Freedom of Movement in the EU: Equality Bodies Tackling Discrimination of Union Workers
Freedom of Movement in the EU: Equality bodies tackling discrimination of Union workers is published by Equinet, European Network of Equality Bodies. Equinet brings together 47 organisations from across Europe which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.


*This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

Equinet Secretariat | Rue Royale 138 | 1000 Brussels | Belgium | info@equineteurope.org | www.equineteurope.org
© Equinet 2021 - Reproduction is permitted provided the source is acknowledged.

This is a publication of Equinet’s Cluster on Freedom of Movement, prepared based on the information, contributions and comments provided by members of the Cluster. The views expressed in it belong to the authors and neither Equinet nor the European Commission are liable for any use that may be made of the information contained therein. This information does not necessarily reflect the position or opinion of the European Commission.
# Table of Contents

**Acknowledgements** 4

**Introduction** 5
   - EU law on free movement of persons 5
   - Free movement of persons in practice 5
   - Directive 2014/54/EU 7
   - Equality bodies as art. 4 bodies 9

1: **Equality bodies designated as art. 4 bodies** 10
   - The mandate and its scope 10
   - Differences between the mandates and functions of art. 4 bodies and equality bodies 11
   - Nationality as a discrimination ground 12

2: **Good practices, casework and building partnerships** 14
   - Research 14
   - Advocacy and policy work 15
   - Promotion of the freedom of movement 17

Cases 18
   - Diploma Recognition 18
   - Access to positions 19
   - Recognition of work experience 19
   - Pay gap 20
   - Access to social security and retirement 20
   - Residency and Housing 21
   - Goods and services in general 22

Fostering partnerships 23
   - EURES 24
   - SOLVIT 24
   - European Labour Authority 25
   - Your Europe Advice 25

3: **Challenges and Ways Forward** 26
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Challenges</td>
<td>26</td>
</tr>
<tr>
<td>Staff and Funding</td>
<td>26</td>
</tr>
<tr>
<td>The mandate</td>
<td>28</td>
</tr>
<tr>
<td>Underreporting of cases and lack of awareness</td>
<td>29</td>
</tr>
<tr>
<td>Recommendations</td>
<td>29</td>
</tr>
<tr>
<td>National level</td>
<td>30</td>
</tr>
<tr>
<td>EU Level</td>
<td>30</td>
</tr>
<tr>
<td>Action plans or initiatives regarding the topic of freedom of movement</td>
<td>32</td>
</tr>
<tr>
<td><strong>Concluding remarks</strong></td>
<td>33</td>
</tr>
</tbody>
</table>
Acknowledgements

Background

This discussion paper is a result of the work conducted by Equinet’s Freedom of Movement Cluster since 2018. Its findings are largely based on national updates from the members and on a survey organized by a Taskforce within the Cluster, circulated among the members earlier this year. The questionnaire focused on the mandates of art. 4 bodies under their national law. Several questions revolved around the daily work of the art. 4 bodies, on any good practices worth sharing as well as on the challenges that the art. 4 bodies still face in fully realizing their potential. All members were also asked to come up with potential recommendations to overcome these obstacles. This publication presents a summary and analysis of the outcomes of the survey.

The purpose is not only to deliver an overview of the work of national equality bodies dealing with freedom of movement issues and cases, but also to provide an overview of relevant legislation, good practices, and challenges that the equality bodies face in their work. Equality bodies that have been mandated as so-called Freedom of Movement Bodies or article 4 Bodies, and other actors working on the topic can use it as a guide or starting point regarding general information on Freedom of Movement in the European Union. At the same time, the paper provides relevant information and important reflections for multiple external stakeholders such as national governments, EU Institutions or Agencies and helps them to understand what is happening in the field and what challenges article 4 bodies are facing today. The discussion paper does not claim to be a complete and detailed final report, but rather an account from the view of equality bodies, in order to show how the situation has evolved since Equinet published its last discussion paper on freedom of movement in 2015.

Authors

The main contributors from Equinet’s Freedom of Movement Cluster were:

- Diana Ureche (National Council for Combating Discrimination, Romania)
- Iva Fellerová Palkovská (Public Defender of Rights, Czech Republic)
- Gilles Boulgen (Centre for Equal Treatment, Luxembourg)
- Laurent Fastrez (Unia - Interfederal Centre for Equal Opportunities, Belgium)

The Paper was coordinated by Equinet Secretariat staff, Julia Konowrocka (Policy Officer).

If you are interested in finding out more about a specific case or project, please consult Equinet’s European Directory of Equality Bodies and contact the relevant equality body.
Introduction

EU law on free movement of persons

Freedom of movement for workers is one of the cornerstones of the European Union and its internal market. It is enshrined in Article 45 of the Treaty on the Functioning of the European Union and the rights of workers and corresponding obligations of Member States are further elaborated in Regulation 492/2011. It sets forth the broadly formulated right to equal treatment of Union workers that covers not only the right to employment, but the whole employment relationship as well as other important areas that are closely tied with the workers’ and their families’ residence in another Member State.

The material scope of Regulation 492/2011 covers:

- Access to employment;
- Conditions of employment and work, in particular as regards remuneration, dismissal, health and safety at work, and, if Union workers become unemployed, reinstatement or re-employment;
- Access to social and tax advantages;
- Membership of trade unions and eligibility for workers' representative bodies;
- Access to training;
- Access to housing;
- Access to education, apprenticeship and vocational training for the children of Union workers;
- Assistance afforded by the employment offices.

It is important to note that the personal scope of the Regulation applies to Union workers and their family members. It does not apply to other mobile EU citizens who move on a different basis.

The concept of the citizenship of the European Union that was introduced by the Maastricht Treaty made it possible to strengthen the rights that nationals of Member States, i.e. EU citizens, possess. Regardless of the economic activity or non-activity, citizenship is supposed to be the fundamental status of every EU citizen. Citizenship comes with a set of rights, one of them being the right to move to another EU country and reside there, which is enshrined in Art. 21 of the TFEU and in the Directive 2004/38/EC. It should also guarantee the right to equal treatment. Exceptions to this right are permitted, but have to be stipulated by the Treaties or by secondary law.

Free movement of persons in practice

Despite the fundamental importance of free movement of workers in the EU, the number of mobile Union workers remains relatively low. According to the Annual Report on Intra-EU Labour Mobility 2020, in

---

2019 there were 17.9 million EU movers\(^2\) which make 4.2\% of the total labour force\(^3\). Nevertheless, the number of mobile workers continues to grow, although at a slower pace. It follows from the Report, that Union workers move across the European Union unevenly. Most of the Union workers reside in Germany (and the UK, when it was an EU Member State), followed by France, Italy and Spain. However, the country with the highest proportion of EU movers is Luxembourg, followed by Cyprus. In addition to the almost 18 million EU movers, there are 1.5 million cross-border workers and 4.6 million postings, which equals approximately 3 million persons\(^4\). The most common countries of origin are Romania, Poland and Italy. From these numbers it becomes visible that the situation of EU Member States differs to a large extent. However, the issues of Union workers who reside in a country other than their country of origin may in several aspects be very similar.

The European Commission identified three sets of problems that lead to discrimination on grounds of nationality and discourage EU citizens from moving and working abroad\(^5\).

**Firstly**, rules provided for by the EU law are sometimes not complied with by public bodies. The rules are not taken into account appropriately because public bodies are not always familiar with relevant EU legislation and its correct interpretation, and also with the direct applicability of some of the EU legal norms. Often the misapplication takes place in administrative practice only and does not affect the implementing legislation which makes it more difficult to detect. Another reason for the non-compliance of national legislation and administrative practice with EU law might be the unwillingness to implement it correctly in order to protect the domestic labour market and other national interests\(^6\).

