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Report on the social security rights of short-term third-country national migrant workers

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Report on the social security rights of short-term third-country national migrant workers

Edited by
Vladimir Bogoeski and Zane Rasnača

Report 2023.04

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Abstract

This report provides an overview of the ways in which EU and EEA Member States have regulated their social security frameworks in relation to short-term third-country national (TCN) migrant workers. It presents the result of an extensive mapping exercise carried out in 24 EU Member States, as well as Iceland and Norway, focussing on the relationship between migration and the social security coverage of different categories of short-term third-country national workers (for example, posted workers, intra-corporate transfers, seasonal workers, temporary agency workers, high-level professionals and self-employed).

While every worker in the EU, in principle, is and should be covered by social security, certain groups of workers are subject to uncertainties and gaps in coverage. Third-country nationals who work in the EU for a short time are among the workers often subject to exclusions from social security coverage or not covered for certain risks. The individual country reports show that, as a general rule, employers who employ short-term third-country national migrant workers are supposed to pay social security and health care contributions as they do for regularly hired local workers. In the various jurisdictions this general rule is subject to various exceptions and restrictions. The internal and external fragmentation underlined by the variety of legal sources addressing social security issues, as well as the diversity of approaches potentially raises difficulties for the navigation of the respective systems. And while this seems justified in light of Member States' discretion in immigration and labour law, more legal certainty should be aimed for to better protect the workers experiencing this fragmentation and lack of coverage.

Introduction

Vladimir Bogoeski and Zane Rasnača

This report examines the ways in which the current social security set-ups in EU and EEA Member States (24 EU Member States, along with Iceland and Norway) and the overarching EU social security regulatory framework help to shape the various vulnerabilities that short-term third-country national (TCN) migrant workers experience across Europe. While every worker in the EU, in principle, is and should be covered by social security, certain groups of workers are subject to some uncertainties and gaps in coverage. Third-country nationals who work in the EU for a short time are often excluded from social security coverage or not covered for certain risks. Even if they are covered, because of the brevity of the period during which they work, they might not be eligible for benefits, or might face difficulties accessing those benefits if they have already left EU territory. These are among the issues this report aims to investigate.

Social security is the protection system offered to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, disability, illness, work injury, maternity or other incapacity to work (ILO 2020). The social security system thus protects people from risks, often linked to working life (such as accidents at work or unemployment). European social protection systems typically consist of two parts, a contributory system (financed by workers' contributions) and an assistance system (funded from general taxation).

As important as social security is for national workers, it is probably even more important for migrant workers. Because migrant workers are generally subjected to more risks associated with their working life (Rasnača 2022), one could argue that social protection coverage is of the utmost importance for them in particular. While migrant workers come in all shapes and forms (seasonal, posted, Blue card holders and so on), it is important for all groups that they be protected against the risks identified above. Recently, Covid-19 revealed rather starkly, for example, how important health care coverage can be.

At the same time, some groups of migrant workers might be more vulnerable than others. There might be more breaches of workers' rights in certain sectors, or work in certain sectors might be characterised by more explicit worker dependencies on their employer (for example, domestic work and agricultural work; Bogoeski 2022). Finally, workers working in the country for a short time or only occasionally might not have the necessary knowledge and other resources to assert their rights (Rasnača 2020). Third-country nationals because of the need to comply with the requirements of legal residency can be especially vulnerable if their residence

status is dependent on their employment status. This is often the case for workers discussed in this report, namely, workers entering the EU from third countries on a short-term basis (Rasnača 2022: 279-283).

Some of these effects, which foster precariousness, vulnerability and exploitation, were exacerbated during the Covid-19 pandemic. The Covid-19 pandemic has also made clear that short-term third-country national workers are essential in many domains of the economy and society, as shown, for example, by the shortages of seasonal workers in food production (Bogoeski 2020). In many national contexts the latter have been officially declared ‘essential’ and part of the critical infrastructure for maintaining food security amidst of a crisis of global proportions (Rasnača 2020). The official recognition of the essential character of their jobs did not, however, prevent worker rights violations and further exclusion from social security frameworks, which among other things often have to do with the workers’ short-term third-country national status (Rasnača 2020).

The regulation of social security access for short-term third-country national workers in the EU and EEA has generally been understudied. Moreover, reliable data on the various arrangements for access to social security for short-term third-country national migrant workers across jurisdictions is relatively scarce. The lack of data is both a symptom and a result of the marginalised legal and empirical reality of some of the categories of short-term third-country national workers, often leading to political neglect of the topic overall.

The first goal of this cross-country report therefore is to move the needs of short-term third-country national workers from the margins closer to the centre of the ongoing social security discussion in the EU (EEA). To the best of the authors’ knowledge, the report is the first comprehensive study of this scale mapping the regulatory regimes, institutional arrangements and challenges for short-term third-country national migrant workers regarding access to different components of social security in the EU and the EEA. The report also maps the social security schemes that apply to different categories of short-term third-country nationals in most EU and EEA Member States with the aim of achieving a comprehensive overview of the legal frameworks; second, it aims to connect the features of the existing frameworks (at EU and national level) with some of the particular challenges that some short-term third-country national migrant workers face. Finally, the report also seeks to provide an initial overview of the political responses to the Covid-19 pandemic regarding social security issues in order to understand what particular short-term or long-term reforms of the past two years might affect the situation of short-term third-country nationals.

The report’s goals and ambitions are threefold. While it constitutes the first comprehensive study of social security rules applying to short-term third-country national workers in the EEA, this first attempt should provide impetus for further and more in-depth studies of the different aspects of the social security question in the context of short-term third-country nationals. Second, the report aims to highlight the current main gaps in the applicable regulations by showcasing where such legislative gaps exist and what groups of short-term third-country national migrant workers lack social security protection and under what conditions. These

gaps can then be further explored, with additional studies of the regulations and their enforcement, in order to develop concrete policy proposals. Lastly, some of the reports highlight the limits of European instruments and their implementation in the Member States. This offers a further basis for reflections on how these gaps could be successfully closed in future.

The remainder of the Introduction to the report is organised as follows. The next section outlines the nexus of short-term migration and social security. Section 2 makes the connection between the social security regulatory framework and the legal construction of vulnerability and precariousness of some categories of short-term migrant workers. Section 3 explains the importance of social security for short-term migrant workers. Section 4 addresses the policy responses regarding social security during the pandemic. The final section explains the scope, approach and objectives of the report.

1. Short-term labour (im-)migration and social security

Aside from general conditions such as language barriers, non-familiarity with the legal rules and social norms, as well as isolation from their communities and social networks in their countries of origin, short-term migrant workers experience a series of other challenges that make their status particularly precarious and prone to different kinds of exploitation. The fact that residence status as the main source of legal rights and entitlements in any foreign context is often tied to concrete employment creates a uniquely high level of existential dependence of the employee on the employer. This facilitates conditions of precariousness and subordination.¹ Even during the pandemic, in some cases the automatic extension of visas for short-term employment was conditioned on employees' ability to secure an extension of their employment agreement (see report on Czechia).

While the purpose of social security regimes is usually to mitigate the negative consequences of the termination of employment relationships (income replacement), inability to work (any kind of incapacity, old age and so on) or caring responsibilities for children or other dependent family members, the materialisation of these general social security goals often falls short in the case of short-term migration (Sabates-Wheeler and Feldman 2011).

Social security regimes have historically been less beneficial to some 'outsider' groups of workers, including short-term migrant workers (third-country nationals in the EU context) (Verschuere 2020; Scheibelhofer 2022). While social security regimes have been seen as a source of solidarity and insurance systems cushion (un)employment related risks, in the case of short-term migrant workers, social security frameworks in combination with different migration schemes have often resulted in systematic exclusion of workers and groups of workers. Particularly in

1. This will be explored in detail in an upcoming ETUI report on immigration law and short-term labour-oriented mobility.

the context of short-term third-country national migrant workers, it is impossible to separate the social security question from the different migration schemes that enable workers to take up short-term employment in an EU or EEA country in the first place. The type of migration regime that enables short-term employment abroad on a large scale determines the type of social security benefits that a short-term third-country national worker will eventually be entitled to.

In the EEA the social security implications for short-term third-country national workers are the result of a combination of a fragmented EU social security legislation (both regulations and directives), member states' own national welfare schemes and social security regulation, as well as the different institutional practices of the relevant authorities and welfare state institutions. Most chapters in this report demonstrate precisely the interaction between these three elements of EU and national social security regulation as well as established institutional practices.

2. Social security and the structuring of precariousness in the EU and the EEA: fragmentation of approaches

In addition to how legal residency and status are shaped by particular migration regimes, often social security in the context of short-term third-country national migrant work is linked to the economic sectors in which short-term third-country nationals most often work. As some short-term third-country national migrant workers are often employed in economic sectors particularly affected by casualisation, social security issues are thus tied to the fact that casual work itself, irrespective of migration status, excludes workers from a wide range of social benefits (see report on Italy).

Equal treatment with regard to some social security benefits is reserved a priori for those who have resided in the Member State for (at least) a year (see report on Finland among others). This is particularly applicable to social assistance (non-contributory benefits) (see report on Italy). Short-term migration status is then sometimes used as a basis for exclusion from both contributory and non-contributory social security coverage and entitlements. Except for posted workers, intra-corporate transfers and seasonal workers in some cases, most Member States approach the social security question in case of the short-term employment of third-country national workers through the imposition of a general requirement that employers should pay social security contributions for these workers. This will then entitle them, in theory at least, to health insurance, pension insurance, and unemployment benefits.

There are three main ways in which the social security issue – or more concretely, lack of access to certain social security components – contributes to put short-term third-country national migrant workers' in a vulnerable or precarious position in host societies. First, the exclusion from immediate social security support upon the termination of employment. Second, limited access to health

and pension insurance for some categories of short-term migrant workers yields both short-term and long-term precariousness and vulnerability. Third, issues with transferability of benefits and entitlements exacerbate the previous two. All three have a temporal and a spatial dimension, namely, they affect different aspects of the worker's social life in a given national (local) context along different time trajectories. The transferability of unemployment benefits adds an additional layer of spatio-temporal challenge in terms of whether short-term third-country national migrant workers will still be entitled to social security services and benefits in case they decide to return to their country of origin, once the main purpose of their stay abroad, namely short-term employment, no longer exists.

In terms of financial stability in old age the issue of social security may appear to be less acute, as its effects seem to belong to a more distant future. The consequences of exempting employers from a mandatory requirement to pay pension contributions for particular groups of workers are not difficult to predict, however. The effect is often old-age poverty. Seasonal workers are a case in point. In Germany, in particular, employers do not need to pay social security contribution in accordance with the national social code, including pension insurance (Bogoeski 2021), for seasonal workers who work no longer than 102 workdays (extended from 70 to 115 and then reduced to 102 in the second pandemic year). The rationale for this is rather outdated, namely that seasonal workers who stay only two or three months in Germany are enrolled in the social security system in their countries of origin. Research shows this is no longer the case, however, as most seasonal workers employed in German fields in recent years have come from relatively impoverished regions in Romania (in addition to third-country-national migrant workers from Ukraine, Georgia and the Balkans), and are either unemployed or in precarious employment there. This means that generally they are not integrated in the social security system of their country of origin.

Against this background, the individual country reports seek to identify the rules that determine access to social security for short-term third-country national migrant workers and, more importantly, the main shortcomings and challenges that characterise their different vulnerabilities and conditions of exploitation.

3. Why social security matters for short-term third-country nationals

Our study of social security and short-term third-country-national migrant workers in the EU and the EEA attempts to achieve a comprehensive overview of how all components of social security apply to short-term third-country-national migrant workers across countries. The comprehensiveness and coverage of combined social security schemes is important, as each social security component addresses a different social risk with fundamental consequences for third-country-national migrant workers' livelihoods. From the individual reports it becomes clear that different states have their own approaches to regulating the application of different social security components to third-country nationals, depending on their welfare state regime, the implementation of EU regulations and national legal arrangements. While overall countries have different approaches to the

various social security components and how they apply to the different types of third-country national mobility, there are also some overlaps. These are a result of legal interventions at EU level (for example, Regulations 883/2004, 987/2009 and 1231/2010), the posted workers regulatory framework that also provides a baseline for posting third-country nationals (including posting of third-country-national temporary agency workers),² as well as several EU directives that regulate different forms of short-term migration and thus address particular social security concerns (Verschueren 2018).³

The short-term migration of third-country nationals and the issue of social security are characterised by a dual contradiction. First, in some systems, obtaining a short-term migrant work visa is conditional on a guarantee of workers' ability to sustain themselves financially during their stay in the host state (see report on Denmark). This means that relying on social assistance and sometimes other social security benefits is not an option. While some social assistance and unemployment benefits are available to other (domestic) workers in order to mitigate social risks and protect them in case of unemployment (for various reasons), in the case of short-term third-country-national migrant workers termination of employment often means that they no longer qualify for their visa.⁴ Thus not only are the risks of unemployment not mitigated through social security services and assistance, but job loss can often entail the withdrawal of the residence permit. This is why, according to the individual reports, in most countries short-term third-country-national migrant workers have no access to social assistance, which is mostly reserved to long-term residents and nationals. For examples, in Estonia, as a general rule 'the national system does not allow employees with a temporary residence permit for employment to be officially registered as unemployed and to receive unemployment allowances and unemployment insurance benefits because their permits expire in case of dismissal' (report on Estonia). Also, in Romania for example, if a short-term seasonal worker requests social assistance, their visa will be revoked (see report on Romania and also the report on Belgium for a similar example).

The second contradiction has to do with the extent to which social security matters with regard to employment that is by definition of relatively or even very short duration. Particularly when the main incentive for migration is higher income – for example, in the case of workers from poor regions (or poorer than the host state) engaged in short-term employment as third-country-national migrant workers elsewhere – the question might arise of why and to what extent a plurality of social security components matters in relation to short-term third-country-national migrant work.

-
2. Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Text with EEA relevance), OJ L 173, 9.7.2018, pp. 16–24.
 3. For example, Seasonal workers directive (Directive 2014/36/EU), Single permit directive (Directive 2011/98/EU), Directive on intra-corporate transfer (Directive 2014/66/EU), and the Directive prohibiting employment of illegally staying third-country nationals (2009/52/EC).
 4. This will be explored in detail in an upcoming ETUI report on immigration law and short-term labour-oriented mobility.

There are three main perspectives to consider when trying to address this question. The first and most important is the perspective of the affected workers themselves. The second is the perspective of the country of destination and its welfare institutions. Third, and often forgotten, is the perspective of the country of origin and how its society and welfare institutions are impacted when its citizens are excluded from different kinds of social security while undertaking short-term employment abroad. These three perspectives on social security concerns in the context of short-term third-country-national migrant work have different levels of salience in the various discourses on social security and short-term migration. For instance, when trade unions argue that everybody should be entitled to proper health insurance and overall social security (regardless of the duration of employment) (Maurin 2022), they might be accused of taking very much a country of destination position, safeguarding the interests of collective and welfare institutions in the host society, which may be undermined or in some other way negatively affected by the exclusion of particular groups of workers, such as short-term third-country-national migrant workers. The accusation is essentially that supporters of collective and welfare structures fear a domestic race to the bottom resulting in the dismantling of those structures if different groups of outsiders are subject to different kinds of exclusionary legislation and institutional practices (Dukes 2018). According to this line of criticism, in other words, protecting institutions in the host society is the primary motive for social protection rather than consideration for the wellbeing of the affected workers themselves.

This has been proven wrong, at the latest during the pandemic, however, when it became clear how essential both health insurance and overall social security are, and even more so in conditions of general exclusion from overall social structures, as in the case of short-term third-country-national migrant workers. The presence of workers with a real danger of contracting what at the time was still an unfamiliar virus with clear health risks (alongside the possibility of not being able to go back to their country of origin while incapacitated in their destination country) demonstrated that people's livelihoods to a great extent depend on the social security options available to them.

The importance of the perspective of countries of origin was equally revealed by the pandemic (while remaining largely missing from the general discourse on social security for short-term third-country-national migrant workers), as institutions were suddenly faced with returning workers who had been working abroad but now could not easily be re-integrated in domestic social structures, as neither health insurance, unemployment benefits nor pension contributions had been paid elsewhere or in the country of origin. Returning posted workers with coverage in their country of origin (if posting from third countries was allowed in that particular case) were in a simpler situation, but all the other types of short-term migrant workers returning home put immense stress on country of origin social assistance systems. The question of the transferability and portability of social security entitlements, examined in the individual country reports, is closely tied to this last point.

As there are no remaining doubts about how essential comprehensive social security is for short-term third-country-national workers, it is extremely difficult

to say whether there is or should be, generally speaking, priority among the different components of social security; that is, whether some components might be more important to short-term third-country-national migrant workers in a given context. Being insured against workplace accidents is as important as having regular health insurance or unemployment benefits to prevent financial insecurity after a job loss, or pension insurance for prevention of old-age poverty or any other kind of poverty if someone becomes incapacitated for work.

4. The Covid-19 pandemic and responses

The Covid-19 pandemic, more than any other recent event, has brought the question of migrant labour – and short-term third-country-national migrant labour in particular – to the centre of public debate. The world-wide lockdowns that brought air and every other kind of travel and border-crossings to a standstill also meant that short-term migrant labourers, who are essential for many industrial sectors, could not make it to their desired destinations. Particularly in food production across Europe, from agriculture to every stage of food processing, it became clear that some economies not only relied on short-term third-country-national migration, but were largely dependent on short-term seasonal third-country-national workers (Bogoeski 2020). The situation was often similar in the care sector (Genacianos 2021). While in some contexts seasonal workers have been declared essential and part of critical infrastructure, primarily in the context of food security, the political responses that followed during the pandemic, especially in the context of social security (furloughs, extensions of stay permits) did not necessarily adequately recognise the essential work that these workers have been doing in host societies (Rasnača 2020).

The report recognises that the pandemic was not particularly exceptional as regards how third-country nationals as a category of migrant worker have been treated over past decades. There is a continuity of exclusion of third-country nationals from social security frameworks. It is often justified in terms of the short-term nature of the work and assumptions that short-term third-country-national migrant workers might already be beneficiaries of social security elsewhere, namely in their countries of origin or countries where they previously lived and worked. However, many of the countries examined in this report have responded in some way to the situation newly created by the pandemic. In some countries, such as Germany, some responses resulted in the further deprivation of seasonal workers from access to social security, while in other countries attempts were made to better accommodate workers' needs (see, for example, the reports on Ireland, Greece and Denmark).

The individual reports offer an overview of the variety of policy responses and legislative interventions during Covid-19, thus providing room for reflection on which might be more or less desirable in an attempt to offer better protection to workers in general.

5. Structure of national reports

This volume contains 26⁵ short reports on the social security rules applying to short-term third-country nationals across the EU and EEA. The reports take a comprehensive approach, mapping regulations and practices related to all social security components and all types of short-term third-country-national migration. In terms of social security components, the reports cover health insurance, pension contributions, unemployment insurance, basic social security (social assistance), insurance against accidents at work and child/family benefits. The reports examine the current regulatory frameworks determining the accessibility of social security components for third-country-national workers, who include, according to their migration status, posted workers (PWs), intra-corporate transfers (ICT), seasonal workers (SWs), temporary agency workers (TAWs), high-level professionals (Blue card workers or BCWs) and self-employed persons.

Each of the individual country reports is structured as follows. First, the authors provide an overview of the relationship between the form of migration (posting, intra-corporate transfers, seasonal work, TAW, high-level professionals, self-employed) and the entitlement to a particular social security service (health insurance, pension contributions, unemployment insurance, basic security, that is, social assistance, insurance against accidents at work and child benefits) in the respective country. All reports also account briefly for sector-specific variations of social security rules and map relevant changes regarding access to social security introduced since the beginning of the Covid-19 pandemic.

After this initial overview, in a second step, the country reports elaborate on specific details concerning access to social security for various categories of short-term third-country-national migrant workers, including the specific conditions for obtaining particular social security rights. Besides specific information on access to social security for each relevant category of short-term third-country-national migrant workers, this part of the reports provides further insights into (i) portability of benefits between the host country and the country of origin, (ii) relevant changes introduced in response to the Covid-19 pandemic, and (iii) short comments on enforcement and monitoring of social security rights in the respective national context.

The timeframe for reporting was between 2020 and 10 October 2021. Thus even though the last revision was in November 2022, changes to national law since that date have not been included in the individual reports.

5. The report includes country reports from Austria, Belgium, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

1. Austria

Elisabeth Brameshuber and Julia Heindl

Austrian social security law can basically be divided into social insurance, social assistance and social compensation (specific benefits for certain types of person, such as war victims). Social insurance is the most important part of the Austrian system. Its main (Bismarckian) pillars are that all working people, employees and self-employed, are mandatorily covered and the system is contribution-financed. The main categories of risk covered by social insurance are health, pensions, accidents at work and unemployment. Social assistance as the 'last safety net' covers support for living and accommodation needs. Family benefits form part of social security law, as well as of tax law. Whether third-country nationals are covered by the Austrian social security system depends on the category of risks and residence and employment status.

Box 1 Sector-specific variations of social security rules

There is no uniform social security system. Different rules apply depending on the respective occupational group; the basic distinction is employee vs self-employed. Accident insurance is regulated for almost all occupational groups in the *Allgemeines Sozialversicherungsgesetz* (ASVG). Health and pension insurance, by contrast, are structured differently in terms of content and organisation, depending on the occupational group. In principle, however, social insurance is linked to (self-)employment. In other words all working people, irrespective of their status, are mandatorily covered (and thus need to pay contributions), although protection is sometimes extended beyond the group of (self-)employed persons (Pfeil and Auer-Mayer 2021: 24).

Table 1.1 Overview of the relationship between the mode of migration and social security coverage

Third-country national categories	Social security categories					
	Health insurance	Pension contributions	Insurance against accidents at work	Unemployment insurance	Basic security (social assistance)	Child benefits
Posted workers	Covered only if employment is carried out from a domicile in Austria and no other social security system applies			Only for those who fall under the health insurance system according to the <i>Arbeitslosenversicherungsgesetz</i> (AIVG)	Only if resident > 5 years	Entitled if the third-country national and children reside lawfully and permanently in Austria
Intra-corporate transfers	A person is insured and entitled if the employer has a domicile or a permanent establishment in Austria (principle of territoriality); mobile ICTs are subject to the social security law of the state that issued the mobile ICT residence permit			Only if they fall under the health insurance system according to the AIVG*	Only if resident > 5 years	Entitled if the third-country national and their children reside lawfully and permanently in Austria

Third-country national categories	Social security categories					
	Health insurance	Pension contributions	Insurance against accidents at work	Unemployment insurance	Basic security (social assistance)	Child benefits
Seasonal workers	Insured and entitled if the employer has a domicile or a permanent establishment in Austria (principle of territoriality)			Exempt	Only if resident > 5 years	Entitled if the TCN and children reside lawfully and permanently in Austria
Temporary agency workers	Insured and entitled if they work for a domestic employer (§ 3 III ASVG icw § 16 Arbeitskräfteüberlassungsgesetz (AÜG))			Only if they fall under the health insurance system according to the AIVG*	Only if resident > 5 years	Entitled if the third-country national and children reside lawfully and permanently in Austria
High-level professionals	Insured and entitled if the employer has a domicile or a permanent establishment in Austria (principle of territoriality)			Only for those who fall under the health insurance system according to the AIVG*	Only if resident > 5 years	Entitled if the third-country national and children reside lawfully and permanently in Austria
Self-employed	Depends on taxable income in Austria	Insured and entitled if they are insured in the health and pension insurance system or are members of the Chamber of Commerce		Self-insurance possible only if insured in the Austrian pension system under the conditions of § 3 AIVG	Only if resident > 5 years	Entitled if the third-country national and children reside lawfully and permanently in Austria

Note: * Entitled only if minimum insurance period of 52 insurance weeks within the last 24 months has been met or 25 insurance weeks within the last 12 months for people under 25 years.

Source: Author's analysis, 2022.

Box 2 Changes during Covid-19

A Covid-19 short-time work model was introduced during the pandemic and was also used by foreign workers (including migrants). Foreign workers (including migrants) were more affected by short-time work than Austrian nationals in 2020 (BKA 2021: 49). Moreover, family benefits were provided regarding special hardship cases, which were also made available to third-country nationals with their main residence in Austria. (FLAG: § 38a; Schwab 2020: 240).

Description of the Austrian system

1. Overview of social security rights of short-term third-country-national migrant workers

Regulation 883/2004 also applies to third-country nationals in certain cases (Spiegel 2022: 120–121; Spiegel 2017: 4, 8–11). Additionally, there are bilateral agreements between Austria and some third states. The applicable law and coverage of the various risks is structured differently depending on the bilateral agreement (Deutsch et al. 2021: 385–387).

Compulsory insurance is based on the principle of territoriality (Pfeil and Auer-Mayer 2021: 28). Even if the foreigner is employed without permission (that is, there is no valid employment contract due to, for example, a violation of immigration law), the employment relationship is subject to the social security system (VwGH 12.11.1991). A person is an employee under Austrian social security law if the employee is personally and economically dependent on the employer and remuneration is paid (Resch 2020: 17). Self-employed persons are subject to the Austrian social security law if they fulfil certain criteria (basically linked to the law on trade licences (Gewerbeordnung 1994 (GewO)) or if they have taxable income above a certain threshold (SVS 2022; USP 2022; Pfeil and Auer-Mayer 2021: 36–37).

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

In general, the rules mentioned above apply except when seasonal workers are employed only temporarily in line with § 5 AuslBG (Ausländerbeschäftigungsgesetz); in such a case they are explicitly exempt from the AIVG (AIVG: § 7 VI; Bichl et al. 2014: 99).

(ii) Third-country-national posted workers

Generally, for posted workers the social security provisions of the home state remain applicable up to a certain period, depending on the applicable law (EU law or bilateral agreement). Accordingly, for the purposes of short-term postings, the law of the home state is applicable in most cases. If none of these provisions is applicable, § 3 III ASVG stipulates that employees of a foreign company without a branch in Austria are covered only if the employment is carried out from a domicile in Austria and no other social security system applies (Deutsch et al. 2021: 385–387; Kind 2018: 453–455).

(iii) Third-country-national temporary agency workers

TAWs are covered within the Austrian system if they work for a domestic employer, in accordance with § 3 III ASVG icw § 16 AÜG (Müller and Spiegel 2014: § 3 ASVG para 42).

3. Conditions for obtaining different social security rights

The social security system in Austria is compulsory for all employed persons (Tomandl 2019: 27). The insured risks within the ASVG are accidents, health and pensions (Resch 2020: 16). If wages are below the low-income threshold of 485.85 euros (€) per month for 2022 (Gesundheitskasse 2022), only partial insurance is mandatory in the accident insurance system (ASVG: § 7 no 3 letter a) with the option of full insurance (Resch 2020: 16–21, 28–31). Additionally, there is unemployment insurance mainly for those who are insured in the health insurance system in accordance with the ALVG. Entitlement to unemployment benefits requires a minimum insurance period of 52 insurance weeks within the last 24 months or 26 insurance weeks during the last 12 months for people under the age of 25 (Tomandl 2019: 247). Because of short working period, most short-time migrants will not be entitled to unemployment benefits.

The provisions on social assistance can be found in the Basic Social Assistance Act and the respective implementing laws of the nine regions of Austria. Generally, every person in need who resides legally in Austria is entitled to social assistance. Third-country nationals are entitled only if they have been legally resident in the country for more than five years, however (Pfeil and Auer-Mayer 2021: 169–170).

For the self-employed, the obligation to pay social security contributions depends on fulfilling certain criteria or on their taxable income in Austria. Fulfilment of certain criteria originating from the Law on Trade Licences, as well as engaging in any other self-employed activity leads to mandatory social insurance coverage. As regards the abovementioned ‘other’ self-employed activities, certain earning thresholds apply. The ‘other’ self-employed are exempt from compulsory health and pension insurance if they do not exceed the marginal earnings threshold of €5,830.20 per year for 2022 (SVS 2022; USP 2022; Pfeil and Auer-Mayer 2021: 36–37). Third-country nationals are subject to limited tax liability in Austria if they do not have a domicile or habitual residence. In contrast, people who reside in Austria are liable to tax without such limits (Sabara and Haas 2021). Another exemption for social security contributions is possible for small businesses that do not reach an annual turnover of €35,000 and the abovementioned income threshold. This applies only to health and pension insurance. Accident insurance must be paid (WKO 2022).

4. Portability of benefits between the host country and the country of origin

As already mentioned, Regulation 883/2004 also applies to third-country nationals in certain cases (Spiegel 2022: 120–121; Spiegel 2017: 4, 8–11). Art 7 Regulation 883/2004 states that social benefits must not be linked to residence. Regulation 883/2004 provides for a restriction of the ‘export’ obligation for certain benefits, however, or even excludes some benefits from export (Art 63, 70 III). The portability of benefits is subject to EU primary law and is therefore covered by the prohibition of discrimination in accordance with Art. 45 TFEU. Consequently, it must be examined whether a residence clause is objectively justified in terms of free movement of workers (Felten 2017: 131–139).

