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Social security rights of third- country migrants under EU law



Overview

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- Third-country nationals moving within the EU
 - ▣ Specific problems linked to the application (or the non-application) of the EU social security co-ordination rules on third-country nationals
- Third-country nationals moving between a third country and a Member State
 - ▣ Bilateral agreements
 - ▣ International agreements concluded by the EU
 - ▣ EU immigration instruments
- Assessment

Application of EU social security co-ordination of Reg. 883/2004

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- Third-country nationals who move within the EU
 - ▣ Temporarily or permanently
 - ▣ As workers; as tourists; ...
- Directly covered by Reg. 883/2004 if they are
 - ▣ Stateless persons
 - ▣ Refugees
 - ▣ Members of the family of EU citizens

Application of EU social security co-ordination of Reg. 883/2004

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- Other third-country nationals may rely on the provisions of Reg. 883/2004 via Regulation 1231/2010
 - ▣ If they legally reside in a MS
 - What is *legal residence*?
 - ▣ In a situation which is not confined within a single MS
 - ▣ No entitlement to enter, stay or reside in a MS
- Not applicable in the relation with DK and UK
 - ▣ In the relations with the UK the old Reg. 1408/71 applies (see Reg. 859/2003)

Application of EU social security co-ordination of Reg. 883/2004

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- Only in cross-border situations
 - ▣ May be a problem for the equal treatment provision
- Export of unemployment benefits when seeking a job in another MS
 - ▣ Dependent on the right to be registered as a job-seeker with the employment services of that other MS (Recital 14 of Reg. 1231/2010)

Regulation 883/2004

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- Guarantees:
 - Determination of applicable legislation
 - Prohibition of discrimination on grounds of nationality
 - Export of benefit (within the EU)
 - With exceptions
 - Aggregation of periods

Third-country nationals moving between a third country and a MS

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- Problems of external co-ordination of the social security schemes
- What about ?
 - ▣ determination of applicable legislation
 - ▣ aggregation of periods completed in a third country
 - ▣ recognition of facts
 - ▣ export of benefits
 - ▣ right to equal treatment in the host MS

Bilateral agreements

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- Numerous (approx. 350) bilateral agreements between Member States and third countries
 - ▣ very diverse scope and content
- Open vs closed character of the personal scope
 - ▣ Closed: limited to the nationals of the states involved
 - ▣ Open: personal scope not linked to the possession of a nationality but rather to being insured by a scheme of the contracting parties
- Should these bilateral agreements be co-ordinated at EU level?
 - ▣ Communication of the Commission (2012) 153

Bilateral agreements: some issues

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- Limited scope
 - ▣ Not all cross-border situations are covered
 - ▣ Not all branches of social security are covered
- Export of pensions
 - ▣ Sometimes limited to contributory pensions
 - ▣ Previous residence condition
 - ▣ In some agreements no right to “indexation”
 - ▣ No obligation to export in absence of a bilateral agreement or for other nationals in “closed” agreements

Agreements concluded by the EU: Association with Turkey

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- No free movement for workers between Turkey and EU
- Decision 3/80 on social security
 - ▣ Lost its meaning for internal EU co-ordination problems because of Reg. 1231/2010
 - ▣ Limited external co-ordination with Turkey: equal treatment and export of benefits
 - *Akdas* judgment (C-485/07) also export to Turkey of the special non-contributory benefits
 - ▣ New decision currently negotiated with Turkey
 - Limited to equal treatment and export of pensions
 - No real co-ordination with Turkey (aggregation,

Euro-Mediterranean Association Agreements with the Maghreb countries

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- Direct effect of equal treatment provision
- External co-ordination with schemes of the Maghreb countries
 - Wait for the decisions of the relevant Association Councils
 - EU Council agreed on mandate for negotiations on 21 October 2010
 - Right to equal treatment
 - Export of pensions; not of family benefits and special non-contributory benefits

Stabilisation and Association agreement with other countries

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- Negotiations under way for a decision of the relevant Association Councils for Montenegro, Albania, San Marino, Macedonia and Israël
 - ▣ Council agreed on mandate for negotiations on 12 December 2012
 - Right to equal treatment
 - Export of pensions; not of family benefits and special non-contributory benefits

