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Social security coverage for migrants: Critical aspects

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The widespread and by now stable presence of non-EU workers in Europe, and the enlargement of the EU to encompass countries with different social security systems, administrative arrangements and cultures, urgently require research, analysis and knowledge of national and international actions undertaken to regulate the new features of migration, and to manage the latter's impact on the social security systems of the various European countries.

Reconciling equality of rights with the economic sustainability of welfare systems is the principal challenge confronting social policies at the beginning of the twenty-first century.

Against this background, the research project assigned by ISSA to CESOS, in collaboration with another Italian research centre, IRES, was set out to examine issues concerning the management of the social security systems of France and Italy when they involve immigrant workers from Albania and Tunisia.¹ But the research did not restrict itself to comparative analysis of the situations of those workers alone; it also examined critical aspects regarding the social protection of immigrant workers and their families, not only when they live in the territories of the European countries and move from one another, but also on their return to their countries of origin.

The overall objective of the project was to furnish policy recommendations to be implemented both within the European Union and internationally in order to improve the situations of immigrant workers.

The aim of this paper is to present the main results of the research and, in particular, the critical aspects concerning the international, European and national tools regulating migrant workers' access (and the one of their families) to the social security systems of the host countries.

For further details, please, consult the Final Report available at ISSA².

¹ These particular countries were selected because Tunisia has bilateral agreements with both France and Italy, while Albania at present does not have agreements with either of them.

² The final report is in preparation.

NATIVE POPULATIONS TOWARDS IMMIGRANTS

Conditions and procedures, for migrants and their families, to gain access to the social security systems of the host countries is one of the most relevant aspect of the migration policies adopted by the various host countries.

It is of a primary importance to look at these aspects within the more general framework of the phenomena linked to migration policies in order to better understand the peculiarities of migration policies.

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 USA, immigrants are net contributors to social security systems and therefore greatly contribute to ensure their sustainability in time.

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. Individual opinions about immigration policies are influenced by expectations concerning the impact of immigrants on the labour market, on public services, and on social security systems. The reasons for these attitudes are firstly that the costs and benefits of the presence of immigrants are unevenly distributed, and secondly that the impact of immigrants on the general economy is not directly perceivable by individual citizens.

There are **three sets of factors** that influence public attitudes towards immigrants in the host countries:

- **cultural**, sometimes giving rise to overt xenophobia and racism;
- **economic**, due to the presence of immigrants in the labour market;
- **social**, connected with the impact of immigrants on social security systems.

Racist and xenophobic attitudes stem largely from the economic worries of native residents concerning their futures. The economic uncertainties of the developed countries, the precarization of jobs affecting young people and their families, as well as growing inequalities, all combine to generate uncertainty about the future which undermines the security of the middle-to-low social classes and low-skilled workers.

These attitudes are also conditioned by levels of unemployment in the host countries, where immigrants may consequently come to be regarded as competitors in the jobs market. In situations such as these, immigrants may also be perceived as cynical exploiters of the benefits offered by local social security systems.

Although these beliefs about the reality of immigration are baseless and irrational, 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 immigration policies, integration policies and those concerning employment and social security to the new circumstances.

THE IMPACT OF IMMIGRATION ON SOCIAL SECURITY SYSTEMS

One of the factors 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. And this perception is all the more marked, the greater the number of immigrants compared to the native population.

The likelihood that an immigrant will be dependent on a country's social security system is substantially determined by his/her education level, skills endowment, and the socio-economic characteristics of his/her family. The low educational levels and younger average age of immigrants place the overwhelming majority of them at a disadvantage in labour markets, and they constitute the main determinants of social exclusion and consequent dependence on social security systems.

In view of these considerations there is an evident need for host countries to adopt active reception policies with which to control the characteristics of migrants and contain the impact of immigration on social security systems.

MIGRANTS' PROTECTION POLICIES AND INSTRUMENTS

Active reception policies

Active policies for the reception of immigrants significantly reduce the risk of their social exclusion, and they 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 countries of origin and the host countries. In particular, they should be designed to achieve the following:

- A reduction in the tendency for immigrants to select their destination countries spontaneously. Policies should work to this end by promoting bilateral and multilateral actions which control and/or enhance the characteristics of immigrants, especially as regards human capital, and give them good chances of successful integration into the host country's labour market.
- A mix of selective entry policies which encourage both family reunification and the recruitment of skilled personnel, thereby increasing the employment of immigrant workers in high knowledge intensity 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 human capital enhancement in both the immigrant and emigrant countries. The efficacy of this policy would be heightened if employers assumed responsibility for providing accommodation and health coverage for immigrant workers, and it could be further increased if specific benefits were granted to the family members of immigrants remaining 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 any discrimination against immigrants by employers on grounds of ethnicity, sex or religion.
- Closer contacts among immigrants belonging to the same ethnic group so that bonds of social solidarity are strengthened and integration and reciprocal economic and social support are fostered.
- 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

The political and social issues currently facing the developed countries concern the manner in which immigration occurs, its regulation, and the modes of access by immigrants to social security benefits.

