Conclusion

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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).

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 (Verschueren 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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