

Rasnača, Zane (Ed.); Bogoeski, Vladimir (Ed.)

## Research Report

# Interaction between labour law and immigration regimes: The case of short-term third-country national workers in the EU and the EEA

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# Interaction between labour law and immigration regimes

The case of short-term third-country  
national workers in the EU and the EEA

Edited by  
Zane Rasnača and Vladimir Bogoeski

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**etui.**



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## **Abstract**

This report provides an overview of the ways in which EU and EEA Member States have regulated the immigration of third-country nationals who enter their territory for the purpose of work. Its focus is on short-term migrant workers and it presents the results of an extensive mapping exercise carried out by national experts from 23 EU and two EEA countries in collaboration with the ETUI. The focus was on the interaction between national immigration law regimes and labour market access, as well as the employment rights of different categories of short-term third-country-national workers, depending on their immigration status. Special emphasis was placed on certain categories of workers discussed most often in the context of EU mobility, namely, seasonal workers, temporary agency workers and posted workers from third countries.

In comparison with the local workforce, third-country national workers, especially short-term, find themselves in a more vulnerable situation because of the dependence of their labour market status on their immigration status. This report explores the immigration pathways available to third-country national workers and provides an overview of the conditions for short-term workers' entry, stay and leave in each national system, depending on category. It then looks at these workers' general working conditions as regulated by national law.

# Introduction

Zane Rasnača and Vladimir Bogoeski

This report provides an overview of the ways in which EU and EEA Member States regulate the immigration of third-country nationals who enter their territory for the purpose of work. Its focus is on short-term migrant workers and it presents the result of an extensive mapping exercise carried out by national experts from 23 EU and two EEA countries in collaboration with the ETUI. It focussed on the interaction between immigration law regimes and labour market access, as well as the employment rights of different categories of short-term third-country national workers, depending on their immigration status.

While every third-country national worker in the EU should, in principle, be treated with respect, dignity and on a non-discriminatory basis in comparison with local workers, it is clear that that is not always the case (Strauss and McGrath 2017; Leboeuf 2021; van Ginneken 2013). In comparison with local workers, third-country nationals are particularly vulnerable because of the often existing link between their immigration status and their labour market access (Mantouvalou 2020). The present report aims to expose how different countries have dealt with this vulnerability in the context of concrete categories of workers. It thus explores the immigration pathways available to third-country national workers and provides an overview of the conditions for entry, stay and leave for each national system for short-term workers, depending on category. Special attention is paid to posted workers from third countries, as well as whether temporary agency work is permitted for third-country nationals in various EU and EEA countries, and its modalities. Finally, we also provide a short overview of the Covid-19 pandemic's impact on third-country national workers and the specific features of national systems dedicated to the enforcement of their rights.

## 1. Debate on short-term labour-oriented migration in the EU

Short-term mobility and research on it are certainly gaining momentum (De Wispelaere and Rocca 2020; Rasnača 2020; Piva et al. 2023). Migration from third countries has for many years been an existential part of the EU labour market in the majority of EU and EEA countries. For a long time, however, it was rarely recognised openly that without migrant workers from countries beyond the EU, many industries might struggle to survive. European employers in many countries have lobbied for years to be able to hire workers from abroad in response to Europe's aging population, mismatches in skills and labour market needs, together with workforce shortages (Coleman 1992; Boeselager 2021; Wallis 2022).

In fact, today most high-income countries of immigration recognise their need for migrant labour at both the high- and low-skill ends of the labour market (OECD 2022). Examples of sectors that often require migrant workers to function include health care, information technology (IT), and finance, as well as hospitality, construction, cleaning, agriculture and food processing (Ruhs 2006). For the general public Europe's reliance on third-country national migrant workers became crystal clear during the Covid-19 pandemic, during which there was widespread reporting on employers' desperate pleas that without them crops will rot in the fields, food shortages are to be expected, and insufficient care will be available to those in need (Rogalewski and Freeman 2022; Mijatovic 2022; BrusselsTimes 2021). As a result, Malta, for example, started work on a three-year strategy to help facilitate the processing of (legal) employment of third-country nationals (report on Malta below).

The rights of third-country national workers have not been highlighted to the same extent, however. Despite scandals exposing human trafficking and grave abuses of third-country national workers' rights, including in Brussels, the 'capital' of the European Union (Brussels Times 2022), major overhauls of migration legislation have focussed primarily on other matters, such as asylum seekers and shortages of highly-skilled workers. In fact, EU Member States have largely maintained their power over immigration rules and also working conditions when it comes to third-country national workers, in sharp contrast to intra-EU migration. The Member States have been extremely reluctant to adopt EU-level initiatives in this area (Paul 2013: 122) despite huge scandals exposing exploitation of migrant workers' rights in various regions of Europe (Hoffmann and Rabe 2014; Bérastégui 2021; UNHR 2021). Furthermore, the EU Immigration Policy Fitness Check published in March 2019 revealed that categories not yet covered by EU legislation include workers who are not highly skilled and who come to the EU for more than nine months, as well as self-employed third-country nationals (European Commission 2019a).