The international conventions promulgated by the United Nations Organisation and by the institutions connected with it, such as the ILO, furnish governments and national institutions with a reference framework in which to devise policies to protect immigrants and to grant them access to social security. Nevertheless, they are not per se able to ensure that national policies are co-ordinated, nor can they guarantee that immigrant workers will effectively receive protection.

The conceptual and operational framework of international regulation – both multilateral and bilateral – does not seem entirely able to deal with the problems that now concern the protection and social coverage of immigrant workers.

As emigration has increased, the efficacy of international conventions has diminished. The principles assumed as the basis for the formulation of bilateral agreements, and the domestic policies of the developed countries towards migration, are not always coherent 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, it should be borne in mind that a large part of the legislation enacted in the European countries to regulate migrant inflows has concerned policies for the reception of political refugees and asylum seekers. It has proved entirely inappropriate to the governance of 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.

THE INTERNATIONAL REGULATION OF MIGRATION PHENOMENA

UN conventions (multilateral level)

Violation of the fundamental rights and human dignity of migrants have become an issue of global concern. Migrants are increasingly used as scapegoats for social problems, and they are indubitably in need of norms and instruments that protect their rights. The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families is the instrument deemed necessary by the United Nations to guarantee the fundamental rights of migrants.

The Convention is today the most complete international instrument on the matter. It sets out a series of international rules on the treatment, social security entitlements, and rights of migrant workers and members of their families, as well as the obligations and responsibilities of the countries concerned – which comprise those of origin, transit and destination.

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

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

The Convention may open new horizons by extending protection to migrant workers and their families on a world-wide scale, acknowledging their crucial contribution to the global economy.

ILO conventions (international level)

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

- non-discrimination;
- 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.

ILO Convention 97 essentially concerns the status of migrant workers (and their family members) during their residence in a country that has ratified the Convention. It is binding on the State that has ratified it with regard to migrant workers of any nationality (even when the third State from which the workers originate has not ratified the Convention).

Regarding the principle of "non-discrimination", it should be pointed out that Convention no. 97 permits immigration countries to "adapt" the application of that principle with respect to:

- benefits or portions of benefits payable wholly out of public funds;

- allowances paid to persons who do not fulfil the contribution conditions normally prescribed for the award of a pension.³

ILO Convention no. 118 concerns equality of social security treatment between national citizens and immigrants. Article 3 (section 1) of the Convention stipulates that each State for which the Convention is in force shall grant to the nationals of any other State for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and entitlement to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.⁴

The Convention also applies to "refugees" and "stateless persons" without any condition of reciprocity. It should be stressed that this Convention lays down principles which cover social security both during the period of residence and in the case of repatriation (conservation of acquired rights) among the 38 ratifying countries (so-called "reciprocity condition").

This Convention has been ratified by only eighteen countries.⁵ Its principal purpose is to combat clandestine migration, the irregular employment of migrants, and illicit trafficking in labour.

It should be stressed that Convention 143/75 is based on the principle that an "irregular" migrant worker is a victim and not a criminal: It is not opposed, in fact, to the regularization – also a posteriori – of the residence and (work) situations of such persons.

European policies (EU level)

The European Union has launched its own policy on immigration, and it 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: implementing the principle of the free movement of European labour; restricting entry into Europe by non-EU immigrants.

Subsequently, as obstacles against the free movement of European labour were gradually overcome, the issue was addressed of 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 which use the "open co-ordination" method to foster the evolution of member-states' immigration regulation policies.

³ Article 6-1, b), ii) of Convention no. 97.

⁴ According to the third section of this article, the State in question may derogate, for a particular branch of social security, from application of the principle established by section 1 with regard to the nationals of another member State which has legislation on that branch but does not grant equality of treatment to nationals of the former State.

⁵ France has not ratified the Convention.

The European Union's policy comprises numerous initiatives intended inter alia 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.

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 legal framework instituted to date by the European Union sets out the principles on which member-states should base their action. The first of these principles is that rights and obligations analogous to those of European Union citizens should be granted to third-country nationals legally staying in the territories of the Union's member-states. Also granted in principle to immigrants is the right to family reunification, whilst their family members are guaranteed access to work, education and training.

The European Union's Directive no. 109/2003 concerns the status of third-country nationals who are long-term residents, and it envisages that the rights accruing to such persons should be commensurate with the duration of their stay. In this regard, the European Union suggests that an uninterrupted stay period of at least five years should be the criterion for the granting of such status.

