

**ISSA Initiative
Findings & Opinions
No. 14**

**Social security coverage
for migrants**

Centro di Studi Economici Sociali e Sindacali
Istituto di Recerche Economiche e Sociali
Italy

August 2004

Social security coverage for migrants

**Centro di Studi Economici Sociali e Sindacali
Istituto di Recerche Economiche e Sociali
Rome, Italy**

Immigration is a structural and permanent feature of all developed countries. As a result of demographic crises such as the large aging population and low birth rates, the countries of the European Union are increasingly reliant on immigrants from the developing countries to maintain their levels of affluence. A recent study by the United Nations predicts that, between 1995 and 2050, Europe will require an average of 1.4 million immigrants per year to sustain an adequate labour force to ensure economic growth.

The number of immigrants, the number of countries involved and the patterns of immigration present unprecedented problems for the political and social decision makers of the countries hosting immigrants *and* those from which they originate.

This study focuses on citizens of Tunisia and Albania working in Italy and France. These two non-European Union nations are representative of countries that have (Tunisia) and have not (Albania) signed bilateral agreements with France and Italy.

Social and economic context of the new immigration

Patterns of immigration within Europe have changed, but the impact of immigration is producing similar problems across the European community. The political and social issues facing the developed countries concern the manner in which immigration occurs, its regulation and how immigrants access social security benefits.

The emigration of the 1950s and 1960s from the countries of Mediterranean Europe was fuelled by conditions of almost full employment in the main countries of northern Europe. Since the 1990s, the countries of southern Europe have also drawn immigrants, and the issue of immigration has assumed growing magnitude and social importance. For the European Union, the growth of immigration has been accompanied by economic stagnation and increasing structural unemployment – the employment problems that arise from a mismatch between the needs of employers and the skills of the labour force.

This situation places the budgetary policies of individual countries under severe strain. In all European Union member states, there is pressure for social security systems to be overhauled, a process that has repercussions on access to benefits by immigrant workers.

The endeavour to balance public budgets has given rise to policies intended to regulate immigration, changes in policies on family reunification and political asylum and intensification of the battle against clandestine immigration – a phenomenon that is perceived as a social emergency, especially in the countries that police the external frontiers of the European Union.

Composition of immigration

The characteristics of migrant workers have changed in terms of sex, age, education and skills. Those changes significantly affect the social security policies of host countries and can be summarised as follows:

- an average age lower than that of the native population;
- a larger proportion of migrant males than in the native male population;
- skills levels usually lower than those of the local population;
- a tendency for immigrants to concentrate in urban areas and to be employed in specific sectors;
- a greater tendency of immigrants to be affected by unemployment or underemployment and to work illegally.

Attitudes of native populations towards immigrants

Immigration has performed a positive function in host countries. Indeed, in the opinion of numerous observers, the great wave of clandestine immigration into the United States during the 1980s was responsible for the sustained growth of the American economy in the 1990s. Moreover, in both Europe and the United States, immigrants are net contributors to social security systems and therefore help ensure their sustainability.

Despite the fact that immigration is a source of economic and social enrichment for the host countries, it is widely believed to have harmful effects. Opinions on immigration policies are influenced by expectations about the impact of immigrants on the labour market, on public services and on social security systems. These attitudes exist because (1) the costs and benefits of immigrants are unevenly distributed and (2) citizens do not directly perceive the impact of immigrants on the general economy.

Three sets of factors – cultural, economic and social – influence public attitudes towards immigrants in the host countries, and these factors are interrelated. Racist and xenophobic attitudes in the culture stem largely from the economic worries of native residents. The economic uncertainties of the developed countries, the changing nature of work affecting young people and their families and growing inequalities combine to generate doubts about the future that undermine the security of the middle-to-low social classes and low-skilled workers. These attitudes are also conditioned by unemployment levels in the host countries, where immigrants may consequently be regarded as competitors in the jobs market. In such situations, immigrants may also be perceived as cynical exploiters of the benefits offered by local social security systems.

