

Employment and social rights of non-EU labour migrants under EU law:

an incomplete patchwork of legal protection

Prof Herwig VERSCHUEREN

University of Antwerp (Belgium)

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Overview

- Employment and social rights of non-EU labour migrants in:
 - EU (external) labour migration instruments
 - International agreements concluded by the EU with non-EU countries
 - Not: rights of workers migrating internally within the EU

EU labour migration policy

- EU competence since 1999
 - Shared with Member States (MSs)
 - Attempts for full harmonization failed
 - Member States not willing to give up their own policy completely
 - Despite common challenges: labour shortages; global competition of talents; demographic problems
 - Piecemeal approach leaving leeway to MSs

Employment and social security rights in EU labour migration directives

- Students and researchers (2004-2005)
- Highly qualified workers (2009)
- Illegally staying third-country nationals (2009)
- Single Permit directive (2011)
- Seasonal workers (2014)
- Intra-corporate transferees (2014)

Students and researchers

- Directive 2004/114/EC: third-country students are allowed to work
 - But no provisions on their employment or social rights
- Directive 2005/71/EC: researchers
 - A general equal treatment clause
 - Which does not guarantee rights as such

Highly qualified workers (EU Blue Card)

- Directive 2009/50/EC
 - Tried to streamline migration of highly skilled workers
 - Weak implementation by MSs
 - General non-discrimination clause
 - Specific clause on portability of statutory pensions when moving back to a non-EU-country

Illegally staying third-country workers

- Directive 2009/52/EC:
 - Sanctions and measures against the employers
 - Liability for back payments of outstanding remuneration and of taxes and social security contributions
 - Must be extended to the main contractors or subcontractors
 - MSs must make effective procedures available to claim rights from employers
 - Presumption that the employment relationship had a duration of at least three months

Illegally staying third-country workers

- However: no general equal treatment clause
 - Depends on the national legislation of the MSs
- In practice MSs are mainly interested in the return of the irregular immigrants to their host State
 - Expulsion measures may seriously jeopardize their employment and social rights

Single Permit Directive

- Directive 2011/98/EC
 - Introduces a single application procedure, a single permit for stay and access to employment
 - Does not influence the right to take up employment as such
 - Guarantees a set of rights for third-country national workers legally admitted to the MSs

Single Permit Directive

- Some categories excluded from its scope
 - Posted workers, seasonal workers,
- Article 12: equal treatment clause
 - In principle for all employment and social rights
 - But limitations possible
 - Unemployment and family benefits
 - Portability of old-age pensions
 - Even in the absence of a bilateral agreement

Seasonal workers

- Directive 2014/36/EU
 - Responds to the need for temporary (seasonal) and low-skilled workforce
 - General equal treatment clause
 - With exceptions possible:
 - Unemployment and family benefits
 - “circular” aspect of labour migration

Seasonal workers

- Portability of pensions (what does it mean in practice?)
- Effective mechanisms to lodge complaints
- Possibility to sanction employers
- But: MSs may tie a migrant worker's legal status to an ongoing employment relationship, making the migrant worker vulnerable to abuse or denial of rights

Intra-corporate transferees

- Directive 2014/66/EU
 - Very specific scope: temporary cross-border assignments by companies of highly skilled workers
 - Equal treatment provision only guarantees the same rights as posted workers: “hard-core” provisions
 - For social security: reference to existing bilateral agreements
 - Limitations for family benefits: but portability of pensions

Some conclusions on these EU labour migration instruments

- No overall and common EU labour migration policy or legal instruments:
 - Piecemeal approach; policy margins for the MSs
 - Striking exceptions to equal treatment for some social rights
 - But: interesting clauses on portability of pensions
 - What about Private International Law and posted workers?

International agreements concluded by the EU

- Agreement with Turkey
 - Equal treatment provisions and export to Turkey of social security benefits
 - Exceptions: unemployment and family benefits
 - No further social security coordination:
 - aggregation of insurance periods; entitlement to health care when temporarily staying in the home country; waiving of residence clauses (for instance children),...

Agreements with Maghreb countries

- Equal treatment provisions
- But no agreement so far on further social security coordination such as export of benefits

Partnership and cooperation agreements

- large number of agreements
 - In some, strong equal treatment provision on employment conditions
 - In others, weaker formulation
 - No equal treatment provisions on social security rights or on further social security coordination

Towards agreements on social security coordination between EU and non-EU countries?

- So far social security coordination with non-EU countries matter of bilateral agreements concluded by each of the MSs individually
 - Provisions on determination of applicable legislation (avoiding positive or negative conflicts of law); aggregation of insurance periods; export of benefits,

Towards agreements on social security coordination between EU and non-EU countries?

- Very fragmented approach
 - More than 350 different bilateral agreements concluded by the MSs with non-EU-countries
 - Still incomplete
 - Differ very much: scope, rights,
- Attempt by the EU Commission to strengthen cooperation between MSs in this field (2012)
 - failed so far

To conclude

- Very fragmented and uncoordinated framework of policy initiatives and legal instruments
 - Despite political ambition to develop a common EU approach to labour migration from non-EU countries

To conclude

- Provisions providing for equal treatment regarding employment and social security rights
 - But with an inconsistent number of exceptions, in particular in cases of short-term migration

To conclude

- Social security coordination with non-EU countries continues to depend mainly on the very fragmented and diverse bilateral agreements concluded by the MSs themselves
- Risk of incomplete protection and loss of rights when returning home
- Need for more developed international standards in this field

Thank you for your attention

herwig.verschueren@uantwerpen.be

