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Pensions in the Fluid EU Society: Challenges for (Migrant) Workers

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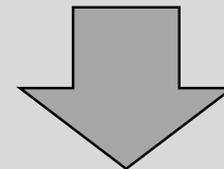
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Outline:

- **What** is fluid EU society ?
- **Why** changes to employment patterns bother us?
- **What** EU acquis on pensions relevant for migrant workers is problematic?

**How
can things be
improved?**



adequate pensions
sustainability
financing

Fluidity of EU society

New working arrangements (precariousness) and labour market polarization

Fraudulent forms of un/under-declared work

- Under-reporting of wages or hours worked
- unregistered wage payments (envelope payment or ...

Changing trends in intra-EU mobility



Why employment changes bother us ?

„STANDARD”

- Stable
 - Open-ended contract
 - Full-time
- Controllable
 - At employer's premises
 - Direct arrangement
 - Bilateral relationship
- Protected by:
 - LL and collective agreements
 - SS legislation

„NON-STANDARD” / „ATYPICAL”

- Growing in number and modalities
 - Marginal work, on-demand work, casual work
 - Platform work: On-line platform- service provider – customer
- Less subordination (grey zone between employment and self-employment)
- WT concerns
- Non-unionisation
- **Diversity, hybridization and aggregation of employment**
- **Instable**
- **Career fragmentation**
- **Undeclared /underdeclared**
- **Lower remuneration and/ or**
- **Lower income insecurity**
- **SS access –limited or no**

Pension concerns for atypical workers (national context)

Insurance based PS:

- no coverage or limited
- participation thresholds (WT and earnings)
- financing problem
- benefit level problem
 - contribution base
 - contribution rate
 - payment density

Tax financed PS:

- usually better coverage
- financing problem if lower taxes or tax exception

**Implicite state
subsidies
(in tax and SS
contributions)**



Undermining standard labour

**Lower pensions
(long-term problem)**

Pension concerns for atypical workers (national context)

Possible solutions

- Full integration
- Elimination of participation thresholds
- Pension contributions covering all types of income equally
- Simplified administrative procedures
- Automatic collection of SS contributions & taxes



Larger solidarity circle

Stable financing of
pension systems

Improved p. adequacy

Pension concerns for atypical migrant workers (FM context)

- **Rising mobility** (2019 Annual report on intra-EU labour mobility, data for 2018)
 - Long-term movers (all ages): 17.6. million
 - Long-term movers (working age): 12.9 million
 - Total working age share of EU-28 population: 4.2%
 - Cross-border workers: 1.5 million
 - Posting: 3 million
- **Changed patterns of mobility**
 - Traditional long-term mobility – decreasing
 - Mobility spells getting shorter since 2004 (from 1 to 4 years)
 - Multiple shorter-term stays
- **Qualification of atypical workers**
 - As employees or self-employed → different protection in different MSs
 - Scope of rights

EU acquis on pensions and its appropriateness for atypical workers in cross-border situations

- **Article 45 TFEU (on FMW) – direct applicability**
 - C-515/14, Commission v Cyprus (21 January 2016)
 - public scheme, civil servants,
 - age related criterion (lump sum p. and loss of future p. rights)
 - C-187/15, Pöpperl (13 July 2016)
 - special scheme, civil servants
 - Loss of special p. rights and insurance under general system
 - C-172/11, Erny (27 February 2014)
 - Top-up amount paid by the employer to older workers switching from full to part-time (deferred wage)
 - Application of different tax rules (MS of residence v. MS of work) leading to lower top-up amount
 - C-379/09, Casteels, (10 March 2011)
 - occupational scheme, worker employed successively by the same employer in several MSs
 - non-inclusion of the years of service completed by a worker for the same employer (intragroup mobility - still relevance)
- **Coordination rules - direct applicability ...**
- **Directives for supplementary pension rights...**

Coordination rules: Regulation 883/2004

Aggregation rules (access to pension entitlements)

- Arts 6, 45, 51 → seem sufficiently flexible
- Problem only if national rules do not cover atypical workers or self-employed