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

A Covid-19 short-time working model was introduced during the pandemic, which was also used by foreign workers (including migrants). Foreign workers (including migrants) were more affected by short-time work than Austrian nationals in 2020 (BKA 2021: 49). Moreover, family benefits were provided in special hardship cases and made available also to third-country nationals whose main residence was in Austria (FLAG: § 38a; Schwab 2020: 240).

6. Overview of enforcement and monitoring

PD A1 must be filed electronically on ELDA, which is a platform of the Austrian social security authorities (Kiesenhofer and Traxler 2021: 19–22). For the posting of employees to another Member State, the competent authority requires the name, date and place of birth, insurance number and nationality of the employee. Furthermore, their address in the country of domicile and in the host state are necessary. Additionally, some data is needed on the employer (name, address, company register), with information regarding the posting (duration, host state), as well as confirmation that the employee is not replacing another posted employee (Gesundheitskasse 2021). There are no special enforcement mechanisms when it comes to the social security rights of third-country-national workers in Austria; the general enforcement regime applies.

2. Belgium

Alexandre de le Court

In the absence of an applicable international agreement or bilateral convention, the Belgian social security regime is applicable to any worker who provides services on Belgian territory for an employer established in Belgium, or for an employer established in another country, but with a place of business (*'siege d'exploitation/exploitatietzel'*) in Belgium on which the worker depends (the latter applies if the worker receives their orders and remuneration from that operational office and is accountable for their activities to that office).¹

Table 1.2 Overview of relations between form of migration and entitlement to a particular social security service

Third-country national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No (see country of origin)	No (see country of origin)	No (see country of origin)	Yes (depending on immigration regime)	No (see country of origin)	Yes*
Intra-corporate transfers	Yes	Yes	Yes	Yes (depending on immigration regime)	Yes	Yes*
Seasonal workers	Yes	Yes	In principle (but need work authorisation or to meet conditions for work authorisation)	Yes (depending on immigration regime)	Yes	Yes*
Temporary agency workers	Yes	Yes	In principle (but need work authorisation or to meet conditions for work authorisation)	Yes (depending on immigration regime)	Yes	Yes*
High-level professionals	Yes	Yes	In principle (but need work authorisation or to meet conditions for work authorisation)	Yes (if means test passed)	Yes	Yes*
Self-employed	Yes	Yes	No (does not exist for self-employed)	Yes (depending on immigration regime)	No (but entitled to sickness benefits)	Yes*

Note: * If children have legal residence in Belgium or an EEA country.

Source: Author's analysis, 2022.

1. Article 2§4 Wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers (Law of 29 July 1981 containing the basic principles of social security for employees).

Description of the Belgian system

1. Overview of social security rights of short-term third-country-national migrant workers

As a rule, and in the absence of contrary provisions in an applicable international agreement, bilateral convention or EU Regulations in matters of social security, the Belgian social security regime applies to any worker who works on Belgian territory for an employer established in Belgium, or for an employer established in another country, but with a place of business in Belgium to which the worker is attached. The *Cour d'Arbitrage* (now *Cour Constitutionnelle*) defined the place of business as an establishment or centre of activity with a certain character of stability, where assignments and instructions are given to the worker, where communication between the parties takes place and where the worker contacts their employer (Cour d'arbitrage, Decision number 9 of 30.01.86).

Without provisions to the contrary in an applicable bilateral agreement (and outside the framework of European Regulations on Social Security, in other words, intra-EU posting), which generally provide for a period of 24 months before the social security laws of the host country apply, if a posted worker directly depends on their employer in their country of origin, Belgian social security legislation will not be applicable.²

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

There is no specific regulation depending on immigration regime or type of work authorisation, so the general rules set out above apply. Thus, seasonal workers will be compulsorily affiliated to the social security regime, as they will depend on an employer in Belgium. In the absence of the application of EU law on posting of workers or a bilateral agreement, posted third-country nationals will not be subject to Belgian social security (except if they are posted to a 'place of business' of the posting company). To the extent that temporary agency workers can be considered posted workers, the same conclusions apply (it is to be noted that non-EU posting of third-country nationals in general and through temporary agency work is exceptional because of the restrictive character of work authorisation in those cases).

2. Article 2§4 Wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers (Law of 29 July 1981 containing the basic principles of social security for employees).

3. Conditions for obtaining different social security rights

Third-country nationals present in Belgium for short periods of work will have difficulty meeting the different waiting periods to access benefits.³ Moreover, authorised residence is needed to access benefits, except in cases of portability. In the case of child benefits, however, it is the authorised character of the child's residence that confers the entitlement to benefits, independently of the status of the parent worker. Specific limitations might also apply in function of the social risk concerned. For example, there is no right to unemployment benefits when the unemployed person does not comply with the law concerning employment of foreigners. This means that to access benefits, the person in question must have authorisation to work (except if the person has a right to residence that allows access to the labour market).

Third-country nationals with authorised residence in Belgium and who are not included in the population register (this means third-country nationals without long-term residence authorisation) have no access to means-tested social integration benefits (*Revenu d'Intégration Sociale/Maatschappelijke Integratie* – integrated social assistance benefits in cash). However, they have access to the subsidiary means-tested system *Aide Sociale/Sociale Bijstand* (Social Aid, a flexible benefits system which can be a combination of cash benefits and benefits in kind, with a margin of decision given to the local authority competent for social assistance – *Centre Public d'Action Sociale/Openbaar Centrum voor Maatschappelijk Werk*). But it is important to stress that the Federal authority can cancel single permit or authorisation to stay when the third-country national is deemed to have become a burden (*'charge'*) on the social assistance system. Foreigners without authorisation to stay have access only to emergency medical aid (although access to social aid is possible if it is impossible to return to their country of origin for administrative, medical or family reasons).

4. Portability of benefits

In the absence of bilateral conventions or application of EU rules, benefits in cash in case of industrial accident or occupational disease that occur in Belgium are exportable in case of return to the country of origin. Other benefits are not exportable.

3. For example, for unemployment benefits, between 312 and 624 worked days in function of different factors; for sickness benefits and invalidity pension there is a 12-month waiting period and a requirement of 180 worked days; for maternity and paternity benefits, there is a 6 month waiting period and a requirement of 120 worked days.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

No specific social security measure seems to have been adopted for short-term migrant workers from third countries.

6. Enforcement and monitoring

Failure to comply with the employer's (or self-employed worker's) obligations in terms of registration and payment of contributions is subject to administrative fines and possible criminal prosecution. Compliance with social security legislation is controlled by the inspectorate of the social security administration.

When posting workers to Belgium, the employer must present a LIMOSA declaration, and the client or contractor in Belgium has to request certification that the declaration was presented from the worker (except for natural persons receiving services in a private context). With the LIMOSA declaration, the employer informs the Belgian authorities about several elements of the posting (nature of the activities, identities of posting employer, posted worker and end user, duration of the posting, among other things). If the worker cannot provide the LIMOSA document, the client is obliged to inform the social security administration. The posting company also has an obligation to appoint a contact person (through the LIMOSA declaration, or if not applicable, directly to the social security administration), from which the labour inspectorate might require documents (including those related to work authorisation).

3. Croatia

Sunčica Brnardić

A work contract with a Croatian employer is the basis for social security rights for third-country nationals. Portability depends on the existence of international agreements and their content. Social welfare rights are available to third-country nationals only with permanent residence. Third-country nationals can be practically excluded from claiming employment benefits if their residence depends on the existence of work relationship, which is the case with single work-residence permits. Third-country nationals entering Croatia for the purpose of work who do not need a single work-residence permit remain insured in the country of origin.

Table 1.3 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Depending on the agreement	Depending on the agreement	Yes	No	Depending on the agreement	No
Intra-corporate transfers	Yes	Yes	Yes	No	Yes	No
Seasonal workers	Yes	Yes	Yes	No	Yes	No
Temporary agency workers	Yes	Yes	Yes	No	Yes	No
High-level professionals	Yes	Yes	Yes	No	Yes	No
Self-employed	Yes	Yes	Yes	No	Yes	No

Source: Author's analysis, 2022.

Description of the Croatian system

1. Overview of social security rights of short-term third-country national migrant workers

According to the Aliens Act, third-country nationals who have been issued a single work-residence permit on the basis of a work contract with a Croatian employer are guaranteed by law the right to equal treatment in relation to branches of social security, as defined by Regulation (EC) No 883/2004. All third-country nationals with a single work-residence permit on the basis of a work contract with a Croatian employer have the right to social security in Croatia and are obliged to pay contributions. This applies to the self-employed as well. They are insured against old age, partial or full loss of work capacity and physical injury, reduced work capacity, illness, accidents at work and occupational diseases. In addition, contributions for health care are paid by the employer on top of the gross wage.

Third-country nationals entering Croatia for the purpose of work who do not need a single work-residence permit (i.e. on the basis of confirmation of a work declaration, posted workers from EU/EFTA) remain insured in their own countries or in their countries of habitual employment.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

Third-country-national seasonal workers and third-country-national temporary agency workers do not differ in terms of the scope of social security rights from other workers on a single work-residence permit. As for third-country nationals posted directly from third countries, it is unclear from legislation which security regime applies. It seems that this matter is regulated by the bilateral/multilateral agreement which constitutes the basis for such posting. Third-country nationals posted from EU/EFTA countries remain insured in the country of their employment, as regulated by the Posted Workers Directive.

3. Conditions for obtaining different social security rights

There are no special conditions for obtaining social security rights. As for social welfare rights, they can be exercised only by foreign nationals with permanent residence. Therefore, most third-country nationals on work permits in Croatia would not qualify for social assistance (including family benefits, the right to social housing or other specific social rights). In exceptional cases, however, they may also be entitled to one-time allowances and temporary accommodation.

An example worth mentioning is a practical problem that occurs for many third-country nationals in relation to realising their right to unemployment benefits. Many (if not most) come to Croatia for a period of one year, which is the maximum duration of the work-residence permit. If their contract is not extended, technically

they would earn the right to unemployment benefits, given that the condition is 9 months of work in the past 24 months (under the same conditions as Croatian and EU nationals). Given that termination of the employment relationship automatically means the loss of the right to reside in Croatia, however, the worker is unable to claim these rights, as they are also unable to register as an unemployed person in Croatia, available for work. In practice, this means that the worker needs to go back to their country of origin, unable to claim unemployment benefits, while simultaneously applying for work in Croatia from their home country.

4. Portability of benefits between the host country and the country of origin

Portability of benefits between the host country and the country of origin depends largely on the existence of signed bilateral agreements and their content. However, the literature suggests problems with claiming contributory pensions in Croatia for workers originating from countries that have signed bilateral agreements with Croatia covering entitlement to the pension scheme (Špadina 2020).

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

There were no notable changes in social security rights for short-term third-country-national migrant workers during the Covid-19 pandemic.

6. Overview of enforcement and monitoring

Upon issuing the single work-residence permit the Ministry of the Interior will notify the Croatian Employment Service, Tax Administration, Croatian Pension Insurance Institute, Croatian Health Insurance Institute and the State Inspectorate. The Ministry of the Interior may refuse to issue or cancel the single work-residence permit if the employer fails to meet its duties in relation to social security and tax obligations, respecting workers' rights and working conditions, as well as respective collective bargaining agreements binding for the employer.

4. Cyprus

Zaphiro Tsitsiou

The statute regulating the entry and stay of most categories of short-term worker from third countries to the Republic of Cyprus (RoC or Cyprus) is the Aliens and Immigration Law [Cap. 105] (AIL). The Aliens and Immigration Law is based on the principle of equality and allows the same access to social protection as Cypriot nationals to third-country-national seasonal workers and intra-corporate transferees (ICTs). The residence of posted workers from EU countries is regulated by the Law on the Posting of Workers in the Context of the Provision of Services and Related Matters (Law 63(I)/2017), which implements Directives 96/71/EC and 2014/67/EU, while the Aliens and Immigration Law is silent on regulating workers posted directly from third countries. Cyprus' Social Insurance Scheme (SIS) administered by the Ministry of Labour, Welfare and Social Insurance, covers all employed or self-employed persons working on the island compulsorily. Apart from old-age benefits, SIS provides benefits including, among others, maternity, sickness, unemployment, and employment injury.

Box 1 Sector-specific variations of social security rules

There are no sector-specific variations of social security rules concerning third-country nationals working temporarily in Cyprus. Short-term third-country nationals have access to social security; however, for claiming non-contributory benefits, residence-related criteria apply, such as proving permanent residency or completing specific periods of residence.

Table 1.4 Overview of the relationship between form of migration and entitlement to a particular social security service

Immigration regime	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	If posted from EU countries, third-country nationals are covered by the country's health insurance system in which they worked before posting. If posted directly from a third country, then it depends on bilateral agreements	Usually, yes. It depends on the bilateral agreements between Cyprus and third countries	N/A	Usually, yes. It depends on bilateral agreements	Yes, if posted from an EU country. If not, then it depends on the countries' bilateral agreements	Only with 5 years of permanent residence
Intra-corporate transfers	Yes, but subject to conditions*	Yes	Yes	Yes	Yes	Only with 5 years of permanent residence
Seasonal workers	Yes	Yes	Yes	Yes	Yes	Only with 5 years of permanent residence
Temporary agency workers	N/A	Yes	Usually yes	Yes	Yes	Only with 5 years of permanent residence

Immigration regime	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
High-level professionals	Yes	Yes	Yes	Yes	Yes	Only with 5 years of permanent residence
Self-employed	No	Yes	Yes	Yes	N/A	Only with 5 years of permanent residence

Note: * Article 18δ(1)(c) Aliens and Immigration Law maintains that Article 3 of Regulation (EC) no. 883/2004 applies to intra-corporate transferees, unless the law of their country of origin applies pursuant to bilateral agreements or Cypriot law, ensuring that they are covered by the social security legislation of the country of origin and/or Cyprus.

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

Due to the long-term forced closure of businesses, mainly in the tourism, food, and hospitality industries, many third-country nationals lost their jobs. As a result, the government issued a series of support packages to businesses to continue operating and secure jobs. Under the measures a percentage of workers' pay was covered by the government, while businesses, to continue receiving governmental aid, were not permitted to dismiss their employees. However, although some third-country nationals managed to keep their jobs, many illegally or temporarily employed could not benefit from these programmes and were dismissed.

Description of the Cypriot system

1. Overview of social security rights of short-term third-country-national migrant workers

Cyprus' compulsory Social Insurance Scheme (SIS) covers all employed or self-employed persons working in Cyprus. SIS is financed by contributions payable by employees, self-employed, voluntarily insured persons and the state. The scheme provides cash benefits, including old age, maternity, sickness, unemployment and employment injury. The most important non-contributory benefit is the Guaranteed Minimum Income (GMI), introduced in 2014. GMI is a top-up, means-tested benefit ensuring that all legal residents enjoy a minimum acceptable standard of living.

Health insurance for some third-country-national worker categories is secured by the General Health System (GESY), which was implemented in June 2019. GESY is available only to third-country nationals with refugee or subsidiary protection status, dependents of refugees and persons with subsidiary protection status, those with a permanent residence permit, and those with the right to equal treatment in the social insurance sectors under the Aliens and Immigration Law. Therefore, the right to health care is secured for seasonal workers under Articles 18ΨH(1)(d). Intra-corporate transferees enjoy the right to equal health care, subject to conditions. Specifically, Article 18δ1ςH(1)(c) Aliens and Immigration Law maintains that Article 3 of Regulation (EC) no. 883/2004 applies in the case of intra-corporate transferees, unless the law of their country of origin applies under bilateral agreements or Cypriot law, ensuring that intra-corporate transferees are covered by the social security legislation of the country of origin and/or the Republic. In the case of third-country nationals posted from EU countries, the relevant EU directives apply. However, if third-country nationals are posted from third countries, then health insurance and other social assistance depend on the bilateral agreements between the Republic of Cyprus and third countries.

Access to contributory benefits depends on the applicant's accumulated social insurance contributions and does not depend on citizenship, type of residence permit or other migration conditions. Furthermore, the required minimum period of insurance is not particularly long, apart from old age pensions (Koutsampelas 2020: 106). Third-country-national seasonal workers' and Intra-Corporate Transferees' (ICTs) social protection rights are particularly mentioned in the Aliens and Immigration Law, which provides that, based on the principle of equality, the same level of social protection is offered as to Cypriot nationals.

There are some differences concerning non-contributory benefits between nationals and foreigners. However, the lack of disparities does not guarantee the equally effective use of the legal framework, as the welfare state relies on income-

based contributions, and there is a significant wage gap between nationals and third-country nationals.¹

Finally, child benefits given to all short-term third-country-national workers are means-tested and non-contributory, and are paid to all families with children permanently residing in Cyprus. The benefit ranges between €345 to €15,675 per child, depending on family structure and income. Notably, however, to be able to receive child benefits a person requires five years of permanent residency, which excludes newcomer third-country nationals.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

The Aliens and Immigration Law maintains that third-country-national seasonal workers can access social security branches as provided under Article 3 of Regulation (EC)883/2004. However, equal access to social security branches does not extend to family and unemployment benefits. Additionally, the Law states that seasonal workers or their successors residing in third countries and deriving rights from them should receive pensions to which they are entitled under their previous employment in the Republic, as laid down Article 3 of the Regulation, and in accordance with the same conditions and rates available to Cypriots when moving to a third country.

(ii) Third-country-national posted workers

The Aliens and Immigration Law also states that inter-corporate transferees enjoy equal treatment concerning the branches of social security defined in Article 3 of Regulation (EC)No 883/2004. The statute also provides, however, that unless the law of their country of origin applies under bilateral agreements or Cypriot law, inter-corporate transferees, in case of mobility within the EU, are covered by the social security legislation of their country of origin or the Republic.

Cyprus has concluded bilateral social security agreements with seven non-EU countries (the United Kingdom, Egypt, Canada, Australia, Switzerland, Serbia and Syria). These agreements aim to safeguard the principle of non-discrimination, enable the aggregation of insurance periods and residence between countries, facilitate the export of benefits covered by the agreements by eliminating any restrictions on payments, and avoid the payment of double contributions. The

1. For example, domestic workers' wages are not governed by collective agreements or the state minimum wage for specific professions. In 2017 it was €870 upon recruitment and €924 for employees completing six months of work for the same employer. A domestic worker's gross minimum wage is set at €460 and employers can deduct 10 per cent for accommodation and 15 per cent for food. Therefore, third-country-national domestic workers earn €309. (For more about domestic workers in Cyprus, see Pavlou 2016).

agreements typically cover contributory pensions and, in some instances, certain short-term contributory benefits (Koutsampelas 2020).

3. Conditions for obtaining different social security rights

Typically, entitlement to non-contributory benefits requires a minimum period of residence in the Republic. For instance, to obtain child benefit, which is a non-contributory benefit, third-country nationals must reside in the Republic legally and continuously for five years, whereas for migrants from the EU, EEA and Switzerland, aggregation periods are allowed. Importantly, child and single-parent benefits cover families whose children reside with them. Moreover, the guaranteed minimum income is available to third-country nationals only if they acquire long-term residence. Therefore, newcomers from third countries or third-country nationals on a temporary residence permit are excluded.

Before the implementation of the health-care reform in 2019, third-country nationals were excluded from the medical card scheme that was in place and had to bear the full financial costs of their treatment if they used public services. GESY, which is now in place, defines the third-country nationals who can access it. Those who can access the GESY are third-country nationals with refugee or subsidiary protection status, dependants of refugees and persons with a subsidiary protection status, those who have a permanent residence permit, and those who have the right to equal treatment in the social insurance sectors under the Aliens and Immigration Law. Other third-country-national groups, including asylum seekers, fall under the old health-care system that only allows health care in in-patient and out-patient departments of public hospitals, where there are difficulties in booking appointments and long queues.

Unemployment benefit is part of the SIS and is payable to involuntary unemployed persons aged between 16 and 63 legally residing in Cyprus. Self-employed people are excluded from the scheme. The benefit's duration is 156 working days for each period of employment interruption. Although there are no statutory differences between nationals and third-country-national short-term workers, third-country nationals need to obtain a temporary residence permit to receive unemployment benefits.

The Safety and Health Law 1996 (89(I)/1996) and its amendments apply to all third-country nationals, meaning that the authorities can investigate their accidents at work. Deportation of injured workers as a result of illegal status is suspended during such an investigation.

4. Portability of benefits between host country and country of origin

Contributory benefits are, in most cases, exportable, especially pensions. Restrictions apply to non-contributory benefits, however.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Because of the long-term forced closure of many businesses, a large number of third-country nationals lost their jobs, which interrupted their contributions to the SIS. A press release from Cyprus' Press and Information Office dated 21 April 2020 stated that the provision of unemployment benefits had been impacted 'due to the low insurance premiums declared in the Register of Social Insurance Services'.

Third-country nationals' loss of jobs and their limited access to banks during the first lockdown – as most third-country nationals do not use online banking (Morsheimer et al. 2020: 8) – meant that they were unable to pay rent for their – in any case very crowded – accommodation. A measure enabling rent reductions was introduced to alleviate the burden of housing costs. The measure was conditional on landlords accepting tax credit, which was granted if they agreed to reduce the rent by between 30 and 50 per cent for a specific number of months. Despite the apparent problem that the reduction was dependent on the landlord's agreement, however, the main obstacle to the measure's enforcement was that many landlords did not declare their rental income and thus could not benefit from the measure.

Finally, during the pandemic's first phase, third-country nationals had minimal access to Covid-19 testing, except the new entrants to reception centres, people with symptoms or those who had been in close contact with confirmed cases. Later, when tests became available by private laboratories, it was reported that third-country nationals avoided being tested because of the relatively high costs and possible language difficulties (Morsheimer et al. 2020: 6).

6. Overview of enforcement and monitoring

When an inspector finds a case of undeclared work (that is, the employer is not paying contributions to the SIS) the inspector must impose an administrative fine of €500 on the employer for each undeclared employee. The fine can be increased by €500 for every month of employment before the violation is found. If a fine is imposed for the second time in two years, then the case is referred to a Committee consisting of the Director, as chairman, and two officers of the Labour Ministry as members, appointed by the Minister. The committee can order the temporary closure of all or part(s) of the employer's business for a period not exceeding 48 hours. When an inspector finds undeclared work of a self-employed person the inspector must impose an administrative fine of €200, subject to an increase for every month of employment before the infringement was found.

5. Czechia

Jakub Tomšej

If a third-country national has an employment contract (*pracovní smlouva*) with a Czech entity, their employer has an obligation to pay contributions to the Czech social security and health-care systems, just as with Czech employees. In relation to health care, third-country nationals with an employment contract are insured on the same basis as Czech nationals and because of this they are covered against most risks and health disorders. The insurance is linked to the duration of employment – as long as third-country nationals are employed they are also insured. Those who are not covered by the public health insurance scheme are usually obliged to arrange private health insurance, which can be quite costly. In relation to the social security system, the situation is complex and depends on the type of residence permit that third-country nationals have and also on the length of their stay in the Czech Republic.

Box 1 Sector-specific variations of social security rules

There are no sector-specific variations of social security rules.

Workers posted directly from third countries are usually subject to social security regimes in their own countries. In some cases (if there is an international agreement between Czechia and the third-country national's country of origin¹), the Czech social security regime may apply.

Table 1.5 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance*	Basic security (social assistance)	Insurance against accidents at work**	Child benefits
Posted workers	Usually, no	Usually, no	N/A	Generally, no, except for extraordinary immediate assistance in some situations.	N/A	No
Intra-corporate transfers	Private health insurance	No	N/A	Yes, if they stayed in Czechia for more than 365 days	N/A	Yes, if they stayed in Czechia for more than 365 days
Seasonal workers	Public health insurance	Yes	N/A	No, except for extraordinary immediate assistance in some situations	N/A	Usually, no

1. For example, with Ukraine, there is an international treaty on social security, which stipulates that the social security regime of the country of origin applies to a worker if the duration of the posting is less than 24 months.

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance*	Basic security (social assistance)	Insurance against accidents at work**	Child benefits
Temporary agency workers	Usually, public health insurance	Usually, yes	N/A	Yes, if they stayed in Czechia for more than 365 days	N/A	Yes, if they stayed in Czechia for more than 365 days
High-level professionals	Public health insurance	Yes	N/A	Yes, if they stayed in Czechia for more than 365 days	N/A	Yes, if they stayed in Czechia for more than 365 days
Self-employed	Depends on their status***	Yes	N/A	Yes, if they stayed in Czechia for more than 365 days	N/A	Yes, if they stayed in Czechia for more than 365 days

Notes: * Under Czech law, this is not considered an insurance scheme even though the system is operated in a similar manner to social insurance. Unemployment benefits are provided by the Labour Office based on the fulfilment of conditions set out in the law. ** There is no insurance scheme under which employees pay premiums in order to obtain coverage in case of an accident. Medical services in case of work accidents are paid from health insurance. Any other damages would be covered by employers, who are obliged to conclude a contract with an insurance company. *** Depends on whether they are included in the public health care system or not and if not, if they have arranged for private health insurance.

Source: Author's analysis, 2022.

As can be seen from Table 1.5, in Czechia there is no separate unemployment insurance and insurance against accidents at work. Periods of unemployment are covered by unemployment benefits provided only for certain groups of third-country nationals – those with permanent residence permits and blue cards. Work accidents are covered by a third-country national's general health insurance, either public or private.

Box 2 Changes during the Covid-19 pandemic

A waiver from minimum social security and health insurance contributions for self-employed people was approved for six months (March to August) in 2020.

Selected employers were able to take advantage of special government programmes contributing to their employment costs with the aim of not laying off employees. Some employees were not assigned work because of obstacles on the employer's side. In such cases, they were entitled to wage compensation.

Provision of most retail sales and services was banned during the first outbreak of Covid-19.

Description of the Czech system

1. Overview of social security rights of short-term third-country-national migrant workers

State social support comprises:

- (i) child allowance
- (ii) housing allowance
- (iii) parental allowance
- (vi) birth grant
- (v) funeral grant

A natural person is entitled to benefits if they and any persons sharing the same household are registered for permanent residence in Czechia (citizens of Czechia) or have a permanent residence permit (foreigners). Foreigners who do not have a permanent residence permit are entitled to receive state social support only after 365 days of stay (there is a possibility to apply for an exemption to the Ministry of Labour and Social Affairs).

Assistance in material need

Only foreigners with a permanent residence permit are entitled to receive benefits from this system. The only exemption is *extraordinary immediate assistance* which can be awarded to anybody in situations that have to be resolved immediately (these situations are described in Act no. 111/2006 Coll., on Assistance in Material Need, as amended).

A third-country national with an employment contract (*pracovní smlouva*)

If a third-country national has an employment contract (*pracovní smlouva*) with a Czech entity, their employer has the same obligation to pay contributions to the Czech social security and health-care systems as they do with a Czech employee.

In relation to the health-care system, a third-country national with an employment contract is insured like a Czech national and because of this they are covered against most risks and health disorders. The insurance is linked to the duration of employment – as long as a third-country national is employed they are also insured.

A third-country national with an agreement to perform work (*DPČ*)

An employer of a third-country national with an agreement to perform work (*DPČ*) which stipulates monthly remuneration higher than CZK 3499 also has an obligation to pay contributions to the Czech social security and health-care systems. If this is the case, the same rights as described above in relation to employment contracts shall apply.

A third-country national with an agreement to complete a job (DPP)

In situations in which a third-country national can also perform work based on an agreement to complete a job (*DPP*),² a third-country national is entitled to public health insurance and their employer pays social security contributions in relation to this agreement only if their monthly remuneration is higher than 10,000 CZK.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

Everything depends on the type of contract that a third-country national has and their residence permit/duration of stay in Czechia – see above.

Workers posted directly from third countries are usually subject to their home social security regime. In some cases (if there is an international agreement between Czechia and the third-country national's country of origin³), the Czech social security regime may apply.

In relation to health insurance, third-country nationals are not entitled to participate in the public health insurance system if they have not yet been granted permanent residence or are not in an employment relationship that would ensure their participation in this insurance system.

3. Conditions for obtaining different social security rights

Everything depends on the type of contract that a third-country national has and their residence permit/duration of stay in Czechia (please see above).

4. Portability of benefits between host country and country of origin

Third-country nationals who permanently leave the country and return to their country of origin will usually lose their entitlement to most Czech benefits. Other arrangements can be defined in bilateral agreements.

2. In general only in cases in which a third-country national has free access to the labour market.

3. For example, with Ukraine, there is an international treaty on social security, which stipulates that the social security regime of the country of origin applies to a worker if the duration of posting is less than 24 months.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

A government resolution stipulated that for the duration of the state of emergency, the validity of work permits, short-stay Schengen visas for employment issued before the date of publication of the resolution in question, which expire within a maximum of 60 days from the date of the end of the state of emergency, shall be extended by 60 days from the date of the end of the state of emergency. This was only possible, however, if a third-country national actually negotiated an extension of the employment relationship with their employer, so that it would last for the period described in this resolution.

