers, can loosely be divided into four levels or types of problems:

- **Non-conform legislation at national, regional or local levels:** Some examples of the violation of EU migrant workers' rights appear at the formal level in legal provisions not in conformity with the EU rights of migrant workers to free movement and non-discrimination on the basis of nationality. These violations are more easily detectable and are therefore more easily addressed.
- **Incorrect application of EU law by national, regional or local authorities:** This is the semi-formal level that represents cases where the legislation (national, regional or local) is in conformity with EU law, but its application in procedures and practices of Member States' authorities does not respect EU rules and rights accorded to EU migrant workers and their family members.
- **Incorrect application of EU law by employers:** The cases of incorrect application of EU workers' rights by employers (public and private) are the most difficult to detect and address. Though the national legislation, standards and procedures applied by authorities might be in conformity with EU rules, EU migrant workers still risk being discriminated against when applying for a job or experience unequal treatment compared to nationals in terms of working conditions.
- **Non-use of rights accorded by EU law:** Many EU citizens choose not to use their right to freedom of movement for work purposes as accorded to them by EU law. Other EU workers who have moved experience discrimination but do not take actions to enforce their EU granted rights to equal treatment.

There are many different reasons why EU law on the free movement of workers is not being enforced or correctly applied. An important one, mentioned by several experts in the field, is related to a general unawareness or lack of understanding (both among citizens themselves and with national and local authorities and employers) of the extent of the EU rights³⁵³. Though EU free movement rights may be clear from a legal point of view, there seems to be some confusion as to its application due to the complexity of the legislation, especially the combination of Article 45 TFEU and Regulation (EU) 492/2011 with all the other legislation within the area of free movement, and the different transpositions of the related directives (e.g. the Residence Directive) into national law. For example, a member of the advisory board for the free movement of workers identified as a major issue that the relevant authorities did not always understand the scope of the phrase 'social advantages' as provided in Regulation (EU) 492/11 and how it related to other regulations on social benefits.

³⁵² feedback report from Your Europe Advice (internal documents); p. 8.

³⁵³ Alain Lamassoure: "The citizen and the application of Community law"; Report to the president of the Republic; 8th June 2008; p. 11

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Other drivers behind the problems will be presented after we have looked closer at the scale of the problem – what kinds of problems occur in which Member States – in the following section.

1.2 The scale of the problem

While the above analysis indicates the types of problems EU workers may face when working in another EU Member State, this chapter aims to provide a more specific overview of the extent to which these problems do in fact occur. First, an overview of the **general scale of the problem** is provided, based on primary data collected through a survey among EU workers in eight Member States, a public consultation among citizens and a public consultation among organisations in Europe. Here it is outlined to what extent the respondents experience discrimination on the grounds of nationality and who are the persons affected by the problems. The general scale of the problem is to a high extent based on quantitative data. Following this, **the specific scale of the problem** is presented with concrete examples of problems from the Member States. It is specified whether the problems are related to a) the non-conformity of legislation at national, regional or local levels; b) incorrect application of EU law by national, regional or local authorities; c) incorrect application of EU law by employers; or d) non-use of rights accorded by EU law.³⁵⁴ Other types of problems that may exist in the Member States with regard to the discrimination of EU migrant workers on the grounds of nationality should not be excluded, so these are mentioned where relevant. The specific scale of the problem is to a high extent based on qualitative, secondary data, which is, where possible, supported by quantitative data from the survey among EU workers. The nature of the data leads to an assessment of the scale of the problem, which is to a high extent qualitative in nature.

1.2.1 The general scale of the problem

The aim of this section is to provide an overview of the scale of the problem based on the views of EU workers and organisations active in this field of the extent to which and in what context discrimination of EU migrant workers takes place. It will also look at the current level of protection in the EU Member States and at the legal recourses available to EU migrant workers when being discriminated against. Consequently, the section is divided into three separate sub-sections:

1. Discrimination of EU migrant workers on the grounds of nationality;
2. Protection of EU migrant workers; and
3. Legal recourse in case of discrimination on the grounds of nationality

1. Discrimination of EU migrant workers on the grounds of nationality

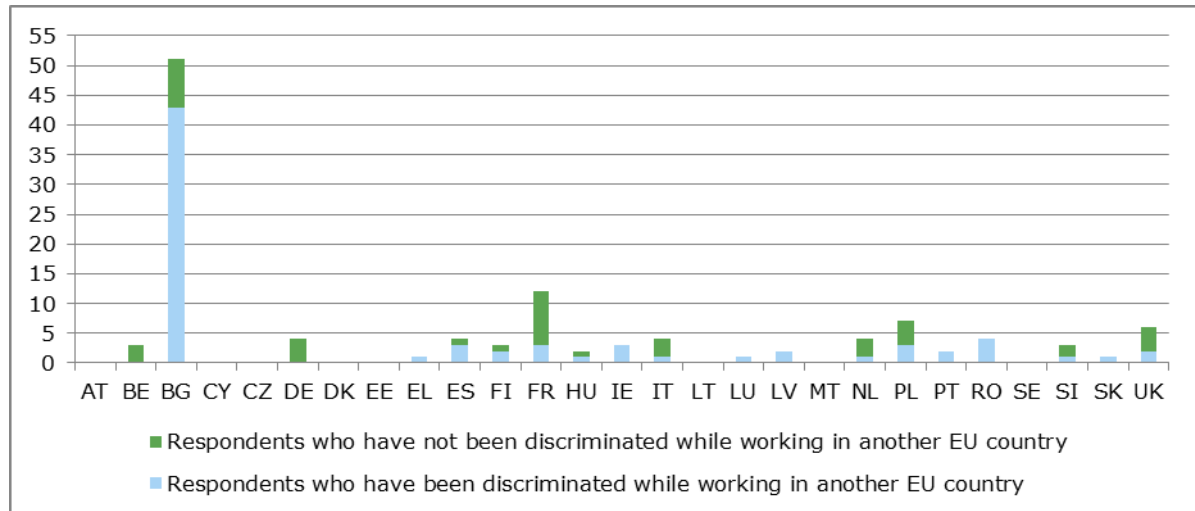
The public consultation of citizens reveals that discrimination of EU migrant workers on the grounds of nationality is a fact in the EU. 74 of the 117 respondents³⁵⁵ (63%) who have worked in another EU Member State have felt discriminated against. The figure differs to a high extent from one nationality to another. While 43 of the 51 Bulgarians (84%) who have worked in another Member State have at some point felt discriminated against because of their nationality, the corresponding figure is 3 out of 12 for the French respondents (25%), 3 out of 7 for the Polish (43%), and 2 out of 6 for the UK respondents (33%).

³⁵⁴ These are based on a broad variety of data sources, including the survey among EU workers, impact case studies in six Member States, public consultations among citizens and organisations, country profiles for the 27 Member States, responses from equality bodies concerning the number of cases, data from the European network on free movement of workers as well as the Thematic Report on the Application of Regulation 1612/68 (Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011) and the Your Europe Advice feedback report - Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

³⁵⁵ This low number of respondents should be kept in mind all throughout the below analysis, where the public consultation among citizens is referred to.

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Figure 98: By nationality: Have you ever felt discriminated against because of your nationality when working in another EU country? (n=117)



Source: Public consultation among citizens

It can be argued that the responses in the public consultation may be somewhat biased, as it can be assumed that the respondents are more likely to have participated in the public consultation if they have been discriminated against while working abroad.

While the number of respondents differs greatly from one nationality to another, it is clear that workers from Romania and Bulgaria in particular experience discrimination on the grounds of nationality. This may to a high extent be caused by the transitional measures that are in place for nationals from these two new Member States. There are however also some respondents from the remaining EU Member States who do experience discrimination on the grounds of their nationality.

This finding is supported by the public consultation among organisations, where only 7% of the responding organisations do not think that EU workers face problems when working in other Member States.

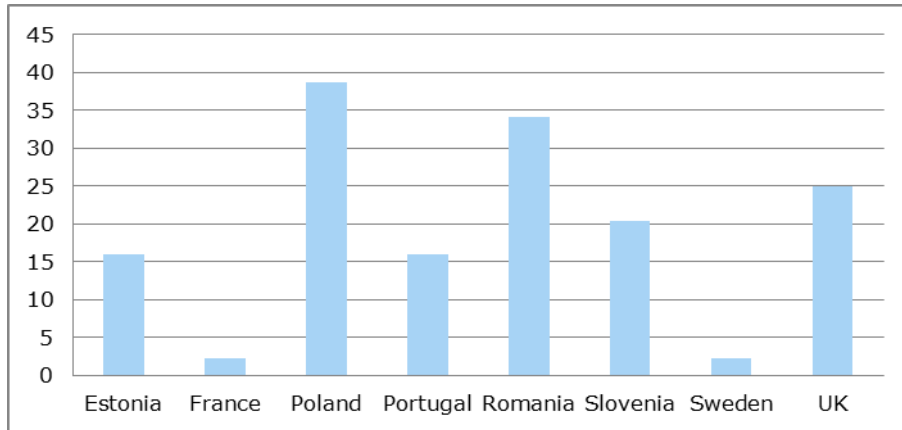
However, the survey among EU workers reveals that being treated differently on the labour market compared to citizens of the host country because of a different nationality is *not* considered to be the most difficult barrier for moving to and or/working in another Member State. The respondents who have worked in another Member State (n= 775) indicate lack of language skills (31.6%), difficulties of finding a job (14%) and difficulties dealing with the necessary administrative formalities (9.7%) to be more important than being treated differently because of different nationality (9.4%).³⁵⁶

When looking more specifically at the nationality of the respondents in the survey among EU workers (see Figure 99), the differences in views of importance of this barrier are considerable. While almost 40% of the Polish respondents and 34% of the Romanian respondents consider differentiated treatment to be the most important barrier for moving to and/or working in another EU Member State, only 2% of the French and Swedish respondents are of the same opinion.

³⁵⁶ The respondents were asked to indicate, in the order of preference, the most important barriers for moving to and or/working in another EU Member State. The responses here refer to the 1st priority.

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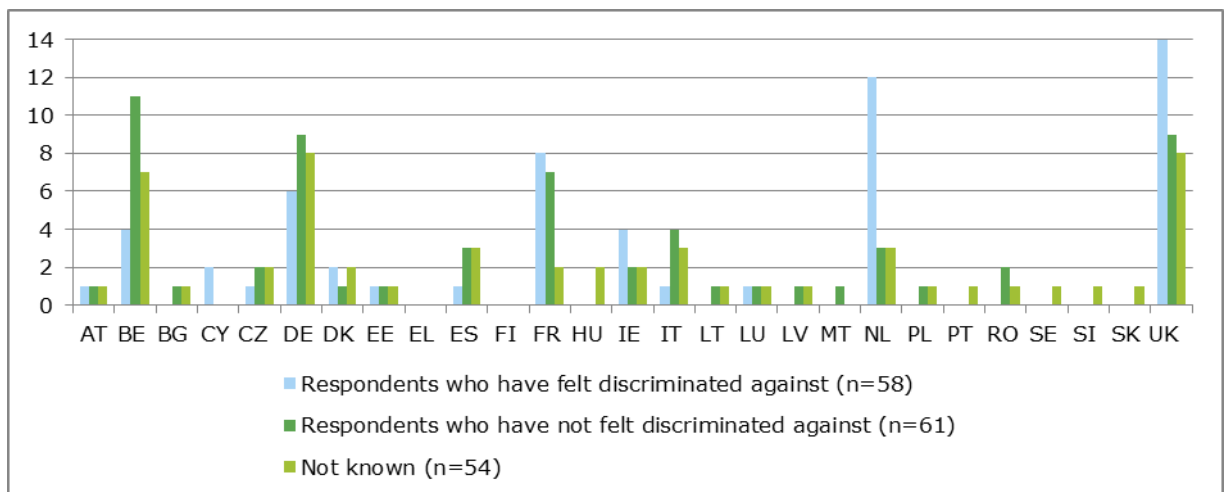
Figure 99: Being treated differently on the labour market compared to citizens of the host Member State (n=68) (percentage of respondents giving first priority per Member State)



Source: Survey among EU workers

Taking a look at the host countries of EU migrant workers, the public consultation shows that of the five most popular Member States for EU migrant workers (among the respondents), the Netherlands is the country with the highest percentage of nationality-based discrimination. 66.7% of the respondents who have worked in the Netherlands have felt discriminated against, while only 16.7% have not³⁵⁷. In the UK the corresponding figure is 45%, in France 47%, in Germany 26%, and in Belgium 18%. These shares may seem small compared to the total percentage of respondents who have been discriminated against. However, the amount of respondents in the “not known” category is relatively high, and the accurate percentage of respondents who have been discriminated against may therefore be higher for some Member States.

Figure 100: By host country: Have you ever been discriminated against because of your nationality when working in another EU country? (n=173)³⁵⁸



Source: Public consultation among citizens

³⁵⁷ The remaining 16.7% are respondents who have been discriminated against but who have worked in other countries, besides the Netherlands.

³⁵⁸ “Respondents who have felt discriminated against” only includes respondents who have worked in one single Member State.

“Respondents who have not felt discriminated against” includes all respondents who have worked in another Member State
 “Not known” includes respondents who have worked in multiple Member States and felt discriminated against in one or more of the host countries. However, it cannot be seen from the questionnaire, in which country/countries they were discriminated against.

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When examining the recent overall developments in Europe, Ireland, one of the few Member States where relevant statistics are available, can be used as an example. The development has been somewhat positive since 2004. When comparing the Quarterly National Household Survey of 2004 to the similar survey of 2010, it can be seen that in 2004, 13% of non-Irish respondents reported that they had experienced work-related discrimination (either "looking for work", or "in the work-place") in the past two years. In 2010, the number had dropped to 12%. The percentage reporting that they had experienced discrimination accessing services³⁵⁹ dropped from 17% to 12% in the same period. However, the cases taken to the Equality Tribunal show an alarming development in the short term: in 2009, the Equality Tribunal processed 37 cases of discrimination on the grounds of nationality against an EU citizen; in 2010 this figure had increased to 134.³⁶⁰ This may be directly related to the increased economic difficulties and a tightened labour market in Ireland caused by the economic crisis.³⁶¹ On the other hand, increased numbers may also refer to improvements in the awareness of EU workers concerning their rights, and the possibility to complain to a tribunal. While it is not possible which of these drivers are behind the increased number of cases, the statistics from the Equality Tribunal show that the majority of the cases have not led to compensation to the complainant.

Discrimination seems to take place in particular when applying for a job (eligibility for employment) and with respect to working conditions (employment). As can be seen from

³⁵⁹ Persons in this category reported feeling discriminated against in at least one of the following areas: 'In the workplace', 'Looking for work', 'In shops, pubs or restaurants', 'Using the services of banks, insurance companies or financial institutions', 'Education', 'Obtaining housing or accommodation', 'Accessing health services', 'Using transport services' and 'Accessing public services'.

³⁶⁰ Information provided by the Irish Equality Tribunal.

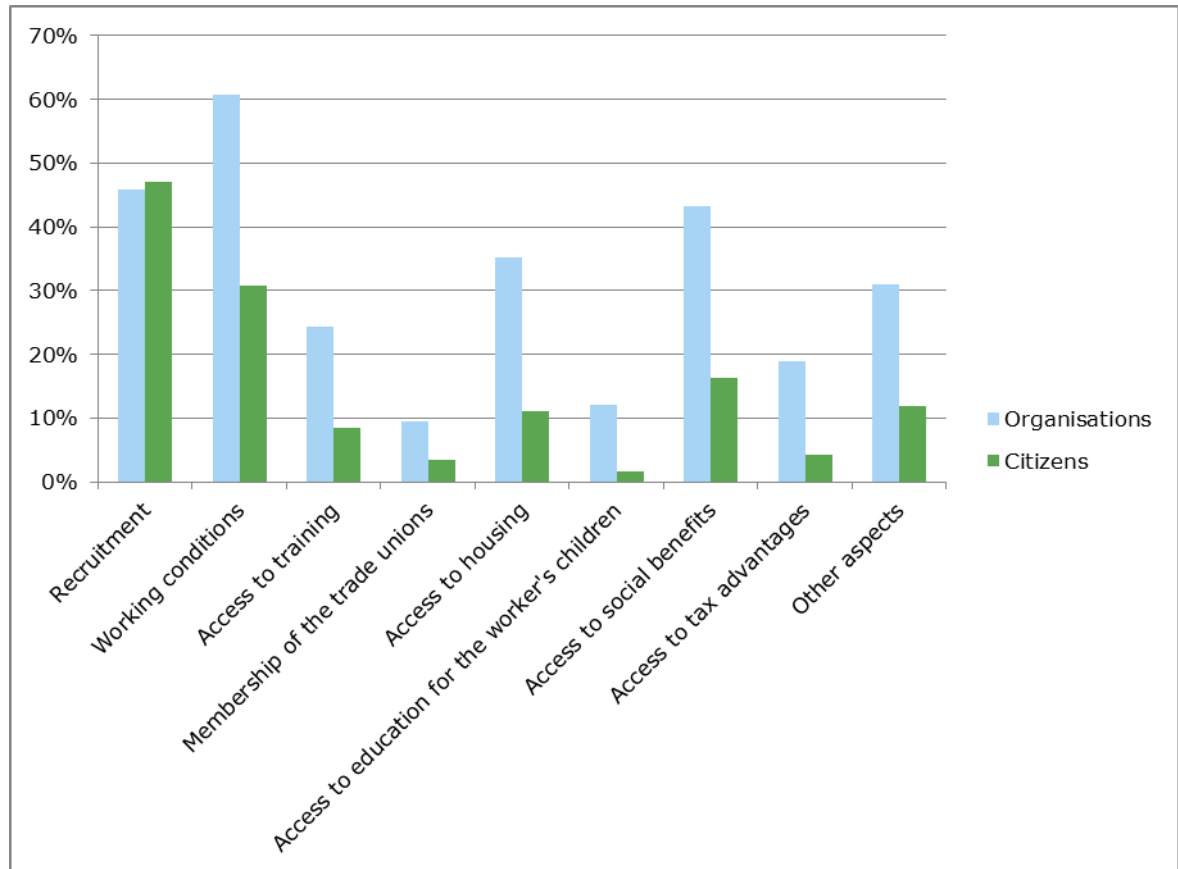
³⁶¹ See for example Record of Proceedings from the Seminar Key Issues in Free Movement in Ireland – Law Society of Ireland, 5 November 2010, where Mr. Handoll states that "in tougher times, there has been less openness in relation to Bulgarian and Romanian nationals".