EU immigration instruments

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- Directive 2003/9 on reception of asylum seekers
 - ▣ To be replaced by Directive 2013/33
- Long-term residence Directive 2003/109
- Directive 2005/71 on third-country researchers
- Directive 2009/59 on the EU Blue Card
- Single Permit Directive 2011/98
- Seasonal workers Directive 2014/36 of 26.2.2014
- *Intra-corporate transferees* Directive 2014/66 of 15.5.2014

Directive 2003/9 on reception of asylum seekers

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- Member States must ensure that the material reception conditions provide an adequate standard of living for applicants
 - ▣ Must guarantee their subsistence and protect mental and physical health
 - ▣ Special provisions for “vulnerable persons”
 - ▣ Court of Justice (CJ): *Saciri* (C-79/13) confirms Member States’ obligations
- To be replaced by Directive 2013/33

Long-term residence Directive

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- Article 11: right to equal treatment for social security, social assistance and social protection in Member State of residence
 - ▣ No cross-border element needed
 - ▣ However, may be limited to “core benefits”
 - CJ: *Kamberaj C-571/10*: exception should be strictly interpreted
 - Reference to the EU-Charter of Fundamental Rights (Article 34)

Directive 2005/71 on third-country researchers

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- No provisions on social security rights in the host MS
 - ▣ Except equal treatment
- No guarantee that third-country researchers will be covered: depends on national legislation
- No provisions on external co-ordination with the systems of third countries
 - ▣ Such as export of benefits or aggregation of periods

Directive 2009/50 on the EU Blue Card

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- For the purpose of attracting highly qualified third-country nationals
- Equal treatment for social security (Article 6(1)(e))
- No other provisions on social security rights
- No provisions on external co-ordination with the systems of third countries
 - ▣ Such as export of benefits or aggregation of periods

Single Permit Directive 2011/98

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- Applicable to the admission procedure for migrant workers coming from third countries
- Equal treatment provisions (Article 12)
 - Also for social security within the meaning of Reg. 883/2004
 - But Member States may limit these rights during the first six months of employment

Seasonal Workers Directive 2014/36 of 26.2.2014

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- Entry and residence provided the seasonal worker has sufficient resources and without having recourse to social assistance
- Equal treatment for social security within the meaning of Reg. 883/2004: but exceptions possible for family benefits and unemployment benefits
- Export of pensions to a third country only guaranteed if Member State also exports its pensions to this country for its own nationals
- No co-ordination with social security schemes of country of origin (such as aggregations of periods)

Directive 2014/66 of 15.5.2014 on “*intra-corporate transferees*”

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- Entry and residence provided the *intra-corporate transferee* has sufficient resources and without having recourse to social assistance
- Equal treatment for social security within the meaning of Reg. 883/2004:
 - ▣ As far as these persons are not subject to the social security legislation of a third country on the ground of a bilateral agreement
 - ▣ exceptions possible for family benefits
- Export of pensions to a third country only guaranteed if Member State also exports its pensions to this country for its own nationals
- No co-ordination with social security schemes of country of origin (such as aggregations of periods)

Problems not resolved or tackled at EU level

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- What about external co-ordination between the MS and a third country in the absence of a bilateral agreement?
 - ▣ Aggregation of periods?
 - ▣ Payment of family benefits for members of the family residing in the country of origin
- What happens if the third-country national returns to his/her country of origin?
 - ▣ Export of benefits?

To conclude

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- Internal EU co-ordination
 - ▣ Regulation 1231/2010
 - ▣ Not applicable in purely internal situation and in the relations with DK
 - ▣ In the relations with the UK the old reg. 1408/71 applies
- External co-ordination
 - ▣ Depends on very diverse and partial bilateral agreements concluded by the MS and the EU
 - ▣ unsatisfactory
- EU immigration instruments
 - ▣ Important for the right to equal treatment; however with exceptions
 - ▣ No real co-ordination with systems of countries of origin

Thank you for your attention

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