**Secondly**, private individuals and companies do not comply with the rules of EU free movement law, and this concerns especially employers. Cases of non-compliance are found regardless of whether national legislation is or is not in conformity with EU law. The reason for the misapplication might be either low awareness or even ignorance about the rules and their correct application. Sometimes it is also the unwillingness to apply EU law correctly and treat employees and jobseekers from other EU countries equally to nationals. Employers might be influenced by stereotypes about foreigners, about their qualifications, working habits or the short duration of their residence\(^7\).

**Thirdly**, lack of information about Union workers’ rights and means of redress is a huge obstacle for those Union workers who feel disadvantaged. Employees often have little knowledge about their rights and obligations under the labour law of the host country. Even if they have it, they don’t know what options of defense they have, which public bodies may help them (labour inspection authorities, job centres, ombudsman institutions, etc.), how to approach them or where to find other help (e.g. NGOs). Bringing a lawsuit to court is particularly difficult due to the cost and length of court proceedings. Many workers fear that they would face retribution from their employer if they were to complain and may lose the job.

\(^3\) Annual Report on Intra-EU Labour Mobility 2020, p. 20.
\(^4\) Annual Report on Intra-EU Labour Mobility 2020, p. 4.
consequently. For mobile workers, losing a job could make it necessary for them to have to return to their home state. Taking legal steps from abroad is even more arduous.\(^8\)

This analysis has brought to light the gap between the stated rights of Union workers and their family members and the actual reality that many workers face daily. Some of these problems might be solved by initiating infringement procedures by the European Commission. An infringement procedure is an efficient tool to remedy flawed national legislation and serious errors in administrative practice. However, it brings no direct benefit for the individuals who are adversely affected by such legislation or administrative malpractice, as the infringement procedure is not intended to remedy individual cases of malpractice. Moreover, breaches of EU law by private parties (mainly employers) have to be dealt with by other means, i.e. individual actions. Taking legal steps requires that the affected person has at least a basic knowledge of their rights and the ability to stand up for their interests.

In 2013, the European Commission concluded that the best solution for the above-mentioned problems is to create a new public body in each Member State\(^9\). Consequently, the Commission put forward a proposal for a directive which would require Member States to establish such a body. The aim of such a public body was to provide advice and assistance in individual cases. This would help overcome the basic barriers of migrant workers to successfully assert their rights, i.e. the lack of information about their various rights and the lack of capacity to assert them. Due to a good amount of knowledge on the issues that migrant workers regularly face, the public body could also work on a systemic level and request the State and its public authorities to take remedial action. Thus, it would connect the individual and systemic approach and combine their benefits.

The legislative proposal of the Commission was adopted in April 2014 as Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. Since May 2016, Member States have been obliged either to establish a new body or entrust an already existing body with new competences and guarantee its functioning to help better enforce EU rules on free movement of workers.

Several of the assigned bodies under Directive 2014/54/EU are national equality bodies, the work of which is presented in this discussion paper.

**Directive 2014/54/EU**

The material scope of Directive 2014/54/EU is identical to the material scope of Regulation 492/2011, i.e. it covers work and employment, social affairs and taxes, education and housing. It does not bring any new substantive rights for workers, rather it seeks to increase the efficiency of enforcement of the already existing rights.

The Directive requires Member States to ensure that migrant workers have the possibility to assert the rights granted by the Regulation in court, if they feel that their rights have been violated. Moreover, under national law, it should be possible for migrant workers to be supported or represented by supporting associations or organisations, including social partners, when asserting their rights in judicial or administrative proceedings.

Aside from this, as was already mentioned, according to article 4 of the Directive, Member States are obliged to designate one or more bodies ‘for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family without discrimination on grounds of nationality, unjustified restrictions or obstacles to their right to free movement’, commonly referred to as art. 4 bodies.

The competences of article 4 Bodies should entail:

- Providing or ensuring the provision of independent legal and/or other assistance to Union workers and members of their family, without prejudice to their rights, and to the rights of associations, organisations and other legal entities;
- Acting as a contact point vis-à-vis equivalent authorities in other Member States in order to cooperate and share relevant information;
- Conducting or commissioning independent surveys and analyses concerning unjustified restrictions and obstacles to the right to free movement, or discrimination on grounds of nationality, of Union workers and members of their family;
- Ensuring the publication of independent reports and making recommendations on any issue relating to such restrictions and obstacles or discrimination;
- Publishing relevant information on the application of the Union rules on free movement of workers at the national level.

The Directive allows Member States to extend their competences as art. 4 bodies so that they cover not only Union workers, but all EU citizens who exercise their right to free movement, including their family members, in accordance with Article 21 TFEU and Directive 2004/38/EC. Most countries have made use of this provision\textsuperscript{10} so that the bodies may assist their clients notwithstanding their status.

Most Member States conferred the tasks of art. 4 bodies to existing national equality bodies, although in some cases the equality body is only one of several bodies designated to work on freedom of movement. In countries where equality bodies have not been designated as art. 4 bodies, the tasks have

been entrusted to other existing institutions, such as governmental ministries and labour market authorities. Only two Member States established a completely new body.

Equality bodies as art. 4 bodies

The reason why equality bodies in several EU Member States have been entrusted with the tasks of an art. 4 body is due to the fact, that the method of work is very similar to their already existing competences on discrimination and equal treatment. Both mandates consist of complex work with victims of discrimination (both on standard discrimination grounds and on grounds of nationality), providing support, conducting policy work and research.

Directive 2014/54/EU and EU Equal Treatment Directives both require equality bodies to:

- Provide independent assistance to those affected by discrimination;
- Conduct independent surveys;
- Publish reports and issue recommendations;
- Exchange existing information with other bodies and institutions.

A more detailed analysis of the similarities between the mandates of equality bodies and art. 4 bodies has been carried out in 2015, in a previous Equinet Discussion Paper on Equality Bodies and Freedom of Movement.

On the other hand, there are some important differences between the mandates of art. 4 bodies and equality bodies. Primarily, equality law and free movement law represent disparate areas of law and thus pursue different aims. They are built on very different foundations. The purpose of equality law is closely tied with the protection of human rights and dignity, and anyone irrespective of his or her nationality may invoke the right not to be discriminated against on grounds that are stipulated by EU Equal Treatment Directives. On the other hand, free movement law aims to protect the functioning of the internal market of the European Union. Only citizens of the European Union (and their family members) are entitled to protection under free movement rules.

These two areas of law are governed by different sets of legislation. Furthermore, the case law related to equality law is generally not applicable to cases regarding freedom of movement. As a result, equality bodies do not automatically possess the necessary expertise needed to carry out the tasks of an art. 4 body properly. This is one of the main reasons why, in reality, carrying out the tasks acquired under the mandate of an art. 4 body poses a challenge to several equality bodies.

---

11 For a complete list of bodies promoting equal treatment and supporting workers in the European Union and their family members, please refer to this website: https://ec.europa.eu/social/main.jsp?catId=1277&langId=en

1: Equality bodies designated as art. 4 bodies

At the moment, there are 17 Member States in which equality bodies also perform the function of an art. 4 body (Austria, Belgium, Czechia, Estonia, Finland, France, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia and Slovenia). In most of these countries, the equality body is the only institution designated as an art. 4 body. However, there are a few exceptions - in Austria, Finland, Lithuania, Slovakia and Slovenia there is more than one body designated to work on freedom of movement, aside from the equality body. As has been previously mentioned, in such cases, the other bodies working on freedom of movement tend to be the governmental ministries of employment, although this is not always the case. In Belgium, for example, there are two bodies working on freedom of movement - Myria (the Belgian Federal Migration Centre) and Unia (Interfederal Centre for Equal Opportunities), which is also the Belgian Equality Body.

Among these 17 members of Equinet’s Freedom of Movement Cluster, 13 filled-out surveys from 12 equality bodies in EU Member States have been received. 11 of the responses are from equality bodies which have been designated as art. 4 bodies. From the remaining 2, one has been sent by Myria, which works closely with Unia, the Belgian equality body, and participates in Equinet’s Freedom of Movement Cluster, whereas the other came from an equality body, which is not mandated as an art. 4 body but has worked with discrimination issues related to the topic, mainly because migrant Union workers have previously turned to them for help (Office of the Ombudswoman, Croatia). Additionally, we have received some information from the Netherlands Institute for Human Rights, which acts as contact point. The survey has not been sent to other art. 4 bodies, which are not equality bodies, as they are not members of Equinet and thus fall outside the scope of this discussion paper.