The government's resolutions of spring and autumn also enabled third-country nationals who were holders of dual employment cards and blue cards to change jobs more freely if they wished to perform work for an employer involved in crisis measures or assisting in the implementation of crisis measures in the state of emergency. In this case it was sufficient to notify the Ministry of the Interior about such a change on the day when a third-country national started work for a new employer – no previous consent was needed from the Ministry of the Interior. At the same time, the prohibition on changing employers in the first 6 months after the dual employment card was issued was temporarily removed.

6. Overview of enforcement and monitoring

Monitoring activities related to employment are carried out by the State Labour Inspection Office and regional labour inspectorates. They monitor whether a foreign national carries out work for a legal or natural person on the basis of an employment relationship and whether they carry it out in accordance with a work permit, employee card, Intra-Company Employee Transfer Card and a European Union Member-State Intra-Company Employee Transfer Card, or a Blue card. These monitoring activities are also carried out by customs offices. Although the area of residence of foreigners is entrusted in particular to the DAMP or Ministry of Foreign Affairs, the bodies that issue the residence permits, the Foreign Police Department (*Cizinecká policie*) plays an important role.

It must be emphasised that the rules applicable to third-country nationals posted directly from third countries differ from the rules applicable to third-country nationals posted within the EU. Third-country nationals posted directly from a third country need a work permit and a residence permit. Third-country nationals posted in the area of free movement of services (under Directive 96/71/EC) do not need any public authorisation in form of a work permit, employee or blue card or any other residence permit.

6. Denmark

Natalie Videbæk Munkholm

Social security in Denmark is very detailed and complex. Rules are found in a number of national laws, each with its own scope of application and monitoring entity. Denmark is not a party to Regulation 1231/2010 extending Regulation 883/2004 and Regulation 987/2009 to third-country nationals residing and working in another EU Member State. The right to social security is significantly reduced for third-country nationals working in Denmark, regardless of their usual place of residence and work. In general, any third-country national working in Denmark must be able to support themselves during the stay and third-country nationals are not allowed to receive public social benefits.

Box 1 Summary of the table

(1) In Denmark all employers and employees, regardless of nationality, must pay monthly small contributions to a public Labour Market Pension, ATP, unless exempted by EU regulation (not for TCN) or bilateral agreement. The ATP funds belong to the employee.

In addition, in companies covered by a collective agreement, employers and employees must make monthly deposits to the employee's private pension funds, unless exempt in the agreement, unless exempt by EU regulation (not for TCN) or bilateral agreement.

(2) Unemployment insurance in Denmark is membership based and requires payment of membership fees and seniority. Foreign workers are eligible for membership and for outpayments in case of unemployment, should they choose to become a member.

(3) With regard to posted third-country nationals from an employer established in an EU Member State, Denmark has not ratified Regulation 1231/2010 extending Regulation 883/2004 and Regulation 987/2009 to nationals of third countries, who are not already covered by these regulations solely on the ground of their nationality (cf. preamble (19) in Regulation 1231/2010).

Table 1.6 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions (1)	Unemployment insurance (2)	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers (from an employer outside the EU)	No	No	No	No	No	No
Posted workers (from an employer established in the EU)	Yes	Yes – if part of their 'pay' is set out in collective agreements, according to the Posted Workers Directive	No	No	Yes	No
Intra-corporate transfers (N/A for Denmark)	N/A	N/A	N/A	N/A	N/A	N/A

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions (1)	Unemployment insurance (2)	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Seasonal workers (N/A for Denmark)	N/A	N/A	N/A	N/A	N/A	N/A
Temporary agency workers (a third-country national employed by a Danish temporary work agency, a third-country national employed by a temporary work agency established in another EU Member State)	Yes	When working for more than 6 months, employer and employee contributions to the public labour market pension ATP, unless exempted by bilateral agreements. Perhaps for private contributions laid down in collective agreements at the Danish user entity or the Danish temporary work agency	No	No	Yes	No
High-level professionals	Yes	When working for more than 6 months, employer and employee contributions to the public labour market pension ATP, unless exempted by bilateral agreements. Perhaps for private contributions based on collective agreements in force at the Danish company.	Yes, but the criteria for membership seniority must be fulfilled. High-level professionals receive up to 6 months residence permit after termination for reasons not related to the employee, to look for new employment in Denmark.	No	Yes	No

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

During Covid-19 all social security rights were extended, including the right to unemployment benefits and basic social assistance. In addition, the virus was acknowledged as an occupational disease if the criteria for employer liability were fulfilled.

These changes did not affect third-country nationals, as they are generally not covered by Danish social security rights.

Description of the Danish system

1. Overview of social security rights of short-term third-country-national migrant workers

In general, any third-country nationals working in Denmark must be able to support themselves during the stay and they are not allowed to receive public benefits.

Health services are free for persons legally residing in Denmark, including third-country nationals with a residence permit. Health services are likewise free for persons working in Denmark, but residing in another EU/EFTA Member State or Switzerland. For all other workers, including workers posted to Denmark from employers established outside the EU, health services are not free, and they must take out their own health insurance.

Insurance against occupational injuries and diseases is mandatory on any employer for all persons performing work under their instructions. This includes third-country nationals in any capacity.

Public pensions – that is, old age retirement pensions and early retirement pensions – are governed by the Act on Social Pensions.¹ Public pensions are residence-based. Public pensions for persons not born in Denmark require permanent residence of at least 10 years between the ages of 15 and retirement age, five of these years immediately before the retirement age/time of application. Third-country nationals who have resided and worked in Denmark on a short-term basis or for a limited time would not meet the requirements for public pensions in Denmark. As a supplement, Denmark has entered into several bilateral agreements primarily concerning the right to public social pensions under the Act on Social Pensions, including old age retirement pension and early retirement pensions.

Public pensions likewise include a premium based Labour Market Pension, ATP. All employers and third-country-national employees must make small monthly deposits to ATP, calculated on the basis of hours worked. The deposits belong to the employee.

The right to Basic Cash Benefits, Family Benefits and Start-help Benefits are not available to third-country nationals on short-term stays in Denmark from a country outside the EU.² It is a criterion for the work permit and residence permit of third-country nationals that they and their family members do not receive social benefits during their stay. In this case the residence and work permit can

1. Statutory Act no. 234 of 12 February 2021 on social pensions, <https://www.retsinformation.dk/eli/lta/2021/234>

2. Statutory Act no. 241 of 12 February 2021 on Active Social Policy, <https://www.retsinformation.dk/eli/lta/2021/241>

be revoked and the third-country national will lose the right to stay and work in Denmark.³

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

According to Articles 1 and 2 of Protocol No. 22 on the position of Denmark, annexed to the TEU and the TFEU, Denmark is not bound by certain Directives. Denmark is not party to the Seasonal Work Directive (Directive 2014/36/EU) preamble consideration No. (55), the Single Permit Directive (Directive 2011/98/EU) preamble consideration No. (34), the Directive on Intra-corporate Transfer (Directive 2014/66/EU) preamble No. (48), and the Directive prohibiting employment of illegally staying third-country nationals (2009/52/EC) preamble no. (39). These directives are not implemented in Denmark.

For posted workers, Denmark is not a party to Regulation 1231/2010 extending Regulation 883/2004 and Regulation 987/2009 as regards third-country nationals residing and working in another EU Member State. This means that posted third-country nationals from another EU Member State are not part of the coordination of social security services.

Third-country-national workers and third-country-national temporary agency workers posted to Denmark from a company established in another EU Member State are thus covered by the social security system in the country of residence and work, that is, the country in which the employer or temporary work agency is established.

3. Conditions for obtaining different social security rights

Health services (hospitals and family doctors) are free for persons legally residing in Denmark, including third-country nationals with a temporary residence permit, and for persons working in Denmark, but residing in another EU/EFTA Member State or Switzerland. For all other workers in Denmark, including workers posted to Denmark from employers established outside the EU, health services are not free. The right to health services is linked to the Personal ID Number (*CPR-nummer*). The *CPR-nummer* is revoked if the conditions for the work and residence visa are no longer met, for example, if the job is terminated. Only if the scheme allows the third-country national to stay longer in Denmark, for example, to look for new employment, is the CPR number extended, and thus the right to health services.

Pension contributions to the Public Labour Market Pension, ATP, are required for anyone working in Denmark for more than 9 hours per week. There is no

3. Ministry of Justice overview of Danish reservations to EU legislation, <https://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2015/Oversigt%20over%20vedtagne%20retsakter,%20der%20er%20omfattet%20af%20Danmarks%20retsforbeh....pdf>

seniority requirement. Additional Labour Market Pension contributions provided by collective agreement may come with seniority requirements, but this depends entirely on the provisions in the collective agreement.

It is a condition of short-term work and residence permits in the Aliens Act that third-country nationals do not receive any public benefits under the Active Social Policy Act. This includes Basic Cash Benefits (Basic Security), Family Benefits (Children's Benefits) and Start-up Benefits.⁴ If a third-country national or family member receive social benefits during their short-term stay, the residence and work permit can be revoked. To illustrate, if the third-country national has been granted a residence permit based on the Positive Lists, Pay Limit Scheme, Special Individual Qualifications, or as a Guest Researcher, the third-country national and their family are not allowed to receive any benefits under the Active Social Policy Act. Children can attend daycare/kindergarten (partly self-financed), school and secondary education on equal terms with local children.

Employers must insure their workers against accidents at work. The Workers' Compensation Act⁵ provides broad duty to cover all persons performing work for a Danish employer, regardless of their status. The scope of the act extends to illegal aliens, unpaid or unregistered workers, self-employed, workers employed elsewhere, and even friends lending a hand.

Unemployment insurance is membership based and financed by the state, as well as by membership fees. Anyone legally residing in Denmark can become a member of an unemployment insurance association. To be eligible, a person must have one year of membership seniority, and must document an accumulated income over the preceding three years of €31,117 (2019). Becoming eligible for unemployment insurance when working in Denmark on a short-term visa is possible, but often redundant. Furthermore, short-term visas are most often connected to the specific job, and a visa is revoked two weeks after the last day of work, if the position is terminated. If working in Denmark under the Positive List scheme for highly educated workers, the pay limit scheme, the researcher scheme, the fast-track schemes, including intra-group postings, and when the contract of work is terminated for reasons not related to the worker, an additional six months of residency can be granted for the purpose of finding new work. During those six months the third-country national could be eligible for unemployment insurance payments.

4. Statutory Act No. 241 of 12 February 2021 on Active Social Policy, <https://www.retsinformation.dk/eli/lta/2021/241>

5. Statutory Act No. 376 of 31 March 2021 on Insurance for Workers' Injuries, <https://www.retsinformation.dk/eli/lta/2020/376>

4. Portability of benefits between host country and country of origin

Only unemployment insurance benefits depend on seniority and a certain amount of work. Seniority and work performed in Denmark can be transferred to the unemployment insurance system in the country of origin. Whether the country of origin will accept the transferred status depends on national rules. Benefits cannot be transferred to a country of origin outside the EU, however, as unemployment benefits in Denmark require that the unemployed person be actively seeking work in Denmark and can take positions offered with a day's notice.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

This issue was not discussed. Short-term migrant workers in Denmark during Covid-19 continued to be covered in the same manner as normal.

6. Overview of enforcement and monitoring

Social security measures are enforced by various public authorities, depending on the type of measure in question.

Pension contributions are monitored by the trade union that is party to the relevant collective agreement. If pension contributions are lacking the question is assessed by the Labour Court as a question of breach of agreement (cf. the Act on Labour Court, section 9).⁶ In case of a breach of agreement the Labour Court will issue discretionary penalties payable by the company to the trade union (cf. the Act on Labour Court, section 12).

Questions related to workers' compensation are monitored by the Labour Market Insurance Authority (AES), which is an independent entity managed by the Public Labour Market Pension. Insurance premium payments are automatically claimed by the AES, when employers register work performed in the entity. Employers not paying the premiums can be required to pay a penalty fee (cf. the Workers Compensation Act, section 82(2)). The same applies to those not registering work accidents, or not complying with a duty to give information about incidents (cf. section 82(3)). The AES rules on all matters regulated by the Workers Compensation Act (cf. section 40). If a penalty is not paid, the matter will be submitted to the police for further investigation and/or retrieval of the penalty.

Matters related to access to public health services, basic social assistance, and/or children's benefits are decided by the local municipality. Decisions can be appealed to the Social Services Appeal Board (*den sociale ankestyrelse*) (<https://ast.dk/>).

6. Statutory Act on a Labour Court and Industrial Arbitration Courts, No. 1003 of 24 August 2017, <https://www.retsinformation.dk/eli/lta/2017/1003>

Unemployment benefits, which are membership based, are monitored by the Unemployment Benefit Associations. Rulings can be appealed to a public administrative appeals board, the Centre on Complaints on Unemployment Benefit (CKA) (<https://ast.dk/>), part of the Danish Agency for Labour Market and Recruitment (STAR) under the Ministry of Employment (<https://www.star.dk/en/>).

7. Estonia¹

Vadim Poleshchuk

All temporary workers can use either of two entry regimes: a temporary residence permit for employment or registration of short-term employment. All workers may have access to the national health insurance system and basic social security (social assistance). A temporary residence permit gives access to the social security system, including child benefits. The national system, however, does not allow such employees to be officially registered as unemployed and to receive relevant allowances and benefits. Registered short-term employees have no access to labour market services for the unemployed and to child benefits. Short-term employees from Ukraine may benefit from the bilateral Estonian-Ukrainian social security agreement of 2010.

Table 1.7 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country national categories	Social security categories (for holders of residence permits)					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Yes	Yes	Yes/No*	Yes	NA	Yes
Intra-corporate transfers	Yes	Yes	Yes/No*	Yes	NA	Yes
Seasonal workers	Yes	Yes	Yes/No*	Yes	NA	Yes
Temporary agency workers	Yes	Yes	Yes/No*	Yes	NA	Yes
High-level professionals	Yes	Yes	Yes/No*	Yes	NA	Yes
Self-employed	Yes	Yes	No	Yes	NA	Yes

Note: * In most cases, holders of a temporary residence permit for employment cannot be registered as unemployed or receive unemployment allowances and unemployment insurance benefits. However, they (their employers) should make unemployment insurance contributions.

Source: Author's analysis, 2022.

1. Blue card holders are not covered in this report because of their marginal presence in Estonia.

Description of the Estonian system

1. Overview of social security rights of short-term third-country-national migrant workers

There are two major legal regimes for temporary employment in Estonia: a temporary residence permit for employment and a registration system for short-term employment. All employees are entitled to basic social security (social assistance) and they make (and/or their employers make for them) health insurance and unemployment insurance contributions, as well as pension contributions. Child benefits are payable only to holders of residence permits.

People staying and working in Estonia legally, also those residing on temporary grounds, may have standard access to the national health insurance system as provided in the Health Insurance Act. The insurance is also valid for one month after the end of an employment relationship.

There is no national insurance against accidents at work in Estonia. Old-age, disability and survivor's pensions are payable only to holders of residence permits, while pension contributions are made by (or for) all workers. In this context, there might be some discrepancies between the current Estonian regulation and Article 23(1)d of the Directive 2014/36/EU (seasonal workers). According to the Chancellor of Justice (the guardian of constitutionality), unemployment insurance contributions for short-term workers are constitutional (Õiguskantsler 2019).

Unemployment allowances and unemployment insurance benefits are a more complicated issue.

Temporary residence permit for employment

The national system does not allow employees with a temporary residence permit for employment to be officially registered as unemployed and to receive unemployment allowances and unemployment insurance benefits because their permits expire in case of dismissal. If the dismissal is because of the employer's economic difficulties, however, the permit is automatically valid for another 90 days with access to all allowances/benefits. In addition, after five years of residence, it becomes possible to apply for the status of a long-term resident of the EU (subject to passing the Estonian language exam at level B1). All such third-country nationals have access to other labour market services.

Registration of short-term employment

Registered short-term employees do have access to public labour market services, excluding unemployment allowances and unemployment insurance benefits.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

The only differences in social security rights are those related to migration status (see above).

There also exists a special guarantee regarding accommodation for seasonal workers. If accommodation is organised by or through the employer, the cost of accommodation cannot be excessive or disproportionate compared with the worker's remuneration. Special regimes are possible regarding access to health care for third-country-national workers posted from the EU, EEA and Switzerland.

3. Conditions for obtaining different social security rights

Access to social security rights may be limited solely because of migration status (see above).

4. Portability of benefits between host country and country of origin

In the national context, the most important rights concern short-term workers from Ukraine (approximately 80 per cent of all such employees are Ukrainian citizens). According to the bilateral Social Security Agreement between the Republic of Estonia and Ukraine of 5 October 2010, an employee of Ukrainian origin can also accumulate social insurance periods in Estonia.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Certain doubts over the temporary labour force were expressed by some nationalist groups concerned about integration into Estonian society and the Estonian language, including supporters of the local far-right Estonian Conservative People's Party. There were no changes regarding social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic, however.

6. Overview of enforcement and monitoring

Monitoring and enforcement are the responsibility of the Social Insurance Board, the Labour Inspectorate and the Unemployment Insurance Board. There is no special mechanism of enforcement or monitoring to deal with short-term labour migrants in Estonia.

8. Finland

Maria Jauhiainen

The Finnish social security system is exceptional because it is divided into housing-based and work-based social security, which are also intertwined. To fall within the scope of housing-based social security third-country nationals must have a (worker's) residence permit of at least one year and are required to have moved to the country permanently. Permanent residence is decided regardless of nationality on the basis of an overall assessment. Proof of permanent residence can be shown mainly with an open-ended employment contract or a fixed-term employment contract for at least two years.

Housing-based social security includes benefits provided by KELA (Social Insurance Institution of Finland). These include medical allowances, health and social care, sickness and parental allowances, child allowances, national pensions and guarantee pensions, the basic labour market support in the event of unemployment, and housing subsidies.

Box 1 Sector specific variations of social security rules

Typically, all groups of workers are covered by the same system, the housing-based social security system, but the group that mainly falls 'in-between' and that is worse off is the self-employed. Also, because the abovementioned social security system requires quite a long residence permit in Finland, seasonal workers are typically not covered by the basic social security system. They receive only emergency health-care assistance.

Table 1.8 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Yes*	Yes*	Yes*	Yes*	Yes, if fulfils the requirements of the insurance company	Yes*
Intra-corporate transfers	Yes*	Yes*	Yes*	Yes*	Yes, if fulfils the requirements of the insurance company	Yes*
Seasonal workers	No (only emergency health care)	No	No	No	Yes, if fulfils the requirements of the insurance company	No
Temporary agency workers	Yes*	Yes*	Yes*	Yes*	Yes, if fulfils the requirements of the insurance company	Yes*

Third-country national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
High-level professionals	Yes*	Yes*	Yes*	Yes*	Yes, if fulfils the requirements of the insurance company	Yes*
Self-employed	Yes*	Not eligible for the 'normal' type because the Finnish system requires an employer	No (but a new system called the combined insurance for self-employed is in the pipeline.)	Yes*	No, because no employer is involved	Yes*

Note: * if the requirements that the third-country national must have a (worker's) residence permit of at least one year and that they have moved to the country permanently are fulfilled.

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

Only a few changes were made, especially for the better, and mainly regarding unemployment benefits for people who had been furloughed. These changes ceased to exist by the end of 2020. The changes also applied to third-country nationals, but only if they were entitled to receive unemployment benefits.

Description of the Finnish system

1. Overview of social security rights of short-term third-country-national migrant workers

The Finnish social security system is mainly housing-based with a strong link to work. To come within the scope of housing-based social security a third-country national must have a (worker's) residence permit of at least one (1) year and they are required to have moved to Finland permanently. Permanent residence is decided regardless of the worker's nationality and type of worker's residence permit, which can be fixed term (and then either temporary or continuous) or permanent. Proof of permanent residence can be shown mainly with an open-ended employment contract or a fixed-term employment contract for at least two years. The right to housing-based social security is decided based on an overall assessment.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

Because the criteria mentioned above are the basis for the whole system, the main groups of workers from third countries fall into its scope when the abovementioned criteria are met. The only groups of workers that are worse off are seasonal workers who do not stay in Finland permanently or the self-employed, who in general lack the very important status of worker, on which most benefits are based.

3. Conditions for obtaining different social security rights

Many of the benefits must be self-bought, like pension systems and/or insurance, and not even unemployment benefits are at all guaranteed for the self-employed.

4. Portability of benefits between host country and country of origin

Because most social benefits are housing-based, so-called portability of these benefits with the country of origin is rare. Thus all the benefits remained mainly the same during the Covid-19 pandemic, too.

Housing-based social security benefits are usually provided by KELA, Finland's Social Insurance Institution. The other actors – mainly in the field of unemployment benefits – are the unemployment funds that operate mainly in close connection with trade unions and are based on an insurance model. Otherwise, Finland has a two-part unemployment benefit system, which guarantees minimum unemployment protection for all third-country nationals who are considered to reside in Finland (under the Act on the Application of Social Security Legislation on Residence (1573/1993)), regardless of the type of residence permit.

Unemployed third-country nationals have the right to:

- earnings-related daily allowance if they are members of the above-mentioned unemployment fund and the conditions of employment are met (such as earning at least the minimum salary according to the collective agreement or at least €1,252 a month (in 2021), having worked at least 26 calendar weeks before unemployment, having been a member of the fund for that time and having worked at least 18 hours per calendar week);
- a basic daily subsistence allowance if they are not entitled to earnings-related daily subsistence allowance and if they are considered to reside in Finland under the law and if they fulfil the condition of employment;
- labour market support if they are considered to live in Finland under the law (no previous employment history required);
- any other social support, if not otherwise accessible.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

No actual new income transfers were created in Finland because of the pandemic. Instead, the unemployment insurance conditions were temporarily relaxed in many respects. For example, it was easier to obtain unemployment benefits, especially under furlough. Also the so-called deductible period (five days) was temporarily not applied and hence more people were able to receive benefits and more quickly. Normally, the state does not contribute to the funding of daily allowances during furlough, but during the pandemic, the funding was temporarily changed.

The relaxation especially of the conditions of unemployment benefits was able to reduce the amount of work required for entitlement to unemployment benefits and thus sped up the payment process.

In addition, a special daily allowance is paid if dealing with a highly contagious disease. During the pandemic, the number of recipients of this rare daily allowance multiplied.

All in all, according to research, Finnish social security operated flexibly during the Covid-19 crisis and responded quickly to emerging needs.

6. Overview of enforcement and monitoring

The social security laws are supervised by KELA and the state and issues rarely rise. If they do, a person can take the case to the administrative Court, with the possibility of appealing to the High Administrative Court. Also, the trade unions can be involved through the unemployment funds, even though they are separate actors.

9. Germany

Effrosyni Bakirtzi

Social security and the residence status of third-country nationals are closely associated within the German legal order. Entitlements under the German social security schemes are not dependent on the possession of German nationality, but are linked primarily to domestic permanent residence, stay or employment relationship in Germany.¹ Nevertheless, because of this connection, some posted third-country nationals and short-term migrants may be excluded from certain benefits. Entitlement to some benefits is not possible for certain third-country nationals as they cannot qualify to claim them because they do not complete legal waiting periods (pensions and unemployment).

Box 1 Sector specific variations of social security rules

Sector specific variations are found for seasonal workers in agriculture and forestry, horticulture, hotels and restaurants, fruit and vegetable processing and sawmills (sectoral restrictions). With regard to posted workers, the meat and construction industries are in focus, but the legal framework extends to all sectors.

Table 1.9 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Social security agreements*	Social security agreements	Social security agreements	Social security agreements	Yes	Social security agreements
Intra-corporate transfers	Social security agreements	Social security agreements	Social security agreements	Social security agreements	Yes	Yes, under conditions
Seasonal workers	Yes	Exemption from payment if marginal employment	No	No	Yes	No
Temporary agency workers	Yes	Yes	Yes, under conditions**	Yes, under conditions	Yes	Yes, under conditions

1. Section 30(1) of the First Book of the Social Code (SGB I).

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
High-level professionals	Yes	Yes	Yes, under conditions	Yes, under conditions	Yes	Yes, under conditions
Self-employed	Yes, choice between statutory or private insurance	Yes	Yes	Yes	Yes	Yes, under conditions

Notes:

* If no such agreement exists, then the national conflict-of-law rules must be applied.

** If regular unemployment benefits are available because of the completion of the necessary qualifying period.

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

During the Covid-19 pandemic, the upper income limits of 'mini-jobbers', including seasonal workers qualifying for exemption from paying social security contributions, were increased. In addition, access to social assistance and renewal of visas/residence permits were facilitated via remote services and temporary extensions.

Description of the German system

1. Overview of social security rights of short-term third-country-national migrant workers

People in employment in Germany must be registered for social insurance there. The residence status of third-country nationals may be a criterion for access to social benefits. Although there are no special laws for foreigners – except for asylum seekers – in the social security legal framework, there are some clauses for foreigners or exclusion clauses that apply to third-country nationals with certain residence entitlements.

A general prerequisite for granting (temporary) residence is a long-term secure subsistence (livelihood) on the part of the third-country national (and, if relevant, their family) (Section 5(1) No. 1 in combination with Section 2(3) of the Residence Act) (Devetzi and Walter 2020). The secure subsistence of a third-country national also requires adequate health insurance coverage (Section 2(3) of the Residence Act.) in order not to impose a financial burden on the national social security system. Employees subject to the payment of social security contributions in Germany and their family members are covered by the statutory health insurance scheme (*gesetzliche Krankenversicherung*) if their residence permit is more than 12 months (if less than 12 months, then private health insurance must be taken out) according to Section 5(1) and (11) of the Fifth Book of the Social Code (SGB V). In the event of temporary incapacity to work because illness or accident, employment status and thus also third-country nationals' entitlement to benefits is retained according to Section 2 (3) Sentence 1 No. 1 of the Residence Act. The employees are entitled to the continued payment of wages in case of illness for four weeks. As far as pension insurance is concerned, all third-country-national workers are treated on an equal footing with German nationals. The acquisition of pension rights depends solely on contributions and insurance periods (Sixth Book of the Social Code – *SGB VI*) and a waiting period of five years is required to qualify for an old age pension.

For third-country-national job seekers, special provisions may apply. If regular unemployment benefits are not available (because of non-completion of the necessary qualifying period) or no longer possible for them because their entitlement has been used up or has expired, the provisions of the social security scheme of basic security for jobseekers could apply (Second Book of the Social Code – *SGB II*). There are specific exclusions from benefits for third-country-national job seekers.² Receiving social assistance benefits according to the Second Book of the Social Code (*SGB II*) can result in the non-extension of a third-country national's residence entitlement (case-by-case decision of the competent authorities).

2. Section 7(1) second sentence, number 2b *SGB II*. Regarding the duration and conditions of residence titles for third-country-national job seekers, see Section 20 of the Residence Act.

The conditions under which self-employed persons can enter and work in Germany are laid down in Section 21 of the Residence Act. Among the necessary documents (Ponert and Tollenaere 2020) a self-employed third-country national/founder of a business must submit proof of health insurance and adequate provision for old age.³ Third-country nationals holding another type of temporary residence entitlement may be permitted to pursue self-employment while retaining the aforesaid purpose of residence (Section 21(6) of the Residence Act).

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) TCN seasonal workers

The Ordinance on the Employment of Foreigners (Section 15a, *Beschäftigungsverordnung, BeschV*) sets out the conditions for granting a work permit for short-term stays of up to 90 days (within a period of 180 days) and the entry and employment of third-country nationals for a period of six months (within a 12-month period) (time restrictions) for seasonal work in agriculture and forestry, horticulture, hotels and restaurants, fruit and vegetable processing, and sawmills (sectoral restrictions) for a regular working week of at least 30 hours.⁴ Admission of third-country nationals requires a prior bilateral agreement to be concluded by the Federal Employment Agency (FEA – *Bundesagentur für Arbeit*) and the ministry of labour or other appropriate institution of the country of origin. Currently, the Federal Employment Agency can issue work permits to nationals of certain states without the need for approval by a visa office. This currently applies to nationals of Georgia and of the Republic of Moldova, who are allowed to work as seasonal workers in Germany without a visa. No special regulations under German social security law apply in principle to third-country-national seasonal workers, who should not be employed under less favourable conditions than comparable domestic workers or equivalent employees. There are some exceptions regarding social security contributions, however. Workers in marginal employment, including short-term employment, according to the provisions of the Fourth Book of the Social Code (*SGB IV*, Section 8(1) number 2), are not subject to compulsory social insurance (pension, health,⁵ care, unemployment⁶), but only to occupational accident insurance.

3. Section 21(3) of the Residence Act. With several countries (Australia, Bosnia-Herzegovina, Brazil, Chile, India, Israel, Japan, Canada and Quebec, Kosovo, Morocco, North Macedonia, Montenegro, Republic of Korea, Serbia and Tunisia) there are social security agreements that facilitate the provision of proof for paid social security contributions to be taken into consideration for this requirement.

4. Section 15a(1)lit.1 of the Ordinance on the Employment of Foreigners, in combination with the provisions of the Act on Working Time (*Arbeitszeitgesetz*).

