

National Effects of the Implementation of EU Directives on Labour Migration from Third Countries

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Roger Blanpain & Frank Hendrickx

Guest Editor

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Preface

Since competence on migration issues was transferred to the EU through the Amsterdam Treaty (1997), many legislative initiatives have been taken in this field. At the European Council in Tampere in 1999 a specific need to attract *migrant workers* from third countries was recognized; the intent was to achieve this through facilitated and harmonized rules on admission procedures and admission conditions, and enforced equal treatment regarding employment and social rights.

The first legislative attempt, which included a horizontal approach, was taken in 2001 and failed. It was clear that this political field was still very sensitive. A new agenda with a more selective approach was drawn up in the 2005 Policy Plan on Legal Migration.

After lengthy negotiations, four out of the five proposed directives from the 2005 Policy Plan have been adopted: the Single Permit Directive, and the sector-oriented directives on Highly Qualified Employment (better known as the EU Blue Card Directive, hereinafter used), Seasonal Employment, and Intra Corporate Transferees. The negotiations and the adopted directives reveal, not very surprisingly, that the Member States are still very reluctant to give away control of their borders and their labour markets. The legislation adopted is, as a result, fragmented and full of solutions that give the Member States an extensive margin of room for manoeuvre.

The divergent national systems on labour migration were considered to hinder an effective allocation of migrant workers to the EU labour market. In order to fully evaluate the achievements made through this legislative process, we therefore have to look at how these directives have been dealt with on a national level.

In this book it is discussed how three of the EU-directives on labour migration – the Single Permit Directive, the Blue Card Directive, and the Directive on Seasonal Employment – interact with the labour migration systems of five countries – France, Germany, Italy, Poland and Sweden.

The Blue Card and the Single Permit Directives are already implemented in the five countries. The Seasonal Workers Directive was adopted in 2014 and must be implemented by October 2016. Our perspectives when dealing with these three directives therefore differ. For the adopted directives we analyse the result. Regarding the Seasonal Workers Directive, we identify tensions between the present national

situations and the obligations in the Directive. This analysis can be of particular interest for the national legislators in the implementation process.

Our idea is to examine whether the ambitions of the EU when initiating this process can be detected in the implementation process. Have the admission procedures been facilitated, the admission conditions unified, and the position of the migrant worker strengthened through an enforced equal treatment principle? We have a labour law lens on when we look at these issues. The directives open up the EU labour market to three new categories of workers, provided with new sets of rights. In order to evaluate their status it is important to examine the combined effect of migration law and labour/social law. The weaker the migration status that a worker has, the less likely it is that she or he will enforce those rights. The intersection of migration and labour law and the impact migration and migration law has on labour and employment relations has been the subject of research in recent years.¹ This is also one of our prime areas of interest, and will be introduced in chapter 2 and further discussed in the conclusive chapter of this book.

Concrete issues that will be dealt with in this book are thus: What are the conditions for the granting of the different forms of work permits in the five countries? For what reasons can the work permit be withdrawn? How long does it take to get a work permit? What access to the labour market does the work permit bring? For how long can the migrant worker stay? Can the migrant worker bring his or her family? What employment and labour rights is the migrant worker entitled to? To what extent can the migrant worker obtain access to social rights? How can the migrant worker enforce their rights? How are violations of the applicable provisions sanctioned? Is there a road to permanent status for the migrant worker? In what way has and could the implementation of the three directives change national law on these issues?

The five countries chosen for the case studies have different characteristics. France has had a very strict labour migration policy for a long time, but has, since 2006, slowly opened up for labour migrants to certain sectors and for highly qualified workers. Germany has actively been adapting its legislation in order to make labour immigration more attractive, especially in undermanned occupations, and is also in relative terms the country that has been most successful in attracting highly qualified workers – 84% of the migrant workers in Germany are highly qualified employees. Italy, due to its geographical position, receives a high number of migrants. Its labour migration legislation has, however, been complex and it has been very difficult to get a work permit; at the same time, there has been a demand for undocumented labour migrants – this combination has led to the presence of a huge number of undocumented workers on the Italian labour market. Poland is characterized as a sending and not a receiving labour migration country. This could, however, change quickly. At the same time, the Polish report reveals that the country's characterization as a source of

1. Cathryn Costello and Mark Freedland (eds), *Migrants at work*, (Oxford University Press 2014); Judy Fudge, *The Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers*, Vol. 34 *Comparative Labour Law & Policy Journal*, 95 (2013); Bridget Andersen, *Migration, immigration controls and the fashioning of precarious workers*, Vol 24(2) *Work Employment and society*: 300-317 (2010).

migrants, is maybe not very accurate: a high number of seasonal migrant workers are present on the Polish labour market. Sweden, the country with the smallest labour market among the five case studies, has, since 2008, applied a very different system in comparison to the other countries. The labour migration regime is purely employer demand driven – no labour market tests or quotas are applied. Sweden is considered to have one of the most open labour migration systems within the OECD.

We are interested in analysing how these different national situations interact with the EU obligations, and to what extent the national legislators have been ready to adapt their national systems in order to fulfil the aims of the EU directives. We are also interested in identifying unintended, or at least not explicit, effects of the implementation process.

The authors of this book are: Petra Herzfeld Olsson (editor, chapters 1-2, 4 and 8); William Chiaromonte (chapter 5); Fabienne Jault-Seseke (chapter 7); Laura Schmitt and Claudia Schubert (chapter 3); and Joanna Unterschütz (chapter 6).

The book is organized in the following way. Chapter 1 introduces the legal base for EU-legislation within this field and gives the historical background of the legal attempts leading up to the adopted directives discussed. Chapter 2 introduces the three EU directives. The content is structured around the headings *Admission conditions*, *Employment relations* and *Institutional security* in order to better understand to what extent the directives promote robust equal treatment.² Chapters 3-7 cover the national reports: chapter 3 is the German report, chapter 4 the Swedish, chapter 5 the Italian, chapter 6 the Polish, and chapter 7 the French report. Finally, chapter 8 presents some conclusions based on the national reports.

Petra Herzfeld Olsson

2. Chapters 1 and 2 are partly based on previous work by Petra Herzfeld Olsson, *The Development of an EU Policy on Workers from Third Countries – Adding new Categories of Workers to the EU Labour Market, Provided with new Combinations of Rights*, in Stein Evju (ed) *Regulating Transnational Labour in Europe: The quandaries of multilevel governance* (University of Oslo 2014).

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