Hence many third-country national workers, and especially those arriving for the short term, are largely left to the mercy of national-level regulatory frameworks, which makes comparison of the utmost interest for a better understanding of the phenomenon on the European labour market.

EU law regulating third-country workers' rights is neither extensive nor comprehensive. However, the following EU directives do regulate some aspects of labour-oriented short-term immigration, specifically with regard to third-country nationals:

- the Seasonal Work Directive (2014/36/EU) sets the conditions of entry and stay of non-EU nationals for the purpose of employment as seasonal workers;

- the Single Permit Directive (2011/98/EU) establishes a simplified application procedure and a single permit for the right to work, albeit covering only certain third-country nationals;<sup>1</sup>
- the Blue Card Directive (2009/50/EC) establishes an EU-wide work permit (the so-called ‘Blue card’) for highly qualified workers who want to stay between one and four years;
- the Intra-corporate Transfer Directive (2014/66/EU) sets out rules for multinational companies transferring non-EU nationals to their European entities within the same corporate group;
- the Researcher Directive (2016/801/EU) sets out conditions for the entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, exchange schemes or educational projects and au pairing.

As revealed below in the national reports this EU-level *acquis* plays some role in regulating work-oriented migration from third countries, but in practice this role is often limited and ambivalent.

Furthermore, insofar as third-country nationals can be considered ‘workers’ under both national law and the EU *acquis* adopted under the Social Policy title in the TFEU, they also benefit from secondary law measures regulating social policy law in the EU.

This is supported by CJEU case law, especially by the judgment in *Tümer*.<sup>2</sup> The case addressed the contentious issue<sup>3</sup> of what rights undocumented migrants have under employment law, namely, whether undocumented migrant workers can be protected as employees under the Directive on Employers’ Insolvency.<sup>4</sup> The CJEU found, first, that the legal basis of the measure (Article 153 TFEU) does not exclude non-EU citizens from its scope and the notion of ‘employee’ has to be extended to all those who comply with the definition of employee in Dutch civil law. Accordingly, the CJEU argued that it was irrelevant that the person concerned had no right to be in the country; the Netherlands could not refuse to apply the Directive to the applicant and deny undocumented workers access to back pay when their employer becomes insolvent. With this judgment the CJEU tried to ensure that the Member States cannot arbitrarily exclude groups of workers, such as third-country nationals, from the benefits that come with worker status.<sup>5</sup> Whether this has been followed up by immigration authorities and labour inspectorates across

1. A recast process is currently under way to amend the Directive. See Proposal for a Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast), COM(2022) 655 final.
2. CJEU Judgment in C-311/13 *Tümer*, ECLI:EU:C:2014:2337.
3. It has been described as a ‘vexed issue’ because, from one hand, allowing undocumented migrants to fully access employment law would arguably provide a ‘pull’ factor for them to enter and stay, but on the other hand, if employment law does apply to them, they might not be undercutting the legally resident workforce (Peers 2014).
4. Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer.
5. See also *Ruhrlandklinik* (C-216/15, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, ECLI:EU:C:2016:883).

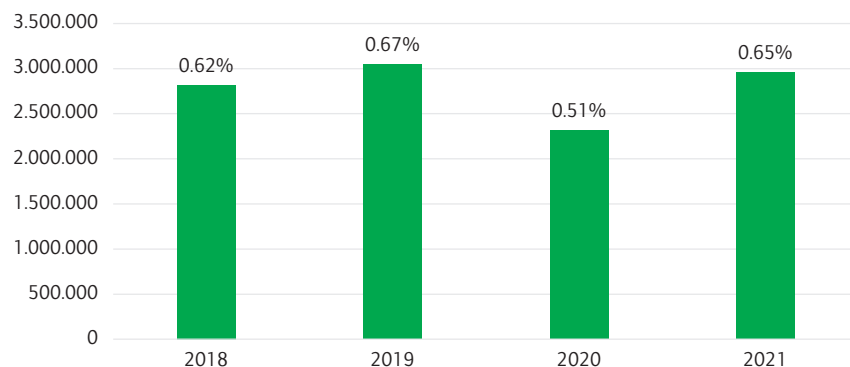
Europe, however, is not clear. While some EU law covers third-country nationals at the EU level and they can also benefit from the EU social *acquis*, the coverage is not comprehensive in either scope and content. It also leaves one of the key matters – the interplay between immigration status and access to labour law – in large part at the discretion of the individual countries. Because third-country nationals do not automatically obtain the same rights as EU citizen workers even when entering via EU pathways such as under the Seasonal Work Directive or the Blue Card Directive, their situation on the European labour market and their rights are worth exploring in more detail.