The mandate and its scope

As mentioned in the previous chapter, most Member States have chosen to confer the tasks of an art. 4 body to a national equality body. This usually requires an amendment of national legislation in order to broaden the existing mandate of the equality body. This is done so that it is officially and legally competent to perform the new tasks. In some Member States, the mandate of the equality body had already been broad enough to encompass the new tasks, at least partly. However, our survey has shown that even if Member States reported to the European Commission that their equality body is going to perform the tasks of an art. 4 body, this does not necessarily mean that the mandate of the equality body has been amended accordingly.

Among the 11 survey responses that we have received from equality bodies acting as art. 4 bodies, only one body, the Austrian Ombud for Equal Treatment, stated that its mandate has not been amended, and that it essentially prevents them from performing the tasks of an art. 4 body. In Luxembourg, the Centre for Equal Treatment stated that its mandate has been amended, but it covers only one of the several tasks embedded in the Directive, namely carrying out research and surveys. The ability of this Body to fulfill the work related to freedom of movement is thus very limited.
10 equality bodies reported having a legal mandate to effectively perform the function of an art. 4 body. The mandates of 4 equality bodies had been sufficient already prior to the adoption of the Directive, meaning that it did not have to be amended. The mandates of the other 6 equality bodies have been amended accordingly. Nonetheless, it needs to be mentioned that the process of implementing the Directive and conferring the mandate to equality bodies has not been without problems. The mandates of two equality bodies have been amended significantly later than the Directive required (The Public Defender of Rights in Czechia and the National Council for Combatting Discrimination in Romania). The Netherlands Institute for Human Rights acts only as a contact point and the Croatian Office of the Ombudsman has not been designated as an art. 4 body, therefore their mandates have not been amended. In spite of that, these equality bodies do assist EU citizens if they file a case that falls under the body’s mandate as an equality body, thus effectively performing a part of an art. 4 body’s functions.

Although the focus of the Directive is to facilitate freedom of movement for Union workers, it also precisely provides the option to extend the competences of art. 4 bodies so that they also cover EU citizens who are not workers. Most of the Member States, which explicitly conferred the tasks of an art. 4 body to an equality body, have made use of this option and extended the competences of the art. 4 body in accordance. This is in line with the general mandates of equality bodies, who help victims of discrimination and do not inquire about the precise status of their clients – whether they are economically inactive or active, workers, self-employed, students etc.

Differences between the mandates and functions of art. 4 bodies and equality bodies

The basic functions of art. 4 bodies and equality bodies are to a large extent similar. That is likely another reason why so many equality bodies have been assigned the task of becoming freedom of movement bodies. However, there may still be differences between the two mandates, which partially stem from the implementation of national legislation and partially from EU legislation.

Among the members surveys, 3 art. 4 bodies stated that their work as a freedom of movement body does not differ from their work as an equality body. However, all the other respondents notice at least minor differences in their work. Several bodies have pointed out that they had to broaden the area of their expertise in order to also cover freedom of movement issues, which is sometimes uneasy due to the completely different set of legislation and case law necessary to know. Below we have outlined a few examples.

The National Commission for the Promotion of Equality in Malta is obliged to provide independent legal assistance in cases related to freedom of movement, however it has no such obligation in cases of equality law. The Public Defender of Rights in Czechia has observed the main difference in having to deal with other stakeholders when enacting the freedom of movement mandate, i.e. with different public authorities and NGOs. Similarly, the National Council for Combatting Discrimination in Romania assessed that the main difference is the inter-institutional cooperation that is explicitly provided for by the law. The Romanian Equality Body considers this cooperation as a great asset. The Public Defender of Rights in
Czechia further noted that raising visibility among EU citizens about their work is particularly challenging as regards freedom of movement. In Belgium, Unia (the Interfederal Centre for Equal Opportunities) stated that the competences and necessary expertise is even broader for freedom of movement issues than in issues related to equality law because the freedom of movement mandate includes not only discrimination but also non-discriminatory obstacles to free movement. For the Austrian Ombud for Equal Treatment the differences between the mandates arise from the incomplete implementation of the Directive, which makes it more difficult to deal with the cases appropriately. Likewise, the Centre for Equal Treatment in Luxembourg has reported difficulty with assisting victims of discrimination due to the very limited freedom of movement mandate it has acquired (limited to carrying out research and surveys).

From the surveys that have been gathered, and from the number of surveys that have not been gathered, it is inevitable that the functions of art. 4 bodies remain a great challenge for most equality bodies, which have simultaneously taken on the mandate of an art. 4 body. Furthermore, only a minority of the respondents stated that they have received adequate funding for their proper functioning. Since these bodies already have many tasks and cases to deal with as equality bodies, it seems that they lack time, human and financial resources, which would enable them to also engage in issues related to freedom of movement. The equality bodies cannot pay sufficient attention to the specifics of this topic, or simply freedom of movement cannot be prioritized by them. Several equality bodies are not even legally permitted to fully carry out the freedom of movement agenda, as their mandate has not been amended, or has been amended to a very limited extent, even though the Member State has declared to the European Commission that the equality body will function also as an art. 4 body.

**Nationality as a discrimination ground**

To be able to perform the functions of an art. 4 body and assist EU citizens, it is important that national legislation recognizes nationality as a discrimination ground and that the mandate of the equality body includes assistance to victims of discrimination on grounds of nationality. As follows from the conducted survey, in most cases, national legislation does contain prohibition of discrimination on grounds of nationality. As follows from the conducted survey, in most cases, national legislation does contain prohibition of discrimination on grounds of nationality and the art. 4 body is mandated to assist in cases of discrimination. In some cases, national legislation had recognized this discrimination ground even before the adoption of the Directive, whereas other Member States had to make amendments in order to comply with the Directive.

An exceptional case is the Centre for Equal Treatment in Luxembourg, which cannot assist victims of discrimination on grounds of nationality, even though the national legislation recognizes nationality as a discrimination ground. This is because, as previously mentioned, the equality body has only been mandated with one function of an art. 4 body – conducting research and surveys. It is worth noting that the equality bodies in Austria, Greece, Malta and Croatia do not tackle discrimination on grounds of nationality. The equality bodies in these countries try to overcome this obstacle by classifying such discrimination cases as cases of discrimination on grounds of ethnic origin or national origin. This may serve as a useful, and at the same time legal option for many cases, since nationality and ethnic origin are often connected, due to the fact that some of the characteristics of the concepts of nationality, ethnic or
national origin are the same. Nonetheless, they are still different discrimination grounds and not all cases of discrimination on grounds of nationality may be legally assessed as discrimination on grounds of ethnic origin. Therefore, Member States should be required to recognize nationality as a discrimination ground and give all ART. 4 bodies a mandate to deal with such cases.
2: Good practices, casework and building partnerships

This chapter provides a deeper glance into the good practices of those equality bodies, which have acquired the new competences under art. 4 of the Directive. It delves into the research that has been carried out by equality bodies, the advocacy work undertaken to protect free movement of Union workers and their family members, and finally, the promotional work that has been done in some Member States by equality bodies, in order to raise the public's awareness of their rights under the free movement principle and directives. A larger section of this chapter is then dedicated to a more systematic analysis of the shared casework conducted by the equality bodies.

Research

The Directive takes a particularly strong interest in the capacity to conduct research, surveys and analyses, by the bodies tasked with the promotion, analysis, monitoring and support of equal treatment of Union workers and their family members. Article 4 states it as composing one of the main tasks of the body:

“Member States shall ensure that the competences of those bodies include: (...) conducting or commissioning independent surveys and analyses concerning unjustified restrictions and obstacles to the right to free movement, or discrimination on grounds of nationality, of Union workers and members of their family.”