5. Section 7 of the Fifth Book of the Social Code – SGB V.

6. Section 27(2) of the Third Book of the Social Code – SGB III.

(ii) TCN posted workers

If the employment is in Germany, the principle of *lex loci laboris* applies. Exceptions to this principle are regulated by Section 5 of the Fourth Book of the Social Code (SGB IV) when an employee who is employed abroad is posted to Germany. The posting must be limited in time because of the nature of the employment or contractually in advance. The German legal provisions on compulsory social insurance do not apply in the case of a posting. The employee does not have to be registered in Germany for statutory health, care, pension, unemployment and accident insurance. A special provision applies regarding coverage against occupational accidents. Section 16(2) of the Seventh Book of the Social Code (SGB VII) provides that 'the accident prevention regulations of an accident insurance institution also apply to entrepreneurs and employees of foreign companies that carry out an activity in Germany without belonging to an accident insurance institution' (Kohte 2015). Therefore, posted workers are covered by the statutory insurance against accidents at work.

(iii) Third-country-national temporary agency workers

Temporary agency work by third-country nationals is subject to legal restrictions. It is possible if the third-country national receives an EU blue card without the necessity of approval by the Federal Employment Agency. In this case the grounds of refusal of the residence/work permit as provided for by law (Section 40(1) of the Residence Act in combination with Section 4(1) of the Residence Act) are not applicable. It is, however, necessary that the third-country national be employed under a German employment relationship and their annual income is above the legal threshold for EU blue card holders.

3. Conditions for obtaining different social security rights

Third-country-national short-term migrants with a German employment contract (high skilled workers, researchers) can obtain the relevant social security rights (health care, pension, unemployment, social assistance) if their residence status is appropriate for the purposes of the allowed economic activity. If their residence permit is issued for another type of activity (for example, self-employment) or based on another provision of the Residence Act, they may lose their entitlements. For old age pensions, the qualifying waiting period is five years (Section 50(1) first sentence of the *SGB VI*). For unemployment benefits, the qualifying period is 12 months within a period of 24 months (Section 142 of the *SGB III*). For the calculation of this period, insurance periods in the country of origin may be taken into consideration if a relevant bilateral social security agreement of Germany with the country of origin exists. For insurance of third-country nationals for a period that is less than those mentioned above, they cannot qualify for any benefits. In addition, all third-country nationals who hold a residence entitlement allowing them to pursue economic activity of at least six months are entitled to family

benefits.⁷ In case of an earlier termination of the employment relationship than envisaged, the employer and the employee are obliged to inform the competent migration authority within a certain deadline. This declaration to the authorities does not constitute an evaluation of the legal validity of the termination. The given deadline serves to allow the migration authorities to examine whether the residence entitlement will be shortened.

4. Portability of benefits between the host country and the country of origin

The provisions regarding payment of pensions abroad are found in Part 5 of the Sixth Book of the Social Code (SGB VI, Sections 110–114). Regulations of supranational and intergovernmental law must be given precedence (EU, EEA, bilateral agreements) according to Section 30 of the First Book of the Social Code (SGB I). Germany has concluded bilateral social security agreements with countries outside the EEA, specifically with Albania, Australia (including an agreement on posted workers), Bosnia and Herzegovina, Brazil, Chile, China (only on posted workers), India, Israel, Japan, Canada and Quebec, South Korea, Kosovo, Morocco, Moldova, North Macedonia, Montenegro, Philippines, Serbia, Turkey, Tunisia, Ukraine, Uruguay and the United States.⁸ These bilateral social security agreements (*Sozialversicherungsabkommen*) regulate which of the national legal systems at issue are to be applied in the individual case (interstate conflict of laws). If the relevant law cannot be derived from a bilateral agreement because Germany has not concluded an agreement with the state in question at all or the agreement does not regulate the relevant issues, national conflict-of-law rules must be applied (Sections 3–5 of the Fourth Book of the Social Code – SGB IV) (Schlegel 2021).

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

During the Covid-19 pandemic, relevant measures for third-country-national short-term migrants included facilitated access to social assistance (access to various social security benefits was simplified or temporarily extended) and facilitation of the extension of visas/residence entitlements without having to attend in person during the pandemic. Marginal part-time employees ('mini-jobbers') who were not fully covered by the social security and tax system were not eligible for short-time work benefits. Social Protection Package I adopted in March 2020 increased the allowed number of days per year for seasonal work without paying social security contributions,⁹ temporarily extending the time limits for

7. Section 62(2) of the Act on Income Tax (*Einkommensteuergesetz – EstG*).

8. See website of the Federal Ministry of Labour and Social Affairs: <https://www.bmas.de/DE/Europa-und-die-Welt/International/Sozialversicherungsabkommen/sozialversicherungsabkommen.html>.

9. Before the Covid-19 pandemic three months or 70 days were allowed, whereas now the period of work was extended to five months or 115 days per year.

short-term employment. Moreover, ‘mini-jobbers’¹⁰ were permitted to exceed the initial upper income limit (€450) during the pandemic and still be exempt from paying social security contributions.

As far as the self-employed (who could be also third-country nationals) were concerned, a type of labour compensation was introduced for a limited period (six weeks, similar to sickness benefit) by the Federal Infection Protection Act.¹¹ Emergency measures to cover their running costs (Bridging Aid Packages I, II and III) were also adopted. Most of these measures do not secure the livelihoods of these persons, however, which jeopardises their entitlement to residence permits conditional upon income thresholds.

6. Overview of enforcement and monitoring

The monitoring of working conditions and protection of seasonal workers’ rights is performed mainly by the Customs Administration (Zoll) and more specifically by the Financial Investigation Office for Clandestine Employment (*Finanzkontrolle Schwarzarbeit*). The Customs Administration monitors compliance with an employer’s obligations under the Act on Mandatory Working Conditions for Workers Posted across Borders and for Workers Regularly Employed in Germany (*Arbeitnehmer-Entsendegesetz – AEntG*).¹² Health and safety at work and hygiene rules are subject to the control of the Federal states (*Länder*).¹³ Practical implementation issues have been reported in particular for posted workers in the meat and construction industries (Kohte 2015; Kohte and Rabe-Rosendahl 2020). There are civil society initiatives to assist mobile workers to enforce their rights. The German Trade Union Confederation (DGB) has set up advice centres under the ‘Fair Mobility’ programme, which is supported by state funding (Kohte 2021).¹⁴ Whether insurance is compulsory in Germany is decided and monitored by the collection agencies (health insurance funds – for accident insurance, by the accident insurance institutions).

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10. A ‘mini-job’ is a job in which one earns on average no more than €520 per month as of 01/10/2022.
 11. Section 56 Infektionsschutzgesetz - IfSG, issued on 20 July 2000, Federal Law Gazette I, p. 1045. This regulation applies only to administrative measures provided for in this Act (excluding general social security provisions).
 12. Sections 16–23.
 13. Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work (*Arbeitsschutzgesetz, ArbSchG*).
 14. Section 23a of the Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany.

10. Greece

Ioannis Katsaroumpas

As regards labour law, Greek social security law is organised on the basis of territoriality and universality, not nationality. All legally residing third-country nationals have the right to insurance from the relevant occupational insurance bodies to access the relevant benefits. They enjoy the same rights with regard to national insurance benefits as nationals, while single permit holders are also entitled to equal treatment with regard to access to social security. Access to contributory social insurance benefits generally depends on fulfilment of insurance conditions related to the length of previous employment periods, not on nationality or residence (see Martini 2020). Prior residence requirements are applicable for most non-contributory benefits, however (ibid).

Box 1 Sector-specific variations on social security rules

There are no major sector-specific variations for social security. This reflects the recent trend towards unification and generalisation of the previously multiple insurance funds. It is notable, however, that the Migration Code (Article 13 par. 4) requires submission of proof of payment of the required contributions as a condition for permission to bring in seasonal third-country nationals in agriculture. The employer has to pre-pay at least one month's employment, while the rest either has to pre-paid or alternatively the employer has to authorise the insurance body to take the payment from the agricultural subsidy organisation responsible for agricultural subsidies, the Greek Common Agricultural Policy Payment Authority (ΟΠΕΚΕΠΕ).

Table 1.10 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No	No	No	No	No	No
Intra-corporate transfers	Yes	Yes	Yes	Yes	Yes	Yes
Seasonal workers	Yes	Yes	Yes	Yes	Yes	Yes
Temporary agency workers	Yes	Yes	Yes	Yes	Yes	Yes
High-level professionals	Yes	Yes	Yes	Yes	Yes	Yes
Self-employed	es	Yes	Yes	Yes	Yes	Yes

Source: Author's analysis, 2022.

Description of the Greek system

1. Overview of social security rights of short-term third-country-national migrant workers

Greek social security law is organised on the basis of territoriality and universality, not nationality. All legally resident (and, under certain conditions, unlawfully resident) third-country nationals have a right to be insured by the relevant occupational insurance bodies for access to various contributory cash benefits (sickness benefit, unemployment benefit, maternity benefits, health benefits). Legally residing third-country-national workers enjoy the same rights with regard to national insurance benefits as nationals, while single permit holders are also entitled to equal treatment with regard to access to social security provisions (under EU Regulation 883/2004). Access to social insurance benefits generally depends on the fulfilment of insurance conditions related to the length of previous employment periods and not on nationality or residence. For non-contributory benefits, however, prior residence requirements may in practice prevent short-term workers from accessing them. Since 2017, the Unified Social Security Fund (ΕΦΚΑ) has covered the National Health System, the National Welfare System and the National Social Insurance System.

The Migration Code (Article 15 paragraph 2) sets as a condition for renewal of the standard ‘paid dependent employment’ visas (of employment of at least 1 year) the submission by the third-country national of a valid health booklet and proof of completion of the minimum required days for insurance contributions.¹

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

The only specific social security provision in the migration code is that seasonal workers are entitled to equal treatment to nationals with regard to the provisions on social security, as defined by Council Regulation 883/2004.

(ii) Third-country-national posted workers

For postings within the EU/EEA, workers must submit as part of their visa application a solemn statement certifying the existence of a contract between the posting company and the recipient of services, along with the assumption of accommodation, healthcare and return expenses by the posting company. Workers shall also submit a copy of an attested health booklet or European insurance card or any other equivalent EU document. For – in practice more limited – postings

1. With a possibility of purchasing additional days up to 20 per cent of what is required if the actual days are less than the minimum.

from outside the EU, the law requires the submission of a certified copy of the contract containing coverage of costs similar to postings within the EU/EEA.

(iii) Third-country-national temporary agency workers

Under Greek law, the contract between the agency and the worker shall contain the latter's insurance provisions, while any provision that impedes their insurance rights is void. The agency worker has a right to equal treatment to workers directly employed by the user company. There is a joint and several liability of user and agency in respect of the required insurance contributions. There are no special provisions on third-country-national temporary agency workers.

3 Conditions for obtaining different social security rights

As space precludes a systematic examination of the complex and often labyrinthine conditions for access to the various benefits, only a brief consideration of the conditions for major benefits is possible here. Entitlement to in-kind benefits of the National Organisation for Health Care Service Provision (EOPPY) is granted to insured workers with 50 days of insurance in the previous year of illness or during the preceding 15 months except for the past three months. For various cash benefits, insured workers must have completed 120 days during the previous year or during the previous three months, excluding the past three months. Maternity benefits are given to insured workers if they have completed 200 days of insurance in the previous two years before the actual date of birth. For unemployment benefits, the qualifying period corresponds to either 125 insured workdays during the 14 months preceding job loss or 200 insured work days during the 24 months preceding job loss, while the two last months before job loss are not included in the reference period. The non-contributory means-tested child benefit can be given to legally residing third-country nationals. Recently, the law increased the requirement of residence for third-country nationals from 5 to 12 years for the birth payment.

4. Portability of benefits between host country and country of origin

A number of bilateral social security agreements are in force covering posted workers, mostly regulating the period in which they are subject to the social security regime of the host country. Greece has bilateral social security agreements in force with Egypt, Argentina, Australia, Venezuela, Brazil, the United States, Canada, Quebec, Libya, New Zealand, Ontario, Uruguay, Syria and Serbia. These agreements commonly provide for equal treatment with regard to social security rules and focus on benefit portability between the contracting parties, along with the consideration of periods spent in the other country for the purpose of benefit eligibility.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

There were no major changes during the pandemic in terms of social security. It is notable, however, that the law extended the pharmaceutical provision, that is, free access to medicines for uninsured workers, as well as ensuring the payment of social security contributions for those whose employment was temporarily suspended due to Covid-19.

6. Overview of enforcement and monitoring

There are two main monitoring and enforcement bodies for social security provisions: (i) Regional Supervisory Insurance Centres (Περιφερειακά Ελεγκτικά Κέντρα) and (ii) the local offices of the Unified Social Security Fund (Ενιαίος Φορέας Κοινωνικής Ασφάλισης). Their mandate is to conduct regular and spot checks for the application of the social security law with regard to employment terms and conditions. All workers can submit a complaint to these regional authorities, which may be anonymous. Third-country nationals have the right to access these courts. Violation of social security obligations by the employer is an explicit ground for visa revocation.

11. Hungary

Gábor Kártyás

Hungary’s compulsory social security system covers all natural persons working in Hungary, regardless of their nationality. Thus, as a general rule, third-country nationals working in Hungary are covered by the Hungarian social security system and they enjoy the full spectrum of health, pension and accident services and benefits. Social security does not cover third-country nationals posted to Hungary if the assignment does not exceed two years, however. This exception also applies to temporary agency workers. Third-country nationals may also be eligible for some social allowances (unemployment and family benefits), on condition that their employment in Hungary exceeds six months.

Table 1.11 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No	No	No	No	No	No
Intra-corporate transfers	Yes	Yes	If employment exceeds 6 months.	Yes	Yes	If employment exceeds 9 months.
Seasonal workers	Yes	Yes	No	Yes	Yes	No
Temporary agency workers	No	No	No	No	No	No
High-level professionals	Yes	Yes	If employment exceeds 6 months.	Yes	Yes	If employment exceeds 6 months.
Self-employed	Yes	Yes	If employment exceeds 6 months.	Yes	Yes	If employment exceeds 6 months.

Source: Author’s analysis, 2022.

Description of the Hungarian system

1. Overview of social security rights of short-term third-country-national migrant workers

The Hungarian compulsory social security system covers the citizens of Hungary and all other natural persons working in Hungary, regardless of their nationality (Act 122 of 2019 on entitlements to social security benefits and on funding these services [hereinafter: Social Security Code] Article 1(1)). Thus, as a general rule, third-country nationals working in Hungary are covered by the Hungarian social security system and they enjoy the full spectrum of health, pension and accident services and benefits.

Social security does not cover third-country nationals employed on the territory of Hungary, however, if:

- they are employed by a foreign employer not registered in accordance with Hungarian laws, and
- work is performed within the framework of posting, temporary assignment or temporary agency work, and
- such employment does not exceed two years, and
- three years has lapsed following the termination of previous employment in Hungary (Social Security Code Article 17 (2) point a)).

If all these conditions are met, the third-country national remains under the social security system from which they were posted or assigned to Hungary.

Third-country nationals may also be eligible for some social allowances:

- all unemployment benefits, if the third-country national holds a single permit and has been employed in Hungary for at least six months (Act 4 of 1991 Article 2 (3));
- all family benefits, if the third-country national holds a single permit and the employment was authorised for more than six months (in case of intra-corporate transfer, for more than nine months);
- family benefits except maternity benefit, if the third-country national holds an EU Blue Card [Act 84 of 1998 on family benefits, Article 2 ae) and af)];
- old age benefit (an allowance for those who are over the pension age but are not eligible for old age pension), if the third-country national holds an EU Blue Card or single permit or residence permit issued under Directive 2016/801 (Act 3 of 1993 Article 3 (4), (4c) and (4d)).

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

There are no special rules.

(ii) Third-country-national posted workers

Social security does not cover third-country nationals employed in the territory of Hungary if they are posted for a maximum of two years (Social Security Code Article 17 (2) point a). The posted worker is eligible for services from the Hungarian Social Security System only if it is prescribed by EU law or an international agreement (Social Security Code Article 3 and 22 (2)). There are a number of bilateral social security agreements with third countries that contain different rules from the Social Security Code. The difference is that under these agreements the posted worker stays longer under the social security system of the home state. In some of the agreements this exemption applies also to self-employed persons working in Hungary temporarily.

(iii) Third-country-national temporary agency workers

The same rules apply as to posted workers.

3. Conditions for obtaining different social security rights

Insurance coverage commences and ends simultaneously with the commencement and termination of the employment relationship (Social Security Code Article 8). Third-country nationals are eligible for the different services of the social security system under the same conditions as nationals.

4. Portability of benefits between host country and country of origin

Portability of benefits is not guaranteed as a general rule. Third-country nationals posted from EEC countries, however, fall within the scope of EU Regulation 883/2004 and thus may make use of its principles. Similar provisions may also appear in bilateral social security agreements with third countries.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

No special measures were introduced during the pandemic.

6. Overview of enforcement and monitoring

If the employer does not declare the work-related relationship to the tax authority then the third-country national will not be covered by social security. The labour authority has the authority to inspect employers and implement sanctions for undeclared work (Act 135 of 2020 Article 7). Compliance with social security rules is monitored by the National Health Insurance Fund (healthcare) and the Hungarian State Treasury (pensions) (Governmental Decrees 168/1997 and 386/2016).

12. Iceland

Halldór Oddsson

General public social security rights as defined by Icelandic law can be divided into three parts. First, general health insurance, meaning access to health care and health services. Second, social security, for example, the right to disability or retirement pensions. Third, so-called obligatory labour market insurance, namely unemployment benefits, maternity/paternity leave and the supplementary pension fund system. Rights in the first two categories are generally acquired for all citizens residing legally in Iceland, but rights in the third category are related to labour market participation.

Table 1.12 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No (country of origin)	No (country of origin)	No (country of origin)	No	Yes, according to Icelandic law	No (needs official residence)
Intra-corporate transfers	Acquired in 6 months of legal residence	Yes, contributions from day one	Fully insured after 12 months on an unconditional work permit / partly insured after 3 months on an unconditional work permit	Yes	Yes	Yes, from day one of formal residence
Seasonal workers	Acquired in 6 months of legal residence	Yes, contributions from day one	Fully insured after 12 months on an unconditional work permit / partly insured after 3 months on an unconditional work permit	Yes	Yes	Yes, from day one of formal residence
Temporary agency workers	N/A	N/A	N/A	N/A	N/A	N/A
High-level professionals	Acquired in 6 months of legal residence	Yes, contributions from day one	Fully insured after 12 months on an unconditional work permit / partly insured after 3 months on an unconditional work permit	Yes	Yes	Yes, from day one of formal residence
Self-employed	Acquired in 6 months of legal residence	Yes, contributions from day one	Fully insured after 12 months on an unconditional work permit / partly insured after 3 months on an unconditional work permit	Yes	Yes	Yes, from day one of formal residence

Source: Author's analysis, 2022.

Description of the Icelandic system

1. Overview of social security rights of short-term third-country-national migrant workers

As stated in the introduction, the Icelandic social security system has three pillars; (i) health insurance; (ii) general social security (disability, retirement); and (iii) obligatory labour market insurance. From the social security standpoint there are few, if any exceptions and special rules regarding third-country-national migrant workers and acquiring rights. For systemic reasons, however, it is quite common that third-country-national workers gain limited rights because some are acquired over a period of time and/or are based on participation in the Icelandic labour market. Naturally the options for transferring rights from other EU/EEA countries are not always applicable.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

Anyone who resides legally in Iceland for six consecutive months benefits from general health insurance (meaning that they are entitled to all general health services needed in Iceland just like any other legal resident). Because it takes six months to acquire this right, employers are obliged to privately insure all working third-country nationals for the first six months of their employment. According to the legislator, this rule is set to protect third-country nationals from any excessive health-related cost that might come up in the period. There is thus no distinction in terms of category of worker, with the exception of posted workers.

3. Conditions for obtaining different social security rights

The right to a social security pension on the grounds either of disability or retirement is calculated based on the individual's period of residence in Iceland between 16 and 70 years of age. The same rule applies to everyone, but naturally many third-country nationals reside in Iceland when they are over the age of 16, so their disability rights are limited. In addition to the condition of continuously residing in Iceland from the age of 16 to be able to receive full disability and/or retirement pension, all applicants must have resided in Iceland for at least three years to qualify for a pension.

The third and final so-called pillar of the Icelandic social security system is the work-related insurance system. To be more precise, these rights cover unemployment benefits, maternity/paternity leave and the so-called supplementary pension fund system that all workers in Iceland are obliged to pay into. One might say that the supplementary pension system is especially important to many third-country nationals because of the limited rights they acquire in the public social security system. The fees amount to 12 per cent of workers' wages, with the worker paying 4 per cent and the employer 8 per cent. The supplementary pension system is

based on the entitlements that people earn over the course of their working lives but even though they are limited in the same way as the public pension scheme the fees from the supplementary funds are in addition to rights in the public system as long as they do not go above a certain level. The right to supplementary disability pension is acquired after three years of payments and the amount is based on the payments the worker would have made if they had continued paying contributions up to pensionable age. The general rule that it takes six months to acquire decent rights applies to unemployment benefits (3–12 months) and maternity/paternity leave.

In relation to that it must be noted, however, that third-country nationals working in Iceland on a temporary permit do not have the right to unemployment benefits. The reasoning is based on the law on unemployment benefits, which requires all applicants to be ‘active in the labour market’, but as temporary work permits are based on the condition of employment – an unemployed third-country national in Iceland without a work permit cannot be considered ‘active’ in the eyes of the law.

4. Portability of benefits between host country and country of origin

The general rule is that there is no possibility to transfer benefits into or out of the Icelandic system, except for nationals of EEA countries and the United States. In addition to general EEA rules on the portability of benefits, Iceland has a special agreement with the USA regarding payment of social security rights, which applies in some instances. An exception from the general rule regarding third-country nationals is the supplementary pension system, which all workers in Iceland must pay into. Third-country nationals have a permit to withdraw the payments they have made into the supplementary pension system when they are no longer residing in Iceland. This is especially common practice for third-country nationals who come to Iceland on short-term work permits.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

The only special measure taken regarding third-country nationals and social security during Covid-19 was that an exception was made from the general rule stating that in order to qualify for unemployment benefits one needs to be ‘active on the labour market’. In general, third-country nationals on temporary work permits do not have the right to unemployment benefits as they do not have an unlimited right to work in Iceland. During the Covid-19 pandemic, a special measure on so-called partial unemployment benefits was introduced. This meant that an employer and an employee could make a temporary agreement to change a full-time job to a part-time job. This was done both in order to protect employees from termination and to provide support for employers during the recession, which hit many sectors because of the Covid-19 lockdown measures. This scheme was introduced as a supplement to general rules on unemployment benefits; in order to protect third-country nationals from being especially exposed to terminations

they were included in the scheme by exempting them from having to be ‘active on the labour market’.

6. Overview of enforcement and monitoring

Enforcement and monitoring of social security is based mainly on information provided by the social security user, as well as information taken from public records, such as tax reports. Social security users who provide false information may be fined and/or subject to punitive measures by the relevant authority. Monitoring is also occasionally done on a case-by-case basis in cases of random checks and tip-offs.

13. Ireland

Michael Doherty, Anthony Kerr and Clíodhna Murphy

Short-term third-country-national migrants in Ireland generally become ‘insurable’ under social welfare legislation under the same conditions as Irish or EU citizens. A third-country national legally residing and working in Ireland may generally claim benefits so long as individual scheme conditionality is satisfied. The same principle applies to social assistance payments, although applicants must satisfy a means test and habitual residence conditionality (which may result in the exclusion of short-term migrants). Posted workers are subject to a special regime and are maintained in the social security systems of their sending state over the duration of the posting.

Box 1 Summary of the table

Third-country nationals can enter Ireland for purposes of employment if they hold an employment permit and, while working in Ireland, they are required to remit social security in Ireland through normal channels. Short-term third-country-national migrants under the Atypical Work Scheme become ‘insurable’ under social welfare legislation under the same conditions as any other employee in receipt of wages. A third-country national legally residing and working in Ireland may generally claim benefits in Ireland, so long as individual scheme conditionality is satisfied. The same can be said with regard to social assistance payments, but applicants must satisfy a means test and habitual residence conditionality.

Posted workers are maintained in the social security systems of their sending state over the duration of the posting; the question of their receipt of benefits depends on them satisfying the conditionality that applies in the sending country. With regard to third-country nationals posted to Ireland from a country with which Ireland holds a Bilateral Agreement, these are intended to cover pension/long-term benefits only. They do not cover ‘short-term’ benefits.

Table 1.13 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No	In sending country if bilateral agreement	No	No	No	No
Intra-company transfer permit-holders	No	Yes	No	Yes	No	Yes
Contracts for services permit-holders	No	Yes	No	Yes	No	Yes
Self-employed	No	Yes	No	Yes	No	Yes

Source: Authors’ analysis, 2022.

Box 2 Sector-specific variations of social security rules

The Atypical Work Scheme for fishermen, introduced in 2015, stipulates that the contract of employment must meet certain requirements, including that it provides for adequate health-care coverage for all such employees. As regards the Intra-Company Transfer Permit and the Contract for Services Permit, the permit may be refused if appropriate arrangements in relation to satisfactory health insurance are not in place.

Box 3 Changes during the Covid-19 pandemic

The Pandemic Unemployment Payment and Covid-19 enhanced illness benefit apply to students, including international students, part-time workers, and non-EU workers who lost employment because of the pandemic, if the worker has paid a minimum amount of social security contributions or has been on an employer's payroll. International protection applicants (asylum seekers) with permission to work were given access to the Pandemic Unemployment Payment and Covid-19 enhanced illness benefit in August 2020.

Description of the Irish system

1. Overview of social security rights of short-term third-country-national migrant workers

Third-country nationals can enter Ireland for purposes of employment if they hold an employment permit and, while working in Ireland, they are required to remit social security in Ireland through normal channels. Those entering Ireland under the Atypical Work Scheme would become ‘insurable’ under social welfare legislation under the same conditions as any other employee in receipt of wages. Third-country nationals can also enter Ireland for purposes of employment as a posted worker from either a country with which Ireland holds a Bilateral Agreement for social insurance purposes, or as a posted worker from another EU/EEA Member State, provided the third-country national holds an employment permit in the ‘sending’ EU/EEA Member State. Such posted third-country nationals do not remit social security in Ireland; rather they remain attached to the social security regimes of their sending Member States.

2. Differences in social security rights of different categories of short-term TCN migrant workers

(i) Third-country-national seasonal workers

Ireland has not opted in to the Seasonal Work Directive (Directive 2014/36/EU). Seasonal work is not yet specifically provided for within the Irish labour migration framework.

(ii) Third-country-national posted workers

Posted workers, either third-country nationals or EU/EEA nationals, are maintained in the social security systems of their sending state over the duration of the posting. The question of their receipt of benefits depends on them satisfying the conditionality that applies in the sending country. With regard to third-country nationals posted to Ireland from a country with which Ireland holds a Bilateral Agreement, these are intended to cover pension/long-term benefits only. They do not cover ‘short-term’ benefits.

(iii) Third-country-national temporary agency workers

Existing labour migration routes are not generally open to temporary agency workers.

3. Conditions for obtaining different social security rights

A third-country national legally residing and working in Ireland may claim benefits in Ireland so long as individual scheme conditionality is satisfied. With regard to social assistance payments, a means test and habitual residence condition apply.

4. Portability of benefits between host country and country of origin

Ireland has Bilateral Agreements for social security purposes with a number of third countries (Australia, Canada [and Quebec], Japan, New Zealand, South Korea, the United Kingdom and the United States). Posting provisions apply to all employees coming from these countries, and to self-employed persons coming from Canada (and Quebec), and the USA. These agreements set out the maximum periods for the posting (five years for Japan, Korea and the USA; four years for Australia; three years for the United Kingdom; and two years for Canada/Quebec, and New Zealand). In all cases, the duration can be extended by agreement between the states party to the agreements. Bilateral Agreements are intended to cover pension/long-term benefits only. They do not cover 'short-term' benefits.

Article 97 of the Social Welfare (Consolidated Contributions and Insurability) Regulations 1996 allows the Minister to exempt persons temporarily employed in the state from paying social security contributions (for a period not exceeding fifty-two contribution weeks).

An A1 form (issued by the sending country) is usually prima facie evidence that the worker is covered by the sending country's social security system (and for Bilateral Agreements, there is an equivalent 'Certificate of Coverage' issued by the sending country). In Ireland, A1 forms are not formally notified to any authority prior to posting, but must be available for inspection by social security inspectors.

The Convention on Social Security agreed between Ireland and the United Kingdom (S.I. No. 746 of 2020) provides there will be no loss of social security coordination provisions under the EU/UK Trade and Cooperation Agreement of December 2020. Under UK / Ireland arrangements, both short-term and long-term benefits are covered.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

The Pandemic Unemployment Payment and Covid-19 enhanced illness benefit applies to students, including international students, part-time workers and non-EU workers who lost employment because of the pandemic, if the worker has paid a minimum amount of social security contributions or has been on an employer's payroll. International protection applicants (who are usually ineligible for mainstream social security) were also given access to the Pandemic Unemployment Payment and Covid-19 enhanced illness benefit in August 2020.