## 2. How many short-term third-country national workers are there in the EU?

When it comes to numbers, it is not particularly clear how many short-term third-country nationals currently work on EU territory. First, the numbers do not necessary distinguish between those who enter with short-term status but plan to and actually stay much longer and those who actually leave. Second, data do not reliably cover undocumented labour and migration, which typically are the constituency of workers on European soil most vulnerable to exploitation (Dewhurst 2009: 2).

But it is possible to estimate. First, it is clear that there are many third-country nationals living and working in the EU and EEA respectively, although the share of the population they represent varies greatly between countries: third-country nationals represent more than 10 per cent of the population in Estonia and Latvia, between 7.5 and 10 per cent in Spain and Austria, but less than 2.5 per cent in Poland, Slovakia and Hungary (Eurostat and European Migration Network 2022: 8).<sup>6</sup>

Figure 1 First residence permits issued to third-country nationals in EU + Norway, 2018–2021



Note: Data for Iceland which is also included in this report for 2021 are not available.

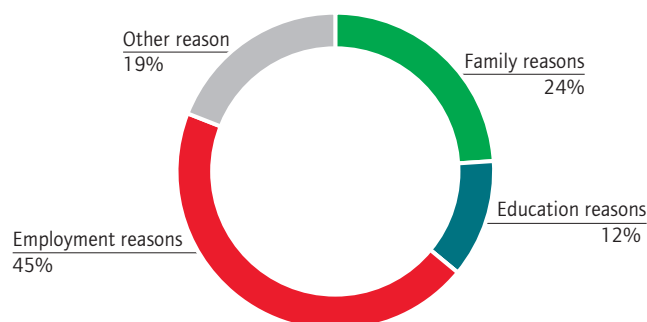
Source: Eurostat, 2022.

6. This number might have changed significantly, at least when it comes to Poland, because of the light of war in Ukraine.

Every year several million first-time residence permits are issued to third-country nationals across the EU and EEA. While, as Figure 1 illustrates, there seems to have been a slight dip in these numbers during the Covid-19 pandemic in 2020, the overall numbers seem to be rather stable over the years and have picked up again following the pandemic.

Among the first time residence permits issued in the EU and Norway in 2020, around 40 per cent were for the purposes of employment (Eurostat and European Migration Network 2022: 10) and 45 per cent in 2021 (please see Figure 2). This means that work is the primary distinctive reason why third-country nationals migrate to the EU and EEA. Moreover, one can also imagine that some of those coming for other reasons will seek a job at some point and thus transition to the status of third-country national worker over time.

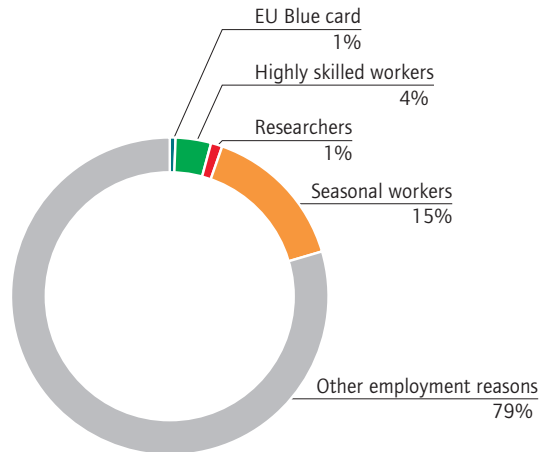
Figure 2 Reasons for issuing first time residence permits in EU + Norway in 2021



Source: Eurostat, 2022.

Finally, among the first residence permits issued for work reasons, it seems that less than half are related to immigration statuses created in EU law (for example, the Blue card, seasonal work, highly skilled work or research). In line with the data in Figure 3, more than half of residence permits are for other ‘types’ of work. Hence exploration of EU-level entry regimes must necessarily be complemented by the analysis not only of how EU-level rules have been implemented in individual countries, but also of essentially national-level entrance regimes in order to get the full picture on how third-country national workers enter the European labour market and how their immigration regimes interact with labour law.

Figure 3 Analysis of the types of first time residence permits issued for work reasons in the EU + Norway in 2021



Source: Eurostat, 2022.

