

Trade unions and free movement of workers in the European Union

ON THE OFFENSIVE

For: Social Europe
Solidarity Sustainability



8

This is one of a series of training modules produced as part of an ambitious European project, *Civil Society Dialogue: Bringing together workers from Turkey and the EU through a shared culture of work*, which aims to ensure better knowledge and understanding of one another and an awareness of the challenges and opportunities of future EU enlargement.

HOW TO USE THIS PUBLICATION

The training modules are intended to offer a short, clear introduction to the subject for a trade union audience, and each will have an educational activity that can be used in the classroom or with groups of members. A list of all the publications in this series can be found below, and copies can be downloaded from the ETUC website www.etuc.org/r/557

PUBLICATIONS IN THIS SERIES

1. Trade unions at the European level
2. Industrial relations at the European level
3. Turkish trade unions and industrial relations
4. Trade unions and industrial relations in EU countries
5. Trade unions and women
6. Trade unions and civil society
7. Trade unions and migration into the European Union
8. Trade unions and freedom of movement of workers in the European Union
9. Working together

ETUC MANIFESTO

At its 11th Congress in Seville, Spain, in May 2007, the European Trade Union Confederation (ETUC) adopted a Manifesto for Action for the next four years. This manifesto highlights five main areas where the ETUC is committed to going 'on the offensive' on behalf of European workers:

- **the European labour market**
- **social dialogue, collective bargaining and worker participation**
- **better European economic, social and environmental governance**
- **a stronger European Union**
- **stronger trade unions and a stronger ETUC.**

FOREWORD

The European Trade Union Confederation at its Congress in 2007 voted in favour of the accession of Turkey to the European Union, 'provided that it meets, in reality and not on paper, the requirements of membership and the provisions of the EU Charter of Fundamental Rights. A transformation of Turkish society with full rights and freedoms should be sought and completed during the challenging process of negotiations'.

It was on this basis that the ETUC, and its affiliated organisations in Turkey and in the European Union, agreed to step up their cooperation and launch this ambitious project *Civil Society Dialogue: Bringing together workers from Turkey and the EU through a shared culture of work*, which aims to ensure better knowledge and understanding of one another and an awareness of the challenges and opportunities of future EU enlargement.

The central elements of the project are:

- 12 exchange and mutual understanding seminars for trade unionists coming from different regions of Turkey on the one hand and from different Members States of the European Union on the other
- 9 training seminars, in cooperation with European Industry Federations.

The project has also produced this series of training modules which will provide an important tool for building capacity within the ETUC, by enabling other workers and trade unionists from both the EU and Turkey to understand the challenges ahead and to accept cultural, social and political differences more readily.



Thanks are due to:

- ETUC affiliated organisations – European Industry Federations and the national trade union confederations from the EU and Turkey that have carried this project forward
- workers and trade unionists from the national unions in Turkey and the EU who have taken part in the different training activities
- trainers from the national unions in Turkey and the EU, and Marcus Strohmeier (ÖGB) who coordinated the training activities and contributed to these booklets
- Nigel Rees (Trade Union European Information Project) who was responsible for editing the original texts for these educational booklets, and also Kazim Ates who was responsible for revising them
- Laura Fallavollita, Yücel Top and the other members of the project coordination committee (Osman Yıldız, Uğraş Gök and Kıvanç Eli Açık), who, under the guidance of Joël Decaillon and Jeff Bridgford, have brought the project to a successful conclusion.

I commend these training modules to trade unionists from the affiliated organisations of the ETUC. I encourage you to use them, so that we are all in a better position to defend workers' interests throughout Turkey and the European Union.

John Monks
General Secretary
European Trade Union Confederation

CONTEXT

The ETUC supports the freedom of movement of workers within the European Union and a managed migration system for those outside the European Union, based on the principles of workers' rights. Trade unions and migration into the EU is covered in training module 7 of this series, and this training module will concentrate on trade unions and free movement of workers in the European Union.