Although these beliefs about immigration are baseless, they fuel currents of public opinion, which, in some countries, have turned into movements and political parties expressing hostility towards immigration. These attitudes can and must be combated by adjusting policies on integration, immigration, employment and social security to take account of the new circumstances.

Impact of immigration on social security systems

One factor responsible for the reluctance of native populations to accept immigration is the widespread perception that immigrants are a drain on the resources of social security systems. This perception is closely tied to the number of immigrants compared with the native population: The greater the number of immigrants, the more marked the view that they strain resources.

Three factors substantially determine the likelihood that an immigrant will be dependent on a host country's social security system: the person's education level, skills endowment and family socioeconomic characteristics. The low educational levels and younger average age of immigrants place the overwhelming majority of them at a disadvantage in labour markets, and these characteristics constitute the main determinants of social and economic exclusion and consequent dependence on social security systems.

For these reasons, host countries need to adopt active reception policies to control the characteristics of migrants and contain the impact of immigration on social security systems.

Active reception policies

Policies for the reception of immigrants significantly reduce the risk of their social exclusion and enhance the sustainability of social security systems. Such policies, moreover, are the most efficacious means to improve the integration of immigrants, to consolidate their positions in the labour market and to bring about positive change in the attitudes of the local population towards them.

However, active reception policies should be based on partnership relations between the immigrant and emigrant countries. In particular, they should be designed to achieve the following:

- A reduction in the spontaneous selection of destination countries. Policies should work to this end by promoting bilateral and multilateral actions that control and/or enhance the characteristics of immigrants, especially in terms of human capital and give them good chances of successful integration into the host country's labour market.
- A mix of selective entry policies that encourage both family reunification and the recruitment of skilled personnel, thereby increasing the employment of immigrant workers in knowledge-intensive sectors.
- An effective policy for temporary legal immigration as an alternative to clandestine immigration. The use of temporary contracts may maximize the benefits arising from enhancement of human capital in both the immigrant and emigrant countries. The efficacy of this policy would be heightened if (1) employers assumed responsibility for providing accommodation and health coverage for immigrant workers and (2) specific benefits were granted to the family members of immigrants who remained in the country of origin.
- Alleviation of the shocks to which immigrants are subject on their arrival in host countries. These shocks are psychological traumas caused by language difficulties and the impact of a cultural environment very different from that of the country of origin.
- Action taken to prevent discrimination against immigrants by employers on grounds of ethnicity or religion.

- Closer contacts among immigrants belonging to the same ethnic group to strengthen bonds of social solidarity and foster integration and reciprocal economic and social support.
- Greater portability of social security benefits, especially when immigrants return to their country of origin.
- A reduction in the illegal employment or under-employment that exposes immigrants to the risk of receiving wages below the subsistence level and increases their potential dependence on the social security system.
- Policies intended to foster new forms of civic citizenship, defined as a set of obligations and rights acquired by the migrant worker over time and which also comprise forms of political participation.

Instruments to protect immigrant workers

The international conventions promulgated by the United Nations and by the institutions connected with it, such as the International Labour Organization, furnish governments and national institutions with a reference framework in which to devise policies that protect immigrants and grant them access to social security. Nevertheless, these conventions are not able to ensure that national policies are coordinated, nor can they guarantee that immigrant workers will receive effective protection.

The conceptual and operational framework of international regulation – both multilateral and bilateral – does not seem able to deal with the problems that are now involved in the protection and social security coverage of immigrant workers. As immigration has increased, the efficacy of international conventions has diminished. The principles assumed as the basis for bilateral agreements, and the domestic policies of the developed countries towards migration, are not always consistent with the provisions of international conventions. They waver between affirmation of the principles of non-discrimination and the introduction of policies designed to restrict immigrant inflows and impede immigrants from obtaining residence or citizenship.

Moreover, much of the legislation enacted in the European countries to regulate migrant inflows has addressed political refugees and asylum seekers. It has proved inappropriate to the broader phenomenon of immigration for economic reasons, which, according to most recent studies, will continue until at least the middle of this century for the majority of the more developed countries.