A further Directive issued by the European Union intends to steer the actions of member-states in defining the entry and stay conditions which apply to third-country nationals intending to take up dependent employment or self-employment, suggesting that the provisions of bilateral agreements which cover only immigrants in dependent employment should be extended.

The European Union's recently enacted Regulation no. 859/2003, which modifies Regulation no.1408/71, promotes social security schemes which give third-country workers the same rights as enjoyed by the citizens of a member-state when they move from one country to another. The European Union is also minded to extend certain principles regulating the mobility of European citizens to immigrants staying on a long-term basis in member-states.

Bilateral conventions (bilateral level)

Bilateral conventions are international agreements stipulated by two countries in order to regulate their reciprocal relations with regard to social security for migrant workers. The underlying principle informing such agreements is reciprocity of the treatment afforded to 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 welfare and other benefits provided by social security systems.

Outline of bilateral agreements on social security

France's relations reflect its past as a **colonial power**. Indeed, featuring most prominently among France's contracting countries are those which, to various extents, fell within its sphere of influence⁶ and which, since gaining independence, have continued to maintain close links with the country (and which have long been France's principal sources of foreign labour). This said, the number of bilateral agreements currently in force (excluding the EU and EES member-states and Switzerland, which are covered by EEC Regulation 1408/71)⁷ amount to more than thirty.

In terms of content (as regards only countries with the largest inflows of immigrants), despite evident limitations in terms of personal and material application (in practice, though with some exceptions, the agreements cover only workers or former workers in dependent employment during their periods of enrolment with employee social security schemes), the picture that emerges is one of a certain degree of **homogeneity**.

Besides the guarantees typifying the concept of "equality of treatment", to be noted is France's endeavour to take concrete consideration of the **plurality** of the situations, and their consequences, connected with migration. Thus agreements containing provisions on sickness/maternity also regulate such matters as health coverage during holidays and/or authorized temporary stay in the country of origin (worker and family members resident in the country of employment); maintenance of sickness and maternity benefits in the case of temporary stay in the country of origin; the application of basic criteria on "sickness" (health care) and "family" cash benefits to family members in the worker's country of origin. This last provision, known as "*droit des familles*" entitles family members in the worker's country of origin to receive the health care and family allowances envisaged by the local legislation. France reimburses the relative costs directly to the insurance institute of the country in which the family is resident. There are in general no restrictions on the transferability of pensions (invalidity, old-age, survivor), although invalidity is subject to the principle of payment of a single benefit (i.e. the invalidity pension is paid only by the country where the invalidity occurs, according to the legislation on the subject in force in that country), and the same applies to workplace accidents and occupational diseases.

These provisions, moreover, are flanked by a series of measures (adopted in 1998) which apply to all migrant workers **independently** of the existence of bilateral agreements: the **superseding** of limits of territoriality (in respect of the acquisition/recovery/maintenance of basic pension entitlements) and the **abandonment**, for residents in France, of the "nationality-reciprocity" requirement regarding eligibility for non-contributory benefits (FNS, *allocation supplémentaire du Fonds national de solidarité*, and AAH, *allocations aux adultes handicapés*).

Indeed, the situation in **Italy** is very different, for in this case bilateral agreements mostly reflect the intensity of migratory **outflows** (to other countries or other continents). Again with the exception of the EU, the EES and Switzerland, the agreements currently in force concern 21 countries.

⁶ By direct exercise of sovereignty or protectorate powers.

⁷ Eighteen countries in total, of which fifteen as member-states of the EU, three under the EES agreement (Norway, Iceland, Liechtenstein), and one under of the EU-Switzerland agreement.

Italy has few agreements with countries from which immigrants originate. This is due only minimally to the fact that the presence of foreigners in Italy is a relatively recent phenomenon. Moreover, when agreements which primarily concerned emigration are examined in the light of the current exigencies of immigration, they reveal shortcomings in several crucial respects⁸, and this makes the situation far from encouraging.

However, the subsequent tendency has been notable mainly for the marked **differentiation** of agreements according to the area of immigrant provenance. Precisely **the reverse** applies to all the other countries, which are largely coincident with poor and/or developing areas. In these cases, the agreements (either paraphed or under negotiation) are characterized by poor quality of content and by the blatantly dominant position of the receiving country compared to the country of origin. The agreement contains **no** provisions with regard to sickness/maternity, accident, or family benefits. Moreover, because the agreement **expressly derogates** from the principle of equal treatment as applying to the non-contributory benefits envisaged by Italian law, despite the existence of a bilateral accord, entitlement to the benefits in question is still subordinate to the provisions that apply to all foreigners ("residence permit" and "nationality").