Under Supplementary Welfare Allowance provisions, emergency payments can be made to an individual on a ‘one-off’ basis, if that individual is facing an unanticipated expense that they could not be expected to fund from their own resources. This might arise, for example, where a posted third-country national fell into financial distress because of the Covid-19 restrictions on work or travel and their ineligibility for either the Pandemic Unemployment Payment or the Covid-19 Enhanced Illness Benefit. As mentioned above, posted third-country nationals do not remit social security in Ireland; rather they remain attached to the social security regimes of their sending Member States.

6. Overview of enforcement and monitoring

In Ireland, employment and social insurance compliance are not integrated, in that the former is the responsibility of the Workplace Relations Commission (WRC), whereas the latter is the responsibility of the Department of Social Protection (DSP). WRC Inspectors work with the Revenue Commissioners and the DSP in relation to the reporting of potential tax and social security issues encountered during inspections.

14. Italy

Silvia Borelli

Short-term third-country-national workers in Italy suffer both from problems linked to work casualisation and from the fact that many social provisions are guaranteed only to third-country nationals with a long-term residence permit. Moreover, only foreigners holding a residence permit with a validity of more than one year can benefit from social assistance provisions like Italian citizens (Article 41 TUI). Several other restrictions on migrants exist in Italian social security legislation.

Consequently, in order to fully enjoy their rights, third-country nationals often have to engage in lengthy and costly legal proceedings. Obviously, many short-term migrants prefer to give up their rights instead.

Box 1 Sector-specific variations of social security rules

All foreigners regularly residing on the territory have the right to the same treatment as Italian workers. However, third-country-national seasonal workers do not enjoy unemployment benefits and family allowance, while posted third-country nationals benefit from the social security legislation of their country of origin. Besides, short-term migrants cannot access social provisions reserved for long-term residents and foreigners holding a residence permit with a validity of more than one year. Other restrictions on migrants are widespread in Italian social security legislation.

Moreover, short-term migrants also suffer from the fact that work casualisation deeply affects the value of in-cash benefits. Indeed, the benefits received risk being very low, both in the case of the reduction of the normal working time and in the case of short-term contracts.

Table 1.14 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Social security legislation in the country of origin applies to migrant workers posted from a company established in the EU. In case of posting from a company established outside the EU, Italian social security legislation applies unless an agreement between Italy and the concerned country exists. In the latter case, posted workers benefit from social security unless they require a long-term residence permit. Posted workers also benefit from social assistance if their permit is valid for more than one year. Workers posted from Italy shall have an Italian work permit. Their social protection depends on the type of permit they hold.					
Intra-corporate transfers (ICT)	If the inter-corporate transfer takes place from a company established in the EU, Regulation 1231/2010 applies. Consequently, the social security legislation of the country of origin is applicable (Article 12 Regulation 883/2004). If the inter-corporate transfer takes place from a company established outside the EU, Italian social security legislation applies unless an agreement between Italy and the concerned country exists. In the latter case, migrant workers benefit from social security unless they require a long-term residence permit; they also benefit from social assistance if their permit has a validity of more than one year.					

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Seasonal workers (SWs)	Equal treatment with local workers	Equal treatment with local workers	No	No (typically, their permit is valid < one year and they do not qualify)	Equal treatment with local workers	No
Temporary agency workers (TAWs)	Temporary agency workers benefit from the principle of equal treatment with the user's workers. However, entitlement to a social security benefit depends on the type of work permit they have.					
High-level professionals (Blue cards)	Equal treatment with local workers	Equal treatment with local workers	Equal treatment with local workers	Equal treatment with local workers if their permit has a validity of more than one year	Equal treatment with local workers	Equal treatment with local workers
Self-employed	Migrants with a permit for self-employment must fully respect Italian social security legislation. In Italy, the self-employed are usually obliged to pay social contributions and do not benefit from all the social protection enjoyed by employees.					

Source: Author's analysis, 2022.

Box 2 Changes during Covid-19

During the pandemic, the Italian legislator decided to regularise work permits outside the quota system for irregular migrants present in the country. Because of the many loopholes of the procedure, however, only few migrants managed to obtain the work permit.

Irregular migrants in sectors excluded from the 2020 regularisation, as well as irregular migrants who could not meet its strict conditions, were trapped in illegality: because of the mobility restrictions, they could not travel back to their countries of origin, while the 'unrealistic' procedure for obtaining a work permit in Italy they could not find a regular job. Consequently, they were further exposed to exploitation and the risk of Covid contagion. Indeed, in Italy, irregular migrants can access only essential health care (Article 35 TUI) and risk deportation when claiming health and safety measures at work, and they do not have the right to non-essential medical-care.

Description of the Italian system

1. Overview of social security rights of short-term TCN migrant workers

Short-term third-country-national workers in Italy suffer from problems linked to work casualisation (§3) and from the fact that several social benefits are available only to third-country nationals with a long-term resident permit (Article 80 co. 19 Law 388/2000). Moreover, only foreigners with a residence permit valid for more than one year can benefit from social assistance in the same way as Italian citizens (Article 41 TUI).

Both rules have been challenged several times before the Italian Constitutional Court because of the possible violation of the equality principle (Article 3 Italian Constitution) and before the European Court of Justice because of a possible violation of the principle of equal treatment between foreigners and national workers.

Italian social security legislation also discriminates against migrants, for example, in the rules excluding, for the purposes of determining entitlement to a family benefit, family members who do not reside in the territory of that Member State (see § 6) or the rules requiring a certain duration of residence (see Constitutional Court, decision no. 44/2020).¹

Consequently, in order to enjoy their rights fully, third-country nationals often have to engage in lengthy and costly legal proceedings; and, obviously, many short-term migrants prefer to renounce their rights instead.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

Third-country-national seasonal workers with a valid residence permit benefit from the same rights as Italian workers. However, Article 25 of the Legislative Decree 286/1998 (TUI) rules out unemployment benefits and family allowance. This rule discourages regularisation of the employment relationship: indeed, why should a third-country national ask for a regular contract of employment and pay social contributions if anyway they do not have a right to all the corresponding benefits?

1. For example, ten years' residence is required to benefit from citizen's income (Article 2 co. 1, a) Law 26/2019), while two years' residence are required to benefit from universal family allowance (Article 2, co. 1, f), 4) Law 46/2021). The former benefit is available only to migrants with a long-term residence permit.

(ii) Third-country-national posted workers

Regulation 883/2004 applies to third-country nationals posted in Italy by an employer established in the EU (Regulation 1231/2010). If the conditions established by Article 12 are fulfilled, posted third-country nationals benefit from the social security legislation of their country of origin. Consequently, the rule that requires that social contributions be calculated on the basis of the salary established by the national collective agreement signed by the most representative trade unions and employers' associations (Article 1, para. 1, Law Decree No. 338/1989) is not applicable and this can severely lower the amount of social benefits for posted workers. Moreover, in case of work accidents, posted workers receive health care assistance that may differ significantly from that enjoyed by local workers.

In case of bogus posting of workers, the Italian Social Security Institute (INPS) has complained about the cumbersome procedure outlined by Regulation 883/2004 for recovering social security contributions. Indeed, sometimes INPS has decided to suspend or limit investigations because of their sheer onerousness; in this case, workers illegally posted remain affiliated to the social security system of the country of origin – that is, they cannot exercise their social security rights in Italy.

Posting by employers from outside the EU does not fall within the scope of the EU legislation. In the latter case, Italian social security regulations apply unless an agreement exists between Italy and the third country concerned.²

(iii) Third-country-national temporary agency workers

Italian legislation does not provide for a specific social security regime for temporary agency workers (TAWs). The latter's social benefits are profoundly affected by work casualisation (see §3). This problem concerns migrant workers, in particular, because of their vulnerability (see the report on immigration rules and labour law).

Social security for posted temporary agency workers is regulated by Regulation 883/2004 if the posting agency is established in the EU. If the latter is based outside the EU, Italian social security law applies unless there is an agreement with the country of origin that rules differently.

3. Conditions for obtaining different social security rights

Italian social security schemes vary according to type of employment or self-employment. The main differences are related to: (i) people obliged to pay social contributions; (ii) the amount of contributions; (iii) protected events; and (iv) benefits received. The first two elements have a profound impact on labour costs; in a nutshell, we can say that more reliance on work performed by those who

2. The list of bilateral agreements is available here: <https://www.inps.it/nuovoportaleinps/default.aspx?itemdir=49954>

are covered mandatorily by social security schemes for the self-employed reduces the social costs of those for whom the work is carried out.

Moreover, in the main regime for employees, almost all the benefits are set as a percentage of wages. Sometimes, the duration of the benefit depends on the duration of the contract. Consequently, work casualisation deeply affects the value of in-cash benefits: indeed, the benefits received risk being very low if normal working time is reduced and in the case of short-term contracts.

4. Portability of benefits between host country and country of origin

Portability of benefits between countries is regulated for third-country nationals by Regulation 883/2004, if they fall within its scope. In other cases, the applicable rules vary according to agreement, if any, between Italy and the third country concerned. If such an agreement does not exist, portability of benefits is very difficult.

Another problem faced by third-country nationals is the impossibility of recovering social contributions paid in Italy when they leave the country. In this case, third-country nationals retain their acquired social security rights and can enjoy social benefits once they meet the eligibility requirements (Article 22 par. 13 TUI). This rule does not consider that, once they have left, third-country nationals often do not have any link with Italy and consequently are unable to enforce their rights (for example, they do not have an Italian bank account where they can receive social benefits). Besides, third-country nationals may struggle to fulfil the eligibility conditions established by Italian law (for example, retirement age). Consequently, foreigners often have no interest in paying social contributions, and so do not seek regular employment relationships.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

As explained in the report on immigration rules and labour law, during the pandemic the Italian legislator decided to promote regularisation, giving employers the possibility of applying for work permits outside the quota system for irregular migrants already present in the country. Because of the procedure's many loopholes, however, only a few migrants managed to obtain such a permit.

Irregular migrants in sectors excluded from the 2020 regularisation, as well as irregular migrants who were unable to meet its strict conditions, were trapped in illegality: because of the mobility restrictions, they could not travel back to their countries of origin; because of the 'unrealistic' procedure for obtaining an ordinary work permit in Italy, they could not find a regular job there. Consequently, they were further exposed to exploitation and the risk of catching Covid-19. Indeed, in Italy, irregular migrants can access only essential health care (Article 35 TUI) and use medical facilities that do not report irregular migrants to the authorities

(Article 35 TUI). Irregular migrants do not have access to non-essential medical care and risk deportation when demanding compliance with OSH measures.

In order to alleviate the social and economic consequences of the pandemic, several social security measures were adopted. All of them have been ensured to legally resident migrants, notwithstanding their residence permit (see, for example, the emergency income regulated by Article 82 Law Decree 34/2020).

6. Overview of enforcement and monitoring

As already mentioned, third-country nationals struggle to enforce their social security rights because of the many rules that make social benefits (such as family and maternity allowances) conditional on possession of a long-term residence permit. These rules have been challenged by the European Court of Justice (ECJ), which states that third-country nationals who are entitled to work ‘are to enjoy equal treatment with nationals of the Member State where they reside with regard to branches of social security, as defined in Regulation No. 883/2004’ (ECJ, 2 September 2021, C-350/20, *INPS*, § 45; see also ECJ, 21 June 2017, C-449/16, *Martinez Silva*).

Other legal disputes concern the rules that exclude, when determining rights to family benefits, family members who do not reside in the territory of that Member State. The ECJ also considers these rules as not consistent with EU law.³

Several judges – included the Court of Cassation (order no. 9378/2021 and 9379/2021) – still refuse to disapply the national rules that infringe EU law, which would extend the social benefits currently restricted to certain third-country nationals (long term residents) to all third-country nationals with a single work permit or a residence permit for other purposes that allows them to work.

3. The cases concern Article 11 of Directive 2003/109/EC (see ECJ, 25 November 2020, C-303/19, *INPS*) and Article 12 of Directive 2011/98/EC (see ECJ, 25 November 2020, C-302/19, *INPS*). These are rules that have vertical direct effect.

15. Latvia

Natalja Preisa

One of the preconditions for the employment of third-country nationals in Latvia is registration as a tax payer. The employer in that case is fully responsible for payment of social security contributions and income tax for the relevant workers in a similar manner to Latvian workers or workers from other EU Member States. Therefore, general social security rules apply and workers can benefit from the social security system. Registration as self-employed in the State Revenue Service (SRS) is a mandatory requirement if a third-country national wishes to provide services to various clients instead of working for a particular client on the basis of a service agreement.

Box 1 Changes during the Covid-19 pandemic

During the Covid-19 pandemic third-country nationals who were employees of companies affected by the virus could receive downtime support if certain criteria were fulfilled.

Table 1.15 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Yes	Yes	Yes	Yes	Yes	Yes
(period not exceeding 12 months)	No	No	No	No	No	No
Intra-corporate transfers	Yes	Yes	Yes	Yes	Yes	Yes
Seasonal workers	Yes	Yes	No	Yes	Yes	Yes
Temporary agency workers	Yes	Yes	Yes	Yes	Yes	Yes
High-level professionals	Yes	Yes	Yes	Yes	Yes	Yes
Self-employed	Yes	Yes	Yes	Yes	Yes	Yes

Source: Author's analysis, 2022.

Description of the Latvian system

1. Overview of social security rights of short-term third-country-national migrant workers

One of the preconditions that allow third-country nationals to be employed in Latvia is registration as a tax payer. The employer then is fully responsible for the payment of social security contributions and income tax for workers in a similar manner to Latvian workers or workers from other EU Member States. Therefore, general social security rules apply and workers can benefit from the social security system. Registration as self-employed with the SRS is mandatory if a third-country national wishes to provide services to various clients instead of working for a particular client on the basis of a service agreement. There is a qualifying period for certain benefits, such as unemployment or sickness benefit. This is explained in point 3.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

The employer is fully responsible for payment of social security contributions and income tax for third-country-national seasonal workers. Seasonal workers cannot qualify for unemployment benefit because of the 6 month limitation in work permits. The non-taxable minimum does not apply to seasonal workers' wages because they are non-residents.

(ii) Third-country-national posted workers

According to posting rules, the employer of posted third-country nationals is responsible for any tax related issues, including the obligation to make mandatory social contributions in the country where the employment agreement is concluded. As provided by the Law on State Social Insurance workers posted to Latvia for a period not exceeding 12 months shall not be subject to social insurance if they submit a document to the SRS attesting that they are making mandatory contributions in the sending state.

(iii) Third-country-national temporary agency workers

The temporary work agency, as employer, is fully responsible for payment of social security contributions and income tax for third-country-national temporary agency workers.

3. Conditions for obtaining different social security rights

Third-country nationals working legally in Latvia may receive benefits related to the payment of social insurance contributions (for instance, sickness benefit, maternity and paternity benefit, parental benefit, funeral benefit, invalidity benefit, compensation for accidents at work), but may not receive other benefits paid to Latvian citizens regardless of the social insurance contributions made.¹

In order to receive unemployment benefit, a worker has to be insured at least for one year and have made compulsory social insurance contributions in case of unemployment in Latvia for not less than 12 months in the past 16 months before the date of becoming unemployed. Therefore, seasonal workers cannot qualify for unemployment benefit because of the six month limitation on their work permits.

Sickness benefit can be received by persons for whom compulsory sickness insurance contributions were made for not less than 3 months out of the last 6 months prior to sickness (first day of incapacity for work), or not less than 6 months in the last 24 months. When granting the sickness benefit with the temporary cause of incapacity for work due to an 'accident at work' or 'occupational disease', determination of the qualification period is not required.

4. Portability of benefits between host country and country of origin

Latvia has concluded bilateral cooperation agreements with Russia, Ukraine, Belarus, the United States and Canada. They provide that the length of service acquired by a third-country national in Latvia shall be transferred to their country of origin. This means that the social insurance contributions made by the third-country national in Latvia are also taken into account in their country of origin when calculating, for example, the amount of unemployment benefit.

1. These include the following state social allowances that are disbursed regularly: state family allowance, childcare benefit, allowance for the maintenance of a child under guardianship, remuneration for the fulfilment of a guardian's duties, remuneration for the fulfilment of a foster family's duties, allowance for compensation of transport expenses for persons with disabilities who have reduced mobility, state social security benefit, remuneration for the care of an adopted child, care benefit for a child with a disability, allowance for a person with disabilities for whom care is necessary, allowance for adoption of a child. In addition, this includes the following one-off state social allowances: childbirth allowance, funeral allowance, remuneration for adoption. The right to state social allowances is provided to Latvian citizens, non-citizens, foreigners and stateless persons to whom a personal identity number has been granted, who have an active status in the Register of Natural Persons, and who reside permanently in the territory of Latvia. Persons who have received a temporary residence permit in Latvia do not have the right to state social allowances. Law on State Social Allowances, sections 3 and 4. <https://likumi.lv/ta/en/en/id/68483-law-on-state-social-allowances>

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

No specific social security rights were provided to third-country nationals during the Covid-19 pandemic. However, as workers at Latvian companies, if certain criteria were fulfilled, third-country nationals could receive state support in case of downtime (downtime allowance and downtime support).

6. Overview of enforcement and monitoring

The SRS performs tax audits and inspections to check whether employers are making mandatory contributions.

16. Luxembourg

Wim Cocquyt

Short-term third-country-national workers in Luxembourg hired on a local contract will in principle be affiliated to the Luxembourg social security system by their employer, through enrolment and registration with the Centre Commun de la securite sociale (CCSS). In principle, once they have entered the country regularly, equal treatment with local workers should be guaranteed to short-term migrants from a social security perspective, except for a few limited social security benefits.

Box 1 Changes during the Covid-19 pandemic

Luxembourg has concluded social security agreements with Germany, France and Belgium, according to which any days spent working from home will remain subject to the social security legislation of their state of employment and will remain subject to social security in their state of residence, even if they spend 25 per cent or more of their working time in their residence state because of Covid-19. This means, for instance, a Belgian frontier worker who works from home because of the COVID-19 crisis continues to be affiliated to the Luxembourg social security system. This agreement was enforced until 31 December 2021 in Belgium¹ and Germany.² In the case of France, it was enforced until 15 November 15 2021, which corresponds to the date of exit from the health state of emergency in France.³

Table 1.16 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No	No	N/A	Yes	No	N/A
Intra-corporate transferees	Yes, if it does not rely on a bilateral agreement	Yes, if it does not rely on a bilateral agreement	Yes, if it does not rely on a bilateral agreement	Yes, if it does not rely on a bilateral agreement	Yes	No
Seasonal workers	N/A	Yes (as they are holding a limited duration employment contract)	No	No	N/A	Yes
Temporary agency workers	Yes	Yes	Yes	Yes	Yes	Yes

1. https://mss.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2021%2B06-juin%2B11-prolongation-accord-affiliation.html

2. See https://mss.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2021%2B06-juin%2B29-accord-allemande.html

3. See https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2021/09-septembre/01-accord-affiliation-securite-sociale-france.html

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
High-level professionals	Yes	Yes	Yes	Yes	Yes	Yes
Self-employed	Yes	Yes	Yes	Yes	Yes	Yes

Source: Author's analysis, 2022.

Description of the Luxembourgish system

1. Overview of social security rights of short-term third-country-national migrant workers

All social security affiliates, regardless of their nationality, have access to the following benefits:

- sickness, maternity and long-term care benefits;
- occupational injury benefits;
- invalidity benefits;
- old-age and survivors' benefits;
- unemployment benefits;
- early retirement benefits; and
- family benefits.

Access to social assistance (entitlement to the guaranteed minimum income) is more restrictive for third-country nationals than for other EU citizens or Luxembourg nationals. Third-country nationals must reside in Luxembourg for at least five years in the preceding 20 years or have long-term resident status to be entitled to guaranteed minimum income support.

An exemption from local social security registration may be granted under a bilateral or multilateral social security agreement concluded between Luxembourg and other countries. For the time being Luxembourg has a valid bilateral agreement on social security with 23 non-EU countries.

Third-country nationals temporarily assigned to Luxembourg from a country with which there is a bilateral agreement on social security may, under certain conditions, remain covered by the social security system of their home country. There is no obligation to pay local social security contributions in Luxembourg or register with the local system. The applicable conditions and risks covered will depend on the personal and material scope of each individual agreement.

Third-country nationals who are self-employed or employed on a local contract in a company based in the EU (except Denmark), and holding a valid EU permit, may be exempt from local social security registration in Luxembourg when performing work activities in Luxembourg temporarily. To benefit from this exemption individuals must obtain an A1 form in their home country based on the EU Social Security Coordination Regulations (Regulations 883/2004/EC and 987/2009/EC). Third-country nationals may benefit from the personal scope of application of the current EU Regulations on the coordination of the social security system to third-country nationals legally residing in the EU and finding themselves in a cross-border situation. To obtain an A1 form, the following eligibility criteria shall be met:

- the employee is posted temporarily to another Member State (at least 1 month of prior employment in the home country is required);
- they perform work activities on behalf of their employer;

- the duration shall not exceed 24 months (extensions of up to five years are possible); and
- the employee must not be sent to replace another worker.

The same principle applies to third-country nationals employed on a local contract in Luxembourg and performing work activities temporarily in another EU country (except Denmark). Self-employed individuals may also benefit from the EU Social Security Coordination Regulations.

Third-country nationals temporarily assigned to Luxembourg from a non-EU country where there is no valid agreement on social security (or who do not fall under the scope of the bilateral agreement) are, in principle, subject to the Luxembourg social security system. In accordance with the Luxembourgish Social Security Code, however, ‘Persons who carry out their professional activities only in an occasional, non-habitual manner for a fixed period, limited to a maximum 3 months per calendar year, are exempt from compulsory insurance’⁴ provided they continue to be affiliated to the home country social security system.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) **Third-country-national seasonal workers**

According to the Labour Code, seasonal work is defined as subject to a fixed-term contract and as a consequence all the rights and duties of this type of contract are applicable. As we have already stated, however, it is more difficult to access social assistance for third-country nationals. For instance, seasonal workers are excluded from receiving unemployment benefits, as the law does not foresee the possibility for a seasonal worker to apply for a salaried worker residence permit. Another example is family reunification. Because they are not entitled to it the right to family benefits for their children living in the country of origin depends on the existence of bilateral agreements.

(ii) **Third-country-national posted workers**

Before each posting, and for each posted worker, the employer must apply for a certificate from the social security authorities in their country of origin. Once they have obtained the form in question, the employee can enrol with the Luxembourg National Health Fund (Caisse nationale de Santé (CSN)). The CNS will issue an enrolment certificate if they have kept their official address in their country of origin. Posted employees who are still enrolled in their country of origin are entitled to health-care benefits in Luxembourg under the same conditions as persons enrolled with the Centre Commun de la Sécurité Sociale (CCSS) in Luxembourg.

4. Luxembourg Social Security Code, Art 4, <https://www.secu.lu/assurance-maladie/livre-i/chapitre-i-etendue-de-lassurance/>

There is a distinction between health care for which employees have to advance the cost, and health care that is paid for automatically.

(iii) Third-country-national temporary agency workers

According to Article 122-10 of the Luxembourg Labour Code, the legal and conventional provisions applicable to employees bound by a permanent contract are also applicable to employees bound by a non-permanent contract.

3. Conditions for obtaining different social security rights

It depends on the different categories of short-term third-country national migrants.

4. Portability of benefits between host country and country of origin

Luxembourg exports pensions to any country in the world, but does not transfer pension contributions as such. In order to add periods of insurance with the ones completed in another country, it is required that Luxembourg has concluded a bilateral social security convention providing for this possibility.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Luxembourg did not experience any difficulties in relation to its admission policy on short-term third-country-national migrant workers, including seasonal workers, during the Covid-19 crisis and no additional measures regarding seasonal work were introduced.

6. Overview of enforcement and monitoring

The Inspectorate of Labour and Mines (*Inspection du Travail et des Mines*) is the main institution for ensuring compliance with labour law and protection of employees. This includes:

- monitoring of compliance with legislation in particular in relation to working conditions and protection of employees;
- providing practical, legal and technical information, as well as assistance to both employers and employees on the implementation of legal, regulatory and administrative provisions in matters of work and occupational safety and health;
- assuming the function of an interlocutor with a view to preventing and resolving individual labour disputes;
- carrying out inspections to monitor possible employment of irregular third-country nationals.

17. Malta

Charlotte Camilleri

Currently, all third-country nationals, with the exception of citizens from the EEA and Switzerland, as well as their third-country-national family members, require authorisation to work in Malta either through a Single Permit for the purpose of employment (SP) or through an employment license (EL). These are generally subject to labour market considerations. Third-country nationals who register in Malta under the Social Security Act require a Maltese ID card (if available) and passport, a copy of the JobsPlus engagement form or a 'Promise of Employment' letter or similar document that shows that the applicant will be carrying out an employed/self-occupied activity in Malta and a copy of an employment license. Persons not in possession of a permanent Maltese ID card need to provide supporting documentation in order to apply for a social security number. Once the application is submitted, they will be subjected to an insurability test.

Table 1.17 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Children benefits
Posted workers	Yes*	Yes	No	No	Yes	Yes**
Intra-corporate transfers	Yes	Yes	No	No. Third-country nationals are expected to support themselves and cannot rely on Social assistance	Yes	Yes
Seasonal workers***	Yes	Yes	Yes	Yes	Yes	Yes
Temporary agency workers	N/A	N/A	N/A	N/A	Yes	N/A
High-level professionals	No	No	No	No. Third-country nationals are expected to support themselves and cannot rely on social assistance	No	No
Self-employed	Yes	Yes	Yes but with conditions****	Self-employed third-country nationals are expected to support themselves and cannot rely on social assistance	Yes	Yes

Notes: * Generally, third-country nationals require both a residence permit and an employment license to reside and work in Malta. If a third-country national satisfies the minimum requirements established by law, that is, by obtaining a single permit for the purpose of employment and is paying social security contributions in Malta then they are eligible for social security benefits. ** With regard to children allowances, if a third-country national is paying social security contributions in Malta and has satisfied the minimum requirements, then yes, the benefit is awarded from birth if a minor is born after employment has been secured, where claimants and children are both living in Malta, both parents have valid residence permits, and one or both parents are in employment. Entitlement is in accordance with the permit. If they have a residence or work permit, claimants will be entitled for children's allowance with effect from the sixth month of employment; if the claimant has a Blue Card/International Protection/Subsidiary Protection/Humanitarian Protection permit (including temporary permits), they will be entitled to children's allowance from the start of employment; if claimants have a long-term residence permit, they are entitled from the date of issue of the permit, whereas holders of an intra-corporate transfer permit will be entitled from the ninth month of employment. Those with seasonal worker status and/or student third-country nationals are not entitled to children's allowance if they do not hold any other permit mentioned above. *** In Malta, seasonal workers are eligible for sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits. **** To qualify for self-employed status, a third-country national must invest capital of at least €500,000 in Malta within six months of the date on which the Jobsplus licence is issued. Long-term residents, refugees, subsidiary protection, humanitarian protection and asylum seekers are exempt from these criteria. Therefore, a third-country-national self-employed person is not eligible for this benefit unless one of the above criteria applies. Source: Author's analysis, 2022.

Description of the Maltese system

1. Overview of social security rights of short-term third-country-national migrant workers

In Malta the Social Security Act is in accordance with the EU general principle that a worker should be subject to the legislation of only one Member State at any one time. This applies to all employees working in Malta whether they are Maltese citizens, other EU nationals or third-country nationals. Special arrangements exist for employees temporarily posted by their employer to work in another Member State. These workers must be insured with a national institution in their third-country homeland.

Third-country nationals may request to be exempted from registering in Malta under the Social Security Act as long as a state contribution is being paid in the home country. The Social Security Department will issue an Exemption Certificate, but the employer is still required to register the employment of the third-country national with both the Commissioner for Revenue and Jobsplus and is then automatically exempted from their share of payment of the social security contributions of the third-country national.

Maltese law grants equality of treatment to all with regard to employment conditions. When it comes to social security benefits all employees, including third-country nationals, are eligible, provided that the minimum requirements established by law (referring to single permits) are satisfied, regardless of the employee's nationality. The benefits do not include unemployment benefits, however.

If a third-country national (not having refugee status) either loses their single permit or their employment licence they have to return to their home country if an alternative job is not found within 10 days.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

Malta has no special provision for seasonal workers with regard to payment of social security contributions. Therefore, any seasonal worker shall be treated in the same manner as any Maltese employee, other EU nationals as well as third-country nationals. Both the employer and the third-country national have to pay their share of National Insurance. The third-country national has income tax deducted from their salary. Third-country nationals do not qualify for unemployment benefits as they cannot be a burden on the state. The rate of social security contributions is dependent on the employee's earnings in accordance with

the Tenth Schedule of the Social Security Act.¹ If there are no earnings then no social security contributions are payable by either the employee or the employer. The same rates of contribution apply to all employees working in Malta regardless of their nationality, for example, whether EU, EEA, Swiss or third-country national as this is based solely on earnings.