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Figure 15, 47% of the respondents have felt discriminated against when applying for a job in another Member State, while 31% of the respondents have experienced discrimination in relation to their working conditions. The third most common situation where respondents have been discriminated against is when applying for social benefits (16%). The respondents who have felt discriminated against in situations other than the ones specified in the figure mention bank related issues, such as acquiring a national credit card in the host country or obtaining a loan. Other discrimination issues stated by respondents relate to the acquisition of residence permits to third-country national family members.

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Figure 101: Situations where discrimination occurs³⁶²



Source: Public consultation among citizens and organisations

An interesting comparison can be made between the experiences of organisations and citizens who have responded to the public consultation. As can be seen above in

³⁶² Question to citizens: In which situations did you feel discriminated against? (N=74) Question to organisations: According to your experience, what are the main problems that EU citizens face when working in another country of the European Union? (N=74). Multiple answers were possible, which is why the sums of the responses do not add up to 100%, but they are indicated as share of respondents instead.

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Figure 15, organisations and citizens agree to a high extent that problems exist with regard to recruitment in particular. For the other causes, the views of the respondents differ to a high extent, but looking at the ranking of the causes of discrimination, apart from working conditions, both organisations and citizens agree. Access to social benefits, access to housing and other aspects are seen as important reasons for discrimination. However, while organisations indicate working conditions as the biggest cause for discrimination, citizens only value it as the second most important reason. This may be caused by the fact that a high share of respondents in the citizens' survey are Bulgarians, who have mainly experienced difficulties getting a job in another EU Member State, but when this hurdle has been passed, they have been satisfied with the working conditions.

There are however important differences between the countries in which the respondents have worked and between respondents of different nationalities.

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[Table 7](#) below reveals that discrimination is experienced more often with respect to applying for a job in the Netherlands, while discrimination with respect to working conditions is equally recurrent in France as discrimination when applying for a job.

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Table 58: By host country: In which situations were respondents discriminated? (host countries with > respondents) (n=111)³⁶³

| | BE (n=22) | DE (n=23) | FR (n=17) | NL (n=18) | UK (n=31) | Total (n=111) |
|-----------------------------------|--------------|--------------|--------------|--------------|--------------|------------------|
| Applying for a job | 18% | 17% | 35% | 61% | 45% | 35% |
| Working conditions | 0 | 13% | 35% | 17% | 32% | 20% |
| Training | 0 | 9% | 0 | 6% | 10% | 5% |
| Membership of trade unions | 0 | 0 | 0 | 0 | 3% | 1% |
| Housing | 0 | 4% | 12% | 11% | 10% | 7% |
| Education for children | 0 | 4% | 6% | 0 | 0 | 2% |
| Social benefits | 0 | 4% | 12% | 17% | 13% | 9% |
| Tax advantages | 0 | 0 | 12% | 0 | 3% | 3% |
| Other | 0 | 0 | 0 | 6% | 13% | 5% |
| TOTAL: Did feel discriminated | 18% | 26% | 47% | 67% | 45% | 40% |
| TOTAL: Did not feel discriminated | 50% | 39% | 41% | 17% | 29% | 35% |
| TOTAL: Not known (n=15) | 32% | 35% | 12% | 17% | 26% | 25% |

Source: Public consultation among citizens

When looking more specifically at the respondents, all four respondents who have experienced discrimination in Belgium have been discriminated against when applying for a job. The four respondents are either Bulgarian or Romanian nationals, and they all mention the special need of a working permit as their biggest obstacle. Other respondents mention unjustified, bureaucratic obstacles when trying to create a bank account, and problems with the Belgian system of calculating vacation days.

In Germany, 17% of the respondents have felt discriminated against when applying for a job, and 13% with respect to working conditions. The discrimination issues (which are not related to transition schemes) have been the requirement of having university studies from another Member State approved, and lower salaries and worse working conditions for migrant workers (including EU migrant workers) than the German employees.

In France, EU-2 nationals have also experienced discrimination related to the transition schemes. One Bulgarian respondent had to find a job as a posted worker. However, posted workers do not work under the same regulations as national workers, and the respondent claimed that the salary and working conditions were not as good as the ones for French nationals.

12 out of 14 of the respondents who have worked in the Netherlands are of Bulgarian or Romanian nationality. Thus, the main issues regarding discrimination were the transition scheme and the bureaucratic obstacles experienced when applying for the required work permit. This may well explain why the Netherlands is the Member State with the highest share of respondents who have been discriminated against (67%³⁶⁴).

In the UK, EU-2 nationals also felt discriminated against as a result of the transition scheme. Data from the Equality and Human Rights Commission shows that discrimination also takes place against workers from EU-8. The most prominent discrimination cases received by the Equality

³⁶³ Some of the respondents, who have been discriminated against, have worked in more than one Member State, and it cannot be known for sure, which of the host countries the respondent refers to, and, therefore, these respondents have been categorised as "Not known".

³⁶⁴ The true percentage is possibly higher since some of the respondents categorised as "not known" may have been discriminated in the Netherlands

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and Human Rights Commission concern working conditions of Polish migrant workers.³⁶⁵ Apart from these issues, an Irish respondent was discriminated against when requesting her holiday pay, and in another occasion she was rejected access to training even though she had the right to equal treatment in access to training according to EU law.

Looking at the four nationalities with the most respondents (Table 59), the only nationality where the majority of respondents have felt discriminated against are the Bulgarians.

Table 59: By nationality: In which situations did you feel discriminated against? (nationalities with > respondents) (n=76)³⁶⁶

| | BG (n=51) | FR (n=12) | PL (n=7) | UK (n=6) |
|--|--------------|--------------|-------------|-------------|
| Applying for a job | 78% | 0 | 43% | 0 |
| Working conditions | 39% | 17% | 43% | 17% |
| Training | 8% | 8% | 0 | 0 |
| Membership of trade unions | 6% | 0 | 0 | 0 |
| Housing | 20% | 0 | 14% | 0 |
| Education for children | 2% | 0 | 0 | 0 |
| Social benefits | 29% | 8% | 0 | 0 |
| Tax advantages | 8% | 0 | 0 | 0 |
| Other | 8% | 0 | 14% | 17% |
| TOTAL: Respondents who have not felt discriminated against | 16% | 75% | 57% | 67% |
| TOTAL: Respondents who have felt discriminated against | 84% | 25% | 43% | 33% |

Source: Public consultation among citizens

Similar trends can be seen when looking at the responses by the organisations who were asked to identify the most recurring cases of discrimination on the grounds of nationality they deal with in their work.

Table 60: Recurrent cases (according to organisations)

| Problems | No. of cases |
|---|--------------|
| Recruitment | 9 |
| Working conditions | 30 |
| Access to training | 3 |
| Membership of trade unions | 0 |
| Access to housing | 7 |
| Access to education for the workers' children | 2 |
| Access to social benefits | 11 |
| Access to tax advantages | 3 |
| Other | 12 |

Source: Public consultation among organisations

The majority of the most recurrent cases the organisations mentioned deal with working conditions. These include wage dumping and precarious working conditions without following collective agreements and legal minimum requirements. According to the respondents, migrant workers from the newer Member States in particular received lower salary compared to nationals for the same positions. In addition, pressure was put on them to work unofficially without contributions to the social security by employers. Language problems were mentioned as one of

³⁶⁵ Data submitted by the Equality and Human Rights Commission on 18 November 2011.

³⁶⁶ The values in some cases add to more than *n* because some of the respondents have felt discriminated against in more than one situation

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the reasons why these exploitative working conditions exist, as workers are not aware of their rights.

Some organisations specifically mentioned the situation of home care workers, who work as "domestic helpers with additional maintenance tasks. In many countries, these workers, who often come from new Member States, were not offered a work contract and therefore did not receive proper protection and working conditions, access to social security, or training. Respondents stated that due to legal gaps, this undeclared employment was not perceived as an unlawful activity, as domestic care work is not considered as "regular" work with all related workers' rights.

According to the respondents, this was often a result from situations where the workers were not properly reported to the authorities by their employer and adequate contributions were not made. There was also lack of information about benefits and schemes that should be followed. Furthermore, there was a risk that migrant workers fall between the social security schemes of different countries, or have too short of periods of employment to be properly covered by the social security schemes.

Problems mentioned deal with recognition of diplomas and experience, which also result in differing working conditions. For example, one of the Spanish employer organisations explained that it is hard to certify and recognise the foreign drivers' licences and training needed to work as a professional driver because of language problems. Bulgarians and Romanians also encountered discrimination with regards to recruitment because work permits were required.

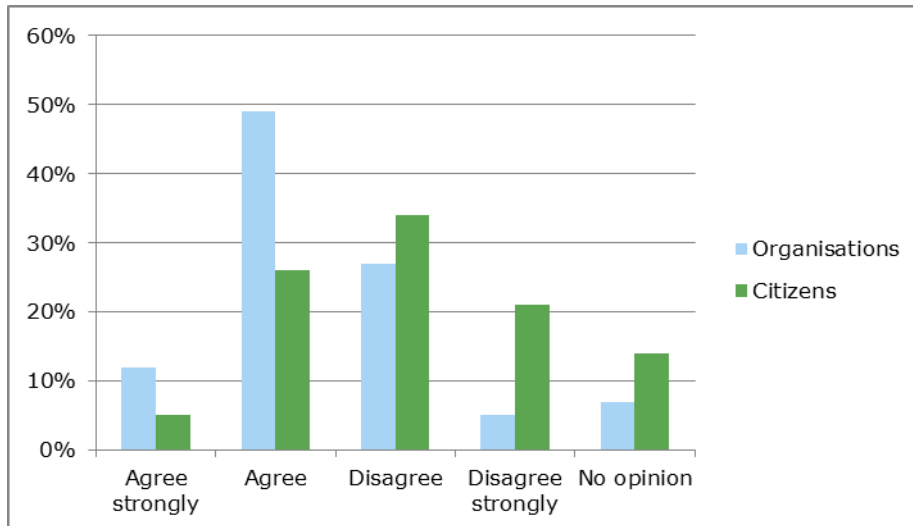
Problems related to housing mainly concerned bad and/or expensive housing provided by employers. Furthermore, the lack of information and knowledge of different procedures in different countries were often pointed out along with the administrative burden that working in another Member State causes to employers. In addition, other challenges mentioned deal with access to services of employment offices, lack of information of job offers, lack of language skills. More specifically, in the case of Denmark, the Danish International Ship Register was not open for migrant workers.

2. Protection of EU migrant workers

When looking at the views of citizens and organisations on the current level of protection of EU migrant workers, important differences can be seen. As Figure 16 shows, citizens were more likely to disagree or strongly disagree with the statement that the country where they are employed provides adequate protection against discrimination on the grounds of nationality to EU migrant workers, while organisations were more inclined to strongly agree or agree with the statement. It should be noted that the overall share of respondents who strongly agreed with the statement is relatively low (12% among organisations and 5% among citizens). All in all, 61% of the organisations and 31% of the citizens either strongly agreed or agreed that the level of protection is adequate.

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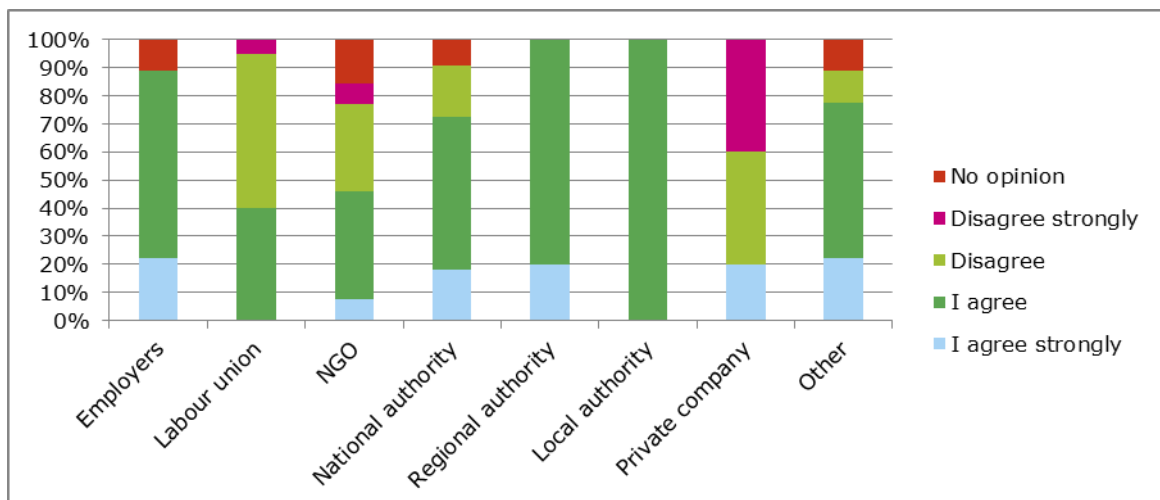
Figure 102: The country where organisation is based/person is employed protects workers adequately against discrimination on the grounds of nationality³⁶⁷



Source: Public consultation among citizens and organisations

Figure 103 allows for a closer look at the responses of different types of organisations to see if the views differed from one type of organisation to another. It seems to be clear that private companies, labour unions and NGOs were the most negative towards their countries' ability to protect migrant workers. More than 70% of other types of organisations considered the protection adequate, while all the employer organisations and regional and local authorities share this view.

Figure 103: By organisation type: Do you think that the country your organisation is based in adequately protects workers against discrimination on the grounds of nationality? (n=74)



Source: Public consultation among organisations

When moving from the specific views concerning the countries where the organisations are based and and the citizens are working to a more general view concerning the need for better protection, it can be

³⁶⁷ Question to organisations: Do you think that the country where your organisation is based adequately protects workers against discrimination on grounds of nationality? (n=74); Question to citizens: Do you think that the country where you are employed or have been employed (other than the country of your nationality) adequately protects workers against discrimination on the grounds of nationality? (n= 117)

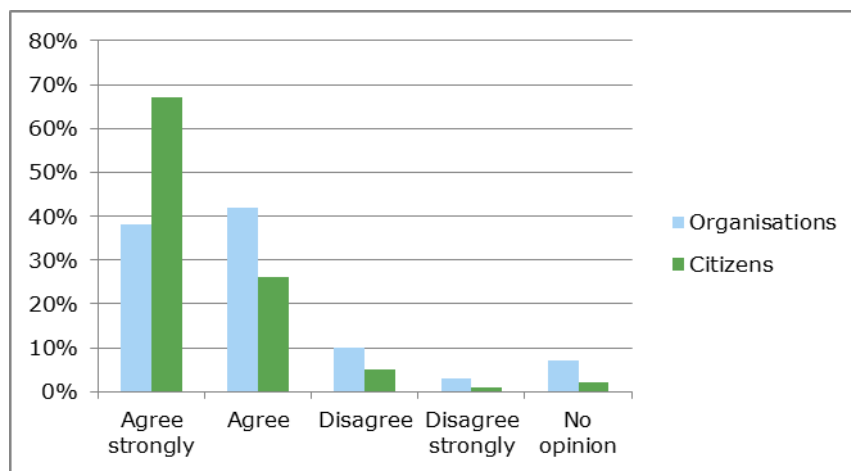
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can be seen that the differences between organisations' and citizens' opinions even out. As can be seen be seen from

The majority of respondents, both citizens and organisations, however, agreed that there is a need for better protection of EU migrant workers when working in another EU Member State. Again, the citizens find the need for better protection bigger compared with the responding organisations, as the majority of the citizens strongly agreed with the statement.

