

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.