

Migrant workers: post-admission policies and rights

Presentation

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“Management Mechanism and Practice after Receiving
Foreign Workers”,

By

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Structure of presentation

- Scope and definitions
- Context of Europe - EU
- Provisions of relevant ILO instruments – post admission
- Law and practice
- Follow up action

Scope and definitions: Temporary migration schemes for low skilled workers

- Every worker has a skill and ILO uses the terms “low” or “less” or “semi”-skilled workers – not “unskilled”.
- Most temporary schemes are for low skilled workers; e.g. seasonal worker schemes.
- Filling long term or structural labour demand with temporary schemes is not a sustainable option.
- ILO's main migrant workers conventions - C97 and C143 - and the UN 1990 International Convention on Migrant Workers do not generally distinguish between permanent migrant workers and temporary migrant workers in terms of their protection. Exemptions- frontier workers, students and trainees

Distinction between skilled and low-skilled workers?

- The demand for migrant workers cuts across all skill categories (EU Green Paper on economic migration and Policy Plan on legal migration).
- Global Commission on international migration; both are essential workers.
- Current policy favours skilled at the expense of low skilled workers leading to (RSA Commission Report):
 - Serious brain drain for developing countries
 - Channelling a substantial number to irregular economy
 - Prevents development benefits to the poor