While these data do allow us to obtain a certain picture of approximately how many short-term labour-oriented migrants enter the EU and EEA countries, it is extremely difficult to gauge how many of them leave after their permit expires and how many stay on and either transition to long-term migrant status or permanent residence in the host country or even become irregular migrants. It is, however, relatively clear that they constitute a meaningful (structural) part of the workforce.

As most of the country reports included below illustrate, third-country national workers have either always been a significant part of the national labour market, especially in certain sectors (see, for example, the reports on Germany, Italy and Portugal), or they are in the process of becoming more and more prominent, also in terms of numbers (see the reports on Czechia, Estonia and Croatia). For example, since 2008 Sweden has had an employer-led immigration regime, in which labour migration is managed on the basis of the needs of individual companies. This reform has led to the establishment of what the Organisation for Economic Co-operation and Development (OECD) has defined as ‘the most open labour migration regime’ among OECD countries (Report on Sweden).

Only in a very few countries are third-country national workers not seen as a major topic and do not represent a significant workforce source from a national perspective (for example, the reports on the Netherlands and Romania). But even there, the statutory approaches to interaction between migration and employment law are worth exploring.

### 3. Structural precarity and labour (im-)migration in its many forms

Migration is becoming an increasingly important issue in the globalised economy. For the countries of origin, migration theoretically has a number of advantages, such as reducing un(der)employment and the prospect of remittances, while for destination countries migration can be a solution to labour shortages and usually provides access to relatively cheap labour (van Ginneken 2013). From the perspective of workers themselves, however, migrant labour is often associated with insecure conditions, as described in research on precarious work (Anderson 2010; Cranford and Vosko 2005; Dyer et al. 2011), and also emotional forms of insecurity, as illustrated by research on precarity as such (Lewis et al. 2014, 2015; Pye et al. 2012; Reid-Musson 2014). From an individual worker perspective, a special role is played in this vulnerability by the relationship between labour rights and immigration regime. They are intimately linked when it comes to migrant workers from third countries (Strauss and McGrath 2017) and result in a sort of ‘dual precarity’ (McLaughlin Hennebry 2015).

This additional layer of migration policy upon employment policy subjects workers not only to protective measures (like labour law, whose main objective is to protect workers), but to immigration control, whose objective is to protect the borders and ensure legal residence within a certain territory. This dual objective is very apparent in Article 79 TFEU, which states that the Union should develop a common immigration policy to ensure efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States, and measures to combat illegal immigration and human trafficking. It is not an approach oriented towards individuals. Notably, fair treatment in Article 79 TFEU is directed only at third-country nationals residing legally, not the undocumented.

In this dual context it is important to emphasise that even when employers, for example, comply with the requirement to obtain work permits in order to legally employ some categories of migrants, this does not necessarily mean that they are complying with all the host country's employment laws (Ruhs 2006). Virginia Mantouvalou and others have pointed out that legislative schemes that otherwise promote legitimate aims can create vulnerabilities that trap workers in conditions of exploitation, in what she calls ‘state-mediated structural injustice’ (Mantouvalou 2020). Even when migrant workers are documented, research shows that nowhere are inequalities more pronounced than between migrant and local workers (Amo-Agyei 2020). The former tend to work in lower-paid jobs, enjoy less protection at the workplace, and are much more often exploited than their local counterparts (Benchmarking 2021: 69). In Anderson's words, immigration law ‘moulds’ certain kinds of workers into ‘precarious workers’ in a situation ‘characterized by instability, lack of protection, insecurity and social or economic vulnerability’ (Anderson 2010).

Interestingly, this vulnerability of third-country national migrant workers cuts across geographical borders and is present also among countries thought to have high levels of labour law protection. Even in countries often lauded as good



examples migrant workers from third countries can experience mistreatment and even exploitation. As national report on Sweden states:

Migrant labour has historically contributed to the growth of the Swedish economy. Yet the intersection between the Swedish model of labour and employment regulations and migration law, produces marginality, vulnerability and exposure to possible exploitation among migrant workers.

This might be so because the insidious presence of precarious migrant labour or even forced migrant labour can often remain hidden in advanced industrial societies. Organisers of forced labour tend to operate in spaces beyond direct social visibility and the reach of regulatory control, such as the back kitchens of restaurants, basement sweatshops, garment manufacturing and the more informal recesses of the construction industry (Thörnqvist and Woolfson 2012). When coupled with insecurity caused by immigration regimes, this might be enough to create a vulnerable situation ripe for exploitation by an employer.