(ii) Third-country-national posted workers

Unless the third-country national prefers to pay social security contributions in Malta they have the option of paying social security contributions in their home country. In that case they have to apply for an exemption certificate issued by the Social Security Department. If the anticipated duration of the posting does not exceed 24 months the worker may remain insured in their 'home' state's scheme. If the work lasts longer than 24 months, the Member States involved may enter into a common agreement under Articles 16 of Regulation 883/2004, whereby the person may remain insured in the sending state. This applies to posted workers, intra-corporate transfers and temporary agency workers.

(iii) Third-country-national temporary agency workers

The Subsidiary Legislation on temporary agency employment² does not differentiate between workers who are from the EU or third-country nationals. The same rules apply to all temporary agency workers. Under Article 16 of Regulation 883/2004, an employee may remain insured for social security purposes in the sending state, if the anticipated duration of the posting does not exceed 24 months. If the work lasts longer than 24 months, Malta may enter into a common agreement under Articles 16 of Regulation 883/2004, whereby the temporary agency worker may remain insured in the sending state. As a result third-country-national temporary agency workers may request to be exempted from registering in Malta under the Social Security Act if they are being paid in the employee's home country. The Social Security Department will issue an Exemption Certificate exempting the third-country national from registering in Malta. But even though the third-country-national is automatically exempted from their share of National Insurance contributions, the employer is still required to register their employment with both the Commissioner for Revenue and Jobsplus, and is then automatically exempted from the payment of Class 1 Social Security Contributions.

3. Conditions for obtaining different social security rights

If by obtaining a Single Permit an employee satisfies the minimum requirements established by law, regardless of nationality, then they will be eligible for free health services, sickness benefit, occupational injury benefits and pension. This does not extend to unemployment benefits. With regard to children's allowances if the third-country national holds a residence or work permit, they will be entitled

1. <https://legislation.mt/eli/cap/318/eng>

2. <https://legislation.mt/eli/sl/452.106/eng/pdf>

with effect from the sixth month of employment. If the claimant has a Blue Card/ International Protection/Subsidiary Protection/Humanitarian Protection permit (including temporary permits), the claimant will be entitled to children's allowance from the start of employment. If they have a long-term residence permit, they are entitled from the date of issue of the permit, whereas holders of intra-corporate transfer permits will be entitled from the ninth month of employment. Third-country nationals with seasonal worker and/or student status are not entitled to children's allowance if they do not have any other permit mentioned above. Child allowance is awarded from the date indicated above if the minor is born before the date of employment, but from the date of birth if the minor is born after the entitlement date mentioned above.

4. Portability of benefits between host country and country of origin

Portability of rights of third-country nationals depends very much on bilateral agreements signed between Malta and third countries. A reciprocal agreement was signed with Australia³ and a bilateral agreement was signed with the Netherlands⁴ and with New Zealand.⁵

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

As a Covid relief measure for businesses, the government provided a deferral on payment of social security contributions. Moreover, through Malta Enterprise⁶ the government introduced a Covid-19 Wage Supplement available to businesses with specific NACE Codes to support businesses that were adversely impacted by the pandemic. This wage supplement is available for all employees of such businesses. Thus, no distinction was made between employees who are EU nationals and third-country nationals. From the wage supplements the government deducted from the outset the portion allocated for employees' social security contributions as a prepaid employees' share of social security contributions.⁷

6. Overview of enforcement and monitoring

Article 5 (5) of the Posting of Workers in Malta Regulation stipulates that when a worker is posted to Malta, the inspection of their terms and conditions of employment is the responsibility of the DIER, in cooperation, where necessary, with the Member State of establishment.

3. <https://legislation.mt/eli/sl/318.11/eng>

4. <https://legislation.mt/eli/sl/318.18/eng>

5. <https://legislation.mt/eli/sl/318.23/eng>

6. Malta Enterprise is the country's economic development agency, tasked with attracting new foreign direct investment, as well as facilitating the growth of existing operations.

7. <https://finance.gov.mt/en/news/Pages/NOTICE-TO-EMPLOYERS.aspx>

A residence permit will cease to apply if the applicant no longer remains in the specified employment, whatever the reason for termination. Third-country nationals with a single permit who lose their job have to find an alternative job within 10 days or they have to return to their home country. These third-country nationals cannot register for unemployment benefits. Only third-country nationals with refugee status may register for unemployment benefit.

18. The Netherlands

Jan Cremers

As a general rule, all persons (EU citizens and third-country nationals) working in the Netherlands are treated in the same way as regards social security as resident Dutch nationals, provided they are staying in the country legally. There are some restrictions for those recently arrived (less than five years). Posted workers are excluded from the social security system as they remain under the social security of the posting country.

The social security system is composed of employee insurance schemes and national insurance schemes. The employee insurance provisions apply regardless of nationality, with no separate eligibility conditions, differences in level of benefits, or any differentiated duration of benefits for residing third-country workers. Besides, sickness and disability benefits do not require any prior periods of contribution and can be exported to third countries, based on bilateral agreements allowing exportability.

Box 1 Sector-specific variations of social security rules

In sectors with generally binding collective agreements, the payment of second pillar pension contributions can be mandatory, also for posted workers. There are no other special rules for specific sectors.

Table 1.18 Relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Work in paid employment ('sponsored')*	Yes	Yes	Yes	Yes	Yes	Yes
Posted workers	No	No	No	No	No (however, the general OHS regime applies)	No
Intra-corporate transfers	Yes (no, if posted)	Yes (no, if posted)	Yes (no, if posted)	Yes (no, if posted)	Yes/no, if posted (but the general OHS regime applies)	Yes (no, if posted)
Seasonal workers	Not applied	–	–	–	–	–
Temporary agency workers	Yes (no, if posted)	Yes (no, if posted)	Yes (no, if posted)	Yes (no, if posted)	Yes/no, if posted (but the general OHS regime applies)	Yes (no, if posted)
High-level professionals	Yes	Yes	Yes	Yes	Yes	Yes
Self-employed	No, if posted (otherwise as nationals)	No	No	No, if posted	No	No, if posted (otherwise as nationals)

Note: * This category is added (see original manuscript).

Source: Author's analysis, 2022.

Box 2 **Changes during Covid-19**

The Netherlands did not introduce special provisions in the area of social security. Third-country nationals working in companies were taken into account in the calculations of the government scheme for preserving employment (NOW). This scheme was introduced to avoid layoffs. However, the impression is, because migrant labour mainly works temporarily, that many migrants became unemployed.

Description of the Dutch system

1. Overview of social security rights of short-term third-country-national migrant workers

All persons (EU citizens and third-country nationals) legally staying in the country and working in the Netherlands are treated in the same way as regards social security as resident Dutch nationals. There are some restrictions for those recently arrived (less than five years). Posted workers are excluded from the social security system as they remain under the social security of the posting country.

The social security system is composed of (a) employee insurance schemes and (b) national insurance schemes. The employee insurance provisions are meant for sickness pay, long-term disability and unemployment benefits. These provisions apply regardless of nationality, with no separate eligibility conditions, differences in level of benefits, or any differentiated duration of benefits for residing third-country workers. Besides, sickness and disability benefits do not require any prior periods of contribution and can be exported to third countries, based on bilateral agreements allowing exportability.

Third-country nationals cannot invoke periods fulfilled in their home country to qualify for unemployment benefits and nationals residing in third countries cannot claim Dutch unemployment benefits. Third-country nationals on holiday still receive unemployment benefits (abroad). However, if a person remains abroad for a longer period, the unemployment benefit is no longer paid and after six months, all remaining rights are lost if they return and the calculation of unemployment rights starts from zero. The national insurance provisions cover first pillar pensions, survivors and child benefits and general health care. The old age, survivors and child benefit national insurance schemes generally cover all residents, including third-country citizens legally residing in the Netherlands. Both schemes are financed mainly from contributions from insured persons and, in case of insurance schemes for employed persons, from employers. For the old age and survivor's insurance schemes contributions, calculated as a percentage of the annual wage or income, have to be paid. General health care insures all residents, including foreign citizens legally residing in the Netherlands, regardless of income.

2. Differences in social security rights of different categories of short-term TCN migrant workers

(i) Third-country-national seasonal workers

The official policy is that the country does not rely on seasonal workers from third countries and thus does not need specific policies in the area of social security. The

country attracts EU citizens for such short-term work.¹ Any seasonal worker will be treated in the same way as other third-country nationals.

(ii) Third-country-national posted workers

A foreign service provider must notify the Social Insurance Office (SVB) in advance about where, when and with which employees work is performed in the Netherlands. The notification concerns proof of registration in the national social security system, an A1 statement or other proof of documents on the payment of social security contributions in the country of issue, the name of a contact person established in the Netherlands, and the name of the person responsible for paying wages. The coordination of social security for third-country nationals is the same as for EU citizens; in other words, social security is the responsibility of the country where the A1-form was issued.

(iii) Third-country-national temporary agency workers

For temporary agency workers posted to a Dutch user undertaking the same regime applies as mentioned under point b (for posted third-country nationals).

3. Conditions for obtaining different social security rights

Old-age (in fact, the first-pillar pension scheme), survivors and child benefit national insurance schemes generally cover all residents, including third-country citizens legally residing in the Netherlands. After payment of contributions for at least one year, the exportability of first-pillar pension benefits is ensured, although there may be restrictions as regards the exportable rate, while only years of residence and insurance count in the calculation (2 per cent accumulated rights per year). This applies also to nationals who have lived abroad (a reduction of 2 per cent per year living abroad).

As a fallback, there is a social assistance system for people legally residing in the Netherlands who do not have sufficient means or are in danger of falling into that situation to provide for their necessary living costs. Such people must first claim any other insurance benefits or special social provisions available before they are entitled to the benefit. EU and non-EU foreigners residing in the Netherlands for less than three months and persons residing abroad cannot claim public assistance.

1. 'In contrast to countries such as France and Italy, this scheme is not currently being used in the Netherlands, because a priority working population – either in the Netherlands or in the EU – is considered to be present', p. 90. <https://www.clingendael.org/publication/gedeeld-belang-bij-circulaire-migratie>

4. Portability of benefits between host country and country of origin

Until 2000, the system in the Netherlands allowed the export of most benefits, also for third-country workers, except for public assistance (social protection) and unemployment benefits. The Benefit Restrictions (Foreign Residence) Act that came into effect on 1 January 2000 limits the right to export benefits for third-country nationals to countries with which bilateral agreements have been made that enable benefit export. The government reached agreements with most of the countries with large numbers of claimants. The conditions formulated include issues such as identity, death, civil status, family situation, work, income, address, training, detention and health position of the claimant and their family members. In the past decade, further changes have restricted the level of benefits payable to people residing outside the EU. For instance, for people who have left the Netherlands, levels of family benefits and parts of disability insurance have been adjusted to the costs of living in the third country of residence.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

A wage threshold applies for certain categories of highly skilled third-country nationals or for paid employment. This continued during the Covid-19 period. It was announced, however, that the IND will handle the situation flexibly and not revoke residence permits if people temporarily receive lower wages or become unemployed. No other information is available on special provisions.

6. Overview of enforcement and monitoring

Compliance control in the area of social security is handled by the Social Insurance Office (SVB). Third-country nationals are handled in the same way as all other residents. Until some years ago, the SVB acted mainly as an administration. Until 1 March 2020, posted workers were registered at the SVB only if they had an A1 declaration. In recent years, the institution has developed its compliance and enforcement activities (for instance, acting against letterbox firms).

19. Norway

Kristin Alsos

Norway has a universal social insurance scheme administered by the Norwegian Labour and Welfare Administration. Membership of the scheme is the key to eligibility for rights and is based on residence or employment. As a rule all people who work in Norway have compulsory membership and the right to statutory benefits. The scheme is financed by contributions from employers, employees and the state. As the contributions of self-employed people are lower, they do not have the same statutory rights, unless they take out additional voluntary insurance.

Box 1 Changes during the Covid-19 pandemic

Changes in social security during the Covid-19 pandemic are not related to third-country nationals as such, but depend on what category social security recipients belong to. For instance, benefits for employees that have been laid off have been increased and benefits to the self-employed and freelancers have been extended.

Table 1.19 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Depends on bilateral agreement with state of origin	Depends on bilateral agreement with state of origin	Depends on bilateral agreement with state of origin	Yes		Depends on bilateral agreement with state of origin
Intra-corporate transfers	Depends on bilateral agreement with state of origin	Depends on bilateral agreement with state of origin	Depends on bilateral agreement with state of origin	Yes		Depends on bilateral agreement with state of origin
Seasonal workers	Yes	Yes	If conditions of being a job-seeker are fulfilled*	Yes	Yes	Yes
Temporary agency workers	Yes	Yes	If conditions of being a job-seeker are fulfilled	Yes	Yes	Yes
High-level professionals	Yes	Yes	If conditions of being a job-seeker are fulfilled	Yes	Yes	Yes
Self-employed	Yes	Yes	No, unless voluntarily insured	Yes	No, unless voluntarily insured	Yes

Note: * The condition is fulfilled if the person is ready to take up any work (paid in accordance with collective agreements or custom), anywhere in Norway, regardless of whether it is part-time or full-time, and ready to participate in labour market measures.

Source: Author's analysis, 2022.

Description of the Norwegian system

1. Overview of social security rights of short-term third-country-national migrant workers

The social security system is not directly linked to the legal grounds for granting a residence permit in Norway. Social security is regulated by the National Insurance Act of 28 February 1997 no. 19. The main rule is that anyone resident in Norway or who takes up work here is a member of the National Insurance Scheme (see Section 2.1 and 2.2). Third-country nationals working in Norway will therefore, as a starting point, be members from their first day of work. Special regulations apply to posted workers from countries with which there is a bilateral agreement (see below). If someone does not pay taxes in Norway, their stay is limited to a maximum of three months and they are covered by satisfactory benefits by the social security system of another country, their employer or insurance, they will not be covered by the Norwegian national insurance scheme.

If workers are not covered by the scheme, they will not have the right to medical assistance, pension rights, and compensation when not being able to work, including sick pay.

The right to social assistance is regulated by the 2009 Act on Social Services. The act covers all persons resident in Norway. Further rules are contained in the administrative regulations, which state that persons who are not Norwegian citizens and who do not have an abode are not entitled to individual services, with the exception of information, advice and guidance. If someone is unable to provide for their subsistence, however, they are entitled to financial benefits and assistance in finding temporary accommodation. Assistance is provided until the person in question can be expected to receive assistance from their home country. There are a number of exceptions. First, there might be international public agreements that state otherwise. Second, victims of human trafficking have special protection. Following from the Insurance Act section 8-3, these persons might be granted a limited right to residence, meaning that they also will be covered by social assistance. The third and final exception concerns people who have the right to stay while awaiting a decision on a residence application or complaint.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

If there is an agreement between the sending state and Norway, special rules apply to posted workers. They may be exempted from the main rule if they provide documentation from the social security authorities in the country of origin that they are covered by the system there. Outside the EU/EEA, such agreements exist with the following countries: Australia, Bosnia and Hercegovina, Canada, Chile, India, Israel, Montenegro, Serbia, Switzerland and the United States. For workers posted from countries where no totalisation agreement exists, workers will be covered by the social security scheme.

3. Conditions for obtaining different social security rights

In order to receive financial benefits under the National Insurance Act, it does not matter whether the person in question has a social or financial need to receive the benefit. If the individual situation is as described in the regulation, the person in question is entitled to receive the benefit. The level of benefit is based on the principle that the individual should be able to maintain a certain standard of living. Past income is therefore decisive. Several of the benefits in the National Insurance Act are related to loss of income due to illness. People with social problems fall outside the National Insurance Act, but may be entitled to financial social assistance in accordance with the rules of the Social Services Act.

4. Portability of benefits between the host country and the country of origin

Whether benefits are portable to the country of origin depends on the type of benefit and whether there exists a bilateral agreement between Norway and the country of origin. If a person is to live permanently in the country of origin, and there is no bilateral agreement, full portability will often depend on having lived in Norway for at least 20 years. If the period is shorter, only part of the benefit is portable. The main rule concerning sick pay is that it is not portable outside the EU/EEA area.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Skilled workers temporarily laid off were able to stay in Norway as long as their permit is valid. They may receive unemployment benefits from Norway. There has, however, been some discussion on whether these workers are entitled to unemployment benefit. One condition for receiving benefit is that the worker must be seeking a job, meaning that they should take any job anywhere in Norway if this is offered at a wage level equal to the one in the collective agreement covering this kind of work. As the permit is linked to a specific position or industry, the condition of being a job-seeker is not considered fulfilled.

6. Overview of enforcement and monitoring

The social security system is trust-based, and the Norwegian Labour and Welfare Administration (NAV) makes their decisions based on the information provided by the social security recipient. The recipient is obliged by law to provide correct information. Abuses may come to light in a number of ways, such as through case handling, cooperation with other authorities, register analyses and tip-offs.

20. Poland

Izabela Florczak

The Polish social insurance system provides for four different types of insurance: accident insurance, sickness and maternity insurance, pension insurance, and disability pension insurance. Health insurance is organised under a separate scheme managed by the National Health Fund. According to the provisions of the Polish social insurance system, all persons who are, among other things, employees, workers, contractors and persons running non-agricultural businesses are subject to mandatory pension and disability pension insurance. These forms of insurance (apart from special cases) also apply to foreigners who work in Poland. People who do not satisfy the conditions for compulsory pension and disability pension insurance have the right to join this insurance voluntarily.

Box 1 Summary of the table

The Social Insurance System Act (13 October 1998; Journal of Laws 2022, item 1009 as amended) makes the payment of social insurance contributions dependent on citizenship, place of residence or stay, depending on the nature of the stay. Non-permanent residence excludes insurance coverage unless otherwise specified in an international agreement.

Table 1.20 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No	No	No	No	No	No
Intra-corporate transfers	Yes	Yes	No	Yes	Yes	It depends*
Seasonal workers	Yes	Yes	No	Yes	Yes	It depends*
Temporary agency workers	Yes	Yes	No	Yes	Yes	It depends*
High-level professionals	Yes	Yes	Yes	Yes	Yes	It depends*
Self-employed	Yes	Yes	No	Yes	Yes	It depends*

Notes: * When it comes to child benefits, the situation of particular migrant worker depends both on their nationality and the type of benefit (benefits from the social security system or the social system). Entitlements to family benefits are granted on the same basis. Foreigners working in Poland enjoy social insurance benefits in the event of childbirth, including in particular maternity allowance, insofar as they are subject to the social security system.

Source: Author's analysis, 2022.

Box 2 Sector-specific variations of social security rules

In Poland there is no differentiation in terms of sectoral variations with regard to social security rules. The only difference is that high-level professionals are subject to unemployment insurance.

Description of the Polish system

1. Overview of social security rights of short-term third-country-national migrant workers

The social insurance system distinguishes between:

- pension insurance;
- disability insurance;
- sickness and maternity insurance (known as sickness insurance); and
- insurance for accidents at work and occupational diseases (known as accident insurance). Health insurance, unemployment insurance (benefits) and social insurance (benefits) are covered by separate schemes.

An employer who employs a foreigner is obliged to pay social security contributions. Their level will depend on the gross remuneration of the employee or contractor. The amount of the contribution is calculated according to the same rules as for Poles.

There are some cases in which it is not necessary to pay social security contributions for foreigners. They include:

- foreigners whose residence on the territory of Poland is not permanent (the notion of ‘permanent residence’ should be understood as residence unchanged during a given period) and who are employed in foreign diplomatic representations, consular offices, missions, special missions or international institutions (unless international agreements provide otherwise);
- foreigners and Polish citizens residing permanently abroad, employed by Polish entities, whose place of work is beyond the borders of Poland.

Depending on the basis of employment (including whether the work is carried out as self-employment), both contributions and benefits vary.

All migrant workers, if they are covered by social security, have the same social security obligations and entitlements as Poles.

All insured persons are entitled to social security benefits depending on their individual situation. These include:

(i) in respect of sickness and maternity:

- sickness allowance,
- maternity allowance,
- care allowance,
- compensatory allowance,
- rehabilitation benefit;

(ii) in respect of a long-term incapacity for work:

- disability pension,
- training pension;

(iii) in respect of old age:

- old-age pension,
- nursing supplement to old-age pension;

(iv) in respect of accidents at work and occupational diseases:

- lump-sum compensation,
- benefits in respect of sickness, long-term incapacity for work and the death of a breadwinner,
- dentist services and prophylactic vaccinations,
- refund of costs incurred in respect of the purchase of orthopaedic equipment,
- refund of cost of tests required to determine the content of alcohol, narcotic drugs or psychotropic substances in the body.

As previously mentioned, the public health care system is organised separately from the social security system. A person covered by public health insurance (obligatory for all occupationally active persons) has the right to all its benefits. And public health insurance is the system responsible for the public funding of:

- preventive services,
- diagnostic services,
- medical services,
- rehabilitation services,
- provision of medicines, orthopaedic items and aids.

Unemployment insurance in Poland functions as unemployment benefits. Some short-term third-country-national migrant workers do have a right to gain the status of unemployed persons. They include:

- workers who hold a temporary residence and work permit;
- workers who have temporary residence and work permits and are on the management board of an enterprise, provided that immediately prior to their registration as unemployed they were employed in Poland for a continuous period of at least six months;
- foreigners holding a visa issued for the purpose of work in Poland provided that immediately prior to registration as unemployed they were employed in Poland for a continuous period of at least six months.

Differences regarding eligibility for child benefit arise from the different types of benefits. If a third-country national is subject to sickness insurance, they are entitled to all maternity benefits. In addition to such benefits, however, there is the most common social benefit in Poland, the so-called '500+' benefit, which pays 500 PLN for each child (person under 18). Foreigners who are parents or care givers are also entitled to this benefit and (in general):

- (i) the provisions on the coordination of social security schemes shall apply to them;
- (ii) this obligation arises from bilateral international social security agreements binding the Republic of Poland,
- (iii) they must hold a temporary residence permit for the purpose of highly qualified employment,
- (iv) they hold a residence card with the indication 'access to the labour market',

-
- (v) they are residing on the basis of a temporary residence permit for the purpose of work within the framework of an intra-corporate transfer, or for the purpose of long-term mobility as a manager, specialist or trainee employee within the framework of an intra-corporate transfer;
 - (vi) they are resident in Poland for the purpose of short-term mobility as a manager, specialist or trainee in the context of an intra-corporate transfer.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

Under Polish law, foreign nationals whose residence in Poland is not permanent are not subject to social insurance, unless international agreements provide otherwise. Therefore, unless nothing else follows from social security agreements, third-country nationals posted to Poland are not subject to social insurance. The consequence of this is that there are no grounds for third-country nationals posted to Poland to benefit from compulsory health insurance.

The situation of third-country-national seasonal workers and temporary workers does not differ from the general situation.

3. Conditions for obtaining different social security rights

The right to sickness benefit from sickness insurance is acquired after 30 days of uninterrupted sickness insurance. In the case of maternity and care benefits, no waiting period applies. These benefits are payable from the date of registration for sickness insurance.

Unemployment benefits, on the other hand, are granted to persons who have lost their job and then registered with the labour office and presented documents showing that they have been in work for at least 365 days in the past 18 months and have received a salary of at least the minimum wage.

All migrant workers have the same rights as Polish citizens.

4. Portability of benefits between host country and country of origin

The portability of benefits is regulated by the relevant bilateral international agreements. Because of the scale of employment in that case, the agreement used most frequently is the one between Poland and Ukraine. The point in this case is that periods of insurance registered in one jurisdiction may be counted towards insurance entitlements in the other.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

During the Covid-19 pandemic short-term third-country-national migrant workers did not gain any new/specific social security rights.

6. Overview of enforcement and monitoring

The Social Insurance Institution (ZUS) is monitoring social insurance system and prepares a study which analyses data on foreigners subject to social insurance in various cross-sections. It presents data on foreigners subject to retirement and disability insurance, as well as sickness insurance. It looks at changes in the number of foreigners and various characteristics of foreigners, such as citizenship, sex, age, place of residence, place of residence of contributor, and insurance entitlement.

Other data include benefits paid by the Social Insurance Institution to foreigners, as well as the account balance of insured foreigners.

21. Portugal

Francisco Xavier Liberal Fernandes and Duarte Abrunhosa Sousa

Portugal's legal system deals with the migratory flows of third-country-national workers in a number of ways. This is strongly influenced by migration movements originating in countries with Portuguese as an official language. The protection regime, although not intuitive, affords some social protection to these workers.

Box 1 Sector-specific variations of social security rules

Third-country nationals resident in Portugal commonly have the same rights and duties as nationals. Whether employed or self-employed, third-country nationals have the right to social security. In the case of workers with an employment contract, the employer must register them and pay social security contributions. Self-employed workers must register their activities with the tax authorities and are bound by the social security scheme for self-employed workers. Equal treatment as regards social security thus depends on workers' legal residence in Portugal.

Table 1.21 Overview of the relationship between form of migration and entitlement to a particular social security service

TCN categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Children benefits
Posted workers	Yes	Yes	Yes	Yes	No	No
Intra-corporate transfers	Yes	Yes	Yes	Yes	No	No
Seasonal workers	Yes	Yes	Yes	Yes	No	No
Temporary agency workers	Yes	Yes	Yes	Yes	No	No
High-level professionals	Yes	Yes	Yes	Yes	No	No
Self-employed	Yes	Yes	No	Yes	No	No

Source: Authors' analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

Since 1 January 2020, a Social Security Identification Number (NISS) has been given on the spot to foreign citizens embarking on activities under the schemes for employees, domestic service workers or independent workers. This process facilitated the registration of these workers during the pandemic.

Description of the Portuguese system

1. Overview of social security rights of short-term third-country-national migrant workers

Portugal's legal system deals with the migratory flows of third-country-national workers in a number of ways. This is strongly influenced by migration movements originating in countries with Portuguese as an official language. The protection regime, although not intuitive, affords some social protection to these workers, even if they are in the country only short-term.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

Third-country-nationals in Portugal commonly have the same rights and duties as nationals. Equal treatment as regards social security depends on legal residence.

(ii) Third-country-national posted workers

Workers who are posted to work in Portugal, as well as their employers, are required to be covered by general Portuguese social security, unless they can prove that they are covered by a compulsory social protection scheme in the sending country. The same applies to self-employed workers. According to Art. 24 of the Social Security Contribution Code, workers who perform paid work under an employment contract in accordance with the provisions of the Labour Code are mandatorily covered by the general regime. In addition, Art. 25 of the Code states that posted workers from Portugal are considered, in particular, to be covered by the general regime, without prejudice to the provisions of specific legislation and international instruments by which Portugal is bound.

Posted workers remain subject to their national social security system and therefore benefit from the same rights as other workers in the country from which they were posted, including those resulting from exceptional measures approved within the scope of the Covid-19 pandemic, namely: (i) sickness allowance resulting from prophylactic isolation imposed by the health authorities; (ii) exceptional family support for employees; and (iii) assistance to children/grandchildren because of isolation imposed by the health authorities

(iii) Third-country-national temporary agency workers

Temporary workers are entitled to have their social security contributions paid by the temporary work agency. The agencies are also obligated to ensure that workers receive medical, medication and hospital treatment, if they do not receive the same treatment in the host country, by means of insurance that guarantees payment of these expenses.

3. Portability of benefits between host country and country of origin

Portability depends on bilateral agreements signed by Portugal with other countries, such as Argentina, Bolivia, Brazil, Cape Verde, Canada, Chile, Ecuador, El Salvador, USA, Philippines, Jersey, Guernsey, Alderney, Herm, Jethou and Man Islands, India, Marocco, Mozambique, Moldova, Paraguai, Tunisia, Ukraine, Uruguay and Venezuela.

4. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

No major changes were made with regard to social security in the context of Covid-19 for this type of worker, except for the simplification of registration, access to rights and information and extension of deadlines.

5. Overview of enforcement and monitoring

In addition to the courts, the situation of migrant workers is monitored by three public entities. The SEF (Foreigners and Borders Service), which controls entry and residence in Portugal; the ACT (Authority for Working Conditions), which supervises the fulfilment of legal, regulatory and conventional provisions on labour relations and working conditions, namely those related to security and health at work; and the ISS (Institute of Social Security), which is responsible for compliance with the rules on social security.

22. Romania

Felicia Rosioru

Equality is one of the key principles of the Romanian social security system. Third-country nationals with temporary residence permits for employment purposes are entitled to social security; they are also entitled to social assistance and protection (except for seasonal workers and posted workers). Posted ICT workers enjoy the same rights as citizens of EU Member States posted to Romania. As a general rule, proof of medical insurance is required for the issue of a Romanian visa.

Box 1 Sector-specific variations of social security rules

The social security system is established on a uniform basis. There are no sector-specific variations of social security rules. One exception is the construction sector, in which there are some tax exemptions. Also, the employer has to pay a supplementary contribution rate to the pensions scheme if working conditions entail a higher risk to workers' health and safety.