"Foreign" labour in Italy and France (and more generally in the European Union) does not consist solely of manual workers. Although a large proportion of immigrants still have low-skilled jobs, also to be considered in view of the implications for social security are those immigrant workers who are especially in demand because of their high levels of training and specialization, their greater mobility due cultural and scientific agreements (with regard to education, research and development of new technologies), and their effective chances of entering self-employment (and the free professions).

Here a **first objective limitation** concerns the definition of the **range of "material" application** of the agreements.

In the case of **Italy**, exclusion mainly operates with regard to the **social security schemes for civil servants and self-employed professionals**.⁹ In other words, the above agreements apply generally to dependent employees in the private sector (including alternative schemes), as well as to self-employed workers enrolled on the special sections of the general compulsory insurance scheme (farm-workers, share-croppers, shopkeepers and craftsmen).¹⁰ As regards employees enrolled on the "exclusive" schemes (for civil servants) the problem has been resolved relatively recently, and exclusively for the Community area (EC Regulation 1606/98).¹¹

⁸ In the agreement with Argentina, for example, aspects relative to sickness benefit are defined only as regards pensioners and annuity-holders. The same shortcoming is apparent in the section on family allowances, for three reasons: because the agreement does not include these among the risks protected (in the case of Brazil and Venezuela); because the measures only apply to pensioners and annuity-holders, and not to workers (Uruguay); because reciprocity criteria are applied (Argentina).

⁹ Save for the recent Italy-USA agreement.

¹⁰ Logically, following the innovations introduced by Law 335/95 this should also apply to "quasi-subordinate" workers enrolled with the INPS. However, information is not yet forthcoming from INPS as to its international application (EU regime and bilateral agreements).

¹¹ Consequently, an Italian civil servant with a previous period of employment in a bilateral area (e.g.

The same exclusion applies in **France**, in which case one is struck by the large number of agreements (almost all of them with the countries from which the largest numbers of immigrants originate) valid **solely** for persons in **dependent employment** (the general scheme, the agricultural scheme, and the special scheme for miners).

Further limitations may derive from the rather marked tendency to **restrict** the number of **risks protected** by agreements (an example being unemployment insurance) and by delays on transposing changes in national social security systems. Consider, for instance, compulsory supplementary pension insurance (second pillar), or early retirement schemes – called "hybrid" because they lie midway between ordinary unemployment benefit and old-age pensions. In all these cases, therefore, the rights of migrant workers depend solely on the national legislation, so that such workers are at risk of losing the relative advantages if they transfer residence.

As regards the scope of personal application, in the majority of cases the bilateral agreements cover citizens of the two contracting states (as well as their family members and survivors). Unfortunately, only in few cases is the broader notion of "insured persons" applied (so that the citizens of other third countries are included¹²).

Further restrictions concern the use of the concept-criterion of "multiple totalization" (a criterion present in some of the agreements concluded by Italy but almost entirely absent from those concluded by France).

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

The application of this principle not only gives rise to inequalities between immigrant workers and native workers but also produces further inequalities among the immigrant workers themselves. The first of them is the disparity between immigrants from countries which have stipulated conventions with the host country and immigrants from countries which have not. Inequalities may, moreover, arise among immigrant workers from countries which have stipulated conventions. This is because some emigrant countries have well-developed social security systems, so that the reciprocity principle works efficaciously, whilst others have less developed systems, with the result that workers from those countries are ineligible for important benefits provided by the host country.

Argentina) cannot accumulate the two periods for pension purposes unless the relative contributions are transferred to the general compulsory insurance scheme managed by INPS. Should he desire to conserve treatment under the special scheme, he can at most redeem the period in Argentina (decree 286/97) for calculation of the Italian pension (without any certainty, however, that he will maintain entitlement to an Argentinean benefit unless he makes up the minimum contributions required in that country). In truth, given recent amendments to the Italian legislation (closer parity between the social security statuses of the two categories of employees), other solutions would be practicable.

¹² For Italy: Argentina, Australia, Canada, Quebec, San Marino, USA, Uruguay, Venezuela. For France, in respect to the agreements examined, this concerns only Chile.

These inequalities produced by the reciprocity principle have prompted some countries with longer experiences of immigration to develop legislation shorn of international references. Such legislation we may call "unilateral" in that it seeks to ensure equality of treatment for immigrants regardless of whether there exist bilateral conventions providing some degree of protection for immigrant workers.

See annex 1.

SHORTCOMINGS IN THE REGULATION OF MIGRATION

At multilateral level

Countries have not transposed the ILO Conventions into their legislations in uniform manner, a circumstance which has given rise to situations at odds with the principles enshrined in international conventions.

Affirmation of the principles of equality of treatment and non-discrimination between nationals and immigrants as set out in the various international conventions does not seem sufficient – in the administrative practices of the countries concerned – to ensure the effective implementation of those principles.

