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Giving to those who have and taking from those who have not- the development of an EU policy on workers from third countries

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Outline

- Background
- The conflicting interests
- Robust equality
- The developing legal framework
- Conclusions





Background

- Until 1999 the EU guarded a zero vision regarding economic migration
- In Tampere 1999 A new goal - attract economic migrants from third countries
 - Demographic change
 - Skill shortages
- In order to promote economic development and maintain the level in the welfare systems –
- necessary in order to make EU the most competitive and dynamic knowledge based economy in the world



But why could not the MS solve these issues themselves?

- A common regulation would maximize the positive effects for the MS
- One application procedure instead of 27
- Common set of rights in order to avoid unfair competition
- Facilitate movements between the MS



Starting points for the regulation

- Adapted to the needs of the market
- Effective/flexible/movement between the MS
- In general the same set of rights as nationals
- - the same wages and working conditions is not only in the interest of the migrants but also of the society so it can benefit the most from the migrants...
- Clear legal status for the migrants and envisaged roads to permanent status



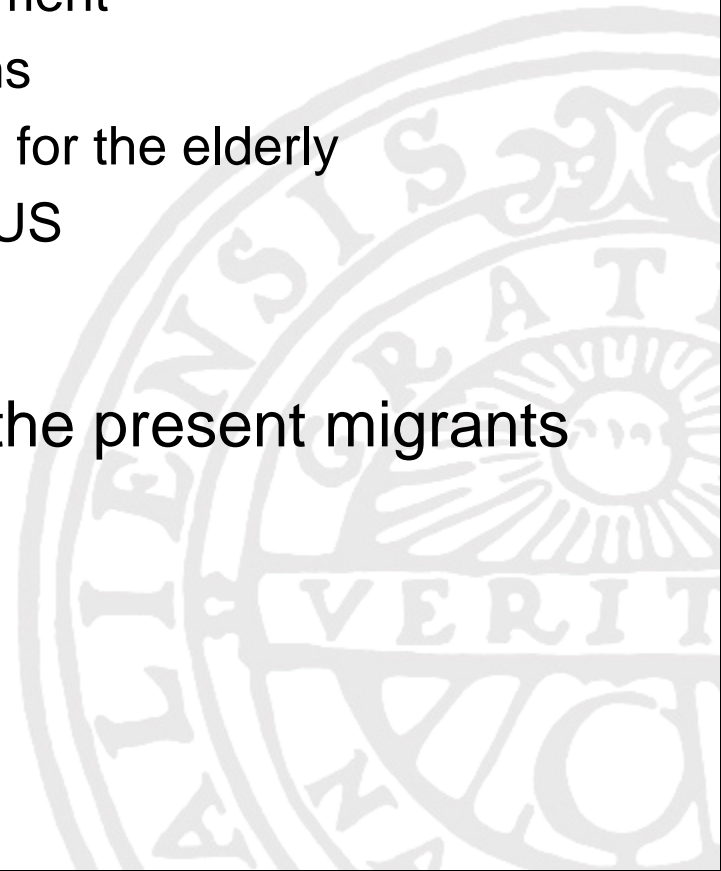
The first attempt – a general legal framework based on equality

- A 2001 proposal for a directive on economic migration – which intended to
 - regulate the entry and
 - residence conditions
 - for all third-country nationals
 - exercising paid and self-employed activities.
 - All TCN were in principle treated in the same way
 - They were offered equal rights with nationals
 - Working conditions and pay
 - Social security rights
- Heavily criticized for
 - intervening too much in the MS's right to decide on who to let into the country and
 - establishing a too generous equality principle/establishing a too limited equality principle
- Was withdrawn 2006



The conflicting interests

- Quantitative and qualitative need of workers in order to
 - Promote economic development
 - Maintain the welfare systems
 - Sustain a good level of care for the elderly
- VERSUS
- High unemployment
 - Inadequate integration of the present migrants
 - Xenophobia