Certain kinds of workers in some sectors or forms of employment can thus be in more vulnerable situation than others. The number of posted workers who are also third-country nationals has also been on the rise (Rasnača and Bernaciak 2020). This report therefore focuses on precisely such categories of workers and their rights because they exist in a realm somewhere between immigration law, labour law and also potentially the freedom to provide services in some instances.

Recent labour scholarship also rejects the idea of free/unfree labour as a strict binary, characterising it instead as a spectrum (Marsden 2019: 174). Indeed, more nuanced understanding of migrant workers' rights and the immigration frameworks that apply to them, as well as the interaction between these two elements is needed to better understand what kind of role they play in terms of creating precarious work and workers in Europe.

## **4. The Covid-19 pandemic and national responses**

The Covid-19 pandemic also exposed the vulnerability of third-country nationals working in the EU. They were often on the frontline of the pandemic but failed to receive adequate support and protection. The pandemic overall served to expose their existing vulnerability (Sommarribas and Nienaber 2021). The scandals surrounding seasonal agricultural work, meat processing and also care workers, for example, reveal the extreme vulnerability and exploitation of these essential workers (Bogoeski 2020; Rasnača 2020; Genacianos 2021). The International Labour Organization estimates that during the Covid-19 pandemic about 4.7 per cent of the global labour pool were migrant workers living and working outside their home country and many Covid infections appeared to be labour-related, thus exposing already vulnerable migrant labour to even more dire circumstances (Lange et al. 2020).

The political responses to the pandemic varied greatly and many did not align with the central and essential role played by third-country national workers in

national labour markets (Rasnača 2020). At the same time, pandemic also offered third-country national workers higher visibility, which may have given rise to some positive changes for such workers down the line. Hence, while the pandemic was just another issue faced by third-country national migrant workers in long decades of failure to enforce their rights and cases of exploitation and abuse, it did create an additional impulse perhaps to regulate their status and pay more attention to their existence in the labour market. Thus, the individual reports offer brief insights into national mechanisms and approaches to short-term third-country national workers during the Covid-19 pandemic.

## 5. Scope of the study

This summary report maps the interactions between immigration law regimes and labour market access for third-country nationals in 25 countries, of which 23 are EU Member States and two are EEA Member States (Norway and Iceland). National reports were prepared by national experts who responded to a call for experts issued by the ETUI in 2020.

In this study short-term migration is understood as migration for a time period up to five years. Because Directive 2004/38/EC confers on workers residing in a country for more than five years the right to apply for long-term residence rights in the EU and then become permanent residents (Article 16(1)) such workers were not included in this study.<sup>7</sup> At the same time, we are fully aware that many people have spent more than five years on EU territory but still have unclear and insecure migration status because of incomplete and fractured working periods or undocumented work. Such workers are indirectly covered by this study because it explores the interaction between labour market status and immigration law in the case of third-country nationals of all statuses awarded for up to five years. Moreover, third-country national workers might enter a Member State on a short-term stay permit (initially issued for less than five years), but their permit might be prolonged and they end up spending more time in the European labour market. In fact, the time trajectories of migrants might often be much longer than their initial work permit envisaged. This is clearly illustrated by some of the country reports (for example, the report on Italy).

The individual country reports provide an overview of short-term migration modes and rights on the labour market. The authors of the reports were in charge of selecting migration modes relevant for this study and in line with the short-term migration timeframe of less than five years for the initial residence permit. The elements to be explored in relation to each kind of permit (period of validity, whether multiple employers are possible, whether an employment contract is needed at the time of entry and whether dismissal entails loss of residence) were selected by the editors to provide uniformity in terms of comparability. Further explanatory sections on certain categories of workers (posting of third-country

7. For some exceptions see a few of the national reports below that also contain some information on such workers.

nationals, hiring of temporary agency workers from third countries) are based on the same parameters for all national rapporteurs. At the same time, where necessary, the national experts were free to amend and modify the categories set out in the template (see Annex to this report for more information) in line with the characteristics of the particular national system.

The timeframe for reporting was between 2020 and 10 October 2021 (with shortened versions of the individual reports submitted in the second half of 2021). Thus even though the last revision round was in February 2023, changes to national law after that date have not always been included in the individual reports, even though the majority of national experts updated their reports during the last revision round.

## 6. Structure of the country reports

This volume contains 25<sup>8</sup> short reports on the interaction between immigration and labour law rules as they apply to short-term third-country nationals across the EU and EEA countries. Each report consists of two parts. The first is a schematic overview of the key elements characterising interactions between immigration regime and labour law in the country. The second part provides a longer description of the national rules with more detailed information and explanations, including about any special regimes for certain groups of workers.