In effect, access to numerous social security benefits is conditional on possession of citizenship, and citizenship is a condition from which immigrants are substantially excluded notwithstanding the changes made to countries' legislations. Hence, the principle of non-discrimination between nationals and immigrants so solemnly pronounced at the international level is disregarded.

In other cases, the citizenship requirement is relaxed by granting partial or total access to social security benefits conditional on possession of a differentiated stay permit; but this too gives rise to discrimination among immigrant workers. In yet other cases, entitlements to benefits are proportional to the duration of the immigrant's legal residence in the host country.

This situation poses the problem of guaranteeing the applicability to immigrant workers of the principles that inform the international regulatory instruments: namely the right to, and the certainty of, access to social security benefits on equal terms with native workers.

The following shortcomings in regulation generate the most serious potential for anti-immigrant discrimination:

- 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 with regard to benefits for the members of an immigrant worker's family when it is polygamous.

At the level of the European Union

The recent Regulation issued by the European Union consolidates a division of tasks among the member states of the Union with regard to the regulation of immigration. The conditions regulating the entry of immigrants into individual countries are decided by national legislations, while Community norms regulate the intra-European mobility of immigrants.

The aim of the Community norms is to reduce the obstacles against the free movement of immigrant workers "legally staying" in a European country. In the case of intra-European mobility, the portability of immigrants' acquired rights should be guaranteed by the same normative principles that apply to the mobility of European citizens, other conditions remaining equal.

By introducing the concept of "legal residence" the EU Regulation may prompt revision of national legislations of the member-states so that they are harmonised with European norms.

At the bilateral level

As said, the principles affirmed at multilateral level by the international conventions find only partial application in the bilateral agreements stipulated by countries. This is because they are founded on the reciprocity principle, which was formulated in a historical context when migration was of much smaller proportions than today.

The shortcomings of this form of regulation are due to at least three factors:

- the large number of countries from which immigrant workers originate, the majority of which 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, on the one hand, and those that obtain in the immigrant countries on the other.

Bilateral regulation is closely influenced by the political and economic relations between the stipulating countries. In most cases, the negotiations conducted prior to 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 current situation does not guarantee the effective enjoyment – under the reciprocity principle – by immigrant workers of all the benefits to which they are entitled in host countries. The evolution of social security policies in immigrant countries does not usually involve the revision and adjustment of bilateral agreements, with the consequent risk that the disparities in access to benefits between immigrants and native workers will increase even further.

Moreover, the system of bilateral agreements was conceived at a time when standard forms of employment predominated, so that immigrants typically worked as wage-earners in the private sector of the host countries' economies. But since that time European labour markets have undergone profound changes. New forms of temporary work have proliferated, while demand for immigrant labour is now also directed towards knowledge workers, who find employment in the public sector or in recently privatised enterprises. As a rule, neither

these new forms of work nor public-sector employment fall within the scope of bilateral agreements.

Immigration in its new form increasingly involves workers undertaking activities typical of the free professions, in which they do not depend on an employer but are self-employed. Cases such as these are entirely unregulated as regards insurance contributions and access to social security benefits.

See annex 2.

Shortcomings in the exchange of information

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.

The main difficulties stem from administrative aspects, for these create formidable obstacles against the efficient management of immigration. They hamper procedures for access to forms of social protection and social security benefits, and they impede the exchange of data and 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 which use non-Latin alphabets;
- the discrepancies among the criteria used by host countries to give personal identification codes to immigrant workers, these codes being essential for access to pensions and social security systems;
- the absence of reliable documentation on the identities of numerous immigrant workers, a problem that forces host countries to assign them conventional dates of birth. In these cases, the host countries apply diverse criteria which significantly increase the costs of acceding to pension and social security benefits;
- the fact that communication between the social security institutes of immigrant and emigrant countries usually takes place only on closure of insurance relationships: that is, at the moment when the immigrant worker lodges a claim for his/her accrued benefits. At this point, serious difficulties arise for administrations as they seek to reconstruct the worker's insurance record, difficulties which cause delays and disputes over recognition of the worker's acquired rights;
- the documentation required for access to pension and welfare benefits differs greatly from country to country, which renders co-operation among social security institutes problematic.

See annex 3.

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

In most countries, the protection of immigrant workers with regard to workplace accidents and occupational diseases is based on the principles of territoriality and the automaticity of benefits.

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

See annex 4.

RECOMMENDATIONS

The results of the research have highlighted areas in which the regulation of access to social security benefits by immigrant workers could be improved, with a view to ensuring the applicability of the assumptions on which international regulations are based, and to increasing the enforceability of the rights which stem from those assumptions.