Figure 17 below, a clear majority of both organisations and citizens considered that EU workers should indeed be better protected. While the citizens' views are somewhat stronger, the shares of both organisations and citizens who disagreed or strongly disagreed were relatively small (13% of organisations and 6% of citizens).

Figure 104: Should EU workers be better protected when working in another EU Member State?³⁶⁸



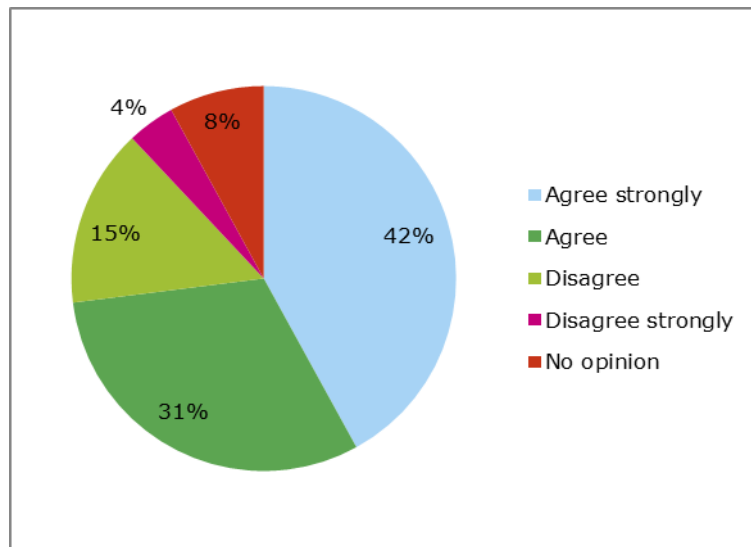
Source: Public consultation among citizens and organisations

The current level of protection is an important aspect with respect to hindering or enabling EU workers from moving to another EU Member State to work. Most EU workers who responded to the public consultation emphasised that the current level of protection of the EU migrant workers in the destination country against discrimination on the grounds of nationality does indeed influence their decision to go and work in the country in question. As can be seen from Figure 105 below, 73% of the respondents either strongly agreed or agreed that the level of protection influenced their decision to work in another EU Member State.

Figure 105: Does the level of protection influence your decision to work in another EU Member State? (n=117)

³⁶⁸ Question to organisations: Do you think workers should be better protected from discrimination on grounds of nationality when working in a different country of European Union? (n=73); Question to citizens: Do you think citizens should be better protected from discrimination on the grounds of nationality when working in a different country of the European Union? (n=117)

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Source: Public consultation among citizens

3. Legal recourse in case of discrimination on the grounds of nationality

The citizens who felt discriminated against on the grounds of their nationality were asked to specify whether they were able to seek recourse under national law against the discrimination they suffered. The responses show that legal recourse was not a measure taken by EU migrant workers when they suffered discrimination on the grounds of nationality. 88.4% of the respondents stated that they were not able to seek legal recourse. The reasons for this were not illuminated in the questionnaire, and thus it is not possible to know whether the reason for the lack of legal recourse is due to the lack of awareness about the availability under national law, the lack of concrete possibilities to seek recourse under national law, the lack of willingness to seek recourse, or the fact that the type of discrimination experienced by the EU migrant worker (for example due to transitional measures) is not legally forbidden.

As Table 61 below shows, the number of cases is marginal where responses were successful when Regulation 1612/68 was applied and the EU migrant worker was supported by an organisation.

Table 61: Respondents who have been discriminated against while working in another EU Member State

| | No. of YES answers | % of YES answers | No. of NO answers | % of NO answers |
|--|--------------------|------------------|-------------------|-----------------|
| Successful response (n=8)* | 1 | 12.5% | 5 | 62.5% |
| Was Regulation 1612/68 applied? (n=8) ³⁶⁹ | 2 | 25% | 3 | 37.5% |
| Supported by organisation (n=8) | 2 | 25% | 6 | 75% |

Source: Public consultation among citizens

It is thus interesting to examine to what extent organisations did in fact support migrant workers by taking actions, providing legal advice or other types of support to EU migrant workers. As can be seen from

³⁶⁹ Some of the eight respondents did not answer this question.

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Table 8, approximately half of the organisations provided one or more of the three forms of support to EU migrants.

Table 62: Legal/non-legal support to migrant workers

| Support to migrants workers | Yes | No |
|---|-----|-----|
| Possibility to take action on behalf of migrant workers (n=72) | 51% | 49% |
| Legal advice to workers discriminated against on the basis of their nationality (n=73) | 58% | 42% |
| Any other form of support to EU migrant workers when discriminated against on the basis of nationality (n=74) | 51% | 49% |

Source: Public consultation among organisations

1.2.1.1 Main findings on the general scale of the problem

Discrimination of EU migrant workers on the grounds of nationality does seem to take place in the European Union: 63% of the citizens who responded to the public consultation have felt discriminated against when working in another EU Member State. However, they only represent 117 EU workers, mainly from Bulgaria (52 Bulgarians, of whom 51 have worked abroad)³⁷⁰, which is why it is important to remain cautious with respect to drawing any general conclusions for EU-27 on the basis of these findings.

According to the survey among EU workers, the biggest barriers experienced by EU workers were not related to problems of application of EU law but were rather more practical in nature. The EU workers (both those who have experience of working in another EU Member State and those who have not) found the lack of language skills to be the biggest barrier in moving to another EU Member State to work, followed by difficulties in finding a job and dealing with the necessary administrative documents. Being treated differently to the nationals of the host country, which is a concrete problem of non-respect or non-application of EU legislation, was considered the fourth biggest barrier.

When they were abroad, EU migrant workers experienced discrimination, particularly with respect to recruitment (eligibility for employment) and working conditions (employment). It seems that EU migrant workers from newer EU Member States, especially those from Bulgaria and Romania, who are still subject to transitional measures, have been the most exposed to direct discrimination on the grounds of their nationality.

The views of citizens and organisations (in the public consultation) differ as to the current level of protection available to EU migrant workers, but the majority of respondents agreed that there is a need for better protection of EU migrant workers when working in another EU Member State.

Legal recourse did not seem to be a measure taken by EU migrant workers. Based on the data, it is not possible to conclude whether this is due to a lack of means available to claim their rights under national law, a lack of information about the means available to them to seek legal recourse under national law, or unwillingness to seek recourse. It may also be that the type of discrimination experienced by the EU migrant worker (for example due to transitional measures) is not illegal.

1.2.2 The specific scale of the problem

The above section on general scale of the problem presented an overview of the views of citizens and organisations concerning the situation of EU migrant workers in Europe. The aim of the present section is to take this knowledge to the Member State level, and to show what types of

³⁷⁰ As mentioned above, a bias with respect to the responses of the 117 EU workers may be expected, as they are more likely to have responded to the questionnaire, if they have been discriminated against while working abroad.

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challenges EU migrant workers experience in the specific Member States. This will be done by providing examples from the Member States and showing different types of barriers that EU migrant workers have experienced. The section will also specify whether the barriers experienced by EU migrant workers are related to:

1. Non-conformity of legislation at national, regional or local levels (problem 1);
2. Incorrect application of EU law by national, regional or local authorities (problem 2); or
3. Incorrect application of EU law by employers (problem 3)
4. Non-use of rights to free movement of workers (problem 4)

Furthermore, an assessment is made concerning the drivers that are underlying to these different types of problems. For example, it is important to know, whether the problems occur because:

- National authorities do not interpret case law in the same way as the Commission
- Member States develop their legislation with their specific objective(/national interests) in mind without paying attention to whether it is in accordance with Article 45 and Regulation (EU) 492/2011
- The officials or judges do not apply the law correctly (public authorities acting as public authorities)
- Procedures to claim rights are not or are incorrectly implemented
- Officials or judges are unaware of or misunderstand EU law regarding migrant workers' (and family members') rights
- Employers are not aware of EU law regarding migrant workers' (and their family members') rights
- Employers do not understand EU law regarding migrant workers' (and their family members') rights
- Employers disregard EU law regarding migrant workers' (and their family members') rights
- EU citizens are not aware of their rights
- EU citizens do not understand their rights
- EU citizens are unwilling to claim their rights (e.g. due to fear of losing their job)
- EU citizens do not have the means to claim their rights
- EU citizens are unaware of the means available to them to claim their rights
- Legal advisors/the legal profession are not aware of the means available to EU citizens to claim their rights

Moreover, an overview is provided of the occurrence of direct and indirect discrimination in terms of the examples.

It deserves to be mentioned that this section does not aim to provide an exhaustive analysis of the specific scale of the problem in each Member State, as it was not possible to conduct a full study on the scale of the problem in each Member State within the scope of this study. The data used is thus to a high extent secondary data. However, the present chapter provides a clear indication of the types of problems that do in fact exist in the Member States with respect to free movement of EU workers, for example by specifying which of the three types of problems and drivers that seem to be most common. All assessments in this section are those of the contractor.

The section is further divided into sub-sections providing an overview of the areas where discrimination against EU migrant workers on the grounds of nationality is forbidden. Consequently, the first sub-section concerns the overall **obstacles to free movement**, followed by issues related to discrimination in **eligibility for employment**, and finally discrimination in **employment**.

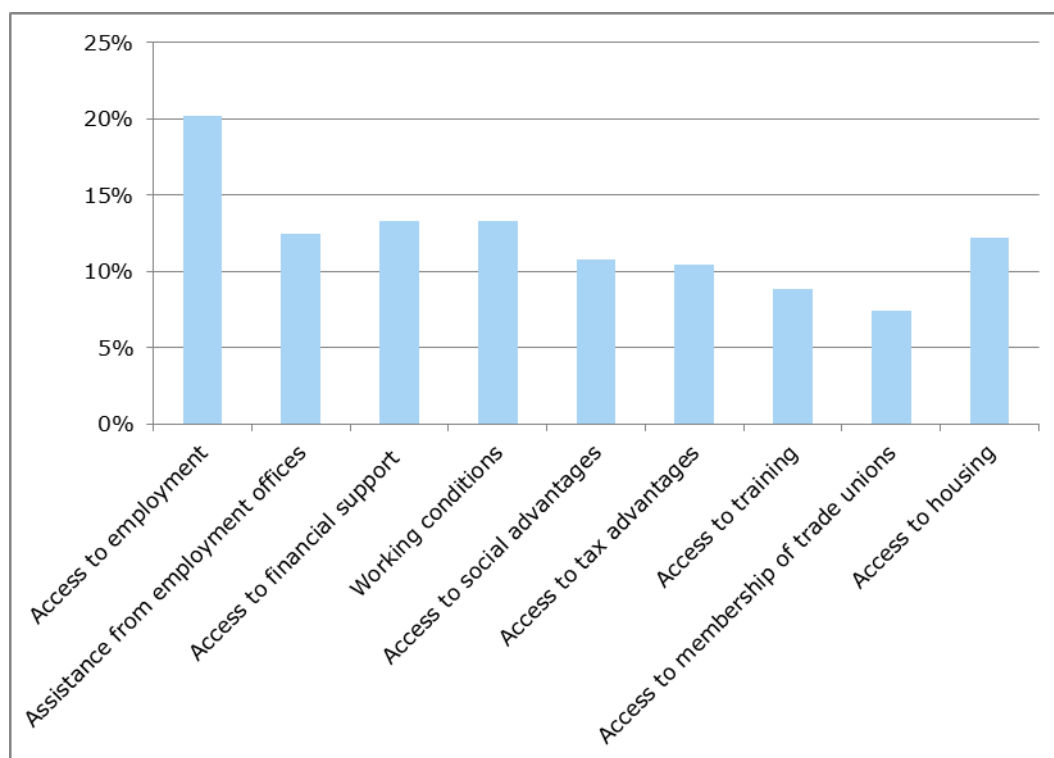
It should be taken into account at all times that there are differences as to the possibilities of the European Commission to tackle the different types of problems identified in this chapter. For example, the Commission would not have the right to take proceedings against a private

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employer who demands excessive language requirements to be eligible for a given position, whereas an identical case in the public sector would provide the Commission with the possibility of taking action for non-compliance against the Member State for failing to fulfil its obligations under EU law. It is important to point out that, in most cases, the citizens who are victims of discrimination on the grounds of nationality have to bring their case to a court (or equality body) in order to claim their rights.

To lay the ground for the analysis below, it is relevant to present some additional findings from the survey among EU workers which provide a triangulation method for the secondary data used in this section. When asked about barriers related to wrong or non-application of EU law by the Member States, as Figure 106 below indicates, EU workers considered difficult access to employment to be the most important barrier to free movement of workers (20%), followed to an almost equal extent by lack of access to financial support intended to facilitate employment (13%), unequal working conditions (13%), and lack of assistance by national employment offices (12%). However, the figure also shows that none of the barriers were considered to be very important by more than 20% of the respondents, indicating that it is difficult to point out specific barriers more important than others.³⁷¹

Figure 106: Very important barriers to free movement of workers (n=821)³⁷²



Source: Survey among EU workers

All of the topics included in the figure above will be covered in the sections that follow, and more specifically in the sections concerning **eligibility for employment** (access to employment, assistance from employment offices, access to financial support) and **employment** (working conditions, access to social advantages, access to tax advantages, access to training, access to membership of trade unions and access to housing).

³⁷¹ Overview of responses "this was a very important barrier" by respondents who have worked in another EU Member State in the survey among EU workers.

³⁷² Question to EU workers: Below, we have listed different issues that migrant workers sometimes face because they are not nationals of the Member State where they live and/or work. To what extent did you experience the following when moving to/working in another EU Member State?

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1. Obstacles to free movement

As the Regulation (EU) 492/11 states in its 4th recital, freedom of movement constitutes a fundamental right of workers and their families.

Obstacles to free movement

EU citizens and their family members have the *right to move freely within the territory of Member States for the purpose of employment*.

Free movement shall be guaranteed, to allow workers the possibility to improve their living conditions and to pursue the activity of their choice.

- This includes professional and semi-professional sportsmen and women (e.g. football players with a terminated contract have the right to take up employment with a new club in another Member States without a transfer payment)

Sources: Article 45(3) TFEU; Regulation (EU) 492/11, 4th Recital; and Case C-415/93 *Union Royale Belge de Société de Football Association v. Bosman* [1995] ECR I-4921

The different obstacles to free movement found in the Member States and presented in this section consist of the following:

- Concrete obstacles to free movement and definition of an EU worker
- Requirements for documentation and registration of workers
- Free movement of family members
- Obstacles with respect to free movement in the field of sport

Concrete obstacles to free movement and definition of an EU worker

Concrete obstacles to free movement due to non-conformity of legislation and incorrect application of EU law exist in a limited number of Member States.

In Bulgaria, the authorities have imposed exit bans on Bulgarian citizens. These exit bans have prevented Bulgarian citizens from relocating and have led to judgements and court cases.³⁷³

In Lithuania, the rules concerning job-seekers seem to be problematic as no specific legislation exists providing EU job-seekers with a right to reside. Due to this, EU job-seekers often risk expulsion and denial of their access to employment support.³⁷⁴ Moreover, the equal treatment provisions in Lithuania are included in the Aliens' Law. This results in a lack of understanding and knowledge by the Lithuanian institutions and courts in applying the principle of equal treatment in concrete situations.³⁷⁵ Moreover, the Lithuanian legislation seems to have a gap with respect to the retained rights of residence for workers, "including, for instance, the right to retain worker status after working for one year, becoming involuntarily unemployed and registering with the employment office".³⁷⁶

There are also uncertainties with respect to the definition of an EU worker in the EU Member States. For example in Denmark, the authorities impose a strict definition of an EU worker. The requirements are to work at least ten hours per week for at least ten weeks. This often leads to problems for third-country national family members of EU workers, who are not granted

³⁷³ See: Case C-434/10; Case C-430/10; and Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁷⁴ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁷⁵ Conference report Lithuania-Poland Free Movement Conference, 28 October 2010.