The first part of each report takes a comprehensive approach mapping short-term immigration regimes and the main consequences with regard to migrants' labour status. The following elements are set out for each category of third-country nationals (for example, posted workers, seasonal workers, temporary agency workers):

- period of validity of the permit;
- whether the person is allowed to work;
- whether multiple (also successive) employers are possible under the immigration regime; and
- whether a signed employment contract is needed to enter the country.

The schematic page also contains a summary overview of how the immigration regime in general interacts with labour law in a given country. It highlights two specific issues: (i) whether posting of workers from third countries is possible and under what rules; and (ii) whether it is permitted to hire temporary agency workers from third countries and how.

The second part of each country report contains a short description of each national system. It is structured in the same way across all reports: (a) an overview of third-country nationals on the country's labour market; (b) the main entry regimes

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8. This publication includes country reports from Austria, Belgium, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

for short-term or limited time work; (c) an overview of working conditions and wage setting for third-country nationals; (d) special regimes (if they exist) for third-country national seasonal workers, posted workers and temporary agency workers; (e) third-country nationals during the Covid-19 pandemic; and (f) an overview of enforcement and monitoring.



# 1. Austria

Elisabeth Brameshuber and Julia Heindl

Austrian migration law is complex as general rules are often modified by exceptions. There are several laws that contain provisions on residence and employment authorisation. These regimes are intertwined and need to be read together, resulting in tremendous complexity. This summary of the main findings focuses on short-term migration of third-country nationals, as well as the necessary residence and work authorisation. Additionally, special rules for seasonal workers, posted and temporary agency workers (TAWs) are highlighted. Finally, the problems during the Covid-19 pandemic and the relevant enforcement and monitoring provisions are briefly explained. All information is related to the legal situation in place in February 2021.

## Box 1 Summary of the immigration regime and how it interacts with labour law

The legal requirements for entering and working in Austria for short-term purposes are regulated mainly in the Employment of Foreign Nationals Act (*Ausländerbeschäftigungsgesetz*, AuslBG), the Aliens Police Act (*Fremdenpolizeigesetz*, FPG) and the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*, NAG). The AuslBG contains requirements for employment, the FPG determines conditions of entry (visa regime) and the NAG governs residence and settlement (Czech 2018: 143–145). For lawful entry third-country nationals need a valid travel document and residence authorisation. The latter could be either a residence title granted for settlement purposes, or a visa/residence permit granted for short-term purposes (Czech 2018: 147–148). The legally required employment authorisations are regulated mainly in the AuslBG and NAG. In principle, the employment of third-country nationals is subject to work authorisation, unless it is exempt by the AuslBG itself, the Regulation on the Employment of Foreigners (*Ausländerbeschäftigungsverordnung*, AuslBV) or intergovernmental agreements (Deutsch, Nowotny and Seitz 2018: 190; AuslBG: §1 III–VI; Gerhartl 2019: §1 para 1). In cases of stays of less than six months, §25 AuslBG states that in addition to a security certificate, work/posting permit or confirmation of notification (these are forms of work authorisation), third-country nationals must meet the immigration law requirements (Kind 2018a: 636). If the employment of a foreign national is terminated, the work permit becomes invalid (AuslBG: §7 VI no 1; Rauch 2021: 190). The visa itself is not invalidated by the termination of employment, however (Muzak and Pinter 2020: §27 FPG). In contrast, an authorisation for more than six months for employment purposes must be revoked if the ground (employment) ceases to apply (Abermann et al. 2019: 471).

Table 1.1 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary					
Visa C	Up to 3 months	No (additional employment authorisation is necessary)	No	No	No, except seasonal workers: revocation of work authorisation leads to cancellation of visa
Visa D	Up to 6 months	No (additional employment authorisation is necessary)	No	No	No, except seasonal workers: revocation of work authorisation leads to cancellation of visa
Permanent					
Red-White-Red Card	Up to 2 years	Yes	No	Yes, except highly qualified persons can enter with a job-seeker visa	Not automatically – the authority must withdraw residence authorisation
Red-White-Red Card Plus	Up to 1 year (subsequent title for different purposes); in some cases up to 3 years	Yes	Yes	No, because it is a subsequent title – the third-country nationals are already in Austria	Not automatically – the authority must withdraw the residence authorisation
Blue Card	Up to 2 years	Yes	No	Yes, binding job offer for highly qualified employment for at least one year required	Not automatically – the authority must withdraw the residence authorisation
Permanent residence EU	Unlimited; however, after 5 years the card must be renewed	Yes	Yes	No	No
Residence permit Researcher-Mobility	Up to 1 year	Yes	No	No, however they must conclude an admission agreement with an Austrian research institution afterwards	Not automatically – the authority must withdraw the residence authorisation
Residence permit ICT [inter-corporate transfer]	Up to 3 years	Yes	No	Yes	Not automatically – the authority must withdraw the residence authorisation
Residence permit mobile ICT	Limited to duration of ICT residence permit of other Member States	Yes	No	Yes	Not automatically – the authority must withdraw the residence authorisation