A challenge with inherent moral problems

- How should the right workforce be attracted without increasing the pressure on the national workforce and the national welfare systems?
- Managed migration?
- Turn migration on and off like a watertap?
- The risks:
 - Treating the third country workers more like economic units than human beings
 - Establishing an area with persistent precarious conditions open for exploitation



Another way forward -robust equality

- The first step
 - A formal right to equality with regard to wages and working conditions
- A migrant is by nature more vulnerable than the national workforce
- The general legal status offered is crucial for the ability to enforce rights connected to working conditions and pay
- The more secure status the migrant is provided with the more likely is it that he or she will face real equality
- Real equality is necessary to avoid exploitation and social dumping
- A range of conditions are decisive for establishing a status
- If you can change employer and are entitled to unemployment benefits it is more likely that you enforce your rights



International Labour Organisation

- Economic migration is a natural effect of globalisation
- The importance of equal treatment with nationals with regard to working conditions and social rights is emphasised
- That is a prerequisite for decent work



Three sets of rights

- Admission criteria
 - The permits connection to an employer, branch, sector, length, mobility rights
- Employment relations
 - terms and conditions of employment, freedom of association, recognition of diplomas, right to vocational training
 - Sanctions and monitoring
- Institutional security
 - Social security rights, social services, pathways to more secure status, family reunification



The division of the legal framework – 2005 Policy plan on legal migration

- One horizontal framework directive
 - Simplified admission procedures
 - A common set of rights for all legally staying workers from third countries
- Four sector specific directives with admission criteria
 - highly qualified workers;
 - seasonal workers;
 - intra-corporate transferees (ICTs);
 - remunerated trainees.



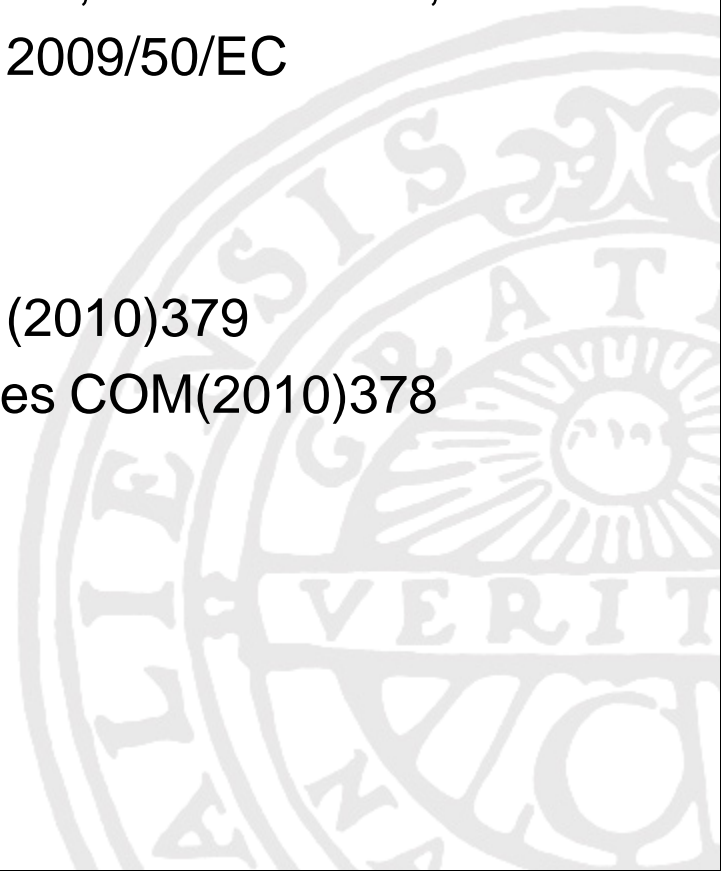
Result so far

– Adopted

- The framework directive Single permit and equal rights, 2011/98/EU adopted, 13 December, 2011
- Highly qualified workers 2009/50/EC