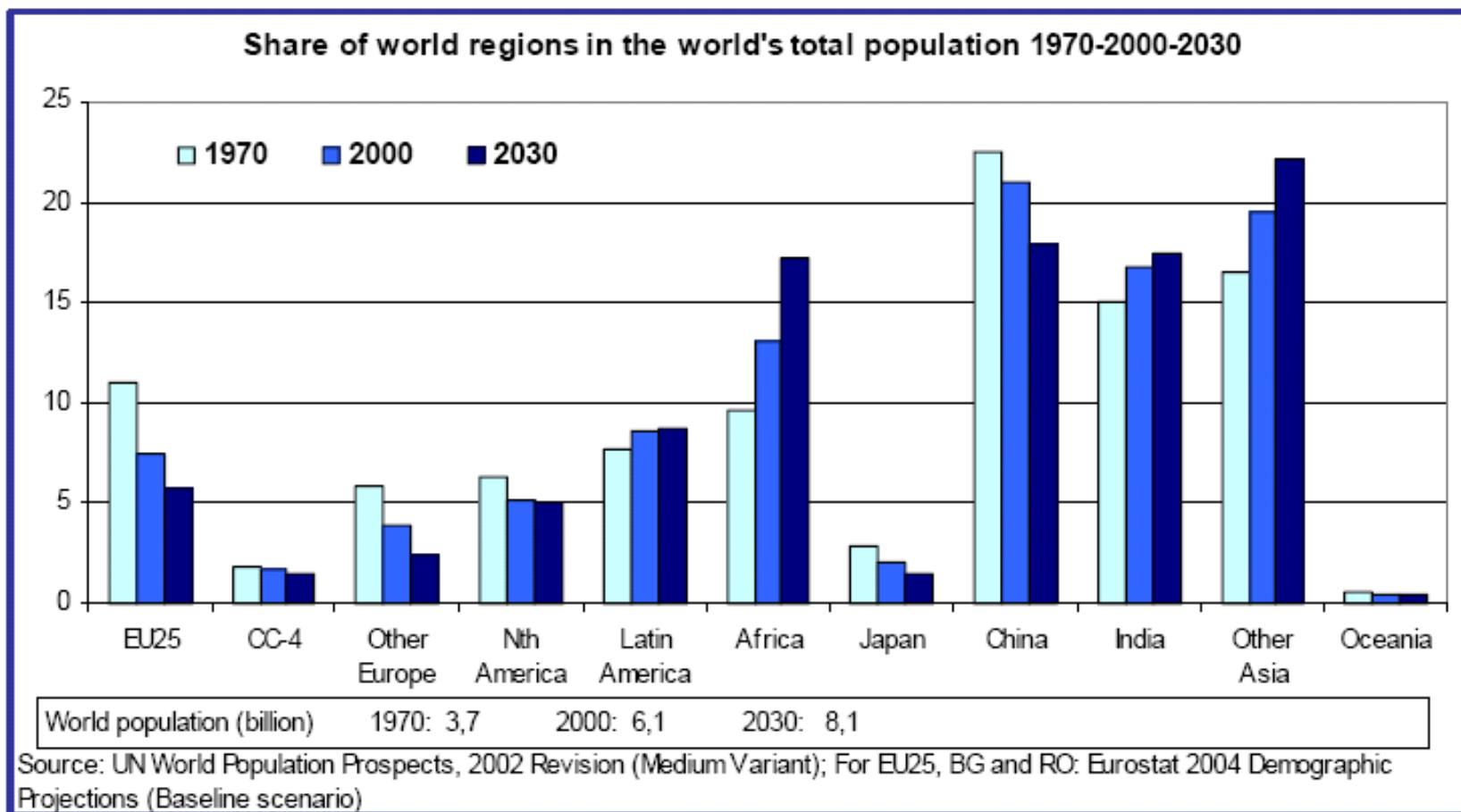
Typologies of temporary work programmes

- Guest worker programmes: Europe, Asia
- Seasonal worker schemes
- Intra-company transferee schemes
- Trainee schemes
- Working holiday makers
- Service providers under GATS mode 4 - movement of natural persons
- Sector-based schemes (UK).

Demographic trends: Europe

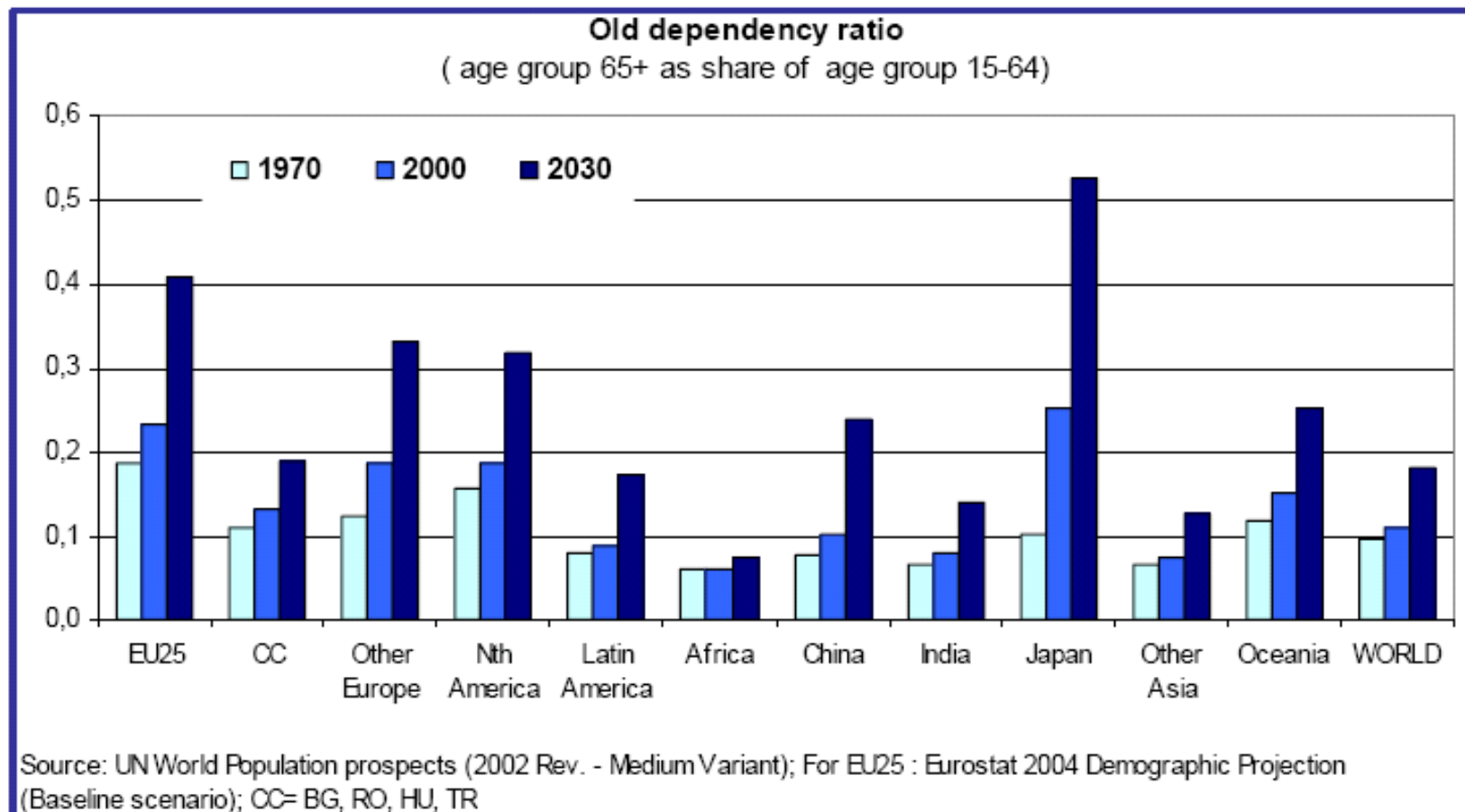
- Continuing increase in life expectancy
- Continuing growth in numbers above 60 years
- Continuing low birth rates; fertility is below replacement level.
- More older workers (55-64); elderly people (65-79) and very elderly people (80+)
- Demographic dependency ratio – 49% in 2005; 66% in 2030.