The prominence of this issue has been well understood by some Member States. The Centre for Equal Treatment in Luxembourg has a mandate strictly limited to “conducting or commissioning independent surveys and analyses concerning unjustified restrictions and obstacles”. While this may be a faulty transposition of the Directive, it underlines the importance of surveys, studies and analyses in the architecture of the Directive, in order to better combat obstacles to free movement of Union workers and their family members.

Despite the importance of this stated goal, research on free movement of workers and their family members have only been sparsely undertaken by equality bodies. Lack of funding unfortunately plays a critical part here: surveys and analyses are both time-consuming and expensive endeavors. Consequently, few if any extra funding for the tasks that fall under art. 4 of the Directive means that any expense, any time given to the free movement of Union workers is time taken away from other projects that also fall under the responsibilities of the equality body.

Austria's Ombud for Equal Treatment (OET) deplores the lack of resources as prohibiting it to conduct any research. Belgium’s Unia has referenced free movement and Union workers in several research conducted on access to housing (2014), health services (2020), and employment (2019) for foreign nationals and on the impact of COVID-19 on fundamental rights, including free movement. However,
those studies are not exclusively focused on Union workers and their family members, rather the categories are examined as with other large regional nationality groups.

Nonetheless, several very interesting research and studies have been initiated by equality bodies. Czechia’s Office of the Public Defender of Rights (OPDR) has commissioned a study on living and working conditions of EU citizens in the country, with a particular focus on the mapping of nationality-based discrimination in public administration, education, and health care. Romania’s National Council for Combatting Discrimination (NCCD) has recently conducted a study that compares the respective legislation, good practices and interesting cases from each EU country (the results are yet to be published).

Likewise, Belgium’s Myria will publish by the end of 2021 a legal, empirical and comparative analysis of the registration formalities for Union workers, self-employed and jobseekers and their family members in Belgium, conducted by the Universities of Ghent, Kent and Fragomen. This research is specifically funded by the Directive 2014/54 budget that Myria has received from the Belgian federal government.

The Irish Human Rights and Equality Commission (IHREC) has published a paper in 2018 analyzing discrimination in the labour market for certain ethnic groups. It sought to identify which groups suffered from discrimination, based on the Equality module of the Quarterly National Household Survey and the Labour Force Survey, that allowed the examination of labour market outcomes across ethnic groups between 2002 to 2014. Among other findings, the report highlights certain disadvantages in the labour market for “EU East” citizens:

“Key points include:
- « Differences between White UK nationals and the White Irish group are minimal for all outcomes - employment rates, occupational position, and the experience of discrimination seeking work and in the workplace;
- White EU-West nationals are actually more likely to be employed than White Irish, while there is no difference in terms of occupational position, in discrimination seeking work and in the workplace;
- For White EU-East nationals, we find no difference in employment rates or reported discrimination seeking work, but this group are more likely to experience discrimination in the workplace (1.5 times as likely). Members of this group are also considerably less likely to occupy managerial/professional jobs (0.2 times as likely).”

Overall, despite the lack of proper resources, several equality bodies have engaged in ongoing or past studies of nationality-based discrimination and obstacles to free movement of workers. A cross-study of those research projects might lead to interesting findings worth sharing among all art. 4 bodies.

Advocacy and policy work

Of course, surveys, studies and analyses in and of themselves are mostly effective to help identify which issues to prioritize and how best to resolve the identified problems. Advocacy and policy work allows
equality bodies to build upon this expertise - their own, the victims of discrimination or from experts and studies - in order to recommend and advocate for policy changes. The Directive thus states:

“Member States shall ensure that the competences of those bodies include: (...) ensuring the publication of independent reports and making recommendations on any issue relating to such restrictions and obstacles or discrimination”.

Many equality bodies tasked under art. 4 of the Directive have devolved significant energy and time to advocacy, network-building and drafting policy recommendations.

One such example can be found with Czechia’s OPDR, which regularly participates in legislative procedures to ensure that the new legislation does not unduly restrict the rights of EU citizens. It has also published several recommendations regarding cross-border issues, among else regarding pre-school admissions. This right exists also for Malta’s National Commission for the Promotion of Equality, which managed through this procedure to influence a recent bill in order to prohibit nationality-based discrimination. The bill is still being discussed in the Maltese parliament.

Ireland’s IHREC has done significant work in 2019 regarding the restrictive application of the Habitual Residence Condition to EU applicants for social housing, welfare and other benefits. This issue raised important questions regarding the interpretation and application of the Free Movement regulations by local authorities.

Belgium’s Myria and Unia continued their network-building by fostering a partnership with SOLVIT Belgium and other important stakeholders (such as regional administrations), meeting several government members to advocate for a better integration of Union Workers and their family members, and the unique challenges they face. Unia and Myria also recently produced different sets of policy recommendations aimed specifically at Union workers under the free movement directive: a recommendation on the connection between free movement of workers and abuse of posted workers, as well as some consideration on social dumping. Another situation concerned nationality-requirements for train controllers. A legal action and a recommendation brought by Unia and the victim led to a change in the conditions. Finally, Unia produced two recommendations about the Directive in February 2021. The first concerned the professional recognition of clinical psychologists, following a change in the Belgian law that made it more difficult for individuals with a foreign diploma to receive the authorisation to work. The second was a recommendation defending the social security benefits that a non-Belgian EU-national can receive on basis of a bilateral agreement between Belgium and a third-country. Unfortunately, both bodies’ mandates are very narrowly defined, which leads to the exclusion of the capacity to produce recommendations to the government.

---

13 The recommendations can be accessed via the Evidence of Ombudsman Opinions (ESO).
14 All recommendations can be accessed via Unia’s website.
Promotion of the freedom of movement

The promotion of free movement of Union workers and members of their families lies at the heart of the 2014/54 Directive. The term “promote” is used more often than any other term associated with the missions given to the article 4 bodies in the Directive, and those bodies are themselves called “bodies to promote equal treatment and to support Union workers and members of their family”.

Recital 17 and 18 of the Directive state that one of the main goals of the directive is to reinforce the protection against discrimination on the grounds of nationality by supplying Member States with a group of experts with expertise in promoting equal treatment. This must be achieved through the promotion of good practices, increased knowledge and outreach towards the wider public regarding EU rules and functioning. Promotion of equal treatment, accessibility of the equality bodies, and a certain public profile and knowledge are key for the understanding of the directive by the EU Parliament.

Consequently, several equality bodies have strongly involved themselves in outreach and promotion. The Gender Equality and Equal Treatment Commissioner in Estonia organized training days about discrimination and the rights of non-nationals in Estonia. They also got involved in another governmental program destined to Union workers called “Settle in Estonia”. Czechia’s OPDR organized a roundtable with labour inspectors, as well as the inspection authorities in the fields of education and access to goods and services to discuss their experience of discrimination on the grounds of nationality. The OPDR also gave them a brief training regarding the rights of Union workers in Czechia. The OPDR’s website also contains a significant amount of pages destined for Union workers and their family members, and allows them access to information on topics such as residence rights, social affairs, taxation, elections and vehicle registration, work and employment, etc. That information has also been distributed in the form of leaflets and a Facebook campaign aimed at EU citizens residing in Czechia. Lastly, the OPDR organised a meeting with the ambassadors of the EEA countries to present the mandate granted through art. 4 of the directive and their communication plans to raise awareness around this issue.

On a similar scale, the IHREC has launched a webpage in December 2018 to discuss EU free movement rights, raising awareness of IHREC’s power under article 4. The communication is given in different languages and the webpage was heavily circulated thanks to the support from the government and NGOs. Contacts were made and established with SOLVIT, EURES, ICI, FAIR EU and the Citizens information Centres. A meeting was planned with SOLVIT to coordinate their actions better, and the representative from IHREC attended many events to reach underprivileged communities within Ireland. Finally, an IHREC UN CERD Youth Event was also used to promote awareness of nationality-based discrimination and racism.

