



“Obstacles to EU citizens’ freedom to move and work in the Internal Market” (III Portability & access to social rights):

The challenges of guaranteeing social protection for precarious workers on the move

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Origins of the social dimension

Inter-dependence of free movement rights and social security coordination at the core of the EU integration:

Aim to **incentivise mobility of factors of production including labour** by neutralising the discriminatory provisions on grounds of nationality in different social security systems for the purpose of the common market creation ...

Still “coordination” of national security system not full harmonisation... (Caldarini and Goldman 2015)

Recent study on social and labour rights in the EU

- Focus on tensions between market freedoms and social protections
- Demonstrate whether and how legal tensions are experienced by social actors at national and EU levels
- Focus on equal treatment for workers and former workers



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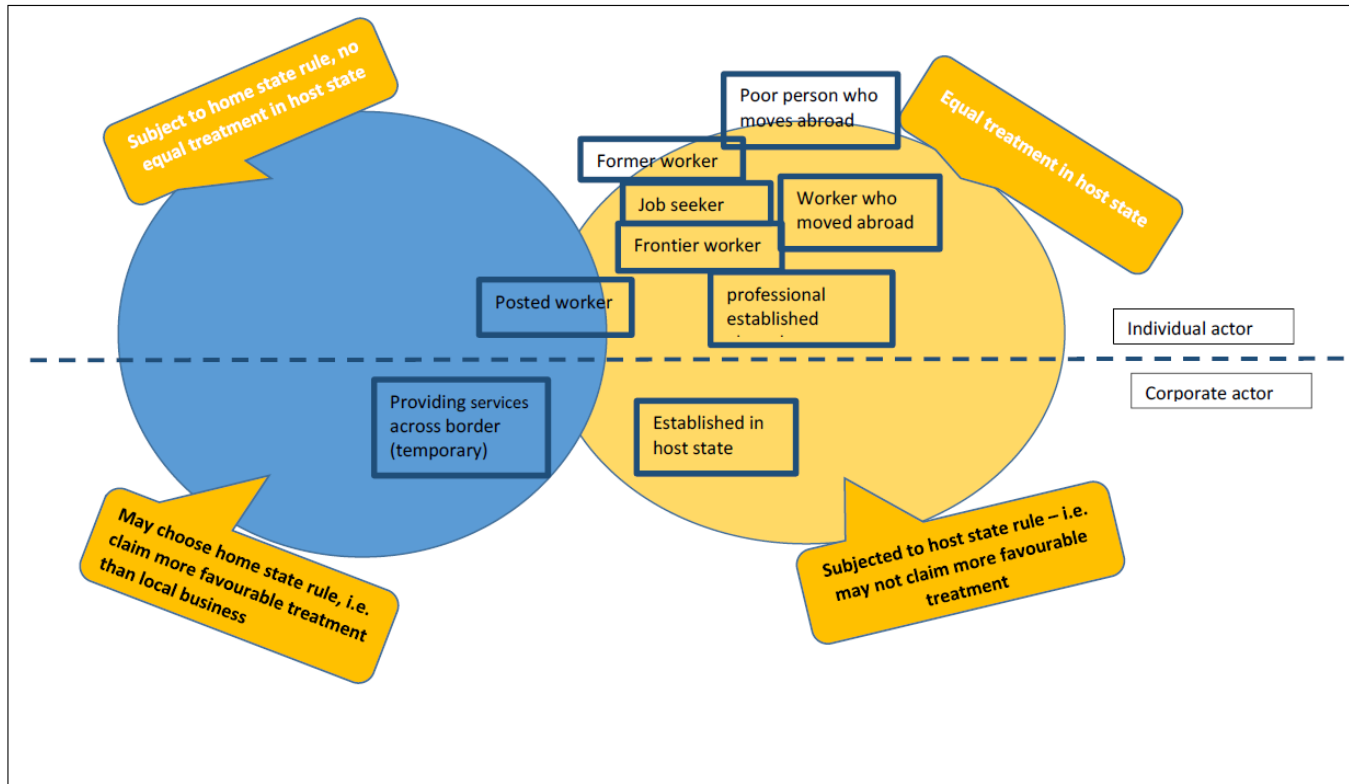


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Social protections and mobility rights

(Schiek et al. 2015)

Figure 2: Free movement and social rights - established case law and legislation



Social security and social assistance

FINDINGS OF OUR STUDY Social security of posted workers a particularly problematic area but increasingly also for “free movers”: difficulties in proving habitual residence and continuity of employment hinders access to protections