³⁷⁶ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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residence permits as their EU worker family members are not recognised as EU workers. The recognition as an EU worker and a registration certificate proving the same are requested in order to receive maintenance grants. This can lead to problems for EU workers who are also studying or the family members of migrant workers.³⁷⁷

In the Netherlands, the guidance provided by the Dutch authorities on who can be considered an EU worker is questionable. The Dutch authorities stated that to be an EU worker, the person must earn at least 50% of the level of income, below which social assistance benefits are awarded, and must work at least 40% of the hours found in a normal full-time contract in that sector. It also must be considered whether the employment is regular. It is the experts' view that it is not clear whether this guidance is indeed in line with EU law and it seems to constitute a case of direct discrimination.³⁷⁸

Examples where jobseekers' rights of residence have been limited exist in France, Germany, the Netherlands and Sweden. In France, a court refused to recognise a Portuguese citizen's right to reside in the country while pursuing occupational training with the State employment service.³⁷⁹ In Germany, a Romanian was not granted the right to reside in order to look for work, even when he met the conditions for the right of residence.³⁸⁰ In Sweden, jobseekers from EU Member States and of Roma ethnicity were expelled, despite evidence that they were actually seeking work and had genuine chances of being engaged.³⁸¹ While these cases concern issues that are regulated in the Directive 2004/38/EC, they can also be considered to represent cases of obstacles to free of movement.

It seems that most of these cases are related to incorrect application of EU legislation by authorities in the Member States (problem 2), but a few cases of non-conformity of national legislation were also found (problem 1).

Requirements for documentation and registration of workers

A limited number of Member States required excessive documentation from EU migrant workers or their family members, causing a practical barrier to free movement of workers. In Cyprus, citizens of other Member States coming for work were often required to produce considerable documentation at the airport, as opposed to merely presenting a passport or national identity card. In the Czech Republic, excessive documentation, for example proof of accommodation, was required of EU migrant workers in order to obtain a registration certificate.³⁸² In Latvia, family ties could only be proved by legalised and official documents. This is said to result in time-consuming and costly application procedures.³⁸³ In addition to these examples, which are related to the provisions in Directive 2004/38/EC, in Malta a licence was required from EU migrant workers in order for them to access employment. This licence is said to be a formality and should not be withheld, but may indeed constitute an administrative hindrance to free movement of workers.³⁸⁴

Several practical obstacles with respect to the registration of EU migrant workers were reported from EU Member States. For example, complaints received by Your Europe Advice revealed that "the most typical indirect barriers are residence registration formalities, where access to employment is impossible until you have completed these."³⁸⁵ Such problems of indirect nature were reported in Belgium, Cyprus, Finland, France and Sweden.

³⁷⁷ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁷⁸ See, e.g., Case C-14/09 *Genc v Land Berlin*. Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁷⁹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁸⁰ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

³⁸¹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁸² Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁸³ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 29.

³⁸⁴ National reports 2010-2011 – *Free movement of workers: Malta*, 2011, p. 1.

³⁸⁵ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

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In Cyprus, the administrative delays in the registration of EU migrant workers sometimes resulted in difficulties when the EU migrant workers were negotiating labour agreements, as employers often required a registration. In Finland, EU migrant workers sometimes experienced practical difficulties because they did not have an identity number. An identity number is given to persons staying for a longer period (not temporarily), and it is needed when wanting to open a bank account and in dealing with other formalities.³⁸⁶ A similar personal number is required in Sweden, where it may take 6-7 weeks to receive such a number, and in Spain.³⁸⁷

Romanians and Bulgarians seem to experience difficulties in France and Belgium with respect to receiving a residence card in order to work and to register with the employment services. There were also examples of cases where it was not possible to obtain a work permit for a job offered to the person in question, as they had not yet received a residence card. In France, the residence card was required in order to access publicly funded training schemes.³⁸⁸

Another issue with respect to the status of Romanian and Bulgarian EU migrant workers in France concerned their work permits. According to the transitional agreement, Romanian and Bulgarian nationals could apply for work permits for 150 specific professions. In reality, however, it seems that the work permits were often refused.³⁸⁹

The main barriers with respect to requirements for documentation and registration of workers seem to be related to general administrative practices or specific individual cases of incorrect application of EU law by authorities (problem 2). Most of these barriers were of an indirect nature.

Free movement of family members

The main problems with respect to family members of EU migrant workers are related to the definition of family members and to the situation of third-country national family members.

It seems that there are overall several differences between Member States on the definition of what constitutes a "durable relationship"³⁹⁰. While these are not necessarily contradictory with EU legislation, they can cause confusion among EU migrant workers, as different rules apply depending on the EU Member State. For example, in the UK, a durable relationship required two years of cohabitation, while in the Netherlands, a duly attested durable relationship required either evidence of a recent common household for at least six months either in the Netherlands or elsewhere or a child born out of that relationship.³⁹¹

In Cyprus, third-country national same-sex partners of EU citizens were only given a visitor's residence permit, which does not allow them to work, or they were refused entry or residence altogether.³⁹² In Bulgaria, the definition of family members was likewise relatively narrow in that the descendant and ascendant family members of partners were not included in Bulgarian legislation. Moreover, the position of de facto partners remains unclear in Bulgaria.³⁹³

With respect to third-country national family members, problems were found for example in Austria, France, Ireland, Slovakia, the Netherlands and UK. In Slovakia, the law was somewhat ambiguous about the third-country national family members' right to work and sometimes led to practical problems.³⁹⁴ In France, Ireland, the Netherlands and the UK, third-country national

³⁸⁶ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁸⁷ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

³⁸⁸ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

³⁸⁹ Interview with Francine Blanche, CGT, 5 October 2011.

³⁹⁰ Article 3.2. of Directive 2004/38/EC.

³⁹¹ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 25.

³⁹² Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

³⁹³ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 22 and 24.

³⁹⁴ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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family members of EU citizens often experienced lengthy procedures for receiving residence cards.³⁹⁵

An example related to Directive 2004/38/EC exists in Austria, where EU jobseekers' third-country family members had to apply for a visa in order to enter Austria³⁹⁶. In Ireland, the third-country family members were not allowed to work until they obtained a residence card.³⁹⁷ In Cyprus, third-country national family members holding residence cards were not able to receive a work permit for a job that paid less than €1,700 per month.³⁹⁸

An example of an obstacle with respect to free movement of family members can be found in Lithuania,³⁹⁹ where the national legislation did not explicitly include a provision ensuring that primary caregivers of children, who exercise their right to reside in the country as children of EU migrant workers, have the right of residence.⁴⁰⁰

Positive examples however also exist. In Belgium, family members now have a strengthened position thanks to the refusal of reverse discrimination of family members of Belgian citizens.⁴⁰¹

While most barriers to the free movement of family members were related to incorrect application of EU law by authorities (problem 2), there were also examples of non-conformity of national legislation with EU law (problem 1). Most cases could be characterised as indirect discrimination, but some cases of direct discrimination also exist. The concrete categorisation of each example can be found in Annex H.

Obstacles with respect to free movement in the field of sport

As also concluded in a report by the European network on free movement of workers⁴⁰², one area where discrimination on the grounds of nationality exists in most Member States is sport. Problems were reported in at least nine Member States⁴⁰³. The direct discrimination occurred in the form of quotas (football teams and water polo in the Czech Republic, football and ice hockey teams in Denmark, basketball and volleyball in Finland, football and women's basketball in Portugal, football in the UK); subsidies or access to tournaments based on the number of citizens of the country of the team (football in Austria, volleyball in Denmark); transfer fees and rules (sport clubs in general in Portugal, for example in one case, the fees for transferring from a German club to a Portuguese club were 40 times higher than the fees for transferring from one Portuguese club to another; and other specific rules that favoured the hiring of nationals instead of EU workers (Greece, Spain, Sweden, International Cricket Council). In the UK (Scotland), discrimination took place as the Scottish local team had to pay additional "taxes" to the Lithuanian sports federation for the Lithuanian player to get a licence in Scotland, which made him more expensive compared to Scottish players.

All the above examples can be characterised as direct discrimination caused incorrect application of EU law by employers (problem 3).

Summing up main findings on obstacles to free movement of workers

A limited number of examples of non-conformity of legislation at national, regional or local levels (problem 1) were found. These were related to both the free movement of family members and

³⁹⁵ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

³⁹⁶ Report on the Free Movement of Workers in Austria in 2009-2010, 2010, p. 9

³⁹⁷ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 36.

³⁹⁸ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

³⁹⁹ Article 10 of Regulation 492/2011.

⁴⁰⁰ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁰¹ Report on the Free Movement of Workers in Belgium in 2009-2010, p. 13.

⁴⁰² Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁰³ AT, CZ, DK, EL, ES, FI, PT, SE and UK. Based on Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011; and Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

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to obstacles to free movement in general (for example visa requirements for third-country national family members and exit bans for citizens).

Incorrect application of EU law by national, regional or local authorities (problem 2) was mainly related to obstacles to free movement in general (for example national authorities imposing strict definitions of who an EU worker is or requiring licenses from EU migrant workers to access employment).

Several of the examples presented above were related to incorrect application of EU law by employers (problem 3). Most of those are related to the area of sport, which remains a concrete area where direct discrimination against EU migrant workers still takes place.

Mainly, the examples of discrimination of EU migrant workers on the grounds of nationality, presented above, can be characterised as indirect discrimination, but there are cases, particularly in relation to concrete obstacles to free movement and sport, that are directly discriminatory towards EU migrant workers. For a full overview of examples, please see Annex H.

2. Eligibility for employment

Based on Regulation (EU) 492/11⁴⁰⁴, all nationals of EU Member States have the right to take up an activity as an employed person in any of the other EU Member States, irrespective of his place of residence. Discrimination in this respect is prohibited in terms of:

4. Access to employment
5. Assistance from national employment offices
6. Access to benefits of a financial nature intended to facilitate access to employment

The below sub-section is structured according to these three themes.

Access to employment

This prohibits:

- Limits on application and/or special conditions only applicable to foreign nationals (such as, special recruitment procedures, restricted advertising of vacancies, requirements for registration with employment offices and/or residence in the Member State)
- Other practices that in effect keep nationals from other Member States from the offered employment (such as awarding fewer points in competition for a post to qualifications acquired in other Member States, imposing a quota on foreign nationals working in the host Member State)

Exceptions:

- Public posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities
- An exception applies in relation to the conditions of linguistic knowledge required due to the nature of the post to be filled

Sources: Regulation (EU) 492/11, Article 3(1); Article 45(4) TFEU; and COM(2010)373 final, p. 10.

Concerning access to employment, the main barriers found in the Member States are related to administrative obstacles, nationality requirements for public authority positions, non-

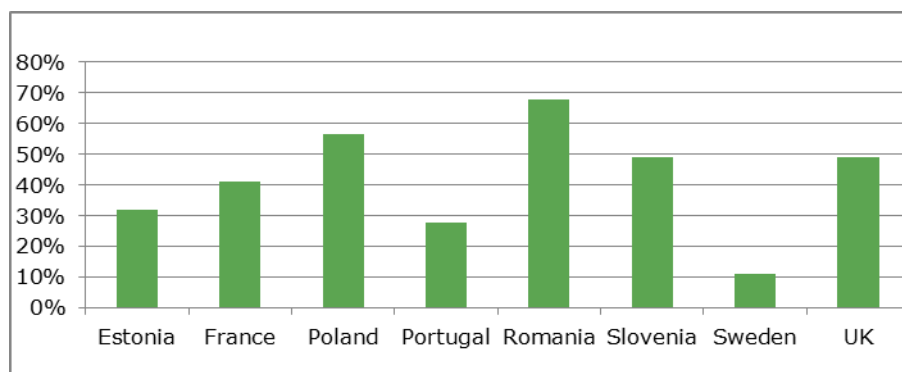
⁴⁰⁴ Regulation (EU) 492/11, Chapter 1, section 1.

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proportionate language requirements, as well as other relevant barriers, such as specific cases of direct discrimination in access to employment.

Difficult access to employment can in general be considered one of the main barriers for EU migrant workers. As presented above in Figure 106, difficult access to employment was found by EU workers to be the most important barrier when working in another EU Member State. When looking more specifically at the responses by EU workers, it can be seen that almost half of the respondents considered this to be either a very important or somewhat important barrier to free movement of workers. It seems that access to employment is challenging in particular to EU migrant workers from Romania, followed by Poland, Slovenia and the UK (Figure 107).

Figure 107: Difficult access to employment is a very important or somewhat important barrier (n=333)



Source: Survey among EU workers

Administrative obstacles

As the Your Europe Advice feedback report states, there were several reports where potential employers or local authorities created indirect discrimination by requesting residence cards or national registration as a condition for employment. Instead, the status of worker should be the one that consolidates the right of residence. Experts assess that "the misunderstanding is probably caused by the long transitional periods which have blurred the distinction between foreign EU citizens and third-country nationals. Recruiters are not fully informed of the nuances between EU citizens and prefer to be 'on the safe side' when recruiting."⁴⁰⁵

Such administrative obstacles, including requirements for registration with employment offices and/or residence in the Member States, formed barriers to EU migrant workers, for example in Cyprus, France, Greece and Malta. In Cyprus, the main barriers were related to the delays in the recognition of professional qualifications and diplomas earned in other Member States.⁴⁰⁶ In Greece, there was a case where a French applicant was required to show a residence card and work permit to work for the Acropolis museum in Greece.⁴⁰⁷ In France, the barriers were mainly related to EU migrant workers from newer Member States. For example, Polish EU workers were still being subjected to a work permit procedure by local authorities even though the transitional period had already ended. Also, Romanian jobseekers were required to present a residence card and a work permit in order to register with the French employment services at the local level, despite the fact that the jobseekers met the current conditions for exemption (they held a Masters degree, had a right of permanent residence, or were family members of Romanian nationals admitted to work in France since 1 January 2007).⁴⁰⁸ In addition to these barriers, there were also reports of challenges in terms of third-country family members, as indirect barriers to

⁴⁰⁵ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴⁰⁶ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁰⁷ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴⁰⁸ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

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free movement sometimes existed due to long waiting times for residence permits and visas, or lack of recognitions of qualifications.⁴⁰⁹

These cases were to a high extent caused by incorrect application of EU law by authorities or employers (problem 2 and 3). As mentioned above, they were mainly of indirect character.

Nationality requirement for public authority positions

Access to employment in the public sector is regulated in all Member States. At a minimum, managerial level positions related to public powers or functions intended to safeguard the interest of the state are open only for nationals. There is an exemption in EU law that concerns access to public posts (see above), yet several EU Member States in practice limit the access of EU migrant workers to public posts where the exemption is not needed. As the Commission and the Court of Justice have put it, the criteria for limiting access to public posts must be assessed on a case-by-case basis with regard to the nature of the tasks and responsibilities covered by the post.⁴¹⁰ Previously, the European Commission established a definition of the activities that may be reserved by the Member States to its nationals (e.g. army, judges) and the activities that may not (e.g. education services, transportation, scientific investigation).⁴¹¹

The data collected within the framework of the study shows that problems do still exist. For example, the Your Europe Advice feedback report states that many of the complaints received concerning public sector employers concerned the access to jobs restricted to nationals of the country, even though the job did not meet the conditions established by case law (such as teaching positions or medical specialties).⁴¹² Concrete examples were found in several Member States, and these are specified below.

In the Czech Republic, a law on access to public services that was drafted prior to the country's EU accession had not yet come into force. This means public service posts in the country were still governed by old rules that limit the hiring of foreigners, including EU migrant workers, to public posts.⁴¹³

In Denmark, a specific type of employment as a civil servant, usually found within the Ministry of Defence, the Prison and Probation Service, the police, the judicial system, and the foreign services, required Danish nationality.⁴¹⁴ Likewise in Lithuania, access to employment in the public service remained restricted to Lithuanian citizens. There are however a few jobs available to foreigners under labour contracts without performing the function of public administration.⁴¹⁵

In Germany and Poland, problems were related to practice rather than the existing legislation. In Germany, access to civil service was open to all EU citizens, but there was no uniform interpretation of when the public service exceptions could be applied. This led to case-by-case decisions by federal and regional authorities when they hired new civil servants. In Poland, legislation opened positions in civil service to EU migrant workers. However, in practice the situation was the opposite in that evidence showed out of 263 recently open posts in the civil service, only one was open to non-Polish nationals.⁴¹⁶

In Portugal, posts in the public sector were frequently advertised as only available to Portuguese citizens, despite the fact that this often violated EU and Portuguese law. Another practical problem was that public sector posts were sometimes only open to those already permanently

⁴⁰⁹ Interview with Claudia Charles, GISTI, 5 October 2011.

⁴¹⁰ COM(2010)373 final, p. 10.

⁴¹¹ Communication of 18 March 1998 and Conference report. Portugal-Spain Free Movement Seminar, 7-8 October 2010.

⁴¹² Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴¹³ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴¹⁴ Report on the Free Movement of Workers in Denmark in 2009-2010, 2010, pp. 23-24.

⁴¹⁵ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 45.