GRAPH 1: THE EUROPEAN UNION IN THE WORLD

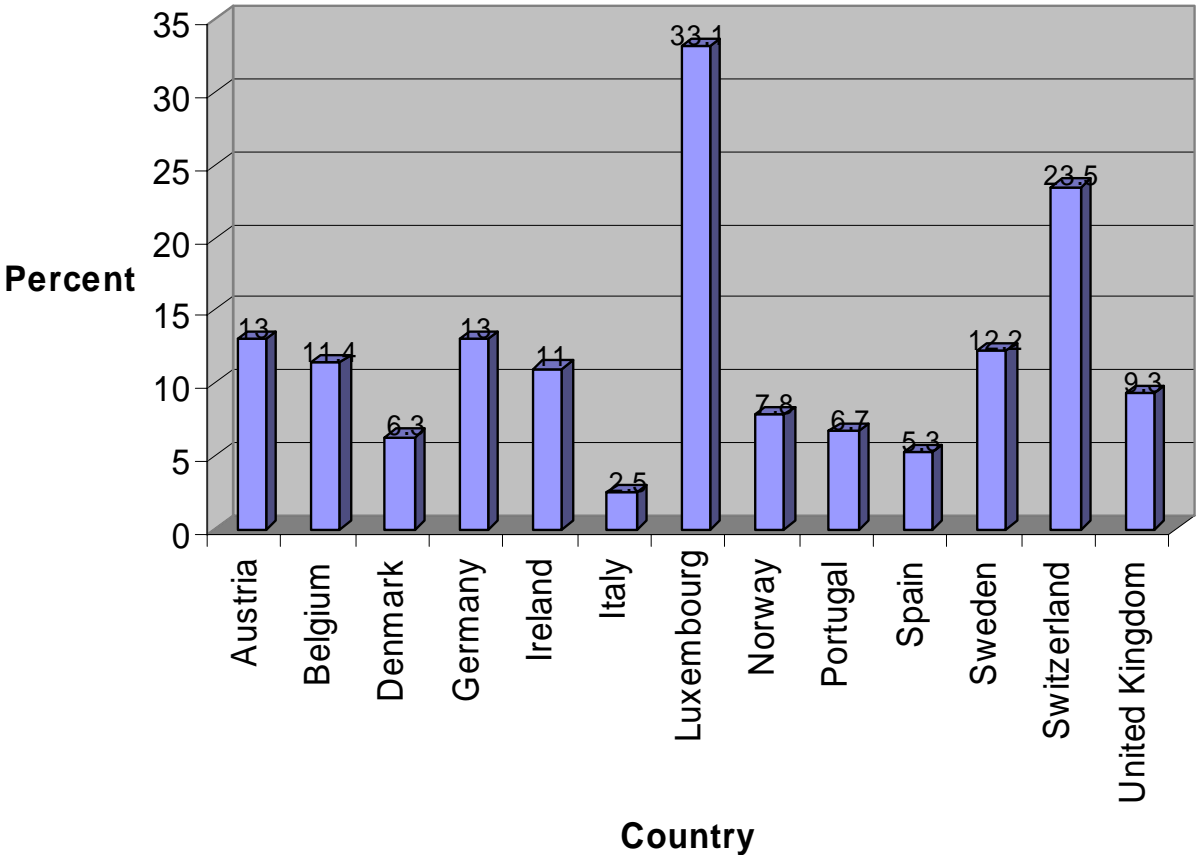


EU Green Paper “Confronting demographic change: a new solidarity between the generations”, COM(2005) 94 final