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Residence permit expatriate	Up to 1 year	No, a security certificate or a work permit is necessary to work	No	No, a security certificate or a work permit is necessary to work	Not automatically – the authority must withdraw the residence authorisation
Residence permit self-employed	Up to 1 year	Yes		Binding service contract for more than 6 months necessary	No, a shorter termination period of the contract is not harmful
Residence permit special cases dependent employee	Up to 1 year	Yes	No	Yes	Not automatically – the authority must withdraw the residence authorisation
Settlement permit researcher and researcher mobility	Up to 2 years	Yes	No	Yes, an admission agreement with an Austrian research institution is necessary	Not automatically – the authority must withdraw the residence authorisation
Settlement permit artists	Up to 1 year	Yes	No	Yes, employer declaration according to §20d AuslBG necessary	Not automatically – the authority must withdraw the residence authorisation

Note: \* There are other residence/settlement permits, such as for family members, students and pupils. For reasons of space, however, these are not explored here.

Source: Author's analysis, 2022 (Abermann et al. 2019; Gerhartl 2019; Schrattbauer et al. 2018; BMI 2021a; BMI 2021b).

## Box 2 Posting of third-country nationals

For postings less than six months from outside the EU/EFTA §18 AuslBG requires a posting permit (up to four months) or a work permit (four to six months). In the construction sector a work permit is required, irrespective of duration (Peyrl 2019a: 873–875). Very short stays of up to one week are exempt (Deutsch, Nowotny and Seitz 2018: 364–366). Furthermore, third-country nationals must meet the immigration law requirements (Kind 2018a: 636). For postings of more than six months, third-country nationals need a residence permit 'expatriate' (NAG: §59; Peyrl 2019a: 873–875). There are facilitations for third-country nationals posted within the EU/EEA (AuslBG: §18 XII).

In principle, each posting, irrespective of a person's nationality, must be reported separately. Reposting of employees is possible under certain conditions, however (framework reporting, joint reporting) (LSD-BG 2021: §19 V–VII; Maska 2020: 23–25; Schrank 2017: §19 LSD-BG). During the period of the posting the Austrian minimum wage, paid annual holiday, maximum working hours and minimum rest periods apply. Exceptions exist for initial assembly work (LSD-BG 2021: §§1, 3–5).



### Box 3 Hiring temporary agency workers from third countries

According to the Temporary Work Act (*Arbeitskräfteüberlassungsgesetz, AÜG*), only highly qualified third-country nationals – except for ICT (intra-corporate transfer) – employees and employees transferred from an EEA state – whose employment in Austria is imperative in terms of labour market or economic policy can be sent to Austria. Pre-conditions are a transfer permit, granted for a limited time, and a work permit. Only highly qualified workers, for whom no alternative exists, can be transferred. Their employment must not undermine national wage and working conditions of Austrian employees. Grounds for refusal are infringement of the provisions of the AÜG, the labour and social security laws and unlawful employment agency services. First, the Austrian employer applies for the transfer permit and then for a security certificate. Afterwards, the foreign national applies for a visa and the employer for the work permit (AÜG: §§16 III–VII, 19; Deutsch, Nowotny and Seitz 2018: 369–370; Schindler 2018: §16a).

## Description of the Austrian system

### 1. Overview of third-country nationals in the Austrian labour market

The labour force participation rate of third-country nationals was lower than that of Austrians in 2019. Prior to the outbreak of the pandemic, the labour force participation rates of foreigners increased. Because of the strict immigration policies, the number of third-country nationals in employment has increased at a slower rate than that of EU and EFTA nationals since 2010. In 2019, foreign workers were more likely to be employed in the industrial-commercial sector and in construction. Employment was highly dependent on sector, however, with agriculture and forestry, tourism, business services, legally employed household staff, construction, transportation, warehousing, and arts and culture workers all prominent. The labour market suffered massively because of the pandemic, with foreign workers severely affected by job losses (BKA 2020). In 2020 the employment rate of foreigners decreased by 2.8 per cent; most foreign workers were employed in agriculture and forestry, tourism, business services and construction (BKA 2021).

### 2. Main entry regimes for short-term or limited time work

Third-country nationals need a valid travel document and residence authorisation for entry and stay. The residence authorisation could be either a residence title, granted for settlement purposes, or a visa/residence permit, granted for short-term purposes (Czech 2018: 147–148).