⁴¹⁶ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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employed by the Portuguese public sector. This indirect discrimination led to the exclusion of many EU migrant workers from potential employees. Direct discriminating practices existed in Spain, where several autonomous communities required candidates to be Spanish nationals in order to apply for posts, such as that of fireman.⁴¹⁷ Also, in Italy there was a case where a Romanian applicant for a job in the Italian national postal service was refused from applying as he was not an Italian national.⁴¹⁸

Somewhat more indirect cases of discrimination also exist where recruitment to the public sector had privileged candidates with previous public sector experience from Spain, ignoring similar experience gained in other Member States. Similar cases took place in Italy, where job advertisements for the public sector stated that experience or qualifications gained in Italy were necessary for the position. In Lithuania, some educational establishments required previous work experience in the institution before they would accept applications for certain research or lecturing posts. While these requirements did not directly state that the candidates must be of Spanish, Italian or Lithuanian nationality, it could be considerably more difficult for applicants from other EU Member States to apply for the positions in question.⁴¹⁹

The Netherlands was vague about which posts in the public sector were restricted to Dutch nationals, but Latvia had a clear definition of such posts. However, in the latter case the list was very extensive, and according to experts, may have violated the requirement to assess the need based on the nature of the job.⁴²⁰

The above examples consist of both non-conformity with EU legislation (problem 1 - to a limited extent), and of incorrect application of EU law by employers (problem 3). There are concrete examples of Member States where the legislation is in conformity and where the positions are in theory open to EU nationals, but where the practice shows a very different picture. The above examples cover both indirect and direct cases of discrimination of EU migrant workers on the grounds of their nationality.

Non-proportionate language requirements

It seems that one of the most important barriers for EU migrant workers is constituted by language requirements. With this respect it is relevant to point out that 31.6% of the respondents in the survey among EU workers who had worked in another EU Member State specified lack of language skills as the main barrier for free movement of workers. While lack of language skills can as such be a practical barrier to free movement and eligibility to employment, it is not a legal barrier related to enforcement of EU law. Instead, such a barrier can be formed by non-proportionate language requirements for jobs, set by employers.

The Court of Justice specified that any measure restricting free movement must be applied in a non-discriminatory manner and must be justified by the general interest, be suitable for the objective pursued, and must not go beyond what is necessary.⁴²¹ This is also true for language requirements in jobs. Reports collected by national authorities (ombudsman, equality authority) showed that, for example in Belgium, several of the complaints received by the Belgian equality authority concerned requirements for specific language skills that are non-proportionate to the job in question.⁴²² Likewise in the Czech Republic, a recent report by the ombudsman showed that one in six published job advertisements were discriminatory, many due to non-proportionate requirements to master the Czech language.⁴²³

⁴¹⁷ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴¹⁸ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴¹⁹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴²⁰ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴²¹ Gebhard and Consiglio Dell'Ordine Degli Avocati e Procuratori Di Milano C-55/94. See: Record of Proceedings: Seminar on Key Issues in Free Movement in Ireland, Law Society of Ireland, 5 November 2010.

⁴²² Statistics from the Belgian equality authority: Centre for Equal Opportunities and Opposition to Racism.

⁴²³ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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Much of the reports relating to excessive language requirements were found in the public sector. For example in Cyprus, excessive language requirements were found with respect to nursing and other public sector posts. In Estonia, clear standards for mastery of the Estonian language in the public sector were laid down in order to deal with the important Russian-speaking minority, but at the same time created a possible hindrance towards EU migrant workers. Applicants must sit exams to demonstrate sufficient level of knowledge for a specific job. It was difficult to assess whether the level was proportionate or not.⁴²⁴

In Finland, the language requirements for public sector jobs were demanding and not associated with the concrete tasks but with the degree of qualification required for the job. This meant that most jobs with a requirement for a university degree also included a requirement for the mastery of both national languages, Finnish and Swedish, even in cases where this was not always strictly necessary for the tasks associated with the job. There were studies suggesting that the language requirements were the most significant barrier to employment for migrant workers in Finland.⁴²⁵

It was also challenging for EU migrant workers to prove that they possess the necessary language skills. In Greece, it was often necessary to show proof from a Greek secondary school or a Greek language centre, while other possible methods of proving one's language skills were not accepted.⁴²⁶ It seems that in particular the language requirements for teachers were very high and non-proportionate.⁴²⁷ In Poland, there were in general several ways to prove one's knowledge of the Polish language. However, those applying for posts in the civil service or local government had to produce documents from a very specific list, which made it potentially difficult for EU migrant workers to show their level of knowledge of the Polish language. Finally in Slovakia, no provisions existed on how individuals were expected to prove their knowledge of the Slovak language, which was required for employment in the public sector.⁴²⁸

In some Member States, requirements for language skills were found in both the private and the public sector. For example in Latvia, very detailed legislation existed that set out exactly what level of Latvian language individuals had to have in order to hold certain jobs in the public-sector or in the private-sector that involved the performance of public-sector functions or duties of particular public importance. Approximately one-third of positions in Latvia were covered by these provisions. There were language inspectors who ensured that private employers used language tests to determine the knowledge of the Latvian language among job-seekers. Moreover, there was a limited number of measures where the sufficient knowledge of Latvian could be proven. In Lithuania, there were requirements for knowledge of Lithuanian language both in the private and the public sector. This was also the case in Luxembourg, where in the private sector the most commonly required languages were French and English. In the public sector, knowledge of the three administrative languages of Luxembourg was a prerequisite. There were indications that the requested language proficiency levels are too challenging for most job-seekers.⁴²⁹

A concrete case of language requirements in the private sector was found in Cyprus, where the government required a specific certificate in order to access employment in the private security sector. This certificate could be obtained through following a course only available in Greek.⁴³⁰

⁴²⁴ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴²⁵ Impact case study and Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴²⁶ Case C-281/98 *Angonese v Cassa di Risparmio di Bolzano SpA*.

⁴²⁷ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴²⁸ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴²⁹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴³⁰ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

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Some of the cases presented above are examples of non-conformity with EU legislation (problem 1). Mainly, they represent cases of incorrect application of EU law by employers (problem 3). The above examples can mostly be categorised as indirect discrimination, as many of the requirements can be fulfilled by EU citizens who are able to speak the language of the host country fluently. They are however indirectly discriminatory in the sense that they are often non-proportionate to the concrete jobs. For a full overview of examples, please see Annex H.

Other

In addition to administrative obstacles, nationality requirements in the public sector, and non-proportionate language requirements, some specific cases of discrimination in access to employment exist. Some examples are presented below.

The Your Europe Advice feedback report found that indirect discrimination in access to employment occurred in local professional bodies that refused to grant the compulsory registration to holders of qualifications from other Member States, even in cases where the qualifications were recognised by national authorities. Cases included the Joint Industry Board in the UK and the local German craftsman body.⁴³¹

Several other cases were identified in Ireland. For example, a Romanian highly qualified for a position and who met all the conditions for access to the local employment market (including market test needs) was denied the work permit on the grounds that he did not seem to have exceptional qualities for the job. Furthermore, a Lithuanian worker was made redundant and replaced in his job by an Irish national. The individual reported that it was admitted public policy of the local employment services to give preference to the employment of Irish nationals.⁴³²

In Germany, a Romanian was told by the German Aliens' Department (Ausländerbehörde) that "Romanians are only formally part of the EU" when questioning the need to have a work permit as a resident in Germany for four years." Similarly, a Bulgarian student was denied access to a job as a night guard in a public hospital on grounds that a German national could very well work in a "nursing position". This shows that the authorities granting the work permit did not consider his application with care, and in any case suggests that only work not wanted by Germans could be open for Bulgarians. Another example concerned the German employment services when they refused to consider an EU-2 form from Lithuania (i.e. for the temporary transfer of unemployment benefits) by giving the reason that "they would not grant a work permit in any case". This shows that there was no intention to consider giving a work permit for a specific type of job offer, and this resulted in denied access to job offers on the spot. Finally, there was a challenge related to the seasonal workers from Romania who could not work in Germany for more than six months per year. This meant that they would never be able to take advantage of the rule under transitional measures that if they worked for one year in Germany then these measures would stop being applicable.⁴³³

To summarise, access to employment does seem to form an important barrier to EU workers for moving to another EU Member State to work. Interestingly, some concrete cases of legislation that is not in conformity with EU law do exist (problem 1), even though the majority of the cases were related to incorrect application of EU law by authorities (problem 2). For a full overview of examples, please see Annex H.

It seems that theory and practice were not always in conformity with each other. For example in Poland, the legislation allowed for EU nationals to take up positions in the public sector, but in practice this was not the case. Both indirect and direct discrimination exist, but indirect discrimination is predominant.

⁴³¹ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴³² Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴³³ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

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Assistance from national employment offices

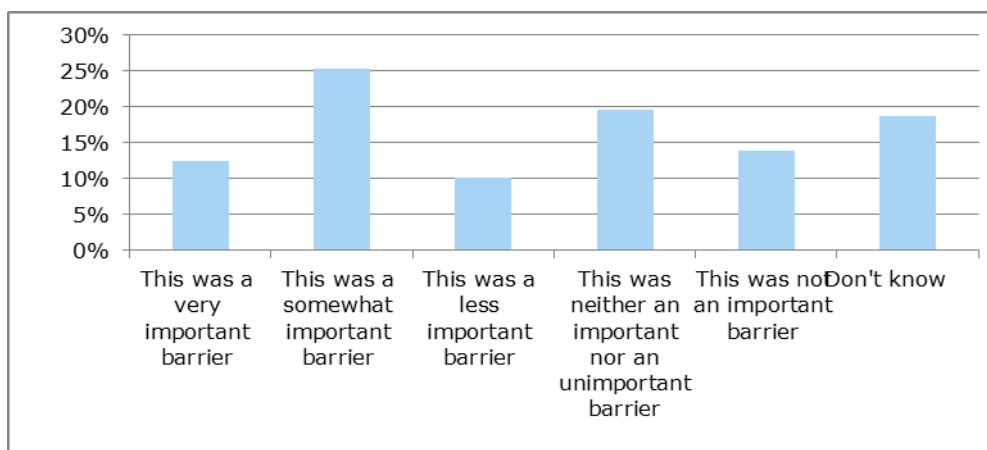
Source: Regulation (EU) 492/11, Article 5.

Based on the examples found in the course of the study, it seems EU nationals have wide access to assistance at the national employment offices in other EU Member States. Registration as a jobseeker was often required in order to access the services.

Barriers were reported in a limited number of Member States. In Cyprus and Latvia, the services of the employment agencies were available to EU migrant workers, but they were only offered in the national language of the country (Greek and Latvian).⁴³⁴ In Finland, some services provided by the employment offices, such as labour market training, were only available to people with a home in a municipality in Finland. EU migrant workers obtained this after having a residence in Finland, meaning that the services were not available to job-seekers.⁴³⁵ In Slovenia, EU migrant workers and their family members were formally entitled to public employment services, including assistance of employment agencies. However, practical problems were reported regarding the registration of EU job-seekers for this assistance.⁴³⁶ In Sweden, there was a case where a German national was denied assistance of Swedish employment services because he had not worked in Sweden for a minimum of two years.⁴³⁷ Finally, Belgium had government programmes for supporting access to employment of young, unemployed people. One of these programmes, Activa, offered incentives for employers to hire unemployed people by reducing the social security contributions. There were however limits stating that the person must have received an unemployment benefit for a specific period of time before participating in the programme. This may be discriminatory towards EU migrant workers.⁴³⁸

While the number of concrete examples of discrimination by national employment offices was limited, EU migrant workers did consider the lack of assistance from national employment offices to be a somewhat important barrier to free movement of workers (see Figure 108).

Figure 108: Lack of assistance from national employment offices (n=753)



Source: Survey among EU workers

⁴³⁴ Report on the Free Movement of Workers in Latvia in 2009-2010, 2010, p. 16; and Report on the Free Movement of Workers in Cyprus in 2009-2010, 2010, p. 20.

⁴³⁵ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 18.

⁴³⁶ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 41.

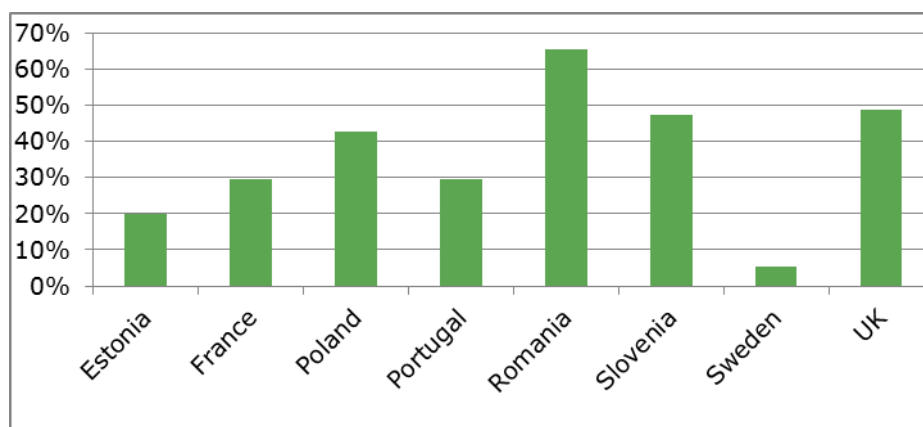
⁴³⁷ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴³⁸ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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This shows that either this is perceived as an important barrier even though the scope of the problem is not very large, or it can be an indication that in practice there are many issues of discrimination by employment offices than what has been found through this study. If the latter is the case, this may be because migrant workers did not report the problems that they considered a barrier while working abroad, or they felt the barriers that existed with respect to assistance from national employment offices were related to other issues than the ones forbidden in EU legislation. It seems EU migrant workers from Romania and Slovenia mainly experienced barriers with respect to assistance from national employment offices, but a relatively high percentage of respondents from the UK also experienced problems with respect to lack of assistance from national employment offices when working in another EU Member State (Figure 109).

Figure 109: Lack of assistance from national employment offices is a very important or somewhat important barrier (n=284)



Source: Survey among EU workers

All the examples presented above are mainly indirect cases of incorrect application of EU law by authorities (problem 2). For a full overview of examples, please see Annex H.

Access to benefits of a financial nature intended to facilitate access to employment

Exceptions: can be subject to the condition of a genuine link between the jobseeker and the labour market in question through proof that the person has sought work in the Member States for a longer period and/or residence requirement¹

Source: Cases C-138/02 *Brian Francis Collins v. Secretary of State for Work and Pensions* [2004] ECR I-02703; C-258/04 *Office national de l'emploi v. Ioannis Ioannidis* [2005] ECR I-08275; C-22/08 *Athanasios Vatsouras v. Arbeitsgemeinschaft (ARGE) Nürnberg 900* [2009] ECR I-04585

The situation regarding access to benefits of a financial nature intended to facilitate access to employment varies greatly between Member States. Nevertheless, it seems that discrimination on the grounds of nationality does not take place in most of the Member States, but the same rules are applied to the EU jobseekers as to the nationals of the Member State. This can cause challenges to the jobseekers entering the country, e.g. in eight Member States⁴³⁹ it is specifically stated that financial benefits are contribution-based. A limited number of barriers are reported.

While the French system for calculating entitlement to unemployment benefits was in compliance with EU law, in practice, it presented some challenges to EU workers. EU citizens (both French

⁴³⁹AT, CY, DK, EE, LT, PT, NL, UK.

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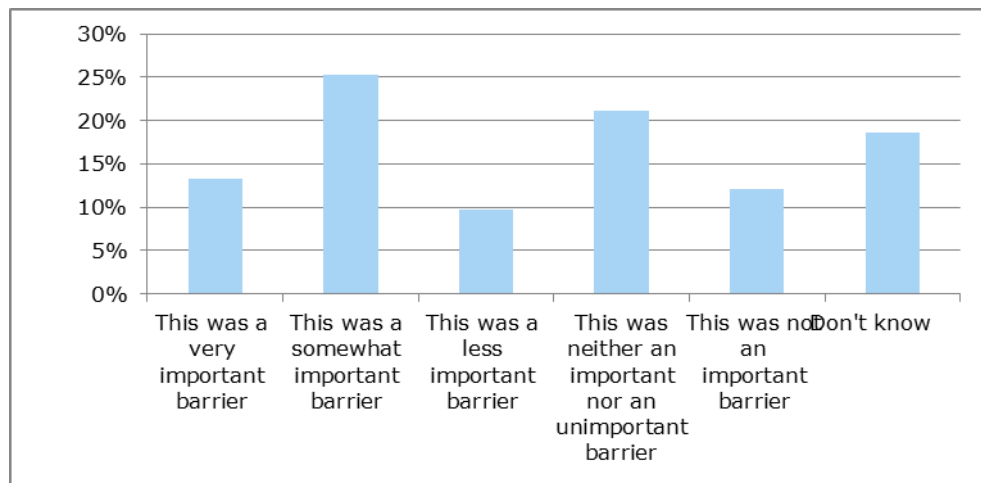
and other) who have worked in another EU Member State and moved to France without having worked in France before, receive a smaller rate of unemployment payment than persons who have worked in France for some period of time. The rate of pay is based on the person's previous income in France and not on that earned in another EU Member State.⁴⁴⁰

In Lithuania, there were barriers for EU job-seekers seeking their first employment. It was necessary to register in the employment office within six months of finishing education, which could be discriminatory towards those who finalised their education in another Member State.⁴⁴¹

Finally, the state of Luxembourg paid reimbursements for the social contributions made for employees over 45 who were registered with the national employment office as job-seekers for over a month before their employment. This reimbursement was not paid for jobseekers registered at employment offices outside of Luxembourg.⁴⁴²

Once again, the barriers experienced by EU workers, as stated in the survey among EU workers, and the examples of cases differ to some extent. Approximately 38% of the EU workers who have worked in another EU Member State consider lack of access to such benefits to be a very important or somewhat important barrier to free movement of workers (Figure 110).

