

*Mainstreaming Equality for third-country
national migrants:
(many) limits and (few) opportunities*

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Mainstreaming

- (Gender) equality should not be pursued as a separate policy field, but across all policy domains
- Inequalities tackled at the structural level: hidden biases in law-making, see the world as unequal (Verloo)

→ Proportionality, impact assessment

Question:

- Can mainstreaming foster equality for TCN migrants?

Equal treatment for TCNs in EU law

After the EU acquired migration competences, the 1999 Tampere Council's conclusions set its goals:

- “integration policy should aim at granting [TCNs] rights and obligations comparable to those of EU citizens”
- Approximation of the status of TCN to that of MS nationals
- Long term residents should be granted uniform rights who are “as near as possible to those enjoyed by EU citizens”.

Equal treatment for TCNs in EU law

Differently from gender equality and equal treatment for EU citizens, equal treatment for TCN migrants is not enshrined in EU primary law; the field of equal access to social benefits is particularly contested

EU primary law:

- Art. 9 TFEU: “**the fight against social exclusion**”
- Art. 10 TFEU: “**combat** discrimination based on [...] **racial or ethnic origin**”.
- Art. 21 CFR: “discrimination based on ...race, colour, ethnic or social origin... shall be prohibited.” And “Within the scope of application of the Treaties any discrimination on grounds of nationality shall be prohibited.”

Interpreted restrictively as not including nationality
(*Kamberaj*, 571/10)

Interpreted as applying only to EU citizens

Equal treatment for TCNs in EU law

EU secondary migration law contains **equal treatment clauses**, but these are scattered, subject to limitations by the MS, and do not always follow a clear logic:

- Each migrant status (asylum seekers, seasonal workers etc) is regulated separately, each having different degrees of equal treatment;
- Through “may” clauses (discretionary restrictive clauses) Member States are given a certain margin of discretion when implementing the directives, often limiting migrants’ right to equality;

Equality clauses in EU secondary law (migration directives): fragmentation by status

SOCIAL BENEFITS		Seasonal workers	Single-permit holders	Long-term residents	Beneficiaries of international protection	Asylum seekers	EU Blue Card holders
SOCIAL SECURITY	Sickness	Green	Yellow	Yellow	Yellow	Red	Green
	Maternity/paternity	Green	Yellow	Yellow	Yellow	Red	Green
	Invalidity	Green	Yellow	Yellow	Yellow	Red	Green
	Old age	Green	Yellow	Yellow	Yellow	Red	Green
	Survivors'	Green	Yellow	Yellow	Yellow	Red	Green
	Accidents at work	Green	Yellow	Yellow	Yellow	Red	Green
	Death	Green	Yellow	Yellow	Yellow	Red	Green
	Unemployment	Orange	Yellow	Yellow	Yellow	Red	Green
	Pre-retirement	Green	Yellow	Yellow	Yellow	Red	Green
	Family	Orange	Orange	Yellow	Yellow	Red	Green
SOCIAL ASSISTANCE		Red	Red	Yellow	Yellow	Red	Red
GENERAL LIMITING CLAUSES		Green NO	Yellow YES	Yellow YES	Yellow YES	Red No equal treatment	Green NO
KEY							
Right to equal treatment ensured		Right to equal treatment subject to general limiting clauses		Right to equal treatment subject to both general and specific limiting clauses		No right to equal treatment	

Can a mainstreaming approach improve the equal treatment for migrants?

Opportunities:

- A mainstreaming approach would force the EU and Italian lawmaker to assess (e.g. via impact assessment) the discriminatory potential of their social security legislation, reforming it in a more inclusionary way.

Limits:

- Without a general principle for migrants' equality, it is difficult to take migrants' equality into account when drafting laws and making impact assessments.
- Principles derived from social mainstreaming (e.g. right to dignity, fight to social exclusion) might serve as parameter, but they are difficult to judicialize.

Conclusion

In Europe, the risk of poverty and social exclusion is twice as high for third-country nationals (EUROSTAT 2019), contributing to make our society **ethnically segregated**:

- Risk of poverty: 20% EU nationals vs 45% of TCN.
- Severe material deprivation: 5% of EU nationals vs. 12% TCN

Measures of social inclusions and social benefits play a crucial role in fighting poverty, we need to make sure they reach those who are more in need.



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