The results of the project reflect the strategic and operational goals outlined in a speech delivered by ISSA President Johan Verstraeten to celebrate the 75th anniversary of ISSA, and in which he declared: "The future of the Association therefore lies in its capacity to formulate practical and targeted recommendations in terms of the needs of its present and future members, at the stages of conception, implementation or improvement of social security systems".

The recommendations set out below result from long discussion among the main actors involved in the project, and their purpose is to furnish proposals which may be put immediately into practice.

The "Recommendations" are followed by specification of findings by the research study which constituted the frame of reference in which the recommendations themselves were formulated.

The following actions, which are described in detail in the final report, are recommended if these improvements are to be accomplished.

Adapt the international regulatory instruments

The instruments used internationally to regulate migration furnish a suitable framework for the devising of reception and protection policies by host countries and for establishing relations between host and home countries on a bilateral basis.

The stipulation of international conventions should therefore be encouraged in order to define a common legal space.

However, the recent magnitude of migration has rendered many of the principles affirmed in international conventions no longer sufficient to provide immigrant workers with adequate protection.

Host countries should therefore enact legislation, even on a unilateral basis, whereby immigrant workers are made 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.

Increase migrant workers' protection rights

Recent changes to labour-market regulation 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 envisaged by current international or bilateral regulations.

Extend migrant workers' protection rights to their families

The changes currently being introduced by numerous countries to improve the selection of immigrants also concern policies on family reunification. These policies are to be considered the more efficacious, the more the national legislations of the host countries extend the rights enjoyed by members of immigrant workers' families in the host country to other members remaining in the home country.

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, in those countries, the benefits to which they would have been entitled had they remained in the host country.

Increase the protection of migrant worker 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.

Improve the exchange of administrative information

The present magnitude of migration hampers the efficiency of administrative procedures by the social security institutes of host and home countries. To remedy this situation, data should be exchanged in constant and timely manner between social security institutes so that immigrant workers' records are continually updated, whilst common forms of certification should be introduced so that bureaucratic delays and disputes between immigrant workers and the social security institutes are reduced to the minimum.

Promote benchmarking policies and stakeholder involvement

The services furnished by the social security institutes should be improved by adopting benchmarking policies and creating communities of practice among the officials working in those institutes. Improving these services also presupposes the cooperation of employers' associations, trade unions, and workers, besides that of the immigrants themselves, who should be encouraged to create their own associations.

ANNEX 1

Benefits for families of Albanian/Tunisian workers who reside in Italy or France or in the worker's country of origin

Italy

Benefits: family allowance.

Requirements: in order to receive the family allowance the family income should not exceed the limits established each year by the law. The family income is composed by the income of the applicant plus the incomes of all the other family members. The family allowance is paid only if the family salary income or related incomes (pension, unemployment, etc.) constitutes from 70 to 100 per cent of the total family income.

Family members (where eligible): the applicants, the spouse not legally or effectively separated, and dependant children (legitimate, legitimated, adopted, natural, legally recognised or judicially declared, born from a previous marriage of the other spouse, under legal custody) and grandchildren of minority age directly dependant; children of majority age who are physically and mentally disable and who are not able have a profitable work; brothers, sisters and grandchildren of minority age or disabled of majority age provided that orphan of both parents and not entitles to receive a survivor's pension. All these persons are considered part of the family, thus entitles to benefit from the family allowance even if they do not live with the applicants (with the only exception of natural children, legally recognised by both parents and direct grandchildren); they are not economically dependent from the applicant; they do not live in Italy (the family members of a foreign citizen can benefit from the family allowance only if they are EU residents, **if the family members come from a non-EU country which does not have a convention they are entitled to the benefit only if they live in Italy**).

France

When the scheme-member makes contributions to the social security system, he can claim benefits in kind (both for himself and for his family) and other cash allowances for himself alone (compensation for work stoppages, daily compensation rates) providing that he fulfils the conditions for entitlement to benefits as provided for under Articles R.313-2 of the Social Security Code (eligibility is determined on the basis of the contributions made or the number of hours worked).

For the allocation of benefits in kind, normally no documentation is required. The annual declaration of social data made by each employer enables the CNAMTS to ascertain whether the applicant fulfils the conditions for entitlement. If the registration procedure of the insured in the social security system has not yet been completed, he could be asked to provide a wage slip.

In the absence of any bilateral conventions Albanian and Tunisian workers are unable to accrue rights to benefits when their families are resident outside of Italy and France.

Where conventions exist, Italy pays benefits (*assegno familiare*) directly to the families of the workers who remained in the countries of origin. In France (with the exception of the Philippines where there is a convention) the various *Caisses d'allocations familiales* make payments to the competent state body in the country of residence of the family who in turn allocates the funds on the basis of their own criteria and legislation (qualifying persons, amounts, cases of polygamy etc). The direct payment of an indemnity (where a convention exists) applies to Turkey only (in so far as there is no family allowance scheme currently established in Turkey).