Fundamental principles of the international regulation of migration

At the multilateral level

The conventions of the United Nations require that member states implement policies founded on equality of treatment between nationals and immigrant workers respect to:

- working conditions and economic treatment;
- access to social security and to social and health services;
- emergency medical assistance.

The international conventions on emigration elaborated by the ILO require the signatory countries to comply with the following principles:

- non-discrimination against immigrants
- equality of treatment between nationals and immigrants;
- reciprocity between immigrant countries and emigrant countries in the treatment of immigrant workers;
- the extension of equal opportunity with nationals to immigrants legally staying in the host country.

At the level of the European Union

Access by migrant workers to the European Union's labour market is of crucial importance for the success of the Lisbon strategy to turn Europe into an engine of international growth based on the knowledge economy. The European Union has launched its own policy on immigration, and that policy is today one of the main sources of the multilateral regulation of migration.

The objectives of the European regulation have evolved over time. It initially centred on the need to achieve two apparently contradictory goals: (1) implementing the principle of the free movement of European labour and (2) restricting entry into Europe by non-EU immigrants. As obstacles against the free movement of European labour were gradually overcome, more attention was focused on how this principle could be reconciled with the regulation of immigration.

In recent years, the European Union has contributed significantly to the development of supranational procedures that use the "open coordination" method to foster the evolution of member states' immigration regulation policies. The European Union's policy comprises numerous initiatives intended, among other things, to encourage the acceptance of immigration by local populations. Indeed, the European Union believes that the integration of immigrants is a prime goal to pursue in view of the importance of the social and economic issues connected with the ageing of its population. The legal framework instituted by the European Union sets out the principles on which member states should base their action, as follows:

- Rights and obligations analogous to those of European Union citizens should be granted to third-country nationals legally staying in the territories of the European Union's member states.
- Also granted in principle to immigrants is the right to family reunification, and their family members are guaranteed access to work, education and training.
- Directive no. 109/2003 states that the rights accruing to third-country nationals who are long-term residents should be commensurate with the duration of their stay. In this regard, the European Union suggests that an uninterrupted stay of at least five years should be the criterion for the granting of such status.
- Another directive suggests that the provisions of bilateral agreements that cover only immigrants in dependent employment should be extended to cover the entry and stay conditions applicable to third-country nationals who intend to take up dependent employment or self-employment.
- The recently enacted Regulation no. 859/2003, which modifies Regulation no.1408/71, promotes social security schemes that give third-country workers the same rights enjoyed by the citizens of a member state when they move from one country within the EU to another. The European Union also extends certain principles regulating the mobility of European citizens to immigrants who stay on a long-term basis in member states.

At the level of bilateral conventions

In bilateral conventions governing social security for migrant workers, the underlying principle is reciprocity of treatment for migrant nationals of the two contracting countries. These conventions affirm the territoriality of insurance obligations, and they regulate the procedures for the totalization of pension contributions and eligibility for the benefits provided by social security systems. Totalization benefit provisions help eliminate situations where workers fail to qualify for social security benefits because they have divided their careers between the United States and a foreign country. Under an agreement, workers may qualify for partial US or foreign totalization benefits, based on credits in both countries.

The principle of reciprocity has proved insufficient to guarantee adequate protection for immigrant workers in host countries. In most emigrant countries, the social security systems are underdeveloped and not comparable with those of the immigrant countries. Moreover, the reciprocity principle hampers the application to immigrant workers of many of the social security provisions that have evolved in host countries during the past century.

The application of this principle not only gives rise to inequalities between immigrant workers and native workers but produces further inequalities among the immigrant workers themselves:

- Disparities exist between immigrants from countries that have conventions with the host country and immigrants from countries that do not have such conventions.
- Inequalities also may arise among immigrant workers from countries that have stipulated conventions. The reciprocity principle works well for workers from emigrant countries that have well-developed social security systems; but workers from countries that have less developed systems are ineligible for important benefits provided by the host country.