Figure 110: Lack of access to financial support intended to facilitate access to employment (n=753)



Source: Survey among EU workers

It is striking that while Romanian respondents experienced most barriers, more than 30% of the respondents from all Member States except Sweden considered this to be a somewhat or very important barrier to the free movement of workers.

The examples presented above belong to cases where EU law was incorrectly applied by authorities (problem 2). For a full overview of examples, please see Annex H.

Summing up main findings on eligibility for employment

A limited number (five) of examples of non-conformity of legislation at national, regional or local levels (problem 1) were found in five Member States⁴⁴³. These were mainly related to nationality requirements for positions in the public service and the language requirements related to jobs.

⁴⁴⁰ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁴¹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁴² Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁴³ CZ, DK, LT, LU, LV.

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Incorrect application of EU law by national, regional or local authorities (problem 2) was found in three examples from two Member States (Germany and France). These were related to complicated systems for unemployment benefits and non-proportionate requirements for EU migrant workers from new Member States.

As for obstacles to free movement of workers, most of the examples related to eligibility for employment were examples of incorrect application of EU law by employers (problem 3). It is clear that there were non-proportionate requirements for access to employment in the public sector and excessive language requirements in a high number of Member States. This finding is supported by the findings by the European network on free movement of workers in their recent report.⁴⁴⁴

While language requirements were found in both the public and private sector, most examples were related to the public sector, and in particular to public authorities acting as employers.

A clear majority of the examples can be characterised as indirect discrimination, but there are also cases of direct discrimination where nationals of other Member States were for example forbidden to apply for positions in the public service. For a full overview of examples, please see Annex H.

3. Employment

Equality in employment between EU workers is guaranteed in Regulation (EU) 492/11, Article 7, stating that "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 [...]". Equality in employment is guaranteed in the following areas. These also form the main themes brought up in the present sub-section:

- Working conditions
- Social advantages (financial and non-financial)
- Tax advantages
- Access to training
- Membership of trade unions
- Matters of housing

Working conditions

- in particular as regards remuneration (e.g. professional experience from other Member States must count equally to that of experience obtained in the national labour market when considering working conditions), prospects of promotion¹, dismissal and re-instatement/re-employment

Sources: COM(2010)373 final, p.12; Regulation (EU) 492/11, Article 7(1).

Barriers related to working conditions were in particular found with respect to the determination of employment conditions based on previous professional experience (non-recognition of professional experience), underpayment and poor working conditions⁴⁴⁵ experienced by EU migrant workers, and other specific individual cases that disregarded EU law. The survey among EU workers showed that more respondents considered working conditions to be a very important

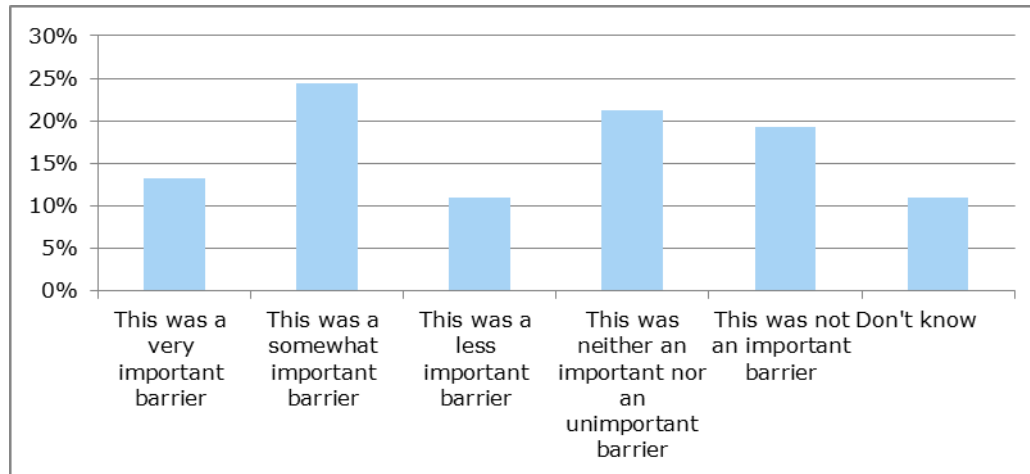
⁴⁴⁴ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁴⁵ According to the impact case studies carried out within the framework of this study, underpayment and poor working conditions are sometimes associated with posted workers, which are not covered within the scope of this study. However, the examples presented in this section do not specify whether they are related to EU migrant workers or posted workers, which is why it cannot be excluded that they do indeed concern EU migrant workers.

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or somewhat important barrier than those who saw them as a less important or non-important barrier (Figure 111).

Figure 111: Unfavourable working conditions in comparison with the nationals of the host Member State (n=753)



Source: Survey among EU workers

Non-recognition of professional experience

It seems that the non-recognition of professional qualifications and experience leading to unequal employment conditions, for example with respect to salary, seniority and access to continued training, was an important obstacle to EU migrant workers. Your Europe Advice⁴⁴⁶ reported a high number of cases where such discrimination took place, and this was supported by other data collected in the study. These were mainly *not* related to EU migrant workers subject to transitional measures.

Calculation of seniority resulted in barriers to EU migrant workers for example in Denmark, France, Latvia and Malta. In Denmark, seniority in the public sector was calculated from the date of first employment in the Danish public sector (for the purpose of calculating certain benefits), and previous experience gained in other Member States were ignored. This was also the case in Latvia, where pay grade and eligibility for certain posts were only determined by experience gathered in the Latvian public sector. There were some exceptions to this, for example experience of three years or more in the private sector were sometimes taken into account. In France, there were recent court decisions that enforced the EU law with respect to taking into account previous experience from other Member States when determining seniority-related advantages, salary and benefits for public sector employees, including the French national railway company.⁴⁴⁷ In Malta, only employment in the national public service was considered relevant when calculating seniority.⁴⁴⁸

More specifically, cases of non-recognition of professional qualifications existed in Sweden. In Sweden, all doctors who had obtained their license after 2006 now had to go through an entirely different and much longer kind of training. The responsible Swedish authority interpreted the new provisions as applicable to holders of non-Swedish licenses, even if acquired before 2007.⁴⁴⁹

Most of the examples above represent cases of incorrect application of EU law by employers (problem 3). They are mainly of indirect nature, and related to situations where only experience

⁴⁴⁶ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011. For example cases 81023, 80403, 76181 62995, 64409 71930, 62042 71520 86747, 62926 62442, 86418, 76228, 86688.

⁴⁴⁷ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁴⁸ Annual European Report on the Free Movement of Workers in Europe in 2008-2009, 2010, pp. 34-35.

⁴⁴⁹ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

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gained in the Member State in question were taken into account when calculating seniority and, in some cases, benefits. For a full overview of examples, please see Annex H.

Underpayment and poor working conditions

Examples of underpayment and poor working conditions experienced by EU migrant workers were reported in Cyprus, France, Ireland, Spain and the Netherlands. In many cases these problems were related to EU migrant workers from the newer Member States who joined the EU in 2004 and 2007. Such problems were reported for example in Ireland, where EU migrant workers from newer Member States were often employed below their skill level and earned significantly less than Irish workers. One of the problems was that Irish employers often did not recognise foreign qualifications and preferred Irish references. There were also barriers with respect to aptitude tests not designed for people who spoke other languages than English as their mother tongue.^{450 (3)}

In Cyprus, experts reported occurrences of social dumping in the tourism industry. It seems that there were some 1,500-2,000 EU migrant workers working as "trainees", only earning food, accommodation and pocket money for their work. There were also reports about the tourism industry dismissing unionised Cypriot workers in favour of hiring non-unionised EU-workers.⁴⁵¹

The impact case study in France revealed that EU migrant workers from the newer Member States were not always paid according to the French minimum salary. The challenge in fighting this phenomenon was that while the cases where unequal salaries were paid did exist, they were not usually brought to the attention of, for example, labour unions.

In the Netherlands, barriers were related in particular to temporary work agencies and the working conditions they imposed on their clients (EU migrant workers) from other Member States. The number of complaints received in 2009 and 2010 by the Foundation for Compliance with the Collective Labour Agreement for Temporary Employees (SNCU) was high⁴⁵². The extent of the problem is important, as approximately half of the labour migrants from the new Member States come to the Netherlands via temporary work agencies.⁴⁵³ This is supported by the data from the public consultation among organisations, where Dutch labour unions particularly mentioned difficulties in the agriculture sector and among Polish workers to receive appropriate working conditions and housing. There was also discrimination on pay for seafarers embarked under a European flag other than that of his/her residence.

In Spain, cases of exploitation of Portuguese workers took place in Galicia. It seems that some Portuguese nationals accepted work offers from Spain through mediators who did not provide them with a proper contract. This was usually caused by lack of relevant information about social rights and job opportunities. If there was a work accident, these workers were often taken back to Portugal by such mediators, although they would have the right to social assistance in Spain.⁴⁵⁴

While all the cases presented above are grave examples of disregard towards EU legislation, they are mainly categorised as either general administrative practices or specific individual cases of incorrect application of EU law by employers (problem 3). They are, however, mainly cases of direct discrimination.

Other

⁴⁵⁰ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁵¹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁵² Nieuwsbericht: Resultaten SNCU 2010. 2 February 2011. www.SNCU.nl. The number of cases in 2010 was 840, which was some 20% less than in 2009.

⁴⁵³ Letter of Dutch Minister of Social Affairs and Employment, Henk Kamp, to the Dutch House of Representatives of the States General, 2011.

⁴⁵⁴ Conference report. Portugal-Spain Free Movement Seminar, 7-8 October 2010. Presentation by Ana Rita Gil, of the Faculty of Law of the Universidade Nova of Lisbon.

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There were a limited number of other cases of discrimination of EU migrant workers in terms of working conditions. There was a case in Malta where a Romanian who obtained a Master's degree in medical sociology in Malta and was employed by the Maltese State asked for a change in his work programme with respect to working hours. The request was turned down, even though Maltese colleagues obtained similar changes in their work programmes.⁴⁵⁵

All the examples of problems experienced by EU migrant workers with respect to working conditions are related to incorrect application of EU law by employers (problem 3). It seems that non-recognition of previous experience when calculating seniority and other benefits is indeed a barrier for EU migrant workers. Moreover, underpayment and poor working conditions are identified, particularly with respect to EU migrant workers from the newer EU Member States. The discrimination they experience is normally indirect, but some cases of direct discrimination do occur. For a full overview of examples, please see Annex H.

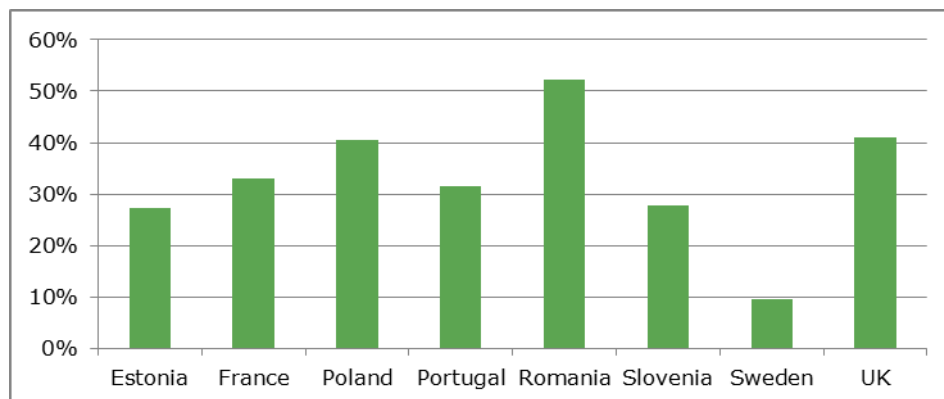
Social advantages (financial and non-financial)

- Equal access of EU nationals to all social advantages (regardless of links to an employment contract) granted to national workers² (e.g. the child of a frontier worker is entitled to tuition from the parent's Member State of employment under the same condition as children of nationals, regardless of whether the child is a resident of the Member State or not)

Sources: Regulation (EU) 492/11, Article 7,2; Case C-85/96 Maria Martinez Sala v. Freistaat Bayern [1998] ECR I-02691; COM(2010)373 final; p. 13

The barriers experienced by EU migrant workers with respect to social advantages are related to social advantages in general and study or tuition grants. Social advantages were found to be an important barrier in particular by EU migrant workers from Romania, UK and Poland (see Figure 112).

Figure 112: Lack of access to social advantages, such as study grants, transport fare reductions, minimum subsistence payments is a very important or somewhat important barrier (n=261)



Source: Survey among EU workers.

Social advantages in general

General barriers for EU migrant workers in terms of access to different types of social advantages were reported from several Member States⁴⁵⁶. They are related to lack of equal access to social advantages in general, and more specifically to access to social advantages for families.

⁴⁵⁵ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴⁵⁶ Including DK, EL, FI, FR, IT, LV, NL, PL, SK and UK.

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General barriers in terms of access to social advantages existed in Italy, where there were reports of direct discrimination by a municipality that offered a financial benefit only to Italian workers who lived there, and of indirect discrimination by two municipalities that imposed a ten-year prior-residence requirement on access to benefits. Such residence requirements are often related to the issues of equal access to social advantages. In Latvia, certain social assistance benefits were reserved for those permanently residing in Latvia. The problem here was not related as much to the existing rules, as the authorities recognised that permanent residents include, in theory, migrant workers from other Member States. However, it seems that in practice the officials in charge of distributing these benefits appeared to not understand and were likely to refuse these benefits to citizens of other Member States who have not yet acquired permanent residence. In Poland, EU migrant workers and their family members sometimes found themselves in a disadvantaged position with respect to social assistance and social security benefits and study grants due to existing residence clauses. Meanwhile in Slovakia, permanent residence was a prerequisite for accessing some social assistance and social security benefits. This could be discriminatory towards those EU migrant workers who had not yet acquired permanent residence in Slovakia.⁴⁵⁷

A concrete case of direct discrimination was identified in Greece, where special pensions and access to free medical care for persons over 68 years were not available to EU migrant workers.⁴⁵⁸

In Finland, there was a case of indirect discrimination related to a "four-month rule" for accessing some social advantages, such as national health insurance, child care subsidy, accruing credits towards national pension and survivor's pension, as well as rehabilitation benefits. This rule entailed that the access to the benefits covered by this rule was granted only if the employment lasted for a minimum of four months.⁴⁵⁹

In the UK, potential barriers existed in terms of rules restricting access to social advantages and retention of worker status. These included a rule (now repealed with the end of transition arrangements for citizens whose countries joined the EU in 2004) that restricted access to benefits for certain individuals who retained their worker status under Article 7(3) of Directive 2004/38/EC. Similarly, case law existed in the UK that found that women who stop working because they are heavily pregnant and can no longer continue in the job they had do not retain their 'worker' status for the purpose of accessing social assistance benefits.⁴⁶⁰

Barriers with respect to family benefits were reported in Denmark, France and Italy. In Denmark, it was necessary to have lived and/or worked in Denmark for at least two years out of the past ten in order to receive family benefits for families with children. In France, frontier workers experienced similar problems; for example in October 2010, a French appellate court declared that it was unlawful to refuse a frontier worker living in Belgium and working in France an allowance to assist with childcare on the basis that it was non-exportable. Finally, in Italy, there were reports of cases where family benefits for newborn babies and adopted children were limited to families with at least one Italian parent.⁴⁶¹

The cases presented above are, to a high extent, examples of legislation not in conformity with EU law (problem 1). There are some examples of incorrect application of EU law by authorities and by employers (problem 2 and 3) as well. The cases can mainly be characterised as indirect discrimination, while a limited number of cases of direct discrimination also exist. For a full overview of examples, please see Annex H.

Study grants

⁴⁵⁷ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁵⁸ European Report on the Free Movement of Workers in Europe in 2008-2009, p. 21.