“....there is some creeping erosion of the hitherto sanctified position of workers (...). And we see it not only because Member States are basically unilaterally adopting guidelines *to limit who benefits from worker status* under European law... (they are also) taking advantage of the fact that the European Court says that the final analysis of whether you get to be a worker or not is for the national courts to make (EU Rights Clinic)

Confronting paradoxes

1. From 2009 **legally binding nature of social and labour rights** under CFREU / increasing restrictions of rights on the ground
2. Migrant rights unilaterally restricted by member states to respond to fears (fuelled by populist parties) about effects of free movement on wages and standards / restrictions of social benefits to EU migrants **actually increase the risk of social dumping!**

Free movement movers might initially accept lower standards but **equal treatment in employment and social protection** leads to reduction of risk of wage depression (Schiek et al. 2015)

Challenges emerging from petition cases (1)

- *Contested nature of Special Non- Contributory Benefits*
- *Entitlement to permanent residence and equal treatment also uncertain for EU mobile citizens and workers*

Petition case 2699/2014: **state pension allowance denied** to German resident in Spain

-The applicant did not succeed at proving to have had sufficient resources not to become a burden (proof of payment of only one month rent)

-Problems retroactively proving of not having being a burden; definition of 'sufficient resources' (in EP study: Spain identified as one of the countries where the concept of 'unreasonable burden' remain undefined; -See also **Petition case 088/2014** Lafuente vs Belgium expulsion of EU citizen, aggravating factor systematic checks on alleged abuse of welfare benefits

Challenges emerging from petition cases (2)

- **Portability of family benefits and discrimination of mobile citizens:**

Petition case 0616/2015 Swedish children in Spain (Commission view this may include a misapplication of EU law):

- Guarantee that mobile citizens of the EU are not discriminated against when a member of the family lives in a different country of the EU: Sweden should be giving benefits as if the children were going to school in Sweden.
- Can similar cases become possible under the future Labour Mobility package? Paper by Inca CGIL (2016) claims family allowance provisions may be revised in the case of children living in a different country: will receive allowance from the country where s/he pays contributions but at a reduced rate (e.g. to the cost of living where the children live and go to school??)

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A restrictive pattern in case law?

- Dano (2013): jobseekers left to destitution (introduce conditionality of lawful residence but it does not bring it forward)
- Alimanovic (2014): recent workers excluded from JSA
- García-Nieto and others (2016): individual assessment declared not necessary and family unity not considered
- UK vs Commission 2016: proof of right to reside discriminatory

-Questions of **marginal employment**, strict requirement of of 'compelling evidence' and undefined nature' of 'genuine prospect of work' come to the fore together with problematic retention of 'worker status' (do not follow the UK path...)

-Ambivalent position of the Court: **proof of right to reside for the purpose of granting social benefit** may constitute indirect discrimination but this can be justified by the need 'to protect the finances of the host Member State'

Implications

- Access to social security and social assistance and cross-border portability of rights **necessary to maintain and increase internal mobility**
- Access to social protections for mobile citizens and reinforcing coordination become even more important given the growth of **marginal and precarious employment**
- EU integration at serious risk without an effort from EU institutions (including Commission and CJEU) to strengthen **mobility and social human rights**

Recommendations

Commission should be monitoring refusal of residence cases + assessment of recent events such as UK Leave vote impact on implementation of the Directive 2004/3 (see new study 2016 Milieu Ltd.)

- Ongoing cases under Brexit will need to be followed as already reported challenges in obtaining permanent residence over least defined aspects : **entitlement to equal treatment in relation to status, continuity of residence, continuity of health coverage, S1 forms...**
- Role of social partners: further paradox of support services for migrants closing down because of governments' budgetary cuts: what is the role of EU institutions in avoiding this?
- Practical initiatives: setting up/funding new mobility and social rights clinics at EU level?

Broader recommendations

From our past study on labour mobility and social rights (Schiek et al. 2015):

- Combat “myth of the undeserving” by empirical studies on mobile workers rather than on jobseekers and SNCB only
- Role of social partners should be enhanced: research on collective agreements creating institutions for cross border social security
- Create social security benefit for marginal workers who move in order to escape un(der)employment (Article 48 TFEU)
- Activities and regulation by social actors: Explore scope for creating transnational collective bargaining and industrial action (aiming at social security institutions, responding to cross border moves of companies)

Thank you for your attention!

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