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Hermann-Josef Blanke
Stelio Mangiameli *Editors*

Treaty on the Functioning of the European Union – A Commentary

Volume I: Preamble, Articles 1-89

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Title IV
Free Movement of Persons, Services and Capital

Chapter 1
Workers

Article 45 [Free Movement of Workers]

(ex-Article 39 TEC)

1. **Freedom of movement for workers shall be secured within the Union.**
2. **Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.**[33–39]
3. **It shall entail the right,**[26–50] **subject to limitations justified on grounds of public policy, public security or public health:**[67–75]
   (a) **to accept offers of employment actually made;**
   (b) **to move freely within the territory of Member States for this purpose;**[29, 55]
   (c) **to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;**[31]
   (d) **to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.**
4. **The provisions of this Article shall not apply to employment in the public service.**[79–83]

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1. The Origins and Genesis of Article 45 TFEU

1 As is well-known, the first steps towards building what is today the EU were taken back in the 1950s and comprised the **establishment of three Communities**: the European Coal and Steel Community, which was established by the eponymous Treaty in 1952;[1] the European Economic Community, created by the EEC Treaty in 1958; and Euratom, which was the result of the Euratom Treaty that also came into force in 1958. The ECSC had a rather narrow aim—that of establishing a common market *in coal and steel*; Euratom sought to create a platform for cooperation for the peaceful use of nuclear energy; and the EEC, which became the core of the European integration project, was aiming at the creation of a common market in goods, economic actors, services, and capital. Accordingly, as will be seen below, all three Communities included provisions that sought to safeguard and encourage the free movement of workers between the participating MS, as part of the process of establishing a common market.

The origins of the three Communities go back to the **Schuman Declaration**, which demonstrates that they were a reaction to the Second World War and were created as a means to ensure the achievement of long-term peace in Europe. It was thought that cooperation in the economic and energy fields would make war among the participating States "not merely unthinkable, but materially impossible",[2] whilst ensuring that the participating States would not be required to cede their sovereignty in more contentious fields such as foreign and defence policy.

2 The very first Treaty provision that sought to establish the free movement of workers between MS was Article 69 ECSC, which was situated in Chapter VIII of Title Three of the **ECSC Treaty**. Given the (limited) focus of that Treaty, Article 69 ECSC only covered workers in the coal and steel industries. Article 69(1) ECSC required MS "to renounce any restriction based on nationality against the employment in the coal and steel industries of workers of proven qualifications for such industries who possess the nationality of one of the Member States" although it was also noted that this commitment would be subject to the limitations imposed "by the fundamental needs of health and public order"; Article 69(2) ECSC provided that in applying this provision, MS were to draw up common definitions of skilled trades and qualifications and were to determine by common accord the limitations provided for in Article 69(1), whilst they would endeavour to work out arrangements on a Community-wide basis for bringing offers of employment into touch

[1] The ECSC Treaty expired in 2002 after applying for fifty years under Article 97 thereof.

[2] The Schuman Declaration, full text available at http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm.