

# 1. Austria

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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 |

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|-----------------------------------|---|-----------------------|---|---|------------------------------------|--|
|                                   | 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.