Calculation of benefits

- Art. 52 – partial pension calculation method
- **Art. 57 - “Less than one year” rule (problematic)**
 - **MS not required to provide benefits for very short periods, under 2 conditions:**
 - duration of these periods is less than one year, and
 - when taking only these periods into account no right to benefit is acquired under that legislation
 - **What happens with them? Are they lost?**
 - → proportionally taken over by other MSs, since they have to take them into account when calculating a theoretical benefit (relevant for pro-rata benefit)
 - **Purpose:**
 - simplification of administrative procedure and
 - reduction of costs related to the payment of very low pensions
 - **Potential problems (in rising atypical short-term assignments):**
 - MS that waived the pro-rata calculation excluded from sharing financial burden (Annex VIII: DK, IR, CY, LT, LI, NL, AT, PL, PT, SK, SE, UK)
 - Last MS has to pay the benefit for all the other MSs in which the person worked but has accumulated less than one year of insurance (Art. 57(3) BR)

Coordination rules: “Less than one year” rule

Potential solutions:

- Abolition of the “less than one year rule” in order to ensure three goals:
 - the payment of a pension to the full extent, based on all periods of insurance (activity) or affiliation accomplished,
 - more legal clarity, and
 - fair and equitable distribution of the financial burden between MSs, but
 - more administrative costs for very low benefits
- Give worker the right to withdrawal the capital sum of contributions paid
 - reduction of administrative costs

Directive 98/49 (safeguarding supplementary pension rights)

- Personal scope: employed and self-employed
- Material scope: “supplementary” pensions
 - occupational public or private,
 - voluntary and compulsory
- Main principles and rights:
 - **Equality of treatment**
 - preservation of vested pension rights
 - no "portability"
 - **Cross border payments**
 - net of any taxes and transaction charges
 - **Continuation of payment of contributions (for posted w.)**
 - **Adequate information when moving**
 - on scheme members pension rights
 - choices which are available to them

Directive 2014/50 (improving acquisition & preservation)

- Transposition: 21 May 2018
- Minimum harmonization directive (Art. 7)
- Personal scope:
 - Only employed (but can be extended to self-employed)
- Material scope:
 - “supplementary” p. (occupational public or private)
 - only to periods of employment after transposition
 - only when workers move cross border
 - does not apply to workers moving within a single MS (but can be extended to such situations, recital 6)
- Main improvements in 3 ways:
 - Acquisition
 - Preservation
 - Information

Directive 2014/50: Acquisition (Art. 4)

- Waiting + vesting periods = max. 3. years
- Minimum age for vesting = 21 years
- D. sets no age limit for becoming a scheme member;

Potential problem:

- growing number of atypical young workers can be excluded from occupational pensions

• If pension right not acquired by the outgoing worker:

- Right to reimbursement of contributions paid by or on behalf of the worker

Potential problems:

- Treatment of employer's contributions - unclear ???
- Depends now on national law and practice, which can significantly influence the reimbursement amount

Possible improvement of the rule:

- providing a unified definition of “contributions paid on behalf of the outgoing worker”

Directive 2014/50:

Preservation of dormant pension right (Art. 5)

General rule: preservation

Exception: withdrawal of capital some (option for MS)

- Purpose: reduction of managing costs of low-value dormant pension right
- Withdrawal of capital sum subject to two conditions:
 - Value of vested p.r. below national ceilings, and
 - Worker's informed consent

Potential problems:

- Atypical workers with lower rights (due to lower wages and career interruption) more inclined to use that right
- Spend money for other financial problems (not old-age)

Possible improvement of the rule:

- oblige outgoing workers to invest that capital sum in another occupational or individual pension scheme in another MS where s/he moves

Conclusions /challenges

- **Can we prevent shifts in working arrangements and mobility?**
 - Obviously not.
- **Will what is still “atypical” now eventually become “typical”?**
 - Probably.
- **Can we make them less attractive? How can we do that?**
 - By partially preventing rising inequalities
 - Directive 2019/1152 on Transparent and Predictable Working Conditions
 - Allowing access to social protection for all economically active persons
→ Council Recommendation (2019/C 387/01)
 - Same “labour cost” in taxation and social security
 - Adaptation of EU acquis regarding pensions in cross-border situations

**Shift from „work type related” to „income related” tax and SS
Future entitlements & sound budgetary and SS financing**

Concluding remarks

- Several challenges
 - Pension systems financing (sustainability)
 - Pension's adequacy
- Room for improvement
 - National level
 - EU level



Let's not miss the chance!
....to bridge the gap between
current income and future pensions