Table 1.22 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits*
Posted workers	No	No	No	No	No	Yes
Intra-corporate transfers	No	No	No	No	No	Yes
Seasonal workers	Yes	Yes	Yes	No	Yes	Yes
Temporary agency workers**	Yes	Yes	Yes	Yes	Yes	Yes
High-level professionals	Yes	Yes	Yes	Yes	Yes	Yes
Self-employed***	Yes	Yes	Yes	Yes	Yes	Yes

Notes: * Provided that the child lives in Romania; ** if not posted; *** only if their fiscal residence is established in Romania.

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

There were no particular issues concerning social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic. In Romania, medical care is provided free of charge in case of contagious diseases. The major general change concerned paid quarantine leave,¹ as the minimal contribution period (six months) was eliminated.

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1. Paid quarantine leave existed in Romania even before Covid-19 in the case of contagious disease. It is paid to workers who are not sick, but who have to stay at home in order to prevent the spread of a contagious disease. During Covid, the minimum contribution period (six month) was eliminated in order to enable all workers to benefit from the leave, if necessary.

Description of the Romanian system

1. Overview of social security rights of short-term third-country-national migrant workers

Until 2018, social security regulations provided insurance for third-country nationals only for workplace accidents, occupational diseases and unemployment benefits. Health insurance and pensions were not usually covered for short-term workers. The regulations provided that only foreigners whose residence or domicile is in Romania may benefit from social protection measures, parental leave, health insurance, paid medical leave and pensions under the same conditions as Romanian citizens. OUG No. 194/2002 on the legal regime of foreigners in Romania establishes the principle of equal treatment with Romanian citizens only for holders of the right of long-term residence² with regard to social security, assistance and social protection, and public health care.

The regulation was amended by Law No. 247/2018, establishing equal treatment with Romanian citizens for foreigners with the right of temporary residence, who are employed, registered unemployed or researchers with regard to employment and working conditions, access to education and vocational training, social security, social assistance and protection (except for seasonal workers and posted workers), public health care, global income tax deductions and tax exemptions, access to public goods and services, freedom of association, and employment agency services. Foreigners who have been employed in Romania or their descendants have the right to an old-age pension, invalidity pension and survivor benefits, even if they no longer live in Romania, under the same conditions as Romanian citizens or their descendants who no longer live in Romania.

Thus third-country-national holders of a temporary residence permit for employment purposes are entitled to social security, as well as social assistance and protection (except for seasonal workers and posted workers). Third-country-national posted and ICT workers enjoy the same rights as citizens of an EU Member State posted to Romania.

As a general rule, for a Romanian visa to be issued, third-country nationals must prove they have medical insurance.

To pursue professional activities in Romania (in the so-called 'liberal' professions) or economic activities – for example, small businesses (regulated by special laws) – a long-stay visa is issued, provided that (among other conditions) the third-country national has medical insurance for the duration of validity of the visa.

2. The right to long-term residence is granted to foreigners residing in Romania continuously for the past five years prior to the submission of the application.

Self-employed people have to register and to pay taxes and contributions only if their fiscal residence is established in Romania, according to guidelines issued by the Romanian Tax Authority (Agenția Națională de Administrare Fiscală 2021).

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) **Third-country-national seasonal workers**

Seasonal workers enjoy all the employment and social security rights associated with employee status. Romanian workers can perform seasonal work as daily labourers, who are not employees and enjoy only limited rights (related to minimum wage, working hours and workplace health and safety). This regime is applicable only to local workers – seasonal third-country-national workers work on the basis of full-time fixed-term employment contracts. Social assistance and protection are not granted to seasonal workers; if they ask for social assistance, their temporary residence permit will be revoked, provided that they were previously informed about this consequence.

(ii) **Third-country-national posted workers**

Posted third-country-national workers are bound by an employment contract prior to and during their posting with the posting undertaking; they do not have any employment relationship with the Romanian beneficiary of services ('host entity'). Therefore, as a general rule, the social security regime of their country of origin is applicable to third-country-national posted workers. Proof of medical insurance is mandatory.

Posted workers do not enjoy social assistance and protection in Romania; ICT workers asking for social assistance have their temporary residence permit revoked, provided that they were previously informed about this consequence.

(iii) **Third-country-national temporary agency workers**

The principle of equal treatment with the local workforce applies.

3. Conditions for obtaining different social security rights

Work is usually performed by third-country nationals in Romania as employees; the employer must retain mandatory taxes and social security contributions and pass them on. The contribution rate for health insurance is 10 per cent and for pensions 25 per cent, for employees and self-employed. There is mandatory insurance for employees for workplace accidents, occupational diseases, paid medical leave, maternity leave and unemployment benefits; the employer must pay a 2.25 per cent contribution rate calculated on the workers' gross wages. For health insurance, there must be at least six months' contributions in the 12 calendar months before incapacity occurred. No qualifying conditions apply

for emergency surgery, contagious diseases and in cases of tuberculosis or AIDS, however. At least 1 month of contributions confer the right to maternity benefits. Unemployment benefits are paid to registered unemployed persons who contributed for 12 months during the 24 months preceding their application.

4. Portability of benefits between host country and country of origin

Posted workers normally fall under the scope of EU Regulation 883/2004, as extended by EU Regulation 1231 of 2010.

There are bilateral agreements (Casa Națională de Asigurări de Sănătate (n.d.)) on free health assistance with Albania, Belarus, Bosnia and Herzegovina, Cuba, Israel, Korea, Lebanon, Macedonia, Moldova, Mongolia, Russia, Serbia, Syria and Turkey, and on social security with Albania, Armenia, Algeria, Canada, Korea, Israel, Quebec, Lebanon, Moldova, Russia, Turkey and Ukraine.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

There were no particular issues related to this topic. In Romania, medical care is provided free of charge in case of contagious diseases. The major general change concerned paid quarantine leave, as the minimal contribution period (six months) was eliminated.

6. Overview of enforcement and monitoring

The checks and formalities for short-term migrant workers are the same as for the local workforce.

23. Slovak Republic

Viktor Križan

When accessing social security benefits in the Slovak Republic, the main consideration is not whether the applicant is a citizen of the Slovak Republic, a foreigner or a migrant worker (short-term or longer), but usually the nature of the activity performed or the applicant's residence conditions.

Box 1 Sector-specific variations of social security rules

Slovak legislation does not contain sector-specific variations of social security rules that would apply to third-country nationals.

Table 1.23 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No (must be covered in the sending country)	No (must be covered in the sending country)	No (must be covered in the sending country)	Yes	No (must be covered in the sending country)	No (only if permanent or at least temporary resident)*
Intra-corporate transfers	No (must be covered in the sending country)	No (must be covered in the sending country)	No (must be covered in the sending country)	Yes	No (must be covered in the sending country)	No (only if permanent or at least temporary resident)
Seasonal workers	Yes	Yes	Yes	Yes	Yes	No (only if permanent or at least temporary resident)
Temporary agency workers	Yes, except if posted from abroad (then covered in the sending country)	Yes, except if posted from abroad (then covered in the sending country)	Yes, except if posted from abroad (then covered in the sending country)	Yes	Yes, except if posted from abroad (then covered in the sending country)	No (only if permanent or at least temporary resident)
High-level professionals	Yes	Yes	Yes, if they have employee status	Yes	Yes	No (only if permanent or at least temporary resident)
Self-employed	Yes	Yes, if they have compulsory insurance or have opted for voluntary insurance	No	Yes	Yes	No (only if permanent or at least temporary resident)

Note: * A permanent residence permit entitles foreign nationals to long-term residence in Slovakia, as well as journeys abroad and back. It is a more stable type of residence, which is granted to foreign nationals for a longer period than temporary residence. Foreign nationals with permanent residence enjoy the same rights and duties as all citizens of the Slovak republic in most areas of life (for example, employment, health care, social affairs, and participation in public life at regional level). There are 3 types of permanent residence: Permanent residence for five years; Permanent residence for an unlimited period; Long-term residence.

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

There was no discussion on third-country nationals and their rights during the Covid-19 pandemic in Slovakia. During the crisis period, however, social security contributions were deferred for employers and the self-employed. Third-country nationals had the same access to sickness insurance benefits as nationals if the relevant conditions were met.

Description of the Slovak system

1. Overview of social security rights of short-term third-country-national migrant workers

Slovak legislation does not contain special social security provisions applicable to short-term migrant workers.

Social security in Slovakia takes three basic forms:

- (i) social and health insurance,
- (ii) state social benefits, and
- (iii) social support.

The social insurance system in Slovakia comprises, apart from sickness insurance, pension insurance and accident insurance, also unemployment insurance, and insurance in case of an employer's insolvency (guaranteed insurance). The Social Insurance Agency disburses unemployment benefits, while the Job-Seekers Registry is administered by the Centre of Labour, Social Affairs and Family. Receipt of social insurance benefits is insurance with the Social Insurance Agency for the required period (social security contributions, whether compulsory or voluntary), as well as other conditions for specific benefits, regardless of form of residence in the Slovak Republic. Social insurance applies to employees or self-employed persons, the voluntarily insured and natural persons if they meet the relevant legal conditions. In general, employees with sickness, pension and unemployment insurance are entitled to a regular monthly benefit, regardless of nationality, should the relevant circumstances arise.

Public health insurance is, in general, mandatory for all persons with permanent residency in the Slovak Republic. Public health insurance is also compulsory for those who do not have permanent residency but who meet one of the conditions, which also include employment with an employer whose registered office is in the Slovak Republic or is self-employed there. If a third-country national wants to receive full health care, they must either be insured or pay for health care. Urgent health care will be provided without insurance, but the hospital or doctor has the right to demand payment for the costs incurred.

To be granted state social benefits, third-country nationals are required to meet the condition of permanent or temporary residence. If a third-country national resides in the Slovak Republic under the Act on the Residence of Aliens, they may also be entitled to material assistance if the other conditions are met.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) **Third-country-national seasonal workers**

Access to social security is not tied to a person's nationality, but to the nature of their economic activity (whether they are employees, compulsorily insured self-employed, or a voluntarily insured) and/or their residence in the Slovak Republic/residence permit in the Slovak Republic.

(ii) **Third-country-national posted workers**

According to the Act on Employment Services, the Office of Labour, Social Affairs and Family will grant an employment permit to a third-country national who is employed by an employer who has their registered office or the registered office of an organisational unit outside the Slovak Republic and who posts them on a contractual basis with a legal entity or a natural person to perform work in the Slovak Republic, based on an agreement on the number and professions of posted employees and the period of their posting with the legal entity or natural person to which the national of a third country will be sent. In this case, the Slovak employer will have the status of a user employer and will be able to manage and give instructions to the assigned employees (it will not involve the provision of services provided by a foreign employer).

Slovak social security regulations do not apply to workers posted from third countries.

(iii) **Third-country-national temporary agency workers**

Only an employee in an employment relationship can be temporarily assigned (be an employee of a temporary work agency), in this case therefore third-country nationals have the status of employee and social rights corresponding to this status.

3. Conditions for obtaining different social security rights

Access to social security is not tied to a person's nationality, but to the nature of their economic activity (whether they are employees, compulsorily insured self-employed, or a voluntarily insured) and/or their residence in the Slovak Republic/residence permit in the Slovak Republic.

4. Portability of benefits between host country and country of origin

There are no legal provisions that would entitle a third-country national to gain benefits that they are eligible for in their country of origin. Entitlement to benefits payable in the Slovak Republic would be subject to Slovak rules. The Slovak

Republic has concluded social security agreements with some countries, however (Australia, Montenegro, Israel, Japan, Canada, South Korea, North Macedonia, Russian Federation, Serbia, Ukraine, and Turkey), which may regulate selected aspects, such as the calculation of insurance periods.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Access to social security is not tied to a person's nationality, but to the nature of their economic activity (whether they are employees, compulsorily insured self-employed, or a voluntarily insured) and/or their residence in the Slovak Republic/residence permit in the Slovak Republic. It should be mentioned, however, that during the crisis period the payment of social security contributions for employers and the self-employed was postponed. Also, third-country nationals had the same access to sickness insurance benefits as nationals if the conditions were met.

6. Overview of enforcement and monitoring

If the relevant employment conditions for third-country nationals are not met they are considered to be working illegally. The employment of a third-country national who is staying on the territory of the Slovak Republic in violation of a special regulation (Act on Residence of Foreigners, Act on Asylum) and who performs dependent work is also deemed to be illegal.

Monitoring of illegal work and illegal employment is carried out (until 31 December 2022) by the Labour Inspectorate, the Labour, Social and Family Headquarters, and the Labour, Social and Family Offices. Since 1 January 2023 it has been the sole responsibility of the Labour Inspectorate.

Natural persons are obliged to prove their identity to the Labour Inspectorate, submit a document containing their social security identification number and justify their presence at the workplace. A natural person who is a third-country national is obliged to present a valid residence permit or other authorisation for residence.

The Labour Inspectorate assesses the risk of illegal employment of third-country nationals and regularly identifies sectors of economic activity in which illegal employment of third-country nationals is concentrated. The Labour Inspectorate monitors the illegal employment of third-country nationals, especially in risky industries. Every year by 1 July, the National Labour Inspectorate submits to the European Commission information for the previous calendar year on the number of inspections of illegal employment of third-country nationals in individual risk sectors, the percentage of inspected subjects from the number of employers in each risk sector and the results of inspections carried out in individual risk sectors.

24. Slovenia

Darja Senčur Peček

Slovenia has a strong compulsory social insurance system (pension and disability insurance, health insurance, parental insurance and unemployment insurance). The main applicable regulations are the Pension and Disability Insurance Act (ZPIZ-2); the Health Care and Health Insurance Act (ZZVZZ), the Parental Protection and Family Benefits Act (ZSDP-1) and the Labour Market Regulation Act (ZUTD). As a rule, coverage depends on the type of contract (employment or civil law) under which the work is performed. Self-employed people are also fully included in the compulsory social insurance system.

Box 1 Summary of the table

Third-country nationals who perform work in Slovenia on the basis of an employment contract (regardless of the form of migration) are included in Slovenia's compulsory social insurance system. The only exception are posted workers, who are, as a rule, insured in the country of origin. Third-country nationals who perform work on the basis of civil law contracts are, according to the general rules, included only in compulsory pension insurance and disability insurance (for disability and death resulting from an accident at work or occupational disease). A third-country national who performs an independent gainful activity in Slovenia as a sole proprietor or performs independent professional activity (self-employed) is compulsorily included in all four forms of social insurance. Conditions for social assistance are not fulfilled because a permanent residence permit and permanent residence are required. Third-country nationals are entitled to family benefits under the same conditions as Slovenian nationals, however, if they are temporarily living in Slovenia with their child.

Table 1.24 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	No	No	No	No	No	Yes
Intra-corporate transfers	No	No	No	No	No	Yes
Seasonal workers	Yes (employment contract) Not if civil law contract	Yes	Yes (employment contract) Not if civil law contract	No	Yes (employment contract) Not if civil law contract	Yes
Temporary agency workers	Yes	Yes	Yes	No	Yes	Yes
High-level professionals	Yes	Yes	Yes	No	Yes	Yes
Self-employed	Yes	Yes	Yes	No	Yes	Yes

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

Some changes were made in unemployment insurance benefits. In both waves of the pandemic, unemployment insurance benefits were granted to all domestic and foreign workers who lost their jobs because their employment contract was terminated for business reasons or because their fixed-term employment contract expired, even if they did not meet the other legal conditions for obtaining unemployment insurance benefits (for example, a certain period of inclusion in the insurance system). Finally, in February 2021 a special solidarity allowance of €150 was granted to all domestic and foreign workers who lost their jobs.

Description of the Slovenian system

1. Overview of social security rights of short-term third-country-national migrant workers

Third-country nationals who perform work in Slovenia on the basis of an employment contract are included in the entire Slovenian compulsory social insurance system (pension and disability insurance, health insurance, parental insurance and unemployment insurance). Third-country nationals have the same rights and obligations as domestic workers in the compulsory social insurance system. All workers (including third-country nationals) are thus insured against the risks of old age, disability, illness and injury outside work; injuries at work and occupational diseases, parenthood, and unemployment (general employment law contract regime).

Other third-country nationals who perform work on the basis of civil law contracts (either on the basis of a single permit, when possible,¹ or on the basis of a seasonal work permit) are, according to the general rules, included in compulsory pension insurance and disability insurance (for disability and death resulting from an accident at work or occupational disease) in Slovenia.² They are not included in other compulsory social insurance (general civil law contract regime). A third-country national who pursues independent gainful activity in Slovenia as a sole proprietor or performs an independent professional activity is compulsorily included in all four forms of social insurance (regime for self-employed).

Regarding consideration of periods of insurance and acquired rights of a third-country national in their country of origin the bilateral social security agreements concluded between Slovenia and these countries (such as Bosnia and Herzegovina (BiH), Serbia and North Macedonia) are applicable.³

Third-country nationals are entitled also to family benefits under the same conditions as Slovenian nationals (childbirth allowance, child allowance, large-family allowance) if they are temporarily living in Slovenia with the child. Nevertheless, only third-country nationals who have a permanent residence permit and permanent residence in the Republic of Slovenia are entitled to cash social assistance and other cash benefits from the social assistance system.⁴ Therefore, third-country nationals who perform work on the basis of a single residence and work permit, the work permit for workers from BiH and Serbia, or a work permit for seasonal work cannot obtain cash social assistance benefits.

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1. Seasonal work, training, individual services.
 2. The qualifying period for pensions is calculated depending on earnings.
 3. For a list of these agreements, see, for example: <https://zavezanec.zzs.si/wps/portal/portali/azap/prijava-odjava-sprememba-obvez-soc-zavarovanj/napotitev-na-delo-v-tujino> (31.08.2021).
 4. See the Social Assistance Payments Act (*Zakon o socialno varstvenih prejemkih, ZSVarPre*). The condition for obtaining a permanent residence permit is a five-year stay in Slovenia on the basis of a temporary permit.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) **Third-country-national seasonal workers**

There are no special rules for third-country-national seasonal workers. Social security rights depend on whether the work is performed on the basis of an employment or a civil law contract (see supra, Q1).

(ii) **Third-country-national posted workers**

As a rule, posted workers remain covered by the social security of the employer's country of registered office.⁵ This also explicitly follows from the bilateral agreements on social insurance that Slovenia has concluded with territorially close countries that are non-EU members, for example, with BiH, Serbia, Montenegro, and North Macedonia.⁶ Given that only shorter periods of posting from third countries are permitted under the ZZSDT, workers will be included in the social insurance of the country of the employer's registered office for the entire period of being posted to Slovenia.⁷ According to bilateral agreements, posted workers will be – during their stay in Slovenia – entitled to emergency medical services (as well as to medical services related to injuries at work and occupational diseases) according to Slovenian legislation, at the expense of the insurance carrier from the employer's country of residence.

(iii) **Third-country-national temporary agency workers**

There are no special rules for third-country-national temporary agency workers under the principle of equal treatment (see supra, Q1).

3. Conditions for obtaining different social security rights

The rights related to inclusion in the compulsory social insurance system on the basis of an employment contract shall begin to be exercised (as a rule) on the day of commencement of work agreed in the employment contract (see answer to Q1). For social assistance and children benefits see supra, Q1. Regarding unemployment insurance benefits, an unemployed person is entitled to benefits for a period of three months, provided that they have been registered in the insurance system

5. A condition for issuing a single permit for a posted worker is, among other things, that they are socially insured in the country from which they were posted. This social insurance must also include health insurance that covers at least emergency health services in the territory of Slovenia. Otherwise, the third-country national must have appropriate health insurance in Slovenia (Art. 45 Ztuj-2).

6. Moreover, such bilateral agreements are concluded with some other non-EU countries (USA, Canada, Argentina and so on).

7. The agreements mentioned stipulate (Art. 8) in relation to posted workers that the legislation of the country where the employer is established (and not the legislation of the country where they work) applies to them as regards social insurance for up to 24 months of work (with a possible extension for another 24 months).

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for at least 10 months (if under 30, they are entitled to benefits for 2 months if registered from 6 to 10 months).

4. Portability of benefits between host country and country of origin

Regarding consideration of periods of insurance and acquired rights of a third-country national in their country of origin the bilateral social security agreements concluded between Slovenia and these countries (for example, BiH, Serbia and North Macedonia) are applicable.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

The situation of third-country-national workers was also addressed in the so-called 'anti-coronavirus legislative packages' enacted to mitigate the effects of the Covid-19 pandemic. For the content of the enacted legislative measures see Box 3: Changes during Covid-19 above.

6. Overview of enforcement and monitoring

As a rule, inspections shall be carried out by the Social Affairs Inspection Service within the Labour Inspectorate of the Republic of Slovenia.

25. Spain

Óscar Contreras Hernández

Third-country nationals working in Spain will be included in the Spanish social security system. In fact, the validity of the initial residence and work permit is conditional on a worker's registration in that system. If they comply with the requirements, they will be entitled to social security benefits on the basis of equal treatment with national or local workers as regards health care, illness and temporary disability, as well as unemployment benefits, social assistance and family benefits. Because of the short duration of their employment, however, third-country nationals are often unable to access social security benefits, such as unemployment benefits (contributory), which in Spain requires 12 months of previous work. Intra-EU posted workers sent to Spain are not covered by Spanish social security because they remain in the social security system of the sending country during their posting.

Box 1 Sector-specific variations of social security rules

There is an important specific variation of social security rules applicable to posted workers of companies established in an EU/EEA country: during the period of providing services in Spain they must maintain their employment relationship with the posting company. Thus, regarding social security, the legislation of the state of origin will be applicable. The EU rules apply to third-country nationals with legal residence in an EU Member State, in accordance with the provisions of Regulations (EC) 1231/2010, 883/2004 and 987/2009 on the coordination of social security systems in the EU. In this sense, together with the residence or stay permit, workers must have the Portable Document (PD) A1 form that certifies the continuity of application of the social security legislation in their country of origin.

Employing workers posted from third countries in Spain who do not have legal residence and/or employment in another EU country constitutes a serious infringement by the employer with regard to foreigners (Art. 54 and 55 Law 4/2000)¹ and a serious infringement of labour law and work permit law (Art. 37 and 40 RDL 5/2000).² In any case, they have the right to health protection and health care under the same conditions as Spanish nationals.

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1. At the minimum grade the amount of the fine will be from €7,501 to €30,000.
 2. At the minimum grade the amount of the fine will be from €10,001 to €20,000.

Table 1.25 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers ³	No (covered in the sending country)	No (covered in the sending country)	No (covered in the sending country)	Yes	No (covered in the sending country)	No
Intra-corporate transfers	Yes, except if posted (covered in sending country)	Yes, except if posted (then covered in the sending country)	Yes, except if posted (then covered in the sending country)	Yes	Yes, except if posted (covered in the sending country)	Yes, except if posted
Seasonal workers	Yes	Yes	Yes	Yes	Yes	No (only if permanent or at least temporary resident)
Temporary agency workers	Yes, except if they are posted: covered in the sending country.	Yes, except if posted (then covered in the sending country)	Yes, except if posted (then covered in the sending country)	Yes	Yes, except if TCN is a posted worker	Yes, except if posted
High-level professionals	Yes	Yes	Yes	Yes	Yes	No (only if permanent or at least temporary resident)
Self-employed ⁴	Yes	Yes	No	Yes	Yes	Entitled if the third-country national and the children reside lawfully and permanently in Spain

Note: * The social security legislation of the country of origin must be applied to third-country-national posted workers by a company established in an EU country. In the case of posting by a company established outside the EU, Spanish social security legislation applies, although the agreements between Spain and the country in question must also be taken into account.

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

Exceptionally, several orders were passed to temporarily restrict non-essential travel from third countries to Spain, in line with European guidelines. The measures promoted by the Spanish government to contain the Covid-19 pandemic included the denial of entry of third-country nationals, except for holders of a long-stay visa issued by an EU Member State, cross-border workers, health professionals or care workers on their way to or returning from work, and transport workers in transit (Article 1 of Order INT/356/2020 of 20 April). However, there were no changes related to social security protection for third-country-national workers during the Covid-19 pandemic, who continued to receive the social protection offered by the Spanish system to those included in the system as employed workers.

3. Social security legislation of the country of origin must be applied to third-country-national posted workers by a company established in an EU country. In the case of posting by a company established outside the EU, Spanish social security legislation applies, although the agreements between Spain and the country in question must also be taken into account.
4. Third-country nationals with a permit for self-employment must fully respect Spanish social security legislation. They are usually obliged to pay social contributions, but do not benefit from all social benefits conferred on employees.

Description of the Spanish system

1. Overview of social security rights of short-term third-country-national migrant workers

The main legal norm that regulates the rights and obligations in terms of social security in Spain Royal Legislative Decree 8/2015 (Social Security Law) which, in its article 7, determines that foreigners who reside or are legally in Spain will be included in the social security system, provided that they carry out their activity in national territory. If third-country-national workers comply with the requirements set out in this legal framework, they will have access to all the social benefits offered by the system under equal conditions with Spanish workers, such as health care, illness, temporary disability, as well as unemployment benefits, social assistance and family benefits.

In fact, the effect of the initial residence and work permit is conditional on the worker's registration in the Spanish social security system by the employer. When this is valid, third-country nationals are subject to the Spanish social security system, meaning that from then on their employer must pay contributions on their behalf and these workers will have the right to access the benefits and services offered by the system on equal terms with Spanish employees, as there is full equality between them and foreigners who provide services in Spain legally, including social services and benefits (Article 14 of Law 4/2000).

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

In Spain, third-country nationals who perform seasonal work (short period) are often not entitled, for example, to unemployment benefits or other social security benefits. This is because of the short duration of their work in Spain; they do not usually qualify for benefits that are designed for beneficiaries who contribute for a longer period to the system (12 months for contributory unemployment benefits, for example). In any case, there are no differences in Spain in relation to eligibility for access to social security benefits for third-country-national workers. If they meet the requirements, they will be entitled to social security benefits under equal treatment with national or local workers such as health care, illness, temporary disability, social assistance and family benefits.

(ii) Third-country-national posted workers

During their posting to Spain, posted workers shall maintain their employment contract and social security status with the company that posted them. Exclusively with regard to posting from non-EU/EEA countries, in the case of an applicable international instrument of social security, a posting certificate must be obtained from the competent authorities of the country of origin certifying that the worker

remains subject to the social security legislation of that country. In this case, the effectiveness of the temporary residence and work permit will take place at the time of the worker's legal entry into Spain. On the other hand, if there is no international legal social security instrument, the residence and work visa that is issued entitles the worker to enter and stay for a maximum period of three months, and to start work activity and registration in the social security system during the three months following legal entry into Spain. In this case, the company must designate, by means of a public document, a representative in Spain for the purpose of complying with social security obligations.

(iii) Third-country-national temporary agency workers

In Spain there are no differences in social security rights and obligations and no different categories for the access of third-country-national temporary agency workers. They must comply with the general requirements set out in the General Social Security Law for all other workers.

3. Conditions for obtaining different social security rights

The main legal norm that regulates social security rights and obligations in Spain is Royal Legislative Decree 8/2015 (Social Security Law) which, in its article 7, determines that foreigners who reside or are legally in Spain will be included in the social security system, provided that they carry out their activity in national territory. If third-country-national workers comply with the requirements set out in this legal framework, they will have access to all the social benefits offered by the system under equal conditions with Spanish workers, such as health care, illness, temporary disability, as well as unemployment benefits, social assistance and family benefits. Although there is formal equality, it is true that, due to the short duration of third-country nationals' work they have difficulties in accessing benefits, such as unemployment benefits, which require a minimum period of contribution to the Spanish system of 12 months.

4. Portability of benefits between host country and country of origin

Spain has signed bilateral international agreements with 23 countries, the aim of which is to ensure that workers who are nationals of signatory states and who move for professional reasons do not suffer any detriment to their social security rights, nor are they subject to unjustified double protection. To this end, rules are introduced to remove obstacles to the application of the different legislations, to connect them with each other and to harmonise relations among the different social security administrations.⁵

5. To access to bilateral agreements signed between Spain and other countries, please see: <http://www.seg-social.es/wps/portal/wss/internet/InformacionUtil/32078/32253?changeLanguage=en>

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Several orders were passed to temporarily restrict non-essential travel from third countries to Spain, in line with European guidelines. The measures promoted by the Spanish government to contain the Covid-19 pandemic included the denial of entry of third-country nationals, except for holders of a long-stay visa issued by an EU Member State, cross-border workers, health professionals or care workers on their way to or returning from work, and transport workers in transit (Article 1 of Order INT/356/2020 of 20 April). There were, however, no changes related to social security rights or protection for short-term third-country-national migrant workers during the Covid-19 pandemic, who continued to receive the social protection offered by the Spanish system to those included in the system as employees.

26. Sweden

Andrea Iossa and Niklas Selberg

Rights to social security benefits in Sweden are based either on residence or work and not on migration law categories, nationality or the like. The duration of residence and employment in Sweden decides which social risks the migrant worker is insured against. For shorter periods of work by third-country nationals posted from outside the EU the social security regime of the country of origin applies. Sweden has concluded bilateral social security agreements with several countries, covering different rules, which may affect rights to different benefits. The social security institution usually asks for an A1 form, but usually does not investigate its validity.