The NCCD in Romania, has also devoted considerable time and resources to promotion and outreach. While the covid-19 crisis has led to considerable discrepancies and the cancellation of all training programs, still, the NCCD managed to participate in a movie festival called “One World Romania”, which was a considerable success despite the cancellation and postponing of the festival due covid-19.
Not every equality body can devote as much time to promotion and communication initiatives, however several efforts with limited means are still worth noting. For example, the Maltese NCPE has published an article on free movement of Union workers in the Malta Independent, drafted a FAQ on free movement of workers and raised awareness through engagement on social media.

**Cases**

The number of cases falling under the freedom of movement mandate is still limited in most countries, making it not yet possible to identify any clear trends in the evolution of cases. At the same time, there are similarities in the areas that the cases are dealing with, as well as the strategies and partnerships used when resolving the issues. The following section will provide short summaries of either specific cases or general issues regarding freedom of movement that national equality bodies have submitted. Rather than giving an overview by country, it seems more useful to group the cases according to the more general subject.

**Freedom of Movement, Nationality, and other grounds for discrimination**

It is important to mention that not every case of discrimination against an EU national on the ground of nationality is automatically a freedom of movement case. This is especially the case when talking about harassment. At the same time, one should not forget that Union workers might also be discriminated against based on other grounds of discrimination like their ethnic origin, religious practices, sex or age.

**Diploma Recognition**

One problematic area that has led to similar cases in different member states is diploma recognition, which concerns education as well as employment at the same time. According to Directive 2005/36/EC, diplomas acquired in a Member State should generally be treated as equivalent to a diploma acquired in the country where a European Union national is seeking employment, although in practice this is not always the case.

The Netherlands Institute for Human Rights reports cases of medical studies\(^{15}\), and specifically in the area of dentistry, that were not recognized in the countries where a Union worker was seeking employment. While the Dutch Equality Body is not an article 4 body, it still judged this as a discriminatory practice contrary to EU law.

---

Access to positions

The barriers to freedom of movement in employment are not limited to diploma prerequisites. Multiple cases are known where employers try to enforce nationality restrictions regarding open positions, either by only accepting country nationals or by explicitly excluding workers from specific EU Member States.

In Greece, a European citizen who works for the Greek state (Ministry of Labour) was excluded from becoming head of his department because he is not a Greek citizen. The Greek Ombudsman has addressed the Ministry several times, explaining that the national framework that excludes non-citizens from occupying an executive position in general, within the Ministry's services, is violating the freedom of movement legislation. The case has been brought to the attention of the European Commission, who has also contacted the Ministry and required explicit justification for this exclusion within a time-limit. According to the latest information, the European Commission is considering referring Greece, due to this case, to the European Court of Justice (CJEU) for violating the EU Law.

Even though the Croatian Office of the Ombudswoman is not mandated as an article 4 body, they do report a case from 2017, where a Czech citizen could not apply to an open position, as possessing a Croatian citizenship was a precondition. The case was forwarded to the National Ministry of Science, Education and Sport, which was identified as the relevant contact point for this matter.

While Estonia and Austria also list nationality-based discrimination as a problem regarding open positions, the Irish Human Rights and Equality Commission reports a successful case regarding indirect discrimination on the grounds of race/nationality for a clinical post. Sometimes the nationality requirement is masked and instead of nationality the employer requires that the candidate for the position is a native speaker instead.

It is important to mention that under certain conditions nationality clauses are acceptable. Regulation 492/2011 (art. 8) states that Union workers “may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law.” Additionally, under Article 45(4) TFEU, free movement of workers does not apply to employment in the public sector. It is noteworthy, that the CJEU interprets this in a very restrictive way and limits this provision to posts involving the exercise of a public authority and of responsibility for safeguarding the general interest of the state concerned (such as its internal or external security).

Recognition of work experience

Recognition of work experience outside of the country can impede the freedom of movement of workers when applying for a certain position. The Greek Ombudsman reports a problem where the acknowledgment of working experience, accumulated in another member state, was a problem in the public sector. Their investigation revealed that there was no violation of the freedom of movement framework because there was a specific provision about the acceptance of working experience acquired in the EU and the applicant had failed to submit the appropriate documentation for its recognition.
Nevertheless, this case shows that Union workers sometimes have to take additional steps in order to benefit from an equal treatment when compared to country nationals.

**Pay gap**

Even if no barriers were encountered while applying for a position, unequal treatment of Union workers is still reported regarding the working conditions. The Public Defender of Rights in Czechia previously dealt with a case of unequal pay in railway transport. An employer allegedly unequally remunerated employees who worked on long-trip routes - those who worked on routes within Czechia (predominantly Czech staff) received higher hourly wage than those who worked on routes between Czechia and Slovakia (predominantly Slovak staff). The National Labour Inspectorate carried out an inspection, aimed at unequal remuneration, but found no breach of law. The equality body asked for details regarding the Labour inspectorate’s procedure and found that the inspectorate didn't take everything into account that the claimant said and urged the inspectorate to ensure that their inspections in this area are more thorough.

**Access to social security and retirement**

While the examples above are all in regard to employment, which is naturally at the center of the freedom of movement subject, problems also arise in fields indirectly linked to employment. Regulation (EC) No 883/2004 provides for social security coordination between EU Member States and lays down common rules to protect social security rights when moving within the EU (as well as Iceland, Liechtenstein, Norway and Switzerland). Nevertheless, EU citizens regularly face problems in this regard.

**Luxembourg’s Centre for Equal Treatment** has submitted a case regarding disability benefits. After working several years in Luxembourg, a person was no longer able to do their normal work and the responsible medical commission gave them the status of a disabled person looking for a new position. Under this status the person receives payments until they can find a new job that is suited for them. In these conditions the work contract is ended without them being dismissed by the employer. A few years later a new medical examination considered the person no longer as disabled, thus allowing him to work again. Therefore, the authorities in Luxembourg stopped the payments. However, at the same time in France, where the person lives, he cannot benefit from unemployment payments as he had not been dismissed by his former employer (in accordance with the Luxembourgish law). The case shows that under specific circumstances, differences in national laws still lead to inequalities not covered by social security coordination.

**The Czech Office of the Public Defender of Rights** also dealt with a case of a Czech woman who was left without health insurance for a long time. The client had an Italian husband, with whom she lives in Czechia. The husband receives a pension from Italy, so according to the social security coordination regulation the whole family is entitled to a health insurance in Italy when the wife is unemployed. However, Italian authorities refused to provide insurance for the wife because she wasn’t an Italian resident. Furthermore, the Czech health insurance company didn't insure her because according to the regulation she should be

---

16 More information can be accessed via the Evidence of Ombudsman Opinions (ESO).
insured in Italy. They have liaised with the health insurance company, with the Ministry of Health and with the Health Insurance Bureau (the Czech liaison body in the sphere of public health insurance and healthcare) and claimed that the client should not be left without a possibility of getting health insurance. After many months the client finally got her health insurance in Italy.

**The Defender of Rights in France** had a case where social security refused to take into consideration a third-country spouse of an Italian national, applying for financial support, on the ground of the spouse not fulfilling the necessary 5-year residency allowing her to work in the country. The equality body's intervention clarified that this cannot be applied in the case of an EU worker whose legal partner is equally protected under EU law.

**Residency and Housing**

Having a place to live in the country where you work is usually a prerequisite in order to be able to fully benefit from the freedom of movement principles. However, the examples below show several obstacles that were encountered by Union workers in practice.

**Belgium’s Unia** submitted a case regarding disability benefits, but more specifically regarding a residency clause. A 2018 Belgian law had doubled the required period to be entitled to these disability benefits, from 5 to 10 years residency in Belgium. A legal challenge was brought – and supported by Unia - before the Belgian Constitutional Court which struck down the change on March 4th, 2020.