GRAPH 2: OLD AGE DEPENDENCY



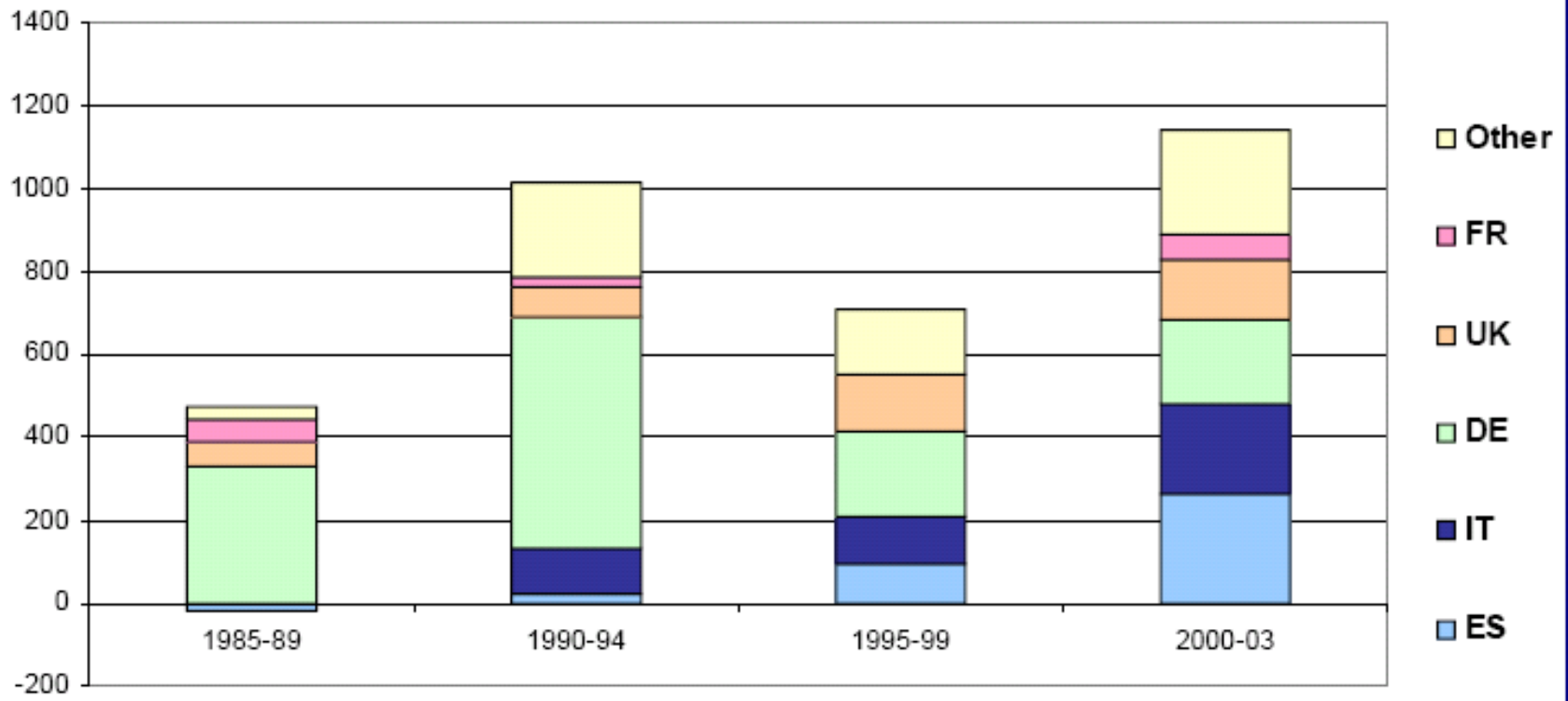
Foreign born population as % of total population 2004