The 'common market' of the European Union is based on the famous 'four freedoms': of persons, services, goods and capital. This is reiterated in Article 45 of the Treaty of Lisbon – 'freedom of movement for workers shall be secured within the Union, and such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'.

These represent significant advances for working people, particularly when compared with the difficulties that existed beforehand in obtaining work permits. Clearly these rights are important for frontier workers who live in one Member State and work in another, but equally it means, for example, that an Italian can work and settle in Sweden and a Spaniard in Ireland.

Importantly for European trade unionists, workers have the right to equal treatment in respect of access to employment, working conditions and all other advantages which could help to facilitate the worker's integration into the host Member State. Workers coming from another EU Member State cannot be discriminated against on the grounds of nationality. They must be treated in exactly the same way as workers from the host country. More details can be found in a guide produced by the European Commission on this subject *Do you want to work in another EU Member State? – Find out about your rights!*.

It is the case however that on the occasion of the EU Enlargement in May 2004, the 'old' Member States

obtained a derogation of the right to free movement of workers to protect their labour markets. 'Transitional measures' were agreed, giving the EU15 Member States the option to restrict access to their labour markets to workers from the EU8 countries of Central and Eastern Europe. Three Member States (Ireland, Sweden and the United Kingdom) chose not to introduce them and others (Finland, Greece, Italy, Luxembourg, the Netherlands Portugal, Spain) dropped them after a few years. They are to be phased out completely in 2011.

The right to free movement was given a boost in 1985 when Germany, France and the Benelux countries (Belgium, the Netherlands and Luxembourg) signed an intergovernmental agreement on gradually abolishing internal border checks in the small Luxembourg border town of Schengen. The Schengen Agreement was followed in 1990 by the Schengen Convention, which finally came into force in 1995. It now covers 22 EU Member States (Belgium, the Czech Republic, Denmark, Estonia, Germany, Greece, Spain, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Finland, Slovakia, Slovenia and Sweden) plus Iceland, Norway and Switzerland.

The right to look for a job has been supported by an initiative set up by the European Commission – the European Job Mobility Portal. It provides information about job opportunities within the European Union, the rules and procedures linked to employment in different countries and practical information living and working conditions.

<http://ec.europa.eu/eures/>

Things to consider

What are the pros and cons of going abroad to work? Would you consider going abroad to work?

This does not mean that working men and women will automatically decide to go and live abroad to work, but it does mean that they can, legally, if they so wish. There are obvious obstacles to the free movement of workers, not least the challenge of living away from home in another country with a different culture and a different language. There are others potential obstacles too – access to social security systems, portability of pensions and recognition of educational and training qualifications – which are being addressed by the European Union.

POTENTIAL OBSTACLES TO THE FREE MOVEMENT OF WORKERS

1. Access to social security systems

A serious obstacle to free movement of workers initially was the exclusive nature of national social security systems. This was addressed by Regulation (EEC) No 1408/71, which provided for equal treatment for all EU nationals, as regards the following aspects of social security schemes – sickness and maternity benefits, invalidity benefits, old age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, unemployment benefits, family benefits and death grants. A subsequent problem was the inability to accumulate rights when moving from one national system to another, which was addressed by a Regulation (EC) No 883/2004 simplifying and clarifying the Community rules for the coordination of Member States' social security systems. More information on these issues can be obtained for a guide published by the European Commission *The Community provisions on social security*.

Another obstacle has been overcome in a highly visible and practical way. A European Health Insurance Card has been introduced. This can be used to obtain public sector health care (from a doctor, a pharmacy or a hospital) during a temporary stay in a Member State other than the one in which the person is insured.

2. Portability of pensions

Another potential obstacle to the free movement of workers has been the loss of recognition of contributions to pension schemes. This has generally been resolved for state pension schemes, but this is far from being the case for other types such as supplementary occupational pension schemes which are most often provided by employers.