**The Austrian Ombud for Equal Treatment** also reports cases where real estate advertisements exclude foreigners, sometimes even from specific EU countries.

**The National Commission for the Promotion of Equality in Malta (NCPE)** had a particular case received and investigated in 2018. The complainant alleged that a woman’s rights, as set out in the Freedom of Movement legislation, were being breached as both her and her son’s rights to free movement in the EU were being unjustly restricted by the responsible entity. The complainant and her son were UK citizens. The complainant explained that after transferring her residence to Malta, in accordance with article 9 of Directive 2004/38/EC, with the aim of eventually securing a job in Malta, she was ordered to leave. Consequently, the Complainant's son was also refused residence. She received a letter stating revocation of residence, as she appeared to still be working in the UK. The complainant stated that during the period indicated she was in a pre-retirement working phase. She further explained that she met both the financial and insurance requirements of her host country. Her position could be described as a cross-border worker, since besides working in the EU she was still returning on a regular basis to her residence in Malta. The complainant also stated that the fact that she was seeking employment in Malta did not mean that she would not abide by the terms and conditions of her retirement agreement with her UK employer. Ultimately, the complaint was upheld and justified since NCPE’s Commissioner identified failure by the relevant department to sufficiently delve in the complainant’s case, thus leading to an unjust revocation.

---

17 All cases can be accessed via Unia’s website.
of the right to residence and of the registration certificate and the right of free movement had been restricted without justification.

The French Defender of Rights reports a case regarding a residency clause wrongfully limiting access to benefits. Union workers who have worked more than one year, can stay for an unlimited time in the country, even if a subsequent contract was for less than a year if the person is registered as a job seeker.

In a different case in France, benefits were not given to people with a work activity of less than 60 hours, considering that this would not be enough for them to be allowed to stay in the country. The responsible administration reexamined the case after an intervention of the French equality body and decided in favor of the plaintiff.

Another French case shows, that based on CJEU jurisprudence, interpreting article 10 of regulation 492/2011, a right to residency, based on their quality as a former worker whose children are getting education in the country, do not need to prove sufficient resources or health insurance in order to be able to stay in the country.

**Brexit and Freedom of Movement**

While Brexit provides for multiple potential new and difficult situations and conflicts regarding freedom of movement, none of the responding equality bodies had reported any specific cases in this regard just yet. This might be due to the fact that the actual process of the UK leaving the EU is still quite recent. Unia and Myria in Belgium have both dealt with inquiries regarding the rights of British residents and cases regarding access to rights and benefits for Belgian residents in the UK, following visible Brexit-related hate speech. These examples show that issues related to Brexit are only slowly starting to emerge.

**Goods and services in general**

The Netherlands Institute for Human Rights reports an issue of recurring nature, concerning access to phone subscriptions for EU citizens (including workers), namely a subscription that includes a ‘free phone’ (in reality, this is determined to be a loan/credit transaction). The issues are relatively complex, and the conditions differ per provider, but it comes down to the following: Providers on the one hand want to automatize their service as much as possible and at the same time prevent fraud. They do this by requiring persons who are seeking a phone subscription with a provider, to provide a phone, in order to prove an intention to reside in the Netherlands. This criterion is fulfilled, for example, if a person can send a copy of their residence permit (normally valid for five years). EU citizens, however, are not issued with such documentation, and because of their free movement rights, have more trouble, in practice, to show

---

their intention to reside, because there is no standardized documentation that they can provide (e.g. a rental agreement is easily ‘faked’). Recently, a few cases have focused on the driver’s license issued by the Dutch authorities on the basis of a license issued by another EU member state. These so-called ‘RDW-rijbewijzen’ have been refused as proof by the Dutch telecom providers, arguing that of all fraud cases, 15-20% concern people having used such a driver’s license as a basis for a phone subscription (after which they never paid and absconded with the phone). In those circumstances, the College has judged that telecom providers are allowed to refuse such a subscription, given that there are alternative ways to get it (e.g. a one year regular subscription without payment in default leads to a transition to a subscription with a ‘free phone’ or paying for the phone up front).

COVID-19 and closing of borders

The COVID-19 pandemic is also responsible for issues regarding the freedom of movement. While the closing of borders or strict limitations on who is allowed to enter the territory of a state, in order to contain the virus has especially impacted Schengen Area agreements, it also created new barriers for the freedom of movement of Union workers. These might be people who work and live in one country during the week but return to their families over the weekend, and were not allowed back, as well as people studying in a different country, but also seasonal workers that only live in a specific country for a few months of the year.

The equality bodies in Czechia, Estonia and Belgium all report issues concerning closed borders or limitations on cross-border travel. In Czechia and Estonia, the cases mostly dealt with frontier workers who cross the border or families that live on both sides of a border. In Belgium, Unia has observed a decrease in cases concerning nationality-requirements in access to employment, and at the same time an increase of cases regarding cross-border employment, second residence, frontier controls and access to benefits and social and economic rights. In Romania, the NCCD stated that the pandemic has probably had adverse effect on the number of newly incoming Union workers to the country. COVID-19 has also had an impact on the work of the equality bodies themselves. The Greek Ombudsman for example, reports that they had to postpone several of their promotional activities due to the pandemic.

Fostering partnerships

The aforementioned, and later explained in more detail, lack of information and resources that many equality bodies are facing, make partnerships very important in resolving cases. While some equality bodies invest a lot of effort into building strong partnerships with other institutions and agencies, for others these are on a more informal level. Nevertheless, all of the participants of the survey stress the importance of working together with partners.

In some countries more than one body has been mandated under article 4 of the Directive, and in such cases, the other national contact points are then naturally very important partners in order to fulfil the
mandate. This also counts for other national equality bodies respectively to the country of origin of the Union worker. Embassies as well as Chambers of Commerce are also often cited as important partners for collaboration and useful multipliers that help spread information. Additionally, Trade Unions and NGOs working for and with foreigners as well as Public Administrations and Ministries are often cited as existing or potential future partners.

Partnerships can take various forms: from mutual training and regular meetings between partners, through preparing cases to direct access to a case creation form, allowing partners to skip parts of a procedure that are necessary for the general public.

As this publication aims to not only provide an overview of the current situation of national equality bodies mandated under article 4 of the Directive, but also provide useful information for them, a few key potential partners will be presented in more detail below.

**EURES**

EURES (European Employment Services) is a cooperation network formed by public employment services. Trade unions and employers' organisations also participate as partners. The objective of the EURES network is to facilitate the free movement of workers within the European Economic Area (EEA) (the 27 members of the European Union, plus Norway, Liechtenstein and Iceland) and Switzerland. EURES is a free service and targets both job-seekers interested in moving to another country to work or to study, and employers wishing to recruit from abroad.

EURES services to jobseekers and employers include:

- Matching of job vacancies and CVs on the EURES portal;
- Information and guidance and other support services for workers and employers;
- Access to information on living and working conditions in the EU member states, such as taxation, pensions, health insurance and social security;
- Specific support services for frontier workers and employers in cross-border regions;
- Support to specific groups in the context of the EURES Targeted Mobility Schemes;
- Support to dynamic recruitment events through the European (Online) Job Days platform;
- Information on and access to post-recruitment assistance, such as language training and support with integration in the destination country.

**SOLVIT**

SOLVIT is a service provided by the national administration in each EU country and in Iceland, Liechtenstein and Norway. SOLVIT is free of charge and it is mainly an online service. SOLVIT can help individuals, companies as well as equality bodies when citizens’ and business’ EU rights are breached by public authorities in another EU country. Cases will then be handled by two SOLVIT centres: the local SOLVIT centre and the SOLVIT centre in the country where the problem occurred.
SOLVIT can help you when:
- Your EU rights as a citizen or as a business are breached by public authorities in another EU country
- You have not (yet) taken your case to court

SOLVIT works around issues such as getting professional qualifications recognised, visa and residence rights, trade and services (businesses), vehicles and driving licences, family benefits, pension rights, working abroad, unemployment benefits, health insurance, access to education, cross-border movement of capital or payments, VAT refunds.

