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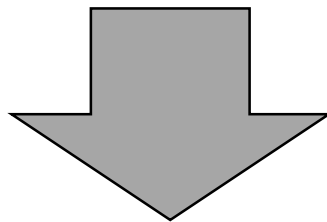
Pensions of atypical workers in cross-border situations: legal and financial challenges

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Outline:

- **Why** is atypical work problematic ?
- **What** is current EU acquis on pensions relevant for migrant workers?
- **How** can it be improved ?



adequate pensions

Why these changes bother us ? ...features

„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”

- Less subordination (grey zone between employment and self-employment)
- 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
- financing problem (in PAYGO)
- benefit level problem
 - contribution base
 - contribution rate
 - payment density

Tax financed PS:

- Usually better coverage
- Financing problem
- same or lower taxes

Implicite state
subsidies
(in tax and SS
contributions)



Undermining standard labour

**Lower pensions for
atypical workers
(long-term problem)**

Pension concerns for atypical workers (national context)

Possible solutions

- Full integration
- Pension contributions covering all types of income equally
- Simplified admin. procedures
- Automatic collection of contributions & taxes

Pension concerns for atypical migrant workers (FM context)

- **Rising mobility**

- cca 11.8 million EU 28 movers (last data for 2016, Fries-Tersch et al, 2018)

- **Changed patterns of mobility**

- Traditional long-term mobility – decreasing
- 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 FM of atypical workers

- **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. right and insurance under general system
 - 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: “Less than one year” rule

- Art. 57 Regulation 883/2004
- **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 alternative solution:

- 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
- Give worker the right to withdrawal the capital sum of contributions paid
 - reduction of administrative costs

Directive 98/49 (safeguarding supplementary p.r.)

- 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

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

Concluding remarks

- Several challenges
- Room for improvement
 - National level
 - EU level