After fifteen years of discussions, some involving the social partners, no voluntary agreement was reached, and the European Commission put forward a new Directive. It proposed a duty on national governments to adjust pension benefits left behind by a mobile worker so that no loss was incurred, to confer a right of pension transfer to the new employer and to restrict waiting periods to one year, vesting periods to two years and vesting ages to twenty-one or younger. However, the European Parliament passed several amendments to the proposal which effectively removed the right to transfer. It also increased the maximum allowed vesting period to five years and the vesting age to twenty-five.

The ETUC described the decision taken by the European Parliament as having taken 'a step backwards' and pointed out the disadvantages to workers on successive fixed term contracts who would never finish a five year vesting period and to young people under twenty-five who could not begin making contributions count, adding that the obligation on employers to inform workers about the consequences for their pensions of changing jobs had been watered down.

Further progress on this proposal is awaited.

3. Recognition of educational and training qualifications

A further potential obstacle to freedom of movement within the EU has been the recognition of educational and training qualifications. In 2008 the European Parliament and the Council agreed a Recommendation to create a European Qualifications Framework (EQF) that would make national qualifications more readable across all the EU Member States and in this way support the freedom of movement of workers. This Recommendation encourages countries to relate their qualifications systems or frameworks to the EQF by 2010 and to ensure that all new qualifications issued from 2012 onwards carry a reference to the appropriate EQF level.

The EQF is divided into eight reference levels describing what a learner knows, understands and is able to do – ‘learning outcomes’. Levels of national qualifications will be placed at one of the central reference levels, ranging from basic (Level 1) to advanced (Level 8). It should therefore enable easier comparisons between national qualifications. It should also mean that workers do not have to repeat learning if they move from one country to another or be employed at levels below what they could expect on the basis of their educational and training achievements.

In addition in 2009 the European Parliament and the Council agreed a recommendation on the establishment of a European Credit System for Vocational Education and Training (ECVET). This system will make it possible to facilitate the transfer of assessed learning outcomes from one Member State to another and in this way improve the recognition of qualifications in vocational training.

CLASHES BETWEEN FREEDOMS – THE RULINGS OF THE EUROPEAN COURT OF JUSTICE

Whilst the freedom of movement of workers has generally been welcomed by trade union organisations throughout the European Union, a less positive side is emerging, the undermining of workers’ fundamental rights, as a result of the rulings of the European Court of Justice (ECJ).

The European Court of Justice has an important role to play in reviewing the legality of the acts of the institutions of the European Union, ensuring that Member States comply with their obligations under the Treaties, and in interpreting European Union law. Recently it has made a series of rulings that have far-reaching implications for trade unions and workers in Europe, and for fundamental workers’ rights, collective bargaining and industrial action in the Member States.

The first and best-known case is the *Laval* case (also known as the *Vaxholm* case). There are others, *Rüffert*, *Viking* and *Luxembourg*, which all go in a similar direction.

The **Laval** case illustrates this new trend. A Latvian company *Laval* won a contract to build a new school in Sweden and imported Latvian construction workers to do the work. It refused however to come to an agreement with the appropriate Swedish trade union, preferring to pay Latvian rates of pay. When the Swedish trade union in question, *Byggnads*, organised a blockade of the site, *Laval* brought an action against them which eventually reached the ECJ. In its judgment the court allowed that unions could take industrial action for ‘overriding reasons of public interest’, including direct undercutting of local wages, however this did not apply when minimum standards were observed. These standards were embodied in the *Posting of Workers Directive* (covering workers that cross the borders in the framework of services).