Prompted by inequalities produced by the reciprocity principle, some countries with longer experiences of immigration have developed legislation shorn of international references. This is a more unilateral approach, which seeks to ensure equality of treatment for immigrants regardless of the existence of bilateral conventions that provide some degree of protection for them.

Shortcomings in migration regulation

At multilateral level

Countries have not incorporated the ILO conventions into their legislation in a uniform manner, a circumstance that has created situations that are at odds with the principles enshrined in international conventions. The result is that in practice, affirmation of the principles of equality of treatment and non-discrimination between nationals and immigrants does not ensure the implementation of those principles.

Functionally, access to numerous social security benefits is conditional on citizenship, and citizenship is a condition from which immigrants are substantially excluded, despite legislative changes. In some cases, the citizenship requirement is relaxed to grant partial or total access to social security benefits conditional on possession of different types of work permits – for example, temporary, agricultural worker, etc. – but this, too, leads to discrimination among immigrant workers. In yet other cases, benefits are proportional to the duration of the immigrant's legal residence in the host country.

The following shortcomings in regulation generate the most serious potential for discrimination against immigrants:

- the absence of a minimum contributory standard for access to pension benefits (stage minimum);
- the criteria determining access to social security benefits by the family members of immigrants, both when they reside in the host country and when they reside in the country of origin;
- the non-uniform criteria applied to benefits for the members of an immigrant worker's family when it is polygamous.

At the level of the European Union

According to terms of a recent European Union regulation, the conditions regulating the entry of immigrants into individual countries are decided by national legislations, whereas European community norms regulate the intra-European mobility of immigrants.

The aim of the community norms is to reduce obstacles to the free movement of immigrant workers "legally staying" in a European country. In the case of intra-European mobility, the same principles that apply to mobility of European citizens generally should guarantee the portability of immigrants' acquired rights. By introducing the concept of "legal stay", the European Union regulation may prompt some member states to revise their national legislation for consistency with European norms.

At the bilateral level

As noted, the principles affirmed by international conventions find only partial application in bilateral agreements because they are founded on the reciprocity principle, which was formulated when migration was of much smaller proportions than it is today.

The shortcomings of bilateral agreements are the result of at least three factors:

- the large number of countries from which immigrant workers originate, and the fact that the majority of those countries do not have agreements or are unable to stipulate them;
- the absence of reciprocity in migratory flows;
- the asymmetry between the economic, political, institutional and administrative conditions regulating pension and social security policies in the emigrant countries and those that exist in the immigrant countries.

Bilateral regulation is closely influenced by the political and economic relations between the stipulating countries. In most cases, the negotiations conducted before the stipulation of agreements define their range of application, the benefits to which immigrants are entitled and the conditions under which immigrants may have access to them.

Yet the reciprocity principle of bilateral agreements does not guarantee immigrant workers all the benefits to which they are entitled in host countries. Because the evolution of social security policies in immigrant countries rarely involves the revision of bilateral agreements, the disparities in access to benefits between immigrants and native workers are at risk of increasing even further.

When the system of bilateral agreements was conceived, standard forms of employment predominated, and immigrants typically worked as wage earners in the private sector of the host countries' economies. Since that time, European labour markets have undergone profound changes. For example, new forms of temporary work have proliferated, and demand for immigrant labour is now also directed towards knowledge workers for the public sector or recently privatised enterprises. As a rule, neither these new forms of work nor

public sector employment falls within the scope of bilateral agreements. Additionally, immigration increasingly involves workers who do not depend on an employer but are self-employed. Such work is entirely unregulated in terms of insurance contributions and access to social security benefits.

Shortcomings in information exchange

The growth of migratory flows and the multiplicity of emigrant countries severely strain the administrative structures and procedures responsible for the management of social security for migrants. Administrative difficulties create formidable obstacles to the efficient management of immigration. They hamper access to forms of social protection and social security benefits, and they impede the exchange of information among the national bodies and institutions that manage the insurance positions of immigrant workers.