⁴⁵⁹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁶⁰ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁶¹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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Barriers in terms of access to study grants and other education related benefits were reported from at least nine Member States.⁴⁶²

The access to study grants was combined in many cases with a requirement to have resided in the Member State for a specific number of years. For example in Austria, in order to obtain a student grant to study abroad, the student must have lived in Austria for at least five years before beginning the studies, and must have completed higher education in the country. In Ireland, study grants were only awarded to students who had been residents in Ireland for three of the previous five years. In Malta, there was a five-year prior residence requirement attached to study grants, and in the Netherlands, the requirement was to have lived at least three of the last six years in the country.⁴⁶³

Permanent residence in the country was required to access student benefits in Lithuania (social scholarships), and in Portugal, where a permanent residence card was required to access scholarships.⁴⁶⁴ In Luxembourg, the law was changed in November 2010 to a requirement to reside in Luxembourg to receive study grants. This meant that children of frontier workers working in Luxembourg but residing in a neighbouring country no longer had access to these study grants if they lived with their parents in a neighbouring country.⁴⁶⁵

Concrete cases where grants and other benefits were not awarded to EU migrant workers existed in Greece, where workers from other EU Member States were not entitled to scholarships granted under Greek law; in Ireland, where EU migrant workers' children were sometimes discriminated against in school admission in favour of children whose fathers had attended the same school; and in Latvia, where the national legislation did not permit the family members of EU migrant workers and some frontier workers from other Member States to obtain student loans guaranteed by the State, whereas Latvian and other EU citizens could get these loans.⁴⁶⁶

Most of these examples are cases of non-conformity with the EU legislation (problem1), which grants equal treatment in access to social advantages, including study grants, to EU migrant workers.⁴⁶⁷ (For a full overview of examples, please see Annex H.)

Tax advantages

National tax rules deterring workers from exercising their right to free movement can be considered an obstacle to the practice of that principle (e.g. EU law protects against discriminatory tax treatment of other incomes, such as pensions, where contributions to foreign schemes should also be deductible, similar to nationals).

Sources: Regulation (EU) 492/11, Article 7(2) and COM(2010)373 final, pp. 13-14.

With respect to taxation, problems are mainly related to frontier workers. For example in Belgium, there have been problems for French frontier workers in the application of local taxes.⁴⁶⁸ In Spain, there seems to be a higher rate of income tax that non-residents earn in Spain, compared with the rate of tax for those residing in Spain. This is another issue particularly harmful for frontier workers.⁴⁶⁹ More specifically, employers established in Spain did not have the

⁴⁶² AT, EL, IE, LT, LV, LU, MT, NL and PT.

⁴⁶³ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁶⁴ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁶⁵ National reports 2010-2011 – Free movement of workers: Luxembourg, 2011, p. 1.

⁴⁶⁶ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁶⁷ See for example cases: LAIR, case 39/86; BERNINI, case 3/90; ECHTERNACH AND MORITZ, cases 389/87; and 390/87; BROWN, case 197/86; MATTEUCCI, case 235/87; MEEUSEN, case C-337/97.

⁴⁶⁸ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 61.

⁴⁶⁹ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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obligation to withhold for taxation purposes part of the wages of their workers who resided in Portugal. These workers thus had the burden of paying all of their income tax at a single time every year.⁴⁷⁰ There were also cases pending before German courts concerning taxation of frontier workers in Germany.⁴⁷¹ Finally, frontier workers who lived in the UK (Northern Ireland) and worked in the Republic of Ireland faced challenges because they paid taxes to the Irish Government, but also had to top up to the UK in order to pay as much as they would have paid had they worked in Northern Ireland. Similar requirements were not posed by the Irish Government for workers living in Ireland and working in the UK. This is not in violation of international tax law, but this and similar examples may in practice pose an obstacle to and discourage EU citizens from working across borders. Another issue existed in terms of childcare, where in the UK people could claim tax credits for childcare if the child attended a UK regulated childcare facility. If the child attended nursery in the Republic of Ireland, such credits could not be claimed.⁴⁷²

The above cases are mainly related to incorrect application of EU law by national, regional or local authorities (problem 2). Most cases were relevant only for frontier workers and they seem to consist of mainly indirect discrimination, as frontier workers could also be of the nationality of the country where they are working, but live in the neighbouring country. For many of the examples related to access to tax advantages, as for some other issues of indirect discrimination, it is the case that while they are indirectly discriminatory and pose an obstacle to free movement, they may be objectively justified.

Access to training

- In vocational schools and retraining centres

Source: Regulation (EU) 492/11, Article 7(3).

The barriers with respect to access to training for EU migrant workers seem to be almost non-existent in the Member States. There was one example from Latvia, where the vocational training courses were only available in Latvian, making it potentially difficult for EU migrant workers to participate in the courses.⁴⁷³ The findings from the survey among EU workers support to some extent this finding, as there was a clear majority of respondents who considered this to be either a non-important, less important or neither important nor unimportant barrier. However, there was a share of 29% among the respondents who found access to training to be an important barrier when working in another EU Member State. These respondents mostly came from Poland and the UK.

⁴⁷⁰ Conference report. Portugal-Spain Free Movement Seminar, 7-8 October 2010. Presentation by Ana Rita Gil, of the Faculty of Law of the Universidade Nova of Lisbon.

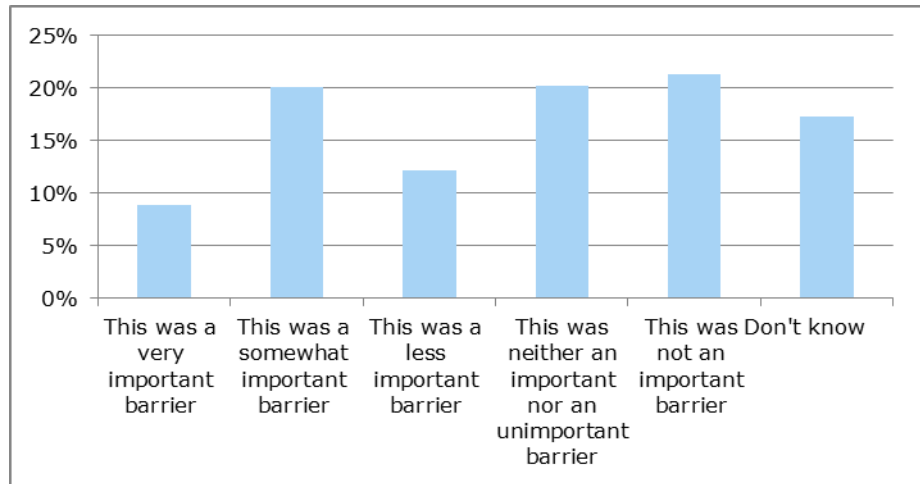
⁴⁷¹ Annual European Report on the Free Movement of Workers in Europe in 2009-2010, 2010, p. 61.

⁴⁷² Record of Proceedings: Seminar on Key Issues in Free Movement in Ireland, Law Society of Ireland, 5 November 2010. Speech by Ms. Mary Bunting, Joint Secretary of the NSMC.

⁴⁷³ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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Figure 113: Lack of access to training (n=753)



Source: Survey among EU workers.

Membership of trade unions

Including the right to vote and eligibility for posts or management

- Exception: Nationals from other Member State may be excluded from taking part in managing bodies or holding an office governed by public law

Source: Regulation (EU) 492/11, Article 8.

One example of concrete barriers with respect to membership of trade unions was found. Lithuania reported specific problems in respect of trade union membership. While general trade union legislation does not limit the access of other EU nationals to trade union membership⁴⁷⁴, the Statute of the Lithuanian Seamen's Union (paragraph 3) provides that the members of the Union must be Lithuanian citizens; other persons (a) permanently residing in Lithuania, (b) having a diploma of seafarer or certificate confirming the maritime profession qualifications (c) working in ships carrying the flag of the Republic of Lithuania and other countries. Thus, the residence condition is a restriction for foreigners working on Lithuanian ships to enter the trade union if they do not have a permanent residence in Lithuania. As a result, their pay and conditions may not be well represented in the event of a conflict.⁴⁷⁵

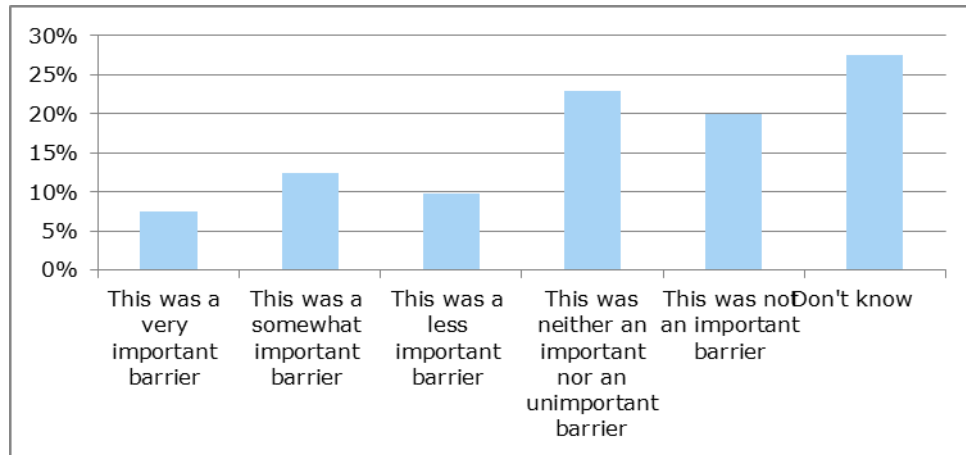
The limited occurrence of problems in this field was supported by the findings in the survey among EU workers where the majority either did not know or categorised membership of trade unions as a less important or non-important barrier (see Figure 114).

⁴⁷⁴ Law on Trade Unions of 2001.

⁴⁷⁵ Source: Interview with Catherine Barnard, Cambridge university.

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Figure 114: Difficult access to membership of trade unions (n=753)



Source: Survey among EU workers

Matters of housing

- including ownership and access to housing lists¹

Source: Regulation (EU) 492/11, Article 9.

The obstacles related to housing seem to be limited among EU migrant workers, and potential barriers were only reported in five Member States.⁴⁷⁶ In Belgium, the state of Flanders introduced rules which may prevent people from purchasing property in certain communities if they could not show sufficient ties to that community. In Italy, the access of EU migrant workers who were also studying were denied student housing, which only seems to be available to students of Italian nationality. In Portugal, there were reports where certain local authorities applied old legislation from the 1970s, which only allowed Portuguese citizens to be placed on the housing register.⁴⁷⁷

In the Netherlands the challenges were somewhat different, as several municipalities responsible for housing reported difficulties in finding suitable housing for the high number of EU migrant workers. At the same time, there seems to have been a difficult balance between the acceptable housing standards and the level of rent that the EU migrant workers were willing to pay for their housing.⁴⁷⁸

Matters of housing were one of the barriers where the respondents from the eight different nationalities agreed the most. More than 30% of all nationalities, except for the Swedish workers, considered matters of housing to be a somewhat or very important barrier when working in another EU Member State (Figure 115).

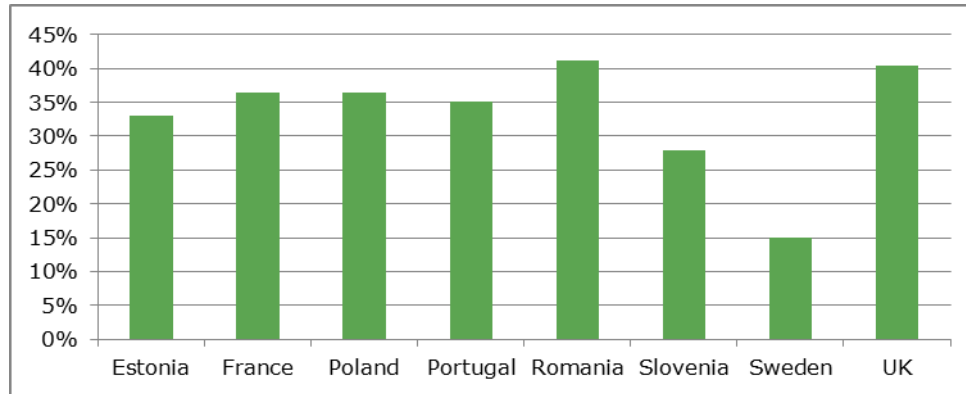
⁴⁷⁶ BE, IT, MT, NL and PT.

⁴⁷⁷ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁷⁸ See for example Letter of Dutch Minister of Social Affairs and Employment, Henk Kamp, to the Dutch House of Representatives of the States General, 2011.

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Figure 115: Difficult access to housing is a very important or somewhat important barrier (259)



Source: Survey among EU workers

The examples in the field of housing represented all three drivers, i.e. there were cases of non-conformity with EU law (Flanders in Belgium), cases of incorrect application by authorities (Portugal) and cases of general administrative practices or specific individual cases that disregarded EU law (Italy). They can mainly be characterised as direct discrimination. Housing was also reported to be a problem in the Netherlands, but it was seen from the point of view where the local authorities acknowledge the need for better housing for EU migrant workers and the challenges they have in providing it.

Summing up main findings on employment

Discrimination with respect to employment seems to be the area where non-conformity with EU legislation (problem 1) takes place most frequently. There were 15 examples of cases from 14 Member States⁴⁷⁹ where it seems that the national, regional or local legislation is not in conformity with EU law. Most cases were related to social advantages, including study grants. Some concrete drivers could be identified behind problem 1, in particular with respect to social advantages, including study grants. This is a concrete area where much of the EU legislation is based on ECJ case law and was not yet codified. It can thus be that the Member States, where non-conformity was identified, did not interpret case law in the same way as the European Commission. Moreover, it is possible that when developing their national legislation, Member States had their specific national objectives in mind without paying close attention to whether those objectives were in accordance with Article 45 TFEU and Regulation (EU) 492/11.

Incorrect application of EU law by national, regional or local authorities (problem 2) was found in six examples from five Member States.⁴⁸⁰ All the examples are related to the public authority acting in its role as the authority, rather than employer. These examples were related to social benefits, housing, non-recognition of professional experience and difficult access to tax advantages (for example application of an old legislation only allowing nationals of the country in the housing register).

Again, most examples related to employment can be characterised as incorrect application of EU law by employers (problem 3). The examples covered all the relevant topics in the field of employment and there were examples from both public and private sectors, the public sector figuring more often than the private one. General administrative practices by the public sector were also found with regard to public authorities acting as an employer. With respect to the private sector, most examples referred to underpayment and poor working conditions. It could also be seen that underpayment and poor working conditions were most common among EU migrant workers from the newer EU Member States. This is however a concrete example of an area, where the Commission has no possibility to intervene in the cases disregarding EU law. The

⁴⁷⁹ AT, BE, DK, EL, FI, IE, LT, LU, LV, MT, NL, PL, PT, SK.

⁴⁸⁰ FR, LV, PT, SE, UK.

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Commission can provide the information about the migrant's rights and advise them to seek solutions through means available at the national level.⁴⁸¹ The Commission notes however that enforcement of these rights at a national level is often problematic. For a full overview of examples, please see Annex H.

Employment is an area where discrimination of EU migrant workers happens both directly and indirectly. The direct discrimination was mainly related to EU migrant workers from the newer Member States who were hired for lower salaries and worse working conditions than the nationals of the host country, or with respect to housing, where nationality of the host country was required in some cases. The indirect cases of discrimination were related to professional experience from other Member States not being taken into account, for example when calculating seniority, with respect to residence requirements for study grants and other social advantages, and with respect to frontier workers, in particular in the case of tax advantages.

Other issues

In addition to general obstacles to free movement, discrimination in terms of eligibility for employment and discrimination in terms of employment, some other issues have been identified that form barriers to free movement of workers. One of them seems to be the lack of information available to EU migrant workers concerning their rights. In a number of Member States, the research shows that it was difficult for EU migrant workers to access information about their rights. The lack of awareness of one's rights is also one of the drivers behind problems that EU migrant workers experience with respect to enforcement of rights for free movement, which is why it is interesting to provide additional evidence on the views of EU migrant workers.

According to one of the sources⁴⁸², this was a problem in Bulgaria, where citizens of other Member States had difficulties accessing information about their rights; in Ireland, where many migrant workers who arrived in the country were unaware of their rights; and in Lithuania, where the inability of people working in the public administration to speak other languages also prevented citizens of other Member States from getting information about their rights in a language they could understand.⁴⁸³

The Your Europe Advice also revealed that there were several complaints from nationals of newer Member States on the difficulty to get precise information about the conditions to start working in the host country.⁴⁸⁴ Finally, the impact case study conducted in the Netherlands showed that it was difficult for EU migrant workers to receive correct and appropriate information about working in the Netherlands. Where information was available, it was not always in a language that the EU migrant worker understood.

When looking at the responses of the EU citizens' public consultation, approximately two-thirds (65.8%) of the 117 respondents who have worked in another EU Member State were not informed about their rights under European law when moving to the host country. Of the 34.2% of respondents who were informed about their rights, 7.7% were informed by the national authorities, 2.6% were informed by a labour union, and 5.1% were informed by their employers. 18.8% of the respondents were informed through other sources, mainly friends, universities, or by searching on the internet, e.g. five respondents found information on EU web pages.

