

16. Luxembourg

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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.