European Labour Authority

The newly formed European Labour Authority (ELA) is also considered by many as a very important future partner. Its mission is to help ensure that EU rules on labour mobility and social security coordination are enforced in a fair, simple, and effective way, and makes it easier for citizens and businesses to reap the benefits of the internal market.

The European Labour Authority is responsible to:
- Facilitate access to information for individuals and employers on labour mobility, and coordinate EURES;
- Facilitate cooperation and the exchange of information between EU Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law;
- Coordinate and support concerted and joint inspections;
- Carry out analyses and risk assessment on issues of cross-border labour mobility;
- Support EU Member States with capacity building regarding the effective application and enforcement of relevant Union law;
- Support EU Member States in tackling undeclared work;
- Mediate disputes between EU Member States on the application of relevant Union law.

Your Europe Advice

Your Europe Advice is an EU advice service for the public, currently provided by the legal experts from the European Citizen Action Service (ECAS) operating under contract with the European Commission. It consists of a team of 65 independent lawyers who cover all EU official languages and are familiar both with EU law and national laws in all EU countries.

The services that they provide include:
- free and personalised advice in the language of your choice;
- clarification of the European law that applies in a specific case and;
- explain how one can exercise EU rights.

Individuals, companies but also national equality bodies can contact them with specific real cases and should get an answer within a week.
3: Challenges and Ways Forward

Article 4 of Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement provides the Member States of the European Union with the legal basis to designate the national contact points and the sphere of competence of these bodies. Due to the fact that these bodies are diverse in structure and competence, as has been seen in the previous chapters, it may be of real interest to seek potential solutions. These should focus on how to strengthen and better coordinate cooperation channels with a range of existing specialized structures and assistance services in this field.

Challenges

The challenges facing equality bodies in 13 European countries\(^\text{19}\) all have in common the lack of information and resources available (i.e., no sufficient funds and experienced staff), as well as issues related to the mandate itself. These concerns, as well as several others, were already raised in 2015 in a previous Equinet publication on equality bodies and freedom of movement. They include a strong need for additional resources, mandates, power and expertise, with a clear emphasis on the purpose, the presence of a nationality as a discrimination ground in national legislation and the possibility of its application.

The main challenges of equality bodies mandated as art. 4 bodies include:

- Staff and funding – inadequate funding and lack of experienced staff;
- Mandate – not all equality bodies have a legal mandate that is sufficient to perform the tasks of an art 4. body;
- Underreporting of cases;
- The lack of awareness among citizens of their rights.

Staff and Funding

The Directive provides that the granting of new powers should be accompanied by additional financial means. This is an essential condition for any equality body to carry out this new mission.

Similarly, the Paris Principles relating to the status and functioning of National Institutions for the Protection and Promotion of Human Rights, adopted by the General Assembly of the United Nations, prescribe that a national institution must be provided with sufficient funds. The reference to the Paris Principles is explicitly included in our cooperation agreement. The International Coordinating Committee

\(^{19}\) from France, Romania, Estonia, Belgium, Greece, Czechia, Malta, Slovakia, Luxembourg, Austria, Croatia and Netherlands, Ireland
of National Institutions (ICC), established to ensure the conformity of the application of the Paris Principles, specifies as follows:

“(e) the allocation of sufficient resources for those activities of the national institution that are consistent with its mandate. Where the national institution is assigned additional responsibilities by the State, additional financial resources should be provided to enable it to carry out the responsibilities associated with these functions.”.

Equinet, the European Network of Equality Bodies, also defends the same principle, in a more specific way:

“Any extension of the mandate of equal treatment bodies based on new national legislation, European directives or international instruments must be consistent with their original mandate and provide for the allocation of sufficient additional resources for the adequate and effective implementation of this extended mandate.”.

The main challenge for equality bodies is then certainly the lack of any additional funding to undertake the new tasks as stipulated by art. 4 of the Directive. Despite such strong worded principles, few equality bodies have received sufficient means to carry out their new mandate. It has severely limited the ability to produce original research, aimed at free movement of Union workers, and has slowed the work on this issue to a minimum, due to budgetary constraints. This obstacle, combined with the lack of legal expertise and the lack of resources, account for some of the institutions, which as a result cannot rise to the expectations stated in the Directive.

The responses to the survey show different experiences for different equality bodies. The Gender Equality and Equal Treatment Commissioner of Estonia has been supported with the creation of a new full position in order to deal with nationality-based discrimination. It is meant to also act as a national contact point for Union workers and their family members for issues regarding the freedom of movement. The National Council for Combating Discrimination in Romania was supposed to receive seven additional positions to undertake, among other competences, the new mandate under Article 4 of the Directive. However, in practice, only four of those positions have been funded so far. The Centre for Equal Treatment in Luxembourg regrets that there has been a lack of any additional funding or staff, which severely dampens its possibilities to carry out the missions granted to them under art. 4 c) of the Directive. In a similar manner, the Maltese National Commission for the Promotion of Equality (NCPE) is also yet to receive any additional support, despite a considerable increase in its mandate.

In the survey, some equality bodies stated that they did not require additional funding, given that their mandate was already broad enough to encompass all the competences asked of them by the new Directive. Given the absence of new competences, more funding was not justified. However, it is important to note, that this unfortunately does not mean that the current missions are sufficiently funded, as the Slovak National Centre for Human Rights (SNCHR) stated explicitly in its response.
**The mandate**

Equality bodies were asked in the survey whether they consider their mandates under national law to be sufficient to fulfill the new tasks under the Directive, and whether they should be amended in order to better empower the equality bodies to fulfill their tasks under art. 4 of the Directive. More than half of the respondents consider their mandate as sufficient.

Nonetheless, several issues with the current mandates were identified by different equality bodies. The lack of the `nationality` discrimination ground was claimed as an obstacle. In the case of Greece and Malta, both equality bodies reiterated that having nationality as a discrimination ground could help better cover the violations of the freedom of movement principle.

The Austrian Ombud for Equal Treatment highlights the very confusing implementation of the Freedom of Movement Directive into national law, which results in a lack of legal clarity on how the two forms of discrimination (nationality and ethnic origin) can be reconciled within the scope of the Equal Treatment Act. Furthermore, the Austrian equality body has already asked the legally competent Ministry of Labour for clarification and to take action, but (also partially due to elections and the COVID-19 pandemic) this topic is not a priority for now. They consider that the best course of action (regarding providing support to people feeling discriminated against due to a violation of their right to freedom of movement) would be to give a clear mandate for the Ombud and other competent institutions and a transparent national structure regarding information.

The Equality Bodies in Luxembourg and Greece have both brought attention to the fact that they have incomplete mandates. In Luxembourg, the Centre for Equal Treatment accentuated the lack of resources (both human and material). The Greek Ombudsman stated that it does not have full legal capacity. Therefore, its legal aid is limited to offering advice and non-judicial mediation. The Ombudsman believes that additional provisions, which would oblige trade unions to inform them about cases related to freedom of movement violations, could enable the Ombudsman to offer more of its help and intervene (a similar provision already exists in terms of labour inspectorates in relation to discrimination-oriented cases). Furthermore, it reiterated the need for additional funding, naming it as necessary in order to perform the mandate adequately. This is especially important as the Ombudsman is a multitasked institution, with several obligations to fulfill as a monitoring institution (such as a national preventive mechanism against torture and ill treatment, national mechanism for the investigation of arbitrary incidents, national mechanism for monitoring third country nationals returns, national framework for promoting the rights of persons with disabilities etc.) outside its regular assignment as a non-judicial mediator between the citizens and public administration.