Table 63: When moving to another EU country for work, by whom were you informed of your rights under European law? (n=117)

| By whom were you informed? | No. of respondents | % of respondents |
|----------------------------|--------------------|------------------|
| National authorities | 9 | 7.7% |

⁴⁸¹ Commission staff working paper: Situation in the different sectors *accompanying the document* report from the Commission. 28th Annual Report on Monitoring the Application of EU law (2010). SEC (2011) 1093 final, 29.9.2011.

⁴⁸² Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁸³ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

⁴⁸⁴ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

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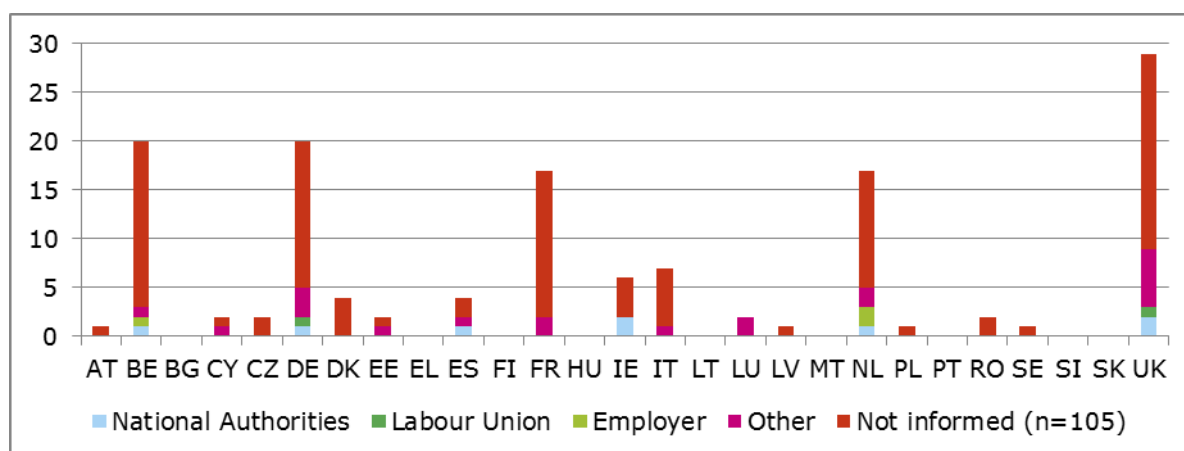
| | | |
|----------------|-----|-------|
| Labour union | 3 | 2.6% |
| Employer | 6 | 5.1% |
| Other | 22 | 18.8% |
| Total informed | 40 | 34.2% |
| Not informed | 77 | 65.8% |
| Total | 117 | 100% |

Source: Public consultation among citizens

When looking more specifically at the host countries, the five Member States where most respondents have worked⁴⁸⁵ stands out. According to the respondents, it seems that none of them paid sufficient attention to informing EU migrant workers about their rights, e.g. in France, only two respondents received information (by using EU information sources and by searching the internet). In general, most respondents found the information themselves, e.g. by searching the internet. It is not possible to estimate whether this is because the respondents *prefer* to find the information themselves, or simply due to lack of information.

Of the 40 respondents who received information, only two (5%) did not find that the information was provided in a language understandable to them. This indicates that there are no major language issues concerning the understanding of the information provided to EU migrant workers. Even the respondents who have worked in multiple EU Member States did not seem to have had any issues with the language in which the information was provided.

Figure 116: By host country: By whom were you informed of your rights under European law? (n=33)



Source: Public consultation among citizens

It is interesting to put this information into the context of the public consultation of organisations, where 70% of the participating organisations stated that they provide information to EU workers about their free movement rights. When looking at the data more specifically per Member State, it appears that in ten Member States⁴⁸⁶, all the respondent organisations provided information to EU workers on free movement rights. On the other hand, 50% or less of the organisations based in seven Member States⁴⁸⁷ provided information to the EU workers. Nevertheless, in most of these countries the number of respondents was limited. In Germany and Spain, both of which had a relatively high number of respondents, all the labour unions provided information but none of the employer organisations did. In Germany, other respondents that provided information included a private company and a NGO, but most of the NGOs did not. In Spain, a respondent from a NGO provided information, while a national authority did not.

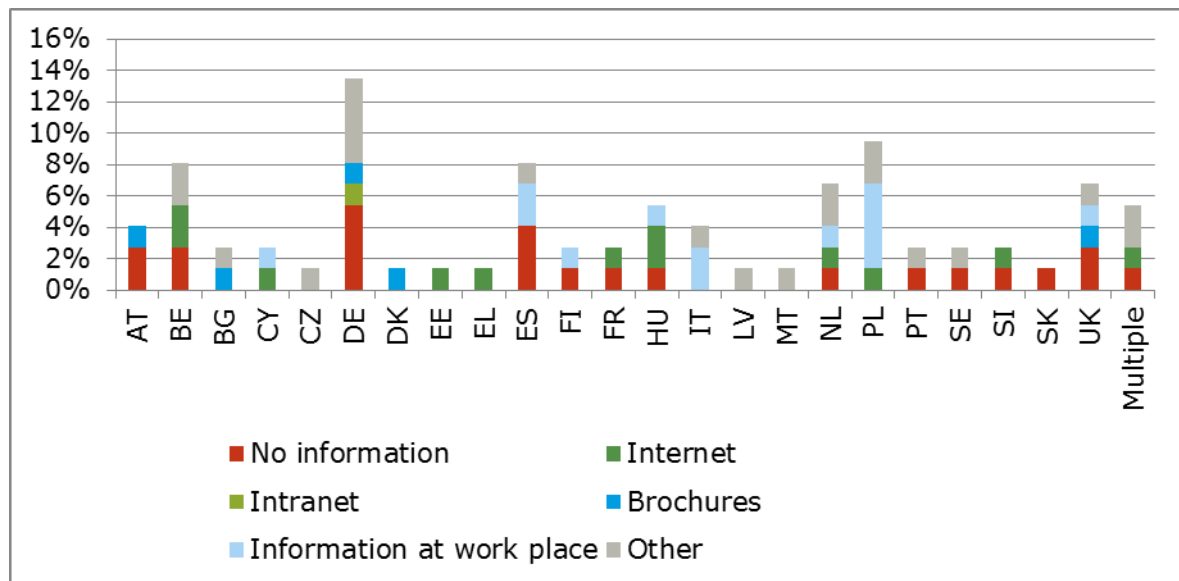
Figure 117: By Member State: Please specify how your organisation provides information? (n=74)

⁴⁸⁵ BE, DE, FR, NL, and the UK

⁴⁸⁶ BG, CY, CZ, DK, EE, EL, IT, LV, MT, PL.

⁴⁸⁷ AT, ES, FI, FR, PT, SI, SK, SE.

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Source: Public consultation among organisations

The responses of the organisations correspond relatively well with the experiences of the EU migrant workers. There are organisations in Belgium, Germany, France, the Netherlands and UK (the countries with the highest number of EU migrant workers who were not informed about their rights) that did not provide such information, but in the case of Italy, all responding organisations provided information either at the work place or by other means, whereas none of the EU migrant workers who responded to the public consultation were in fact informed about their rights.

1.2.2.1 Main findings on the specific scale of the problem

This section on the specific scale of the problem presented examples of discrimination of EU migrant workers on the grounds of their nationality from all Member States except Romania and Hungary⁴⁸⁸. The examples were divided into three different types of barriers:

1. Non-conformity of legislation at national, regional or local levels (problem 1);
2. Incorrect application of EU law by national, regional or local authorities (problem 2); or
3. Incorrect application of EU law by employers (problem 3)
4. Non-use of EU free movement rights (problem 4)

The examples of non-conformity with the EU legislation (problem 1) found in the Member States⁴⁸⁹ were mainly related to study grants and other social advantages, but nationality requirements for public services and excessive language requirements were also prominent. Two main drivers could be identified with respect to the problems of non-conformity of legislation. On the one hand, it can be that the national authorities do not interpret case law in the same way as the European Commission, and this is in particular relevant with respect to the above topics, where much of the legislative basis has been developed by the ECJ. On the other hand, it is possible that Member States have their own national objectives in mind when developing their legislation in particular with respect to study grants, and that they might not always pay close attention to whether the objectives are in accordance with the relevant EU legislation.

With respect to incorrect application of EU law by national, regional or local authorities (problem 2), examples were found in rules and regulations concerning the free movement of workers and definition of EU workers, and to a lesser extent in different topics related to eligibility for

⁴⁸⁸ The examples cannot be considered exhaustive, which is why it should not be stated that no barriers for free movement of workers exist in Hungary and Romania.

⁴⁸⁹ AT, BE, BG, CZ, DK, EL, FI, IE, LT, LU, LV, MT, NL, PL, SK.

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employment and employment. In some cases these problems may be driven by problems with non-conformity of national legislation (problem 1), and differing interpretation/understanding of the case law. Other drivers for problem 2 seem to be incorrect or lack of application by officials or judges of legislation (when public authorities are exercising their power as the authority, rather than as employer), and incorrect implementation of procedures to claim rights.

Examples representing incorrect application of EU law by employers (problem 3) were found in almost all Member States. These were found under all topics covered by EU law. In many cases the problem was caused by the employers (both public and private) not applying the existing legislation correctly (for example in the case where legislation does allow nationals of other Member States access to public positions, but where practice by the employing authority shows that this is rarely the case). This can be caused by a lack of understanding or awareness among employers of the rights of EU workers, and of their obligations with this respect. Some of the above examples can also be related to the limited awareness or understanding among EU workers of their rights. The above examples do not however include enough detail to gain a clear understanding of whether the underlying drivers are indeed caused by either limited awareness or limited understanding among EU workers of their rights.

1.2.3 Conclusions on the scale of the problem

The above sections that present the scale of the problem clearly reveal that discrimination on the grounds of nationality against EU migrant workers does take place. This discrimination is mainly of indirect nature, meaning that the rules or regulations applied do not concretely exclude nationals of other EU Member States, but the way these rules are written or applied favours the nationals of the host country.

The above sections also show that there are some differences between the views of the EU workers on the most important barriers to moving and working abroad on the one hand and the examples that were found based on existing cases of complaints or other reports on the other hand. This may be because the EU migrant workers were not aware of their rights to complain when they felt discriminated against.

Discrimination happens everywhere in the European Union; examples were presented from almost all Member States⁴⁹⁰.

Examples of non-conformity with EU legislation (problem 1) were found in approximately half of the Member States. These were mainly related to study grants and other social advantages, but also to nationality requirements for public services and excessive language requirements. All of these can be characterised as belonging to the area of legislation, where much of the current EU law is based on ECJ case law rather than concrete provisions in regulations or directives. The relevant case law has in these cases not always been codified, i.e. the relevant changes have not yet led to amendments in the legal texts. In order to implement the ECJ case law in the national legislation, it is required from the Member States that they are aware and up-to-date with the ECJ rulings and take them into account when developing the national legislation. It can thus be that the Member States, where non-conformity was identified, did not take into account the relevant rulings by ECJ. It may however also be that the Member States did not interpret case law in the same way as the European Commission. Moreover, it is possible that when developing their national legislation, Member States had their specific national objectives in mind without paying close attention to whether those objectives were in accordance with Article 45 TFEU and Regulation (EU) 492/11. For example with respect to the definition of an "excessive language requirement", the ECJ has stated that measures restricting free movement "must not go beyond

⁴⁹⁰ The examples cannot be considered exhaustive, which is why it should not be stated that no barriers for free movement of workers exist in Hungary and Romania.

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what is necessary"⁴⁹¹, but it may be more difficult for the Member States to assess, where the limit to "beyond what is necessary" goes.

Incorrect application of EU law by national, regional or local authorities (problem 2) were found in less than half of the Member States. These were found in particular in rules and regulations concerning the free movement of workers in general and definition of EU workers, and to a lesser extent in different topics related to eligibility for employment, and employment. Finally, examples of incorrect application of EU law by employers (problem 3) were found in almost all Member States. These were found under all topics covered by EU law.

A clear trend could be seen with respect to in particular problems 2 and 3: discrimination towards EU migrant workers from the newer EU Member States, in particular Romania and Bulgaria, still subject to transitional schemes is more common than discrimination towards EU migrant workers from elsewhere in Europe. Most examples of underpayment and poor working conditions were related to workers from the newer EU Member States. Likewise, Bulgarian and Romanian citizens have felt the most discriminated against of all EU nationalities when working abroad. The Your Europe Advice-feedback report⁴⁹² concludes that "most cases of **direct discrimination** affect nationals from countries which are or were the object of transitional restrictions in access to employment. There is therefore a "spill-over" effect of such restrictions." Even though the transitional measures are no longer in place for the EU-8, it seems that EU migrant workers from EU-8 still experience problems. The report concludes that there is the impression that local authorities feel that they have the right to treat EU migrant workers from newer EU Member States as "second-class EU citizens". The Your Europe Advice cases reveal that the negative consequences of transitional measures can be seen broadly. They are often related to Bulgarians and Romanians, but also to other nationalities, such as Poles, Lithuanians and Hungarians. The cases include workers and students, "who are employed in total ignorance of their rights (working time, minimum wages), if not simply illegally (undeclared work), often without suspecting it. They find out about their precarious situation when dismissed (often unfairly and without the last payments) or leaving their job, namely when claiming unemployment benefits, or simply when in need of healthcare. They also discover that they do not really have a right to remain in the host country because they had failed to register (or had not been registered by their employer) as workers."⁴⁹³

These findings indicate that the main challenges with respect to discrimination of EU migrant workers are not related to non-conformity with EU legislation, and that EU legislation as such is not the main problem. As mentioned above, most cases that were found with respect to non-conformity with EU legislation were related to study grants and other social advantages, as well as to nationality requirements for public services and excessive language requirements. It is the assessment of the contractor that the potential number of EU workers affected by these cases is relatively limited. Instead, there seems to be concrete challenges with respect to the practical application of the existing rules either in terms of general administrative practices, or as individual cases that disregard the EU law rather than barriers of systemic nature that would blatantly disregard the existing EU legislation. These conclusions support the findings by the European network on the free movement of workers, who state in their recent report⁴⁹⁴ that there is a limited number of problems of systemic nature in Member States that constitute unlawful discrimination. Most of the problems that exist are related to potential forms of indirect discrimination, such as excessive language requirements or taking into account previous work experience when calculating years at work.

⁴⁹¹ Gebhard and Consiglio Dell'Ordine Degli Avocati e Procuratori Di Milano C-55/94. See: Record of Proceedings: Seminar on Key Issues in Free Movement in Ireland, Law Society of Ireland, 5 November 2010.

⁴⁹² Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011.

⁴⁹³ Discriminations affecting mobility in the Internal Market. A Your Europe Advice feedback report, June 2011. Examples: 83998, 86187, 70979, 68292, 78153, 83492, 86508, 83881, 61738, 70575, 68902, 80636, 82127, 68442, 86687, 77423, 53570, 67111, 64585, 81595, 64022, 73898, 61693, 65378, 63793, 64591, 65082, 65969, 64591, 65082, 65969, 68477.

⁴⁹⁴ Weiss, Adam (ed.): Revised version of Thematic Report – Application of Regulation 1612/68, October 2011.

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While the majority of the examples found in this chapter represent the public sector, it should be kept in mind that the collection of examples is by no means complete, which is why this does not suggest that there are no challenges in the private sector. The violation of EU migrant workers' rights by private employers is more difficult to detect, and can only be identified when EU migrant workers complain to the court, to an equality body or other designated authority. The cases concerning private sector always fall under problem 3, which is also the level that is the most difficult one for the Commission to address. The Commission does not have the power to intervene in cases against private employers, for example when they demand their potential employees to fulfil excessive language requirements.

The data collected shows that the information provided to EU workers is very scarce and that problems often occur due to the lack of information. This goes for both the potential EU workers who are planning to move abroad, and to those EU migrant workers who are already working in an EU Member State other than the one they come from. It can thus be assumed that there are cases, where the main driver behind the problem is that EU citizens are either not aware, or do not understand their rights with respect to free movement. These drivers can be behind several types of problems, but as the above examples do not include enough detail to gain a clear understanding of the underlying drivers with this respect, it is not possible to specify to what extent this happens. However, evidence from other sectors shows that unawareness is indeed a challenge, in particular with respect to the EU citizens' means to claim their rights.⁴⁹⁵

The examples presented in the above chapter show also that lack of awareness concerning EU migrant workers' rights does not only apply to EU migrant workers, but also to the public authorities, employers and legal advisors. Several of the examples relating to problem 3 could be explained by non-awareness or lack of understanding of rights by the employers, judges, legal advisors or by the public authorities. This is supported by findings from other sectors, where it was found that "difficulties with reversing the burden of proof in practice result from limited awareness among judges and other members of the legal profession with respect to the requirement as well as the means of its application".⁴⁹⁶

⁴⁹⁵ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011.

⁴⁹⁶ Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law. Synthesis Report, February 2011