ANNEX 2

Accrued rights to insurance, social security/welfare and health benefits for Albanian/Tunisian workers who are affiliated to general compulsory insurance schemes in Italy/France

Albanian Immigrants

Italy

Individual benefits: pension, sickness and maternity benefits; disability pension; unemployment benefits; retirement allowance; survivorship pension.

For family members: Family allowances paid to family members resident in Italy or in other EU Member States as provided for under Regulation (EEC) No. 859/2003.

Healthcare benefits: administered by the National Health Service.

France

In France the level of social protection available to workers (volume of health insurance benefits to which salaried persons are entitled) does not vary according to nationality. Rather, it is based on a contributory system or is calculated according to the total number of hours worked. So long as a foreign national working in France has obtained a regular permit of stay, (and once a social security number has been allocated) he is affiliated to an obligatory social security system (general scheme or agricultural scheme depending on the activity undertaken) and is entitled to benefit from all services administered under the regime providing he fulfils the qualifying conditions.

When the scheme-member makes contributions to the social security system, he can claim benefits in kind (both for himself and for his family) and other cash allowances for himself alone (compensation for work stoppages, daily compensation rates) providing that he fulfils the conditions for entitlement to benefits as provided for under Articles R.313-2 of the Social Security Code (eligibility is determined on the basis of the contributions made or the number of hours worked).

Albanian workers who are resident in France, and who have paid contributions there, have the right to an old-age pension when they reach the age of retirement. Their old-age pension can, on the basis of means-testing and their age, be converted to a "minimum old-age pension", i.e.: old-age pension + supplementary retirement contribution + supplementary allocation. The supplementary retirement contribution and supplementary allocation are non-contributory benefits.

The worker's old-age pension may be increased to provide for a dependent spouse (again subject to the means and age of the spouse).

The old-age pension entitles the retired person and their spouse (where eligible) who reside in France to health insurance.

Albanian pensioners may also benefit from social services administered to the elderly such as home-help and home-management schemes.

To gain access to an old-age pension, the Albanian worker must, at the time of the application, prove that they are in possession of a regular permit of stay in France.

Tunisian Immigrants

Italy

Tunisian workers accrue rights to the same kinds of benefits as those listed above for Albanian workers.

France (CNAMTS)

Tunisian workers are entitled to the same benefits as those available to Albanian workers.

CRITICAL ELEMENTS

The range of benefits administered in Italy and France is very wide and varied (old-age pensions, seniority pensions, disability and survivorship pensions, unemployment benefits, national redundancy fund allowance, mobility allowance, sickness and maternity benefits). In order to qualify, applicants must produce documents relative to their family status and declarations of earnings.

- ➔ In France, the allocation of family allowances respects the principle of country of residence. In general, the various state offices (*Caisses d'allocations familiales*) allocate funds to families resident in France. In the case of families who have remained in the immigrant worker's country of origin (with the exception of the Philippines convention), France pays a contribution to the competent state body in the country of residence of the family who in turn allocates the funds on the basis of their own criteria and legislation (qualifying persons, amounts, cases of polygamy etc). The direct payment of an indemnity (where a convention exists) applies to Turkey only (in so far as there is no family allowance scheme currently in existence in Turkey).
- ➔ In Italy, in order to receive a family allowance from INPS, the worker must provide a certificate of registration with the state registry office and documentation that testifies as to existing family relations with the beneficiaries who reside abroad. These documents must be translated and legally certified.

Social protection available to Albanian and Tunisian immigrants who move from Italy to France or vice-versa for professional reasons

Albanian Immigrants

Italy

Insurance and social security/welfare benefits

- From Italy to France: the worker becomes affiliated to the security system of the second State.

The worker receives benefits according to the provisions of his State of residence.

When applying for a pension, the worker may aggregate contributions made in Italy and France as provided for under Regulation (EEC) No. 859/2003.

- From France to Italy: as above.

France (CNAMTS)

Regulation (EEC) No. 859/2003 of 14/05/2003 extended the scope of Regulations (EEC) 1408/71 and 542/72 to include nationals of third countries. These provisions do not apply to Norway, Iceland, Liechtenstein, Switzerland and Denmark.

It follows that an Albanian worker who visits another Member State as a tourist, along with members of his or her family (except in the case of the five countries mentioned above) is entitled to obtain an E111 EU community health insurance form.

This remains valid should he or she move from Italy to France.

France (CNAV)

For an Albanian national who arrives directly from Albania and wishes to receive social security benefits (in the broad sense of the term), providing he or she is in possession of a regular permit of stay in France, the formal application procedures do not differ from those applicable when travelling from Italy to France.