In the **Viking** judgment a similar balance was struck. A ferry company sought to re-flag a ship from Finland to Estonia so that they could employ Estonian crews on the lower wages existing in that country. The Finnish Seamen's Union informed the International Transport Workers Federation (ITF) of Viking's intention, and the federation organised a boycott forbidding all unions from negotiating with the firm. Again the case reached the European Court of Justice for a decision on the conflicting principles. Although the ECJ affirmed the right to take collective action under the European Social Charter and the International Labour Organisation (ILO) conventions, it ruled that this must be 'proportionate' and 'not go beyond what is necessary'. It was for national courts to decide what action was suitable in each case.

In **Rüffert** a case was brought, not against a trade union, but against a local authority. The German region of Lower Saxony operated a procurement policy which insisted that companies winning contracts with it must pay wages at the rate stipulated in the applicable collective agreement. However when Objekt und Bauregie GmbH & Co. was successful in tendering for building work, they sub-contracted this to a Polish firm whose workers were receiving less than half the agreed minimum wage for the sector. The local authority then withdrew the contract, and Dirk Rüffert, on behalf of the company in question, took the case to the European Court of Justice. Basing its decision on the provisions of the Posting of Workers Directive the ECJ ruled that the Lower Saxony region could not insist on the agreed minimum, because only collective agreements that were 'universally applicable' were allowed by the Directive. Because the procurement policy only applied to the public sector it was not 'observed by all undertakings in the geographical area and in the profession or industry concerned'.

The final judgment of the four was made against a Member State government. In **Luxembourg** the Posting of Workers Directive had been implemented

in such a way that foreign companies were required to provide a written contract of employment, to raise pay with the cost of living and to respect collective agreements and rules on part-time work. National legislation also insisted that they provide information to labour inspectors on request and always have a representative in the country. The European Commission regarded these laws as having 'over-implemented' the Posting of Workers Directive, and the ECJ agreed with them. The law in Luxembourg will now have to be re-written.

THE ETUC RESPONSE

The ETUC considers that the four recent ECJ cases have exposed the weaknesses in the current EU legal framework applicable to fundamental social rights and the free movement of workers and services. The ECJ has confirmed a hierarchy of norms, with market freedoms highest in the hierarchy, and the fundamental social rights of collective bargaining and action in second place. The ECJ has interpreted the Posting of Workers Directive, in a very restrictive way, limiting the scope for trade unions to take action against 'social dumping' – unfair competition on wages and working conditions leading to a spiral downwards – and to guarantee equal treatment of local and migrant workers in the host country.

The ETUC considers that a European labour market requires European 'rules of the game', which combine open borders with adequate protection. The key conditions for this are:

- equal wages and working conditions for work of the same value on the same territory
- full respect for national collective bargaining and industrial relations systems as indispensable and dynamic tools to manage change in a democratic way
- equal access of all workers to social benefits
- proper instruments and tools for monitoring, enforcement and application in practice for stakeholders at all relevant levels, including the social partners.

The EU needs a rigorous commitment from its Member States to fully implement the free movement of workers provisions of the Treaty across the EU, based on equal treatment and non-discrimination of workers and companies in the place where the work is done (the host country principle).

Member States, where appropriate in cooperation with social partners, should more actively and intensively inform their population on the legal framework for free movement of workers and the rights of the workers involved in order to reduce unfounded fears and concerns.

Member States in consultation with social partners should, where necessary, address the weaknesses of their national systems which may lead to an increase in undeclared work, non-application of labour standards and unfair competition on wages and working conditions, and make them 'mobility proof'. This can help reconsideration of replacing transitional restrictions, where still existing, by appropriate conditions for open borders.

The ETUC has a two-pronged approach. First of all it is engaged in working to influence the decision-making process of the European Union (for more details, see booklet 2 *Industrial Relations at the European level*).

The ETUC has the following proposals:

- revision of the Posting of Workers Directive, to strengthen it and better achieve its aims of guaranteeing fair competition and the respect for workers' rights
- strengthening of the so-called 'Information Directive' (about the minimum information that workers should receive from their employer regarding their employment relationship) to include all relevant provisions regarding their employment situation in the host country especially in situations of posting

- the addition of a Social Progress Protocol to the Treaties, confirming social progress as a clear objective of the internal market.

