

EMN INFORM

Migrant access to social security and healthcare: policies and practice

1. INTRODUCTION

This EMN Inform summarises the main findings of the EMN Main Study on *Migrant access to social security and healthcare: policies and practice*. The Study was based on contributions from EMN National Contact Points in 25 Member States¹, collected via common specifications to ensure comparability. The key findings are set out below.

2. KEY POINTS TO NOTE

- ★ The **equal treatment provisions** contained in the EU's Migration Directives have influenced national legislation and practice, in particular as regards the social security rights of third-country nationals holding long-term residence permit and EU Blue Card holders. However, in the absence of Union-level harmonisation of social security policies, **significant variations** exist in relation to the range of benefits available in Member States, the way these benefits are financed (insurance contributions, general taxation or both) and the conditions under which the benefits are granted.
- ★ There appears to be a connection between the systems used to finance social security benefits and their accessibility by third-country nationals. Third-country nationals that are **holders of long-term residence permits** generally have access to all of the benefits reviewed in this study. However, equal treatment for third-country nationals that are **holders of fixed-term residence permits** tends

to be granted more readily in relation to benefits that are financed through contributions by employers and employees (e.g. sickness cash benefits, invalidity benefits, old-age pensions, survivors' benefits, and benefits in respect of accidents at work and occupational diseases) than in relation to benefits that are financed through general taxation (e.g. family benefits, long-term care benefits and guaranteed minimum resources i.e. social assistance).

- ★ Member States use different mechanisms to regulate access by third-country nationals to social security benefits. These include **migrant-specific eligibility rules**, where third-country nationals are required to hold a particular residence permit, authorisation of stay or visa; as well as eligibility rules that apply to third-country nationals and Member State nationals alike, such as minimum residence periods; restrictions on exporting certain social security benefits; minimum employment (or contribution) periods; and the use of administrative discretion in order to determine eligibility. The eligibility rules that apply equally to third-country nationals and Member State nationals may represent a **greater hurdle for third-country nationals** whose presence in the country tends to be more recent and temporary.
- ★ In the majority of Member States, claiming social security benefits – in particular **social assistance** – can have some **negative impact on the legal status** of third-country nationals in procedures for residence permit renewal, applications for long-term residence permits, naturalisation and family reunification. This negative impact is foreseen in

¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom.

the Directive on the admission of researchers (2005/71/EC) and the Directive on EU Blue Card holders (2009/50/EC) which require the researchers and EU Blue Card holders to have sufficient resources to meet their expenses without having recourse to the Member State's social assistance system.

★ Existing **bilateral agreements on social security** reached by Member States with third-countries extend access by third-country nationals to certain social security benefits, especially benefits that are contributory or partially contributory. However, significant variations in the material scope and geographical coverage of these bilateral agreements mean that many third-country nationals may lose acquired social security rights when they move out of the European Union.

3. AIMS OF THE STUDY

The study aimed, firstly, to outline the **formal EU and national rules** that shape entitlements to social security and healthcare for **third-country nationals** in EU Member States. Secondly, it aimed to examine how these entitlements compare to the entitlements of Member State nationals. Thirdly, the study aimed to investigate the **administrative practices** that determine how the formal rules on eligibility for third-country nationals are applied in specific cases, especially when implementing the '**habitual residence test**' and other eligibility rules that contain a discretionary element. Finally, the study aimed to review the **reciprocal agreements** that exist between EU Member States and third countries that affect the entitlement to social security and healthcare of certain groups of migrants. The study does not focus on the take-up by migrants of the various social security payments available, although this issue forms an important political backdrop to the study.

4. EU COMPETENCES

What provisions are made in the EU's Migration Directives for third-country nationals to access social security?

The most significant provisions of the Directives relate to the right to **equal treatment** with Member State nationals, which is granted to long-term residents, researchers from third countries, EU Blue Card holders and Single Permit holders as regards the branches of social security defined in Regulation (EC) No. 883/2004; as regards access to goods and services made available to the public; and as regards working conditions, including pay and dismissal. Long-term

residents additionally enjoy equal treatment with nationals regarding social assistance.