Source: OECD

Ratio of foreign born population

Net immigration (x1,000) to the EU15 and main countries of destination, Annual average



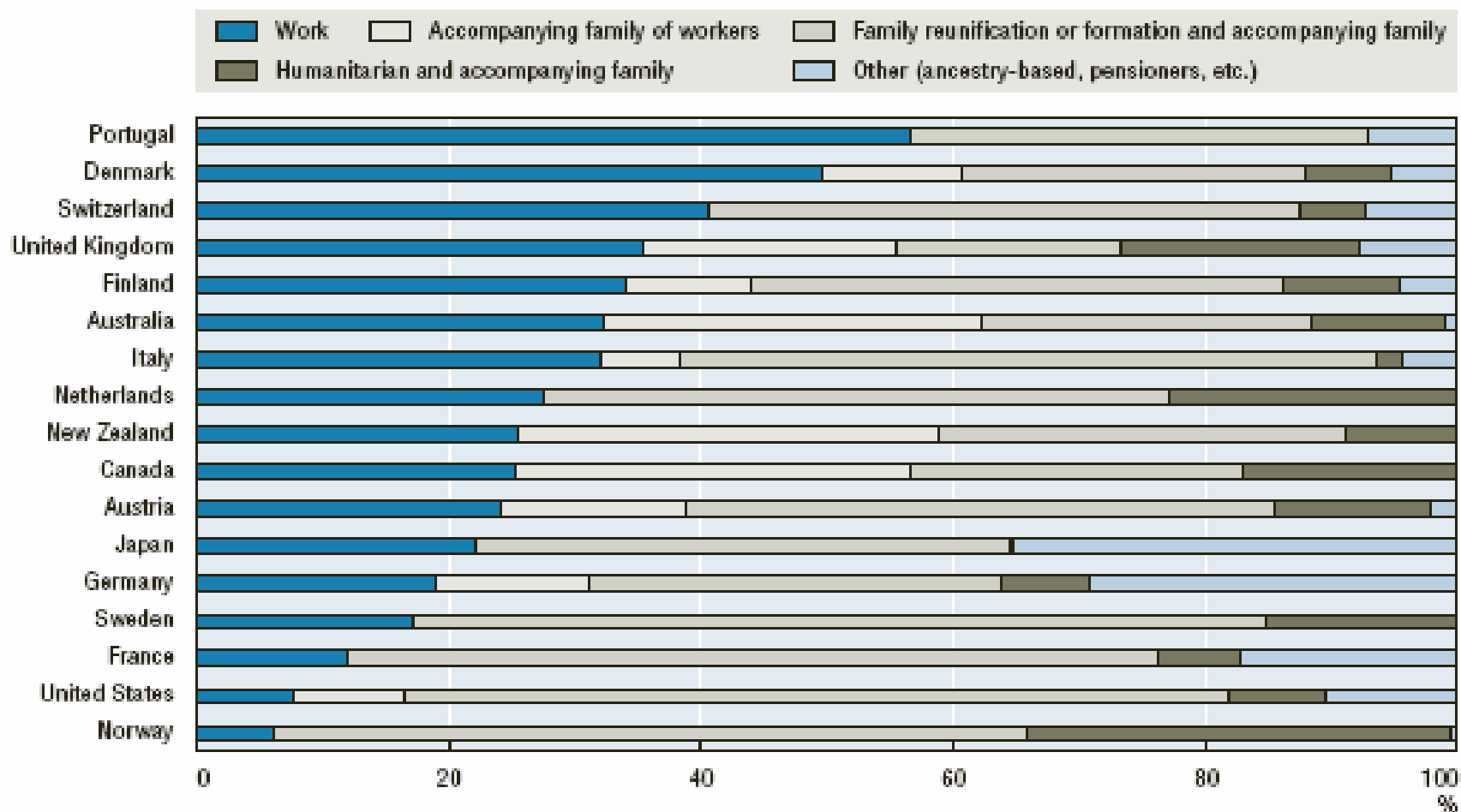
Source: Eurostat

Country	All Work Permit Holders	Professionals with Work Permits	% of prof. work permits
Denmark	1,600	500	31.3
Germany	165,000	3,300	2.0
Spain	65,000	-	
France	31,200	12,400	39.7
Ireland	16,100	2,000	12.4
Italy	78,800	500	0.6
Netherlands	38,000	10,900	28.7
Sweden	6,700	4,300	64.2
United Kingdom	89,200	15,800	17.7
EU25	633,200 (est)	74,300 (est)	11.7