Secondly, the ETUC proposes the adaptation of trade union actions, activities and structures, in order to provide the workers concerned, especially those temporarily working abroad, with adequate and effective information, support and protection regarding their social and labour rights. It is now more urgent than ever to invest in cross border solidarity. Mutual aid systems between unions cross border on a bilateral as well as multilateral basis must be further developed, building on existing good practice, and the possibility for wider cooperation under the ETUC umbrella must be explored.

One example of support has been provided by the Trades Union Congress. Once in the UK, many migrant workers are unaware of their legal rights or unable to enforce them and face exploitation at work as a result. For that reason the TUC has produced a series of leaflets for people coming to work in the UK, giving information about legal rights to work. These booklets are available in many EU languages (Czech, Estonian, French, Hungarian, Latvian, Lithuanian, Polish, Portuguese, Slovak and Spanish) and also Russian. This information is being prepared also in Turkish.

Free movement of workers is a fundamental right, a freedom and not an obligation.

Too often, politicians promote high levels of mobility as an aim in itself, but the European Union needs to reflect on how much mobility it really needs. Increased and accelerated mobility levels may also have negative side effects, leading for example to erosion of communities and local cohesion. If people are forced to exchange one precarious job for another one, job mobility is not something to be welcomed.

When high skilled workers are forced to move out of poverty, to earn more in another country where they are employed far below their skills level, this is a waste of human capital. Some countries, which instead of investing in employment at home relied heavily on their workers being employed elsewhere, are now faced with return-migration of thousands of workers that they cannot offer proper employment.

Activity

Free movement of workers in the European Union

AIMS

To enable you to:

- understand your rights to freedom of movement
- think through what support workers might need in your country
- determine how your union can help

TASK

Consider the kinds of support you think migrant workers might need when working in your country. You might want to consider:

- employment rights
- health and safety regulations
- language
- qualifications
- other

Research the arrangements in place in your country to support migrant workers. Check your union website and other useful sources of information.

What are the steps your union would need to take to bring about improvements on what is on offer?

FURTHER INFORMATION

The European Trade Union Confederation (ETUC) was set up in 1973 to promote the interests of working people at European level and to represent them in the EU institutions. The ETUC's objective is an EU with a strong social dimension that safeguards the wellbeing of all its citizens. At present, the ETUC has in membership 82 national trade union confederations from 36 European countries, as well as 12 European Industry Federations, plus observer organisations in Macedonia, Serbia, and Bosnia and Herzegovina. Other trade union structures such as EUROCADRES (the Council of European Professional and Managerial Staff) and EFREP/FERPA (European Federation of Retired and Elderly Persons) operate under the auspices of the ETUC. In addition, the ETUC coordinates the activities of the 45 IRTUCs (Interregional Trade Union Councils), which organise trade union cooperation at a cross-border level.

The ETUC is one of the European social partners and is recognised by the European Union, by the Council of Europe and by EFTA as the only representative cross-sectoral trade union organisation at European level.

www.etuc.org

PROJECT PARTNERS

	Algemeen Belgisch Vakverbond – Fédération Générale du Travail de Belgique – ABVV-FGTB	www.fgtb.be/
	Algemene Centrale der Liberale Vakbonden van België – Centrale Générale des Syndicats Libéraux de Belgique – ACLVB-CGSLB	www.aclvb.be/
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	European Metalworkers' Federation – EMF	www.emf-fem.org/
	European Federation of Public Service Unions – EPSU	www.epsu.org/
	European Transport Workers' Federation – ETF	www.itfglobal.org/etf/
	European Trade Union Federation: Textile, Clothing and Leather – ETUF-TCL	www.etuf-tcl.org/
	UNI-Europa	www.uni-europa.org/



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Civil Society Dialogue – Bringing together workers from Turkey and the EU through a shared culture of work

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