A particular case is that of Myria in Belgium, whose mandate allows it to work on different aspects related to freedom of movement, while the specific scope of the Directive is quite limited. In Belgium there is no legal document appointing the article 4 Body. Therefore, neither Myria nor the equality body Unia were officially assigned with the competences involved. The two institutions were only referred to by the

---

20 Romania, Estonia, Slovakia, Belgium (UNIA), Czechia, France and Malta.
Belgian authorities in the correlation tables on the transposition of directive. This might cause difficulties in the future, when they need to call on official instances about a case, while lacking a sound legal basis to support their intervention. The case of Belgium is also unique in that these are two mutually complementary institutions, yet the mandate is unconfirmed and the ‘nationality’ ground of discrimination is not considered sufficient. For Myria, the personal scope of the directive is limited to workers. Through their competences to ensure the fundamental rights of foreign nationals, they are able to help others (self-employed, jobseekers, students) who do not strictly fall under the scope of the Directive. Furthermore, the material scope of the directive is rather limited. A different treatment for goods and services does not fall within the scope of the directive, only housing does. Finally, the link with Regulation No. 883/2004 on the coordination of social security is not clear, whereas a lot of times there is causality.

**Underreporting of cases and lack of awareness**

Another issue that has been frequently mentioned by Equality Bodies is the underreporting of cases. EU citizens often do not know about the existence of an art 4 body in the country where they are, or what its mandate is and how it could assist them. This is further worsened by the aforementioned lack of resources that in fact restricts the possibility of equality bodies to carry out information campaigns and promotional activities that would allow them to gain visibility. The lack of awareness among EU citizens about the existence of an art. 4 body thus represents another challenge for equality bodies. It is intertwined with the abovementioned challenges – i.e. an insufficient mandate and the lack of resources.

The task of the equality bodies to publish relevant information on free movement of Union workers and thus raise the general awareness among workers and other mobile EU citizens about their rights is a key duty of an art. 4 body according to the Directive. However, its appropriate fulfillment remains an issue. Some bodies have not been able to create a functioning website in a language other than the official language of the Member State, making access to information scarce. There are only a few bodies that have a website in more than two languages (English and the official language of the Member State), an example being the National Council for Combating Discrimination in Romania and Gender Equality and Equal Treatment Commissioner in Estonia. Raising awareness about rights among EU citizens therefore poses an even bigger challenge and motivating EU citizens to defend their rights is even more difficult.

**Recommendations**

In order to overcome the obstacle that equality bodies face in fully realizing their potential as art. 4 bodies, members have shared sets of recommendations, which in their opinion could improve the facilitation of exercising the right to free movement in the European Union.
**National level**

- Better enforcement of existing legislation, both national and European;
- Reinforcement of the competences of labour inspectorates to control and sanction instances of discrimination in employment;
- Reinforcement of sanctions regarding access to housing, health and social benefits;
- Clarification and efficiency in the process of recognition of diplomas;
- Capacity-building and appropriate funding of the bodies;
- Closer cooperation with SOLVIT and relevant EU partners;
- Strengthening the protection of EU citizens by enacting the power to file and action popularis to better protect rights of people in cases where an individual action would not be sufficient;
- Use of data mining in employment discrimination.

It is important to note that equality bodies stressed the need to **better enforce existing legislation rather than to create new sets of rules**. The enforcement of both public law and private law rules is the key to achieve real freedom of movement.

**EU Level**

Equality Bodies have also expressed their desire to receive more support from the European Union. Such forms of support may be diverse, and may include, but are not limited to:

- Frequent and in-depth exchange of good practices with respect to freedom of movement of workers;
- Trainings for staff working in this field on knowledge and better understanding of the mechanisms to support the mobility of European workers;
- Launching open calls for funding, which would be directly accessible for the Bodies;
- A closer cooperation with SOLVIT and also the newly founded European Labour Authority.

The **exchange of good practices** is the most important recommendation coming from the equality bodies. The need for more information on the activities of other equality bodies appears urgent, and crucial to know the experiences and cases in other EU countries, as well as the information regarding new policies and good practices from other institutions. Together with staff trainings, these recommendations may help to overcome one of the biggest obstacles that the bodies face, which is the lack of expertise and experience in the freedom of movement area. Furthermore, such staff trainings may quickly spill over to others working on the topic, doubling the benefits, as the bodies could then offer trainings for the professionals who may work on cases related to free movement (medical staff, magistrates, employers, teachers, police, gendarmes, public administration). Finally, a closer cooperation with SOLVIT or ELA could be mutually enriching for all actors involved, as it extends the pool of opportunities for sharing knowledge and experience.
Equality Bodies have also shared their views on which pieces of legislation could be amended to improve the facilitation of the freedom of movement. These include:

- Reform of the posted workers directive;
- Reform of the procedures for recognition of education and strengthening the principle of non-discrimination;
- Amendment of EU rules on financial services so that it contains prohibition of nationality-based discrimination;
- Clarification and possible strengthening of the principle of equal treatment on grounds of nationality in other areas than free movement of workers.

Recognition of education and qualification of EU mobile citizens seems to be a persistent problem. Therefore, an action or perhaps even reform to further strengthen the principle of non-discrimination could be considered. The latest report of the European Parliament on the implementation of the Directive 2005/36/EC stresses this need as well.

Mobile EU citizens are often disadvantaged in various life situations, not only due to restrictions imposed by the host Member State or by unequal treatment from their employer, but also due to many other day-to-day situations. EU law is not always clear on what unequal treatment is allowed and what might be considered as discriminatory on grounds of nationality. Consequently, the principle of non-discrimination on grounds of nationality should be clarified and reinforced.

The responses to the survey have also indicated some other possible EU actions, which could be useful for facilitating the free movement:

- Strict evaluation of compliance of Member States with Freedom of Movement of Union Workers rules as a condition for EU funding;
- An EU-wide website with information in all EU languages;
- Promotional campaigns for workers in their country of origin that would inform about their rights and obligations;
- Use of data mining in employment discrimination.

Equality bodies perceive it as unjust if Member States which substantially violate EU free movement rules (e.g. by not implementing the Directive 2015/54/EU properly) are recipients of EU subsidies. The compliance of Member States with free movement rules could be introduced as a condition to receiving EU funding.

Promotional campaigns might lower the risk of workers’ exploitation. Such campaigns should include information about employment rights, administrative formalities in host Member States, and also about services such as EURES that provide job offers. Focusing the campaigns on the workers’ countries of origin would equip the prospective migrant worker with necessary information in advance, which might reduce the risk of mistakes being made afterwards.
Action plans or initiatives regarding the topic of freedom of movement

Despite existing challenges and obstacles, equality bodies have also shared their ideas and work plans in the area of freedom of movement for the future:

- Most often equality bodies wish to establish partnerships with ELA, SOLVIT, EURES and similar institutions and major trade unions;
- Several bodies plan to conduct or commission research regarding various freedom of movement topics that would map persistent issues that mobile EU citizens struggle with and help to better understand their causes;
- Some bodies plan to organize trainings for professionals who meet with migrant EU citizens;
- Some bodies are about to engage in national strategies on labour mobility and migration.

It can therefore be seen that equality bodies' initiatives and plans for future actions regarding freedom of movement are much less representative than the needs, which leads to the conclusion, that such a will has become the normality or habit and will continue to remain so if the lack of resources is not taken into account.
Concluding remarks

After providing an introduction to EU legislation on Freedom of Movement, this discussion paper provided an overview of the work of equality bodies mandated as freedom of movement bodies under art. 4 of Directive 2014/54/EU. On the one hand, this shows that many equality bodies do report successful resolution of cases and interesting promotional work. On the other hand, though, it also highlights that freedom of movement in the EU is still far from being a reality for all EU citizens. The present paper also shows that the problems highlighted in the 2015 Equinet discussion paper on Equality Bodies and Freedom of Movement are still more or less the same in 2021. Therefore, and in addition to showing the challenges, this paper includes possible solutions and ways to ensure that equality bodies can assure their role as they are supposed to under an article 4 body mandate. Naturally, the problems differ from Member State to Member State, which is why we have included not only national level recommendations, but also encompassing recommendations on what could be done at the EU level in order to ensure an effective protection of all Union workers’ rights.