Table 4: Estimates of Annual Inflows of Work Permit Holders in 16 EU Countries based on Sexton study 2005: Source: EU Policy Plan on legal migration

Chart I.2. International migration by category of entry, selected OECD countries, 2004, harmonised data

Percentage of total inflows



Note: For details on sources, please refer to www.oecd.org/els/migration/imo2006.

Migrant specific International Instruments

- **ILO Conventions**

- the Migration for Employment Convention (Revised), 1949 (No. 97) – 45 ratifications

- Related Recommendation R86

- the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – 21 ratifications

- Related Recommendation R151

- **United Nations**

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, 1990 – 36 ratifications. (in force since mid-2003)

- **ILO multilateral framework on labour migration:**

- non-binding- principles, guidelines and best practices

Main principles in ILO Migrant Conventions

- Most ILO labour standards apply to all migrant workers unless specified otherwise.
- ILO Migrant specific Conventions & Recommendations (non-binding)
 - Applies to legally admitted or regular workers except in part I of C143.
 - Equal treatment and equality of opportunity on par with national workers (for regular workers),
 - Principle of non-discrimination
 - Respect for basic human rights of all migrant workers (in regular and irregular status) – Art.1 of C143
 - Recognize need for consultations with social partners
 - Principle of cooperation between States. E.g.to curb irregular migration.
- Principles & good practices can be used in national law and practice even if not ratified: ILO multilateral framework documents those.

Ratification of Migrant Worker Conventions* - EU & Norway

Country	ILO C.97 Migration for Employment, 1949	ILO C.143 Migrant workers, 1975
Belgium	27-Jul-53	
France	29-Mar-54	
Germany	22-Jun-59	
Italy	22-Oct-52	23-Jun-81
Netherlands	20-May-52	
Norway	17-Feb-55	24-Jan-79
Portugal	12-Dec-78	12-Dec-78
Slovenia	29-May-92	29-May-92
Spain	21-Mar-67	
Sweden		28-Dec-82
United Kingdom	22-Jan-51	

* 1990 ILO Convention on migrant workers, not ratified by any EU member

Post-admission policies and international norms

- Respect basic human rights of all migrant workers: C143 Art.1
- Treatment and conditions of work
 - Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory. – Art. 10, Part II ILO C143
- Job changes: voluntary and involuntary
- Access to health and medical care
- Integration policies

Equal treatment in regard to conditions of work

- Wages and salaries
- hours of work, rest periods, overtime arrangements, holidays with pay
- restrictions on night work
- minimum age for employment
- apprenticeship and training,
- protection against sexual harassment at work
- maternity protection
- welfare facilities and other benefits.

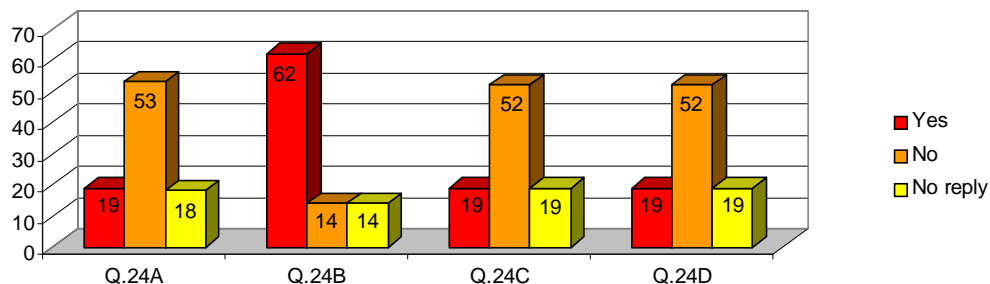
Mobility, employment security and residence status

- Some restrictions on free choice of employment or job mobility.
C143 – only after stay of two years within contract period: some jobs restricted in the interest of the state.
- Loss of employment should not lead to loss of residence status.
C143: Article 8
 1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.
 2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.
- Migrant workers who have been lost jobs should be allowed sufficient time to find an alternative job.