– Being negotiated

- Seasonal workers COM (2010)379
- Intra corporate transferees COM(2010)378





Framework directive

- **Excludes:**
 - **Posted workers, seasonal workers, intra corporate transferees**
- Admissions criteria
 - None-up to the member states
- Employment relations
 - Equal treatment- working conditions including pay and health and safety rights, freedom of association, recognition of exams and right to vocational training
- Institutional security
 - equal access to social security rights and social services (but possible to limit parts of these rights to employment),
- Weaknesses – Many important aspects left to the MS to decide→diversity is preserved; certain rights can be restricted, no sanction or monitoring provisions



Highly qualified workers

- Quite robust equality principle
- Covers
 - Highly qualified employment
 - At least 3 years of post secondary education or if the MS so wish 5 years of equivalent work experience
- Admission conditions
 - Offer of employment, wage floor, successive increased labour mobility, after 18 month look for another job in another MS, the permit can last 1-4 years and be renewed,
- Employment relation
 - Equal treatment – working conditions including pay and occupational health and safety rights, trade union membership, recognition of exams and right to vocational training
- Institutional security
 - equal access to social security rights and social services, generous family reunification rights, right to stay during unemployment, can lead to permanent status
- Weaknesses - the permit is connected to a certain employer, no provisions on sanctions or monitoring, a permit can be withdrawn if the holder becomes dependent on social welfare



Proposal on seasonal employment

- **Covers:**
 - work dependent on the passing of the seasons' means an activity that is tied to a certain time of the year by an event or pattern during which labour levels are required that are far above those necessary for usually ongoing operations
 - Agriculture and tourism
- **Admission criteria**
 - Permit must be applied for in a third country, offer of employment including information on wages and working time (in order to safeguard that the permit holders will be able to support themselves), housing solved, max 6 months permit/year, possible to change employer, permit for three seasons in the row
- **Employment relationship**
 - No equality principle with regard to working conditions including pay and occupational health and safety, must be guaranteed through regulation,
 - Equal treatment, freedom of association
 - Some rules on sanctions and a simplified complaint mechanism
 - NO Vocational training or recognition of exams
- **Institutional security**
 - Equal treatment with regard to social security rights but a limited set of social services
 - No right to family reunification
 - Not possible to obtain permanent status
- **Weakness**
 - No formal equality principle, short stays –difficult to uphold social security rights, no right to stay as unemployed, no family reunification,



Proposal on intra corporate transferees

- Covers:
 - Temporary secondments of managers, specialists and graduate trainees within an international company or groups of companies, from a unit in a third country to an establishment or subsidiary in EU
- Admission criteria
 - Permit connected to a specific company, can be renewed up to three years,, the tasks and time shall be clarified beforehand, the wages must correspond to what a EU-posted worker is guaranteed, the permit can cover work in establishments in several MS
- Employment relationship
 - the PWD-level with regards to working conditions including pay and occupational health and safety , equal treatment with regard to freedom of association and recognition of exams,
- Institutional security
 - similar to the seasonal workers, with one exception the ICT are guaranteed generous family reunification, no way to permanent status.
- Weakness
 - No right to equal treatment with regard to working conditions and pay, the worker is totally dependent on the company and therefore has no means to enforce their rights



Conclusion

- Four sets of statuses for third country workers
 1. Highly qualified workers
 2. Framework directive
 3. Seasonal workers/Intra corporate transferees
- None of these categories is what it seems provided with a robust equality principle as
 - their permits are either connected to one single employer or unknown and
 - they are treated differently than the nationals with regard to the *Employment relation* and *Institutional security*
- Hardly any provisions on sanction and monitoring
- An ambition to export the PWD level of protection
 - to establishments in third countries
 - involved in other activities than providing services



Conclusions

- The TCN-workers risks being less protected and treated differently than the national work force
- Risks:
 - pressure on the national work force
 - an area of persistent precariousness can be established
- But..
 - The minimum level/ the status provided for is probably higher than the level provided for in many member states
 - many provisions are minimum provisions→the member states can provide for a higher protection and adopt robust sanctions and monitoring mechanisms
- In order to evaluate how this legal framework will affect the protection of the TCN-workers the implementation in the MS must be looked at
- That is supposed to be a next step



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Thank you!