The EU Migration Directives foresee a number of **derogations and exceptions** from the equal treatment principle. Member States can restrict equal treatment for long-term residents to 'core benefits' and cases where the registered or usual place of residence lies within the national territory. Under the Single Permit Directive, equal treatment can be restricted to third-country nationals in employment, or registered as unemployed after having worked at least 6 months. Member States may also withdraw, or refuse to renew, the residence permit of a researcher or EU Blue Card holder if he or she does not have sufficient resources to maintain him/herself without having recourse to the social assistance system, or, in the case of EU Blue Card holders, if he or she is unemployed for more than three consecutive months or if unemployment occurs more than once during the validity of the EU Blue Card.

5. FINANCING SOCIAL SECURITY

What is the predominant system of financing social security benefits among Member States and does this matter?

A majority of Member States rely on **insurance-based systems** (i.e. contributions made by employees and employers) to finance sickness cash benefits, invalidity benefits, old-age pensions, survivors' benefits, and benefits in respect of accidents at work and occupational diseases. However, several Member States also have a parallel system of non-contributory benefits in place (i.e. benefits that are financed through the general taxation system) under most of these branches of social security, which provide a minimum level of protection to persons who have not made sufficient contributions.

General taxation or specific taxes are the predominant mechanism across Member States for financing family benefits, long-term care benefits and guaranteed minimum resources (i.e. social assistance). However, family benefits and long-term care benefits that are financed through employer and employee contributions also exist in a number of Member States. Finally, healthcare benefits (in kind), maternity and paternity benefits and unemployment benefits are financed in most Member States through a **mix of contributions and general taxation**.

These different systems of financing the social security benefits are important in the context of this study as it appears that equal treatment for third-country nationals who hold fixed-term residence permits tends

to be granted more readily in relation to contributory benefits than in relation to benefits that are financed through general taxation.

6. NATIONAL RULES ON ELIGIBILITY

What national rules shape access to social security benefits by third-country nationals?

The eligibility rules attached to social security benefits vary significantly across Member States. All Member States require third-country nationals to hold a valid residence permit in order to take up social security payments. Member States often require additional **migrant-specific conditions** for third-country nationals to access specific social security benefits, including a particular type of residence permit, authorisation of stay or visa. A majority of Member States require third-country nationals to hold long-term residence permits in order to access benefits that are financed through general taxation, especially family benefits, guaranteed minimum resources and long-term care benefits. However, there are important exceptions to this rule. For example, third-country nationals holding fixed-term residence permits qualify to receive non-contributory guaranteed minimum resources in fifteen Member States; non-contributory family benefits in ten Member States; and non-contributory old-age pensions in six Member States.

Evidence of an applicant's physical presence in the country is a common eligibility condition for most social security benefits. However, **minimum residence periods** are not normally required before third-country nationals (and Member State nationals) can take up the benefits. The exceptions are in relation to old-age benefits where such a minimum residence period is required by six Member States; unemployment benefits where it is required by two Member States; to family benefits in two Member States; maternity and paternity benefits in one Member State and guaranteed minimum resources where it is required by most Member States.

National legislation in most Member States includes **restrictions on the export of benefits to third countries** for third-country nationals and Member State nationals alike. These restrictions are in some cases lifted in bi-lateral agreements reached with third-countries for certain types of benefits (see section 5 of the report). Restrictions in national legislation apply to healthcare (in kind) benefits in all Member States but one; to maternity and paternity benefits, except in seven Member States; to family benefits, except in one Member State; to unemployment benefits except in seven Member States; and to guaranteed minimum resources in all

Member States. In contrast, the national legislation of most Member States (18 out of 25) allow old-age pensions to be exported to third countries.

Third-country nationals (and Member State nationals alike) are subject to **minimum employment periods** in most Member States in order to take up sickness cash benefits (except in six Member States); maternity and paternity benefits (except in ten Member States); old-age benefits (except in three Member States); and unemployment benefits (except in seven Member States). Minimum employment periods are not usually required for third-country nationals to access healthcare benefits (in kind), family benefits and guaranteed minimum resources.

7. ADMINISTRATIVE PRACTICES

What administrative practices affect the take-up of social security by third-country?