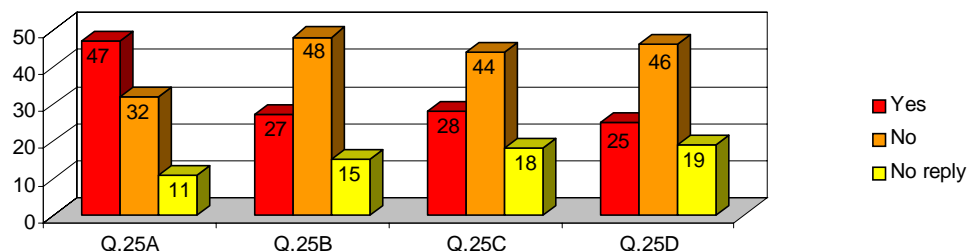
Occupational mobility – ILO General Survey 2003 (93 country responses)

Question 24. Are there any restrictions regarding the occupational mobility of migrant workers (i.e. on the right of migrant workers to accept offers of employment by a person or entities other than those who arrange the migrant workers' admission into the country?)

- A. Change of employer not allowed under any circumstance
- B. Change of employer allowed subject to prior approval by competent authority
- C. Change of employer allowed at any time if in the same branch of economic activity
- D. Change of employer allowed only after certain years of legal employment



Loss of employment



ILO general Survey 2003

- **Question 25.** Are migrant workers who lose their employment through no fault of their own, prior to the termination of their contract:
 - A. Allowed to stay and seek other employment?
 - B. Assisted in finding other employment?
 - C. Required immediately to return to country of origin?
 - D. Given separation pay and sent home?

Total responses= 93 countries

Social security for migrant workers

- Separate ILO Conventions establish clear rights
 - The *Equality of Treatment (Social Security) Convention, 1962* (No. 118) = 38 Ratifications (Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Norway, Sweden)
 - The *Maintenance of Social Security Rights Convention, 1982* (No. 157) = 3 Ratifications (Spain, Sweden)
- Equality of treatment on par with nationals
- Maintenance of acquired rights:
 - The rights acquired in other countries should be guaranteed to the migrant worker: portability of rights
- In practice, temporary migrant workers receive few benefits though they contribute. 2003 ILO General Survey.

Conditions necessary for realizing rights

- Equality in legal proceedings (C.97)
- Access to redress and complaint mechanisms without fear of intimidation (MLF guideline)
- measures to monitor abusive practices, and imposing sanctions
- measures to prohibit certain practices like passport confiscation
- laws to prevent and combat racism
- providing language courses and orientation
- Equal opportunity and diversity training for administrators and employers
- Availability of information (contracts and OSH information, etc.) in languages understood by migrants

Multilateral framework guidelines on temporary migrant workers

- 5.5: ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 of this Framework.
- 9.7. ensuring that restrictions on the rights of temporary migrant workers do not exceed relevant international standards;
- 15.8. adopting policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies.

Protection gaps for temporary workers in practice

- Employment rights
 - Lower wages
 - Poorer working conditions
 - Access of right to vocational training
 - Limited protection from layoffs
 - Tied to a particular employer
- Social security; pay contributions but no return
- Family unification not possible
- No mobility and fragile residence status
- Limited protection from expulsion
- Limited integration: substandard housing

Challenges

- Not an issue of balancing rights and numbers issue
- Ensuring return and circular nature of programmes
- Cannot fill long term labour demand or structural needs with temporary schemes
- Controlling malpractices of recruitment agencies
- Mobility, employment and residence status
- Integration issues.

Way forward

- Temporary schemes are now a fact of life: Workable temporary work programmes and circular migration systems needed: Global Forum on Migration and Development, Brussels, July 2007
- World Bank – Eastern and Central Europe. Proposed system.
- EU – emphasis on temporary migration and circular migration - what new measures?
- Bilateral and multilateral agreements
- Mobility and Circulation-friendly visa regimes including portability of social security rights
- Information on legal migration opportunities made available in source countries