The most critical aspects of administrative management are the following:

- the methods used to transliterate the names of immigrants from countries with languages that do not use Latin alphabets;
- the discrepancies among the criteria used by host countries to give immigrant workers personal identification codes, which are essential for access to pensions and social security systems;
- the absence of reliable documentation on the identities of numerous immigrant workers. This problem forces host countries to assign workers conventional dates of birth, applying diverse criteria that significantly increase the costs of accessing pension and social security benefits;
- the absence of communication between the social security institutes of immigrant and emigrant countries until closure of insurance relationships, when the immigrant worker lodges a claim for accrued benefits. As they seek to reconstruct the worker's insurance record, administrators face serious difficulties that cause delays and disputes over recognition of the worker's acquired rights; and
- the great country-to-country variance in documentation required for access to pension and welfare benefits, which makes cooperation among social security institutes problematic.

Shortcomings in the regulation of work-related accidents and occupational diseases

In most countries, the protection of immigrant workers in cases of workplace accidents and occupational diseases is based on the principles of territoriality and the level of skilled performance.

Despite this common basis, major shortcomings exist in the application of these principles, especially in the criteria used to assess "biological damage" and the absence of common standards for the certification of invalidity and occupational diseases.

Recommendations

The study highlighted areas where the regulation of access to social security benefits by immigrant workers could be improved (1) to ensure the applicability of the assumptions underlying international regulations and (2) to increase the enforceability of the rights that stem from those assumptions.

The following actions are recommended if these improvements are to be accomplished:

1. Adapt international regulatory instruments

The instruments used internationally to regulate migration furnish a suitable framework for host countries to devise reception and protection policies and for host and home countries to establish relations on a bilateral basis. The stipulation of international conventions should therefore be encouraged.

However, with the recent magnitude of migration, many of the principles affirmed in international conventions are no longer sufficient to provide immigrant workers with adequate protection. Host countries should therefore enact legislation, even on a unilateral basis, that makes immigrant workers eligible for the pensions and welfare benefits provided by law for nationals, solely on the basis of the existence of an insurance relationship and their legal stay in the host country.

2. Increase migrant workers' protection rights

Recent changes to regulation of labour markets in host countries have made employment less stable and social security systems less generous. Immigrant workers should be entitled to the forms of supplementary social security that the host countries have put in place: voluntary supplementary pensions, insurance against involuntary unemployment; extension of benefits to third or public sector immigrant workers whose protection is not addressed by current international or bilateral regulations.

3. Extend migrant workers' protection rights to their families

The changes numerous countries are introducing to improve the selection of immigrants also affect policies on family reunification. The more the host countries extend the rights of immigrant workers' families in the host country to family members remaining in the home country, the more efficacious such policies will be.

4. Improve migrant workers' protection on return to their countries of origin

The host countries should, in collaboration with the countries of origin, introduce policies that facilitate the return of immigrant workers to their home countries, enabling them to receive there the benefits to which they would have been entitled had they remained in the host country.

5. Increase migrant workers' protection in the case of work-related accidents and occupational diseases

The protection of immigrant workers with regard to occupational diseases and work-related accidents should be extended on the basis of the territoriality principle regardless of the legal status of the worker's stay in the host country. The criteria used to assess occupational diseases and invalidity levels should be standardised.

6. Improve the exchange of administrative information

The present magnitude of migration hinders the administrative efficiency of the social security institutes of host and home countries. To remedy this situation, those institutes should regularly exchange data in a timely manner so that the records of

immigrant workers records are continually updated. Additionally, common forms of certification should be introduced to reduce bureaucratic delays and disputes between immigrant workers and the social security institutes.

7. Promote benchmarking policies and stakeholder involvement

The social security institutes should improve their services by adopting policies that include measuring and compared results and promoting greater sharing of information among the officials who work in those institutes. Improving these services requires the cooperation of employers' associations, trade unions and workers, as well as the immigrants themselves, who should be encouraged to create their own associations.