Box 1 Sector-specific variations of social security rules

The Swedish social security system is characterised by the principle of universalism as regards the resident population. The right to different social benefits depends on either domicile or work. The public social security scheme does not vary from sector to sector. Sectoral collective bargaining is an important form of labour market regulation and agreements may provide different standards, depending on sector.

Table 1.26 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Yes	No	No	Yes	Yes	Yes
Intra-corporate transfers	Yes	Yes	Yes	Yes	Yes	Yes
Seasonal workers	Yes	Yes	Yes	Yes	Yes	Yes
Temporary agency workers	Yes	Yes	Yes	Yes	Yes	Yes
High-level professionals	Yes	Yes	Yes	Yes	Yes	Yes
Self-employed	Yes	Yes	Yes	Yes	Yes	Yes

Source: Authors' analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

Access to unemployment benefits were broadened during the Covid-19 pandemic. In effect, membership criteria and the qualifying period as regards hours worked were lowered, making more people eligible for unemployment benefits. People belonging to a risk group were afforded a particular social security benefit when staying home from work. The waiting period for sickness benefits was suspended. A doctor's certificate was not needed for the first 15 days of sick leave. While changes to social security were not aimed at migrant workers, restrictions on mobility might have affected migrant workers' ability to enter Sweden.

Description of the Swedish system

1. Overview of social security rights of short-term third-country-national migrant workers

Rights to social security benefits in Sweden are based either on residence or work, as defined by the applicable code, and not on migration law categories, nationality or the like. The duration of residence and employment in Sweden determines what risks the migrant worker is insured against. If the residence period is intended to be one year or more, the migrant is considered from day one to be residing in Sweden and therefore has the right to residence-based benefits, such as child allowance, housing allowance and parental benefits at minimum and basic levels (ch. 5 act 2010:110). Work-based benefits apply from the start of employment and include, for example, occupational injury compensation, parental benefit at the sickness benefit level and basic level, income related activity compensation and sickness compensation, and rehabilitation allowance (ch. 6 act 2010:110). In the case of a work permit for less than a year the migrant worker does not have a right to subsidised health care, therefore other private insurance coverage is required.

Workers posted from outside the EU for a period shorter than one year do not qualify for either work-based or residence-based benefits (ch. 5 sect. 3, ch. 6 sect. 4, Act 2010:110). If the stay in Sweden is supposed to be longer than a year, the worker will have a right to residence-based benefits. If the assignment in Sweden can be assumed to be longer than a year, the work is to be considered to have been performed in Sweden and to grant rights to work-based benefits. For shorter periods of work by third-country nationals posted from outside the EU the social security regime of the country of origin applies.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

High level professionals, under certain conditions, are covered by a number of social security schemes. They must present three months of private health insurance in order to be granted a permit. Subsidised health care demands registration and intent to reside more than one year.

Pension contributions to the national public system are made by the employer. The right to a pension depends on the duration of residence in Sweden and the level of earnings. It takes a long time to qualify for an adequate pension. Collective bargaining agreements may contain rules on pensions. Unemployment insurance demands a fixed domicile in Sweden and availability for work. Earnings-related benefit depends on membership of the unemployment insurance fund and having worked for a qualifying period. The right to basic security in the form of social assistance depends on holding a residence permit valid for at least one year and intending to reside in Sweden for at least one year. The right to insurance against accidents at work while working depends on possession of a work permit. The right to child allowance and flat-rate and low-level cash benefits under parental

insurance depend on whether the applicant intends to reside in Sweden more than a year and holds a residence permit. The right to belong to the earnings-related parental insurance system depends on whether the applicant is working and holds a work permit.

Self-employed persons are, under certain conditions, covered by a number of social security schemes. They have a right to subsidised health care if holding a valid residence permit and legally domiciled in Sweden. Subsidised health care demands registration and intent to reside more than one year. Contributions must be made to the public pension system. The right to a pension depends on duration of residence in Sweden and amount of earnings. It takes a long time to qualify for an adequate pension. Unemployment insurance demands a fixed domicile in Sweden and availability for work. Earnings-related benefits depend on membership of the unemployment insurance fund and having worked for a qualifying period. The right to basic security in the form of social assistance depends on holding a residence permit valid for at least one year and intending to reside in Sweden for at least one year. The right to insurance against accidents at work while working depends on possession of a work permit. The right to child allowance and flat-rate and low-level cash benefits under parental insurance depend on whether the applicant intends to reside in Sweden more than a year and holds a residence permit. The right to belong to the earnings-related parental insurance system depends on whether the applicant is working and holds a work permit.

Intra-corporate transferees are, under certain conditions, covered by a number of social security schemes. They must present private health insurance for stays shorter than one year. Subsidised health care demands registration and intent to reside more than one year. Pension contributions to the national public system must be made by the employer. The right to a pension depends on duration of residence in Sweden and amount of earnings. It takes a long time to qualify for an adequate pension. Collective bargaining agreements may contain rules on pension. Unemployment insurance demands a fixed domicile in Sweden and availability for work. Earnings-related benefits depend on membership of the unemployment insurance fund and having worked for a qualifying period. The right to basic security in the form of social assistance depends on holding a residence permit valid for at least one year and intending to reside in Sweden for at least one year. The right to insurance against accidents at work while working depends on possession of a work permit. The right to child allowance and flat-rate and low-level cash benefits under parental insurance depend on whether the applicant intends to reside in Sweden more than a year and holds a residence permit. The right to belong to the earnings-related parental insurance system depends on whether the applicant is working and holds a work permit.

(i) Third-country-national seasonal workers

Third-country-national seasonal workers must present private health insurance. Subsidised health care demands registration and intent to reside more than one year. Pension contributions to the national public system must be made by the employer. The right to a pension depends on duration of residence in Sweden and amount of earnings. It takes a long time to qualify for an adequate pension.

Collective bargaining agreements may contain rules on pension. Unemployment insurance demands a fixed domicile in Sweden and availability for work. Earnings-related benefits depend on membership of the unemployment insurance fund and having worked for a qualifying period. The right to basic security in the form of social assistance depends on holding a residence permit valid for at least one year and intending to reside in Sweden for at least one year. The right to insurance against accidents at work while working depends on possession of a work permit. The right to child allowance and flat-rate and low-level cash benefits under parental insurance depend on whether the applicant intends to reside in Sweden more than a year and holds a residence permit. The right to belong to the earnings-related parental insurance system depends on whether the applicant is working and holds a work permit.

(ii) Third-country-national posted workers

Third-country-national posted workers have subsidised health care upon registration and if there is an intent to reside more than one year. Contributions are not made to the public pension system. The right to basic social security in the form of social assistance depends on holding a residence permit valid for at least one year and intending to reside in Sweden for at least one year. The right to insurance against accidents at work depends on having a work permit for a period longer than a year. The right to child allowance and flat-rate and low-level cash benefits under parental insurance depend on whether the applicant intends to reside in Sweden more than a year and holds a residence permit. The right to belong to the earnings-related parental insurance system depends on whether the applicant is working and holds a work permit. There is no right to earnings-related parental cash benefits for work shorter than one year.

(iii) Third-country-national temporary agency workers

Third-country-national temporary agency workers have a right to subsidised health care if holding a valid residence permit and legally domiciled in Sweden. Subsidised health care demands registration and intent to reside more than one year. Pension contributions to the national public system must be made by the employer. The right to a pension depends on duration of residence in Sweden and amount of earnings. It takes a long time to qualify for an adequate pension. Collective bargaining agreements may contain rules on pension. Unemployment insurance demands a fixed domicile in Sweden and availability for work. Earnings-related benefits depend on membership of the unemployment insurance fund and having worked for a qualifying period. The right to basic security in the form of social assistance depends on holding a residence permit valid for at least one year and intending to reside in Sweden for at least one year. The right to insurance against accidents at work while working depends on possession of a work permit. The right to child allowance and flat-rate and low-level cash benefits under parental insurance depend on whether the applicant intends to reside in Sweden more than a year and holds a residence permit. The right to belong to the earnings-related parental insurance system depends on whether the applicant is working and holds a work permit.

3. Conditions for obtaining different social security rights

Rights to social security benefits in Sweden are based either on residence or work, as defined by the applicable code, and not on migration law categories, nationality or the like. The duration of residence and employment in Sweden determine what risks the migrant worker is insured against. Work-based benefits apply from the start of employment.

4. Portability of benefits between host country and country of origin

Sweden has concluded bilateral social security agreements with a number of countries, and these agreements cover different rules and may affect rights to particular benefits.

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Changes to social security during the pandemic were not aimed at migrant workers.

6. Overview of enforcement and monitoring

Companies posting workers to Sweden must notify the Work Environment Agency about the posting and the names of the posted workers (sect. 4 act 1999:678, sect. 7-8 regulation 2017:319). The social security institution asks for A1 forms as a matter of routine, but usually does not perform any particular investigations (Inspektionen för socialförsäkringen rapport 2015:11, p. 85f).

Conclusion

Vladimir Bogoeski and Zane Rasnača

As the national reports demonstrate, the question of social security rights for short-term third-country-national migrant workers in the EU (EEA) countries involves multiple levels of governance through law and regulation, including EU directives and regulations, national legislation and welfare state arrangements, as well as bilateral agreements between states regulating social security issues. That in itself generates a complex world of regulatory arrangements and practices that often veil the issues in obscurity for experts, regulators and advocacy groups, never mind short-term third-country-national migrant workers directly affected by the rules. Hence, what this report has set out to do is precisely to produce a comprehensive overview of the social security rules that apply to short-term third-country-national migrant workers across different of short-term migration and across EU (EEA) Member States in order to understand where regulatory gaps and blind spots exist.

As the 26 individual reports show, the regulation of social security questions for short-term third-country-national migrant workers is embedded in regulatory complexity because of the interaction of several levels of governance and institutional practice on a number of social security matters. Although most national systems rest on principles of equal treatment and universality of social protection, access to social services for short-term third-country-national migrant workers often remains restricted by various conditions that are, by definition, not fulfilled. The fact that some categories of such migrant workers cannot fall back on social safety nets and social security services (including health and pension insurance) further reinforces the regular vulnerabilities arising from short-term migration and short-term migrant worker status.

The conclusion of this report addresses four main issues that stood out from the mapping exercise through the individual reports. First, it addresses the issue of fragmentation and the difficulty of developing a typology of EU (EEA) states' approaches to social security in the case of short-term third-country-national migrant workers. Second, it discusses the shared problems that the individual reports identify and their effects on such migrant workers in terms of the various vulnerabilities they create. Third, the conclusion addresses the challenges and legal or policy interventions (or the lack thereof) across states during the Covid-19 pandemic. Finally, the conclusions highlight the issue of enforcement and monitoring as a significant blind spot in current research and political discussions, implying that this should be a follow-up research endeavour.

1. Fragmentation and typological difficulties

A clear takeaway from the 26 individual reports is that, despite shared similarities and harmonising efforts at EU level, short-term third-country-national migrant workers' access to social security is organised in a relatively fragmented way, both within and across national jurisdictions. The *internal* fragmentation within jurisdictions comes from the fact that, despite a certain level of EU harmonisation (for example, Regulations 883/2004, 987/2009 and 1231/2010),¹ the internal regulation of social security questions is scattered across different legal sources (EU regulations, national legislation implementing EU directives, other national legislation and bilateral agreements between states) and entangled in various welfare state institutional arrangement and practices. As the Danish report points out, rules on social security 'are found in a number of specific national acts, each with its own scope of application and monitoring entity' (see report on Denmark). The fragmentation reflects unique trajectories of national legal and welfare state development, as well as Member States' approaches to and concrete policies on protection of migrant workers through integration in domestic social and welfare state frameworks. On top of laws and regulations, collective agreements that in some cases regulate pensions or different kinds of membership-based insurance schemes additionally complicate the regulatory landscape (see report on Denmark). This fragmentation raises difficulties for workers in navigating the systems and understanding which social security services and entitlements they might legally have access to. Bilateral agreements play a special role when it comes to short-term migrants from third countries. Their access to social protection and, moreover, portability of their benefits – which is extremely important for this particular group – often depend on specific agreements. This creates another layer of fragmentation that does not exist for other groups of workers.

The other form of fragmentation, namely fragmentation across states – which implies that there are various differences among EU (EEA) states – raises additional difficulties for workers in navigating social security systems, particularly if they are engaging in short-term work consecutively in more than one state (circular migration). The latter insight, however, does not imply a normative call simply for further unification and harmonisation of national welfare state systems (Vandenbroucke et al. 2017), as significant parts of these differences are the result of different historic development trajectories of national welfare state models. While diversity of approaches and fragmentation does not in itself contradict across-the-board (comprehensive) social protection for short-term third-country-national migrant workers, and is certainly to some extent justified in the historical specificities of national welfare state developments, the current challenge is to locate those differences and blind spots in the diversity of approaches that might negatively affect short-term third-country-national migrant workers. Hence, the insights of this report serve to point out the instances in which the current laws

1. Also a number of EU Directives regulate social security questions, for example the Seasonal Workers Directive (Directive 2014/36/EU), the Single Permit Directive (Directive 2011/98/EU), the Intra-corporate Transfer Directive (Directive 2014/66/EU), and the Directive Prohibiting Employment of Illegally Staying Third-country Nationals (2009/52/EC).

and regulations on social security rights for short-term third-country-national migrant workers fall short of protecting workers from the variety of social risks, thus creating certain types of vulnerabilities making it easier to exploit short-term third-country-national migrant workers and rendering their situation precarious in different national contexts. Moreover, based on the analyses at Member-State level the report sought to signal the need for clarity and legal certainty regarding access to social security for short-term third-country-national migrant workers. While at national level local workers' social protection and security entitlements are to a large extent institutionalised and processed by designated authorities, this is not the case with cross-border coordination. There, for example, the burden is often on workers to transfer their entitlements. Clarity, simplification and a common approach to third countries (that is, a common regulatory framework) would be the starting point for improving access to social security for short-term third-country-national migrant workers.

As different Member States have adopted different approaches regarding how different categories of short-term third-country-national migrant workers may access different social security components, it will be difficult to come up with a clear typology of approaches to access or constraints on access across states, third-country-national worker categories and social security components. What is clear, however, is that the specific migration regime – that is, the form of short-term third-country-national migration (posting, intra-corporate transfer, seasonal work and so on) – has direct consequences for the access to social security that short-term third-country-national workers have in a host country. The duration of a single stay or accumulation over several stays often has an effect on the type of access short-term third-country-national migrant workers have to social services in a given country. For example, seasonal workers in Germany are entitled to full access to almost all social security components if their employment exceeds 102 workdays within a year (it was limited to 70 workdays prior to the pandemic), but otherwise they are excluded from mandatory social security arrangements. The impact of time duration is limited, however, because often the scope of available social security components expands after a longer period – often beyond one year – which also means that third-country-national migrant workers in employment that exceeds one year are no longer considered ‘short-term’ and are thus beyond the scope of this study.

The fragmentation is manifest even in spheres that are fairly harmonised, such as the posting of third-country nationals. Posting of workers is far away from being clear even when it involves posting of EU nationals or companies established in an EU Member State (Arnholtz and Lillie 2019; Rasnača and Bernaciak 2020), so it is not surprising that the posting issue raises different questions when it involves posting of third-country nationals from firms established both within and outside the EU (EEA). One could say, however, that the posting situation is relatively harmonised compared with other mobility regimes, as the basic premises and

logic of the EU posting framework apply to the posting of third-country nationals.² For example, the ‘fictional’ assumption that posting constitutes a continuation of employment in the country of origin applies in the case of the posting of third-country nationals, too. This implies that the laws regulating the employment relationship in the country of origin apply during the duration of the posting abroad, as well as that the posted worker in terms of social security remains predominantly integrated in health, social and pension insurance structures in the country of origin.

While we can see from the reports that this basic premise of posting applies across most EU Member States, we also see a certain fragmentation across countries regarding what components of social security might be accessible to short-term posted third-country-national workers. For example, while in other states the country-of-origin principle applies, in Italy when workers are posted from a company established outside the EU, Italian social security legislation applies unless there is a bilateral agreement between Italy and the country concerned (see report on Italy). Contrary to many states (see the report on Denmark, for example), Slovenia grants posted third-country-national workers access to child benefits if they are not receiving a similar benefit elsewhere (report on Slovenia). In Croatia, in particular, there is higher uncertainty as to what social security regulation applies in some situations of posting (see report on Croatia). This diversity and relatively high fragmentation of approaches makes it difficult to develop a Member State categorisation or a typology of approaches to social security access. A more productive approach is to examine the situation in each Member State, as the individual country reports have done, and then search for common root causes of the problems identified in the legal frameworks established at EU and Member-state level.

2. Common challenges and their source in the legal framework – reinforcing vulnerabilities

Social security in most EU Member States, in theory at least, is organised on the basis of territoriality and universality, not nationality (see the emphasis on this in the reports on Greece and Hungary). The individual country reports show that the general rule is that employers who employ short-term third-country-national migrant workers shall pay social security and health care contributions as they do for regularly hired local workers. In the various jurisdictions this general rule then becomes subject to different exceptions and restrictions. For example, short-term third-country-national workers could be employed under different kinds of contracts, as the Czech example illustrates, based on an employment contract or a contract of services, which then grants access to different social security

2. Although posting of workers has undergone attempts at harmonisation through EU regulation and jurisprudence, one can hardly argue that it has in fact been harmonised given its multifarious aspects. While re-posting is fairly harmonised, posting from third countries to EU Member States is not regulated at all. Some Member States have extended their EU rules to posted workers from third countries, others have not (there is no obligation to extend).

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components under different conditions (see report on Czechia). In addition, time duration, type of mobility regime, or for some social security services, the wage level could also play quite an important role (see reports on Czechia and Slovenia).

The general ideas of territoriality and universality imply an understanding that all employers and persons employed on a given territory would be granted access to the same social security rules under the same conditions. The idea is anchored in two main foundational building blocks. The first draws on ideas of functional solidarity, while the second rather has a ‘dignitarian’ background, drawing on egalitarian ideas of equal treatment and workers’ dignity. The first block, namely the idea of functional solidarity, means that equal treatment with regard to social security is necessary in order to maintain established welfare state arrangements. Once fragmentation and differentiation are normalised, those arrangements can easily be undermined, and even dismantled as projected in different race-to-the-bottom scenarios. The second block implies that if certain social security protections exist to preserve workers’ and human dignity there is no good reason why they should be applied selectively, leaving different categories of workers subject to precisely the same risks that social security measures are trying to offset. Most importantly, at EU level, the discussion around equal treatment of workers, especially some short-term mobility regimes, such as posting of workers, are to a large extent shaped by motives such as fair competition, limiting competition among workers across borders or limiting regulatory competition overall (Bottero 2020).

The reports demonstrate, as is generally the case, that equal treatment aspirations are often limited to formal rather than substantive equality. This would mean that such formal equal treatment might entail a certain obliviousness to the specific situation of short-term third-country-national migrant workers by claiming to be treating them formally in an equal manner to other, namely, domestic workers (both citizens and long-term residents). Hence, if domestic workers are required to have made contributions over a substantive period of time in order to be entitled to a particular social security service, applying that demand to short-term third-country-national migrant workers in a formally equal manner entails excluding the latter from access to that service because some of those conditions cannot be fulfilled by definition. Equal treatment principles are entrenched in the EU level regulatory framework, including series of migration directives and Regulation 883/2004 and Regulation 987/2009, as well as Regulation 1231/2010 extending the former to short-term third-country-national migrant workers residing and working in another EU Member State (Verschuere 2018).

The seemingly counterintuitive argument that equal treatment principles can be a basis for exclusion can be observed in particular in Member States’ approaches to access to (contribution-based) social insurance benefits, which generally depends on meeting insurance conditions related to length of previous employment. Regarding non-contribution-based benefits (social assistance), prior residence requirements may in practice prevent short-term workers from accessing them. Both the requirement of periods of social contributions and prior residence are often difficult to fulfil in the case of short-term third-country-national migrant workers. For example, the Finnish social security system is divided into housing-

based and work-based social security, which are in many ways intertwined. Housing-based social security services are central, but to fall within its scope a third-country national must have a (worker's) residence permit of at least one year and is required to have moved to Finland permanently (see report on Finland). Therefore, although this rule is meant to treat everyone in a given situation equally, it is particularly exclusive with regard to short-term third-country-national migrant workers. Formal equal treatment approaches of this kind that we see through most of the individual reports often mean exclusion rather than inclusion. Inclusion in social security regimes of short-term third-country-national migrant workers in a substantive and material sense would require adjustment and accommodation of their situations rather than a formalist equal treatment approach (the report on Malta provides a good example of the formal equality approach).

Another case in point are the general exclusions of the type we notice in the report on Iceland, where short-term third-country-national migrant workers are required to be active in the labour market in order to qualify for benefits, which by definition they cannot be (see report on Iceland). That means that short-term third-country-national migrant workers working in Iceland on a temporary permit do not have a right to unemployment benefits. The reasoning is based on the Icelandic law on unemployment benefits, which requires that all applicants be 'active in the labour market' (report on Iceland). As temporary work permits there are based on the condition of employment, however, an unemployed third-country national in Iceland without a work permit cannot be considered 'active in the labour market' either *de jure* or *de facto*.

Access to non-contributory social security services often requires a longer duration of stay and thus mostly remains out of reach for third-country-national migrant workers. Some of these mandatory contribution periods are quite long. For example, in Cyprus, for third-country nationals to qualify for child benefits they need to have resided in Cyprus for at least five years (see report on Cyprus). The time duration restrictions on both contributory and non-contributory social security entitlements might result in short-term financial insecurity when employment is terminated or long-term financial difficulties in the case of old age poverty. The fact that in most jurisdictions job termination for short-term third-country-national migrant workers often renders the residence permit invalid is a major source of vulnerabilities. Possibilities for transferability or portability of limited social security rights are regulated by the EU social security regulations and additionally by bilateral agreements that EEA Member States have concluded with a number of countries. They are also often subject to numerous restrictions. The number of bilateral social security agreements varies greatly among Member States. Some have a significant number of such agreements. For example, Spain has 23 (see report on Spain); others have fewer. For example, Cyprus has seven (see report on Cyprus).

Some common restrictions on social assistance are evident in almost every national jurisdiction, as presented in the individual reports. Requirements of longer periods spent in the respective state usually exist. For example, in Luxembourg 'third country nationals must reside in the country for at least five years in the preceding 20 years or have long-term resident status to be entitled

to the guaranteed minimum income support'. Even regarding health insurance, seasonal workers in Germany, for example, are generally not entitled to full health insurance provided by employers, or in Iceland general health insurance benefits area available only to those who have resided in the state for at least six consecutive months (report on Iceland), which often is not fulfilled in the case of short-term third-country-national migrant workers.

Pensions contributions and portability of pensions often depend on bilateral agreements and therefore are highly fragmented. Some states, for example Luxembourg, export pensions to any country in the world, but do not transfer pension contributions as such. Combining periods of pension insurance accumulated in different states often requires bilateral agreements that provide for such a possibility. Also, there is much differentiation with regard to how some social insurance schemes extend to family members (report on Cyprus).

Most of the exclusions resulting from current legal frameworks and arrangements that regulate access to social security for short-term third-country-national migrant workers forge different kinds of vulnerability. Not all categories of third-country-national migrant workers seem to be affected equally, however. While seasonal workers, temporary work agency workers and some short-term posted workers are affected more intensively, both the exclusions and their effects are less present in the case of high-qualified Blue Card holders or intra-corporate transfers. Research demonstrates how lack of access to social security and inability to change employment upon termination in case of short-term visas renders workers more open to exploitation because of their increased dependence on a single employer, with no fallback options (Anderson 2010). While formal equal treatment requirements both discursively and practically have offset some forms of exclusion, many still exist. The way forward would be to rethink social security access guided by the concrete necessities of certain groups of short-term third-country-national migrant workers. Moreover, the rethinking should be guided by the ambition of offsetting the concrete vulnerabilities that current restrictions and exclusion create. Beyond formal equality, inclusive social security needs to accommodate the negative externalities of short-termism and visa regimes that particular groups of short-term third-country-national migrant workers regularly face.

3. Covid challenges

Since the very outset, the Covid-19 pandemic has caused the introduction of radical restrictions on all kinds of (labour) mobility, particularly affecting short-term third-country-national migrant workers (see report on Spain). Short-term third-country-national migrant workers have been affected by cross-border and internal movement restrictions in three main ways. First, some who were already working in EEA states could not easily return to their home countries if they wished to do so. Second, those short-term third-country-national migrant workers who were about to depart shortly before lockdowns were imposed and whose livelihood depended on seasonal or other kinds of short-term migrant work could not depart and enter their employment. Third, those short-term

third-country-national migrant workers whose employment had been terminated for whatever reason during lockdown had no alternatives, as they could neither pursue a different employment (visas are tied to a concrete employer) and often could not immediately access social security (often neither in the host nor in the home country). These situations have severely affected both short-term third-country-national migrant workers and their families depending on the income they obtain from short-term migrant work.

Some states introduced different accommodating solutions (for example, see report on Ireland). For example, in Greece, pharmaceutical provision for uninsured workers was extended by law, while payment of social security contributions was ensured for those whose employment was temporarily suspended because of Covid-19. Denmark has acknowledged Covid-19 as an occupational disease. But there were also states where no notable changes were made affecting social security for short-term third-country-national migrant workers.

Some patterns emerge from the analyses offered in the individual reports, according to which one could argue that the more affluent welfare states of western and northern Europe have introduced a greater variety of welfare and social security protective measures than the less well funded welfare states of central, eastern and southern Europe. This has not always been the case, however. While Poland and Romania, for example, offer free health care in case of threatening illness, Germany has extended the periods during which seasonal workers are exempted from social security and health insurance requirements (Bogoeski 2021). Overall the reports describe a broad spectrum of protective measures and point to their absence across states. Some good practices could serve as an inspiration for introducing extra protective measures in non-exceptional times, while the illustration of shortcomings provides an overview of what kind of interventions might be desirable in response to the acute vulnerabilities of short-term third-country-national migrant workers exposed to the pandemic.

4. Enforcement and monitoring: a blind spot

While the main aim of the report was a comprehensive mapping of the regulatory framework governing short-term third-country-national migration for work in the 26 EU and EEA states, each report contained a brief overview of the enforcement and monitoring frameworks. It was beyond the scope and aims of this report to examine the current state of enforcement and monitoring, as well as their effects on the situation of short-term third-country-national migrant workers. Understanding the legal rules in place without knowing how they are being realised in practice through control and enforcement mechanisms, however, is at best only one piece of the puzzle. Both the editors and the rapporteurs were conscious of the central role that enforcement plays, but there is also an awareness that empirical exploration would require a separate project.

From the short overviews of the regulatory frameworks alone we can conclude that enforcement is subject to fragmentation and diversity in a similar way to the framework regulating access to social security. Some states require guarantees

by employers employing short-term third-country-national workers that social contributions will be paid. In Greece, for example, employers employing third-country-national seasonal workers need to pay one month's social security in advance and guarantee the rest of the payments (see report on Greece). Across EEA member states we see a variety of authorities designated for monitoring and control, as well as multifarious functions, mandates and capacities. Additionally, there are a range of systems of fines. Hence, a future study building on this one and delving into the specificities of enforcement practices in the social security domain, and how rules are enforced in the context of short-term third-country-national migrant workers, should focus on cross-sectoral empirical analysis across states, including – in particular – precarious sectors, such as seasonal agricultural work, hospitality, food processing and platform work.

5. Conclusions and outlook

While internal and external fragmentation, underlined by the variety of legal sources addressing social security issues, as well as the diversity of approaches raise difficulties for navigating the respective systems, the main insights of the individual reports help us to understand what absent protections are currently creating certain types of vulnerabilities, rendering short-term third-country-national migrant workers exploitable and their situations precarious in different national contexts. While a diversity of approaches and fragmentation do not in themselves rule out across-the-board (comprehensive) social protection for short-term third-country-national migrant workers, and certainly to some extent are justified in terms of the historical specificities of national welfare state developments, the reports locate those differences and blind spots in a diversity of approaches that might negatively affect short-term third-country-national migrant workers.

Based on this, further work should explore which different trajectories can be undertaken to address the challenges identified in terms of policies and regulation at both EU and national level. To start somewhere, there seem to be uncertainties and significant differences among Member States concerning the social security coverage of third-country nationals. And while this seems justified in light of the discretion Member States enjoy in immigration law and labour law, more legal certainty should be aspired to for the sake of the workers experiencing this fragmentation and lack of coverage. Even in the areas in which there are EU-level instruments regulating immigration (seasonal work, Blue Card, intra-corporate transfer), third-country nationals face significant diversity when it comes to their social security entitlements. Moreover, the rules on how benefits are actually delivered to third-country nationals who may have left EU territory and whether they may receive such benefits at all is an open question, appropriate for future research. This might be an area in which work towards harmonising Member State approaches should be carried out.

The revision of intra-EU social security rules (Regulation No. 883/2004) was recently relaunched by the Swedish Presidency (Agence Europa 2023) and this might be a suitable moment to start a discussion also on how to ensure that

everyone working in the European labour market is adequately covered by social security and not only pays contributions but is also in a position to receive the benefits if the need arises.

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