A majority of Member States apply **administrative discretion** in determining eligibility to particular social security benefits, particularly non-contributory benefits. In eleven Member States, discretionary criteria are used to determine the strength of an applicant's attachment to the Member State. A 'habitual residence test' is often implemented, which involves applying a range of discretionary criteria to evaluate the personal circumstances of an applicant. The criteria taken into consideration by different Member States for this purpose include, among others, the duration of the applicant's stay in the Member State to the existence of family ties, the exercise of professional activities, the duration of employment contracts and evidence of social integration.

Methodological guidance for the **consistent implementation** of discretionary criteria is provided to deciding officers in a number of Member States. This guidance mostly includes training sessions, but in some cases Member States have also developed regulations, circulars and guidelines listing general exceptions to the eligibility rules, explaining relevant case law and providing sample questions and recommendations. The European Commission has also produced a Guide to help Member States in how they apply the 'habitual residence test' in the context of social security coordination, based on the case law of the Court of Justice of the European Union.

Certain Member States apply administrative discretion in other ways, including when deciding whether to waive certain eligibility conditions, in the course of applying a means-test, or when assessing a third-

country national's motives for entering the Member State. Whilst most discretionary assessments apply to nationals and third-country nationals alike, they are more likely to affect the outcomes of social security claims made by third-country nationals whose presence in the country tends to be more recent and temporary.

Claiming guaranteed minimum resources (social assistance) can have some negative impact on the application of third-country nationals to **renew a residence permit** in twelve Member States. In certain Member States, a residence permit may also be withdrawn or refused if a third-country national is receiving unemployment benefits and sickness cash benefits. Applications by third-country nationals for naturalisation may also be affected by making social security claims in eight Member States. Again this concerns mostly social assistance claims, but in certain countries naturalisation may also be refused in the case of third-country nationals who claim needs-based family benefits. In fourteen Member States, claiming social security benefits may also have a negative effect on applications for family reunification where such payments compensate for a lack of stable, regular and sufficient resources.

The availability of **translation, interpretation and information services** can also affect the take-up of social security by third-country nationals. Translation and interpretation services are provided to third-country nationals in the context of claiming social security benefits in a number of Member States. However, in several Member States, the services are restricted to certain languages only, to certain categories of third-country nationals (e.g. victims of human trafficking), to certain types of benefits (e.g. healthcare benefits), or to matters initiated by the authorities.

8. BILATERAL SOCIAL SECURITY AGREEMENTS

What type of provisions do Member States include in bilateral social security agreements reached with third countries?

All Member States have concluded bilateral agreements on social security with third countries. These bilateral agreements have generally been negotiated independently of each other. As a result, there is significant variation in the provisions of the agreements, both in relation to their **material scope and geographical coverage**. The network of bilateral agreements is 'fragmented' in that a large number of

agreements have been signed with a small number of countries (especially Canada, Australia, the United States, Serbia and Bosnia Herzegovina) whilst no bilateral agreements exist with a significant number of third countries.

Most bilateral agreements cover benefits that are **contributory or partially contributory**, in particular old-age benefits and healthcare. A much smaller number of bilateral agreements also cover non-contributory benefits, including social assistance and family benefits.

All bilateral agreements foresee the **export of benefits** to third countries. A majority of bilateral agreements grant **equal treatment** between the third-country nationals of the contracting state and nationals of the Member State with regard to the social security rights identified in the agreement. Most bilateral agreements include the possibility for workers from a third country to work in the Member State while remaining **subject to the social security legislation of the sending state**. However, this provision usually includes strict time limitations (from 24 months up to 5 years) and often only covers certain categories of workers, especially posted workers but also others such as civil servants and diplomatic personnel. A majority of bilateral agreements apply the **principle of the aggregation** of periods of insurance for the purposes of qualifying for benefits.

The European Commission has recently issued a Communication on the External Dimension of EU Social Security Coordination, which underlined the need for **better cooperation** on national bilateral agreements and for the development of a common EU approach. The Communication also considers the possibility of establishing **EU-wide social security agreements**, which would allow a more flexible approach than is possible under association agreements and could also be concluded with third countries with which no association or cooperation agreement exists.

9. FURTHER INFORMATION

You may obtain further details on this EMN Inform and/or on any other aspect of the EMN, from HOME-EMN@ec.europa.eu.

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