A regular permit of stay entitles him to be affiliated to old-age, sickness and unemployment insurance schemes, which in turn grants the right to access the different benefits available under these schemes as well as to family benefits.

Tunisian Immigrants

Italy

Insurance and social security/welfare benefits

- From Italy to France: Tunisian workers come under the Franco-Tunisian convention (formerly under the Italian-Tunisian convention). This transition normally implies the loss of family benefits for dependent family members who have remained in Tunisia, as the criterion of residency is no longer satisfied.

The worker receives benefits according to the provisions of his or her State of residence. When applying for a pension the worker may make his/her claim under the Franco-Tunisian convention or may aggregate contributions made in Italy and France as provided for under Regulation (EEC) No. 859/2003.

- From France to Italy: as above, and inverted.

Required documentation: permit of stay; certificate of residence; EU documentation.

France

Regulation (EEC) No. 859/2003 of 14/05/2003 extended the scope of Regulations (EEC) 1408/71 and 542/72 to include nationals of third countries. These provisions do not apply to Norway, Iceland, Liechtenstein, Switzerland and Denmark.

It follows that a Tunisian worker who visits another Member State as a tourist, along with members of his or her family (except in the case of the five countries mentioned above) is entitled to obtain an E111 EU community health insurance form.

This remains valid should he or she move from Italy to France

For a Tunisian national who arrives directly from Tunisia and wishes to receive social security benefits (in the broad sense of the term), providing he or she is in possession of a regular permit of stay in France, the formal application procedures do not differ from those applicable when travelling from Italy to France.

A regular permit of stay entitles him or her to adhere to old-age pension, health insurance and unemployment schemes, which in turn grant the right to access different benefits available under these schemes as well as to family benefits.

CRITICAL ELEMENTS

- ➔ Albanian and Tunisian workers are subject to the laws of the State in which they reside. When applying for a pension, they may aggregate the periods of contributions made in Italy and in France as provided for under Regulation (EEC) No. 859/2003.
- ➔ The problem for Albanian workers arises from the fact that, unlike Tunisian workers who can aggregate multiple periods of contributions as provided for under the Italian-Tunisian and Franco-Tunisian conventions, Albanian workers, due to the absence of any such convention, may not aggregate contributions formerly made in Albania with those made at a later date in EU countries.

ANNEX 3

- In Italy, INPS and INAIL manage their files differently. For example, while INAIL was able to provide very detailed data regarding the circumstances giving rise to benefits and type of services administered, INPS cannot provide complete data on the nationality and number of immigrants who are in receipt of benefits in Italy. This is because the field relevant to nationality in the data base is not always diligently completed by operators and therefore it is difficult to distinguish this group from the larger basin of Italian nationals.
- Again, with respect to the management of files, it has emerged that in Italy the computerised systems and databanks of the various bodies active in the field of immigration and employment (INPS, Ministry of Work and Social Policies, Ministry of Foreign Affairs, Home Affairs) must be integrated in order for data generated by PESO (the databank that registers permits of stay) to be accessible by all.
- In France, it is not possible to obtain data on the nationality of those registered with the various social insurance bodies. This is due to the existence of a law on the right to privacy which bans the publication of information on the nationality of persons registered in the various public databanks.

ANNEX 4

Insurance against professional accidents in Italy/France for Albanian/Tunisian workers

- Italy: Regarding professional accidents and occupational diseases, the principles of territoriality and automaticity of benefits apply throughout the Italian territory. From the combined application of these two principles, it follows that for the purposes of insurance, non-EU workers are subject to the same treatment as Italian nationals irrespective of whether their country of origin has stipulated a social security convention/agreement with Italy. Even workers who do not have regular working permits are entitled to benefits in the event of an accident. However, given that they are not insured by their employer, in the event of professional illness they will not receive sickness benefits.
- In France too, every worker – regardless of their nationality or whether there is a convention between the host country and country of origin – benefits from insurance against professional accidents and occupational diseases. The only qualifying condition is that the worker must be affiliated to an insurance scheme.

Benefits for Albanian/Tunisian workers in the event of an accident in the workplace in Italy which occasions a permanent handicap

- There is a need to homogenise criteria for the granting of benefits for disabilities and professional illnesses. Problems arise in particular when the certification of the injury caused takes place in a country other than where the accident took place. The acknowledgement and certification of the injury/damage must be subject to standardised evaluation criteria so that they are equivalent across countries. Equally, as regards professional illnesses, there is a proposal to create a European-wide table of illnesses and a standard evaluation process for each with respect to the reduction in percentage terms of the ability of the worker to carry out his or her professional activity as before.
- Questions also arise about workers who, during a temporary stay in their country of origin, fall ill or have an accident. Current legislation does not guarantee them the benefits to which they would be entitled had the accident or illness occurred in the host country.

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