The general conditions for granting a visa (< 6 months), as laid down in §21 FPG, are mainly the absence of a ground for refusal (for example, no health insurance) and ensuring the foreign national's departure (Ornezeder 2018b). Visas C and D are also available for (self-) employment purposes, if it is a solely temporary (self-) employed activity, or an activity as seasonal worker or trainee (FPG: §24; Ornezeder 2018a and c; Peyrl 2019b: 880). For lawful employment a third-country national must provide a social security certificate, work permit, posting permit or confirmation of notification (Kind 2018a: 636).

For third-country nationals, for stays of more than six months, residence including work authorisation (one-stop-shop) is necessary. There are some exceptions, however (NAG: §1). The general requirements are a valid travel document, legal entitlement to a locally customary accommodation, health insurance covering all risks, and sufficient means. Furthermore, there must be no infringement of public interests and relationship impairments between Austria and another state/subject of international law. A previous breach of residence provisions is harmful (§11 NAG; Bichl, Bitsche and Symanski 2014: 35–36; Peyrl and Czech 2019: 157–183). Self-employed third-country nationals must provide, in addition to the general conditions, a genuine self-employed activity in Austria's economic and labour market interest and a binding contract (Peyrl 2019b: 880–884).

### 3. Overview of working conditions and wage setting for third-country nationals

In general, all employees with a usual place of work in Austria, regardless of nationality, are entitled to the minimum wage laid down in Austrian laws, regulations or collective bargaining agreements, and to paid holiday leave, notwithstanding the law applicable to the employment relationship (LSD-BG 2021: §§3,4; Kind 2018a: 205–206). In Austria there are over 800 collective agreements, which cover about 98 per cent of employees (Brameshuber 2017). Because there is no statutory minimum wage in Austria, in most cases the minimum wages stipulated in collective agreements apply.

### 4. Special regimes

#### a. Third-country national seasonal workers

For third-country national entry and residence, visa D can be granted for a maximum period of nine months out of 12 months (FPG: §20 II no 2). Additionally, it is possible to extend the visa within the territory of Austria to the maximum permitted length of stay. There are facilitations for third-country nationals who have already been admitted to Austria for seasonal work, entry under facilitated conditions; sometimes no quotas apply (Kind 2018a: 272). Moreover, for short-term seasonal work, visa C with a framework validity of up to five years can be issued but a renewed work permit is necessary (Völker and Krumphuber 2017: 73–74). The labour market must be assessed. The maximum period of the work permit for regular seasonal workers is limited to nine months out of 12 months, whereas permits for (seasonal) harvest workers are limited to six weeks (Gerhartl 2017: 8–9). The Federal Ministry for Labour is authorised to set quotas pursuant to §5 I AuslBG. The overall maximum number is laid down in a regulation, which is issued based on §13 NAG (Kind 2018b: 251–252).

#### b. Third-country national posted workers

For postings of less than six months from outside the EU/EFTA, §18 AuslBG requires a posting permit (up to four months) or a work permit (four to six months). In the construction sector a work permit is required, irrespective of duration (Peyrl 2019a: 873–875). Very short stays of up to one week are exempt (Deutsch, Nowotny and Seitz 2018: 364–366). In addition, third-country nationals must fulfil the immigration law requirements (Kind 2018a: 636). For postings of more than six months, third-country nationals need a residence permit ‘expatriate’ (NAG: §59; Peyrl 2019a: 873–875). Third-country nationals who are posted or transferred within the EU/EEA (with Austria as host country) do not need extra residence authorisation if the temporary residence title was issued by a Schengen Contracting State. Further requirements include employment in the home state, compliance with Austrian wage and social dumping provisions, no grounds for prohibition and a maximum stay of three months (§18 XII AuslBG; Deutsch, Nowotny and Seitz 2018: 384).

In principle, each posting, irrespective of a person's nationality, must be reported separately. Reposting of employees is possible under certain conditions, however (framework reporting, joint reporting) (LSD-BG 2021: §19 V–VII; Maska 2020: 23–25; Schrank 2017: §19 LSD-BG). For the period of the posting the Austrian minimum wage, paid annual holiday and maximum working hours and minimum rest periods apply. Exceptions exist for initial assembly work (LSD-BG 2021: §§1,3–5).

### c. Third-country national temporary agency workers

Temporary agency workers can enter and work if they apply for a visa for employment purposes. It shall be granted only if they perform temporary activities (FPG: §24; Ornezeder 2018a and c; Peyrl 2019b: 880). According to the Temporary Work Act (*Arbeitskräfteüberlassungsgesetz*, AÜG), only highly qualified third-country nationals – except for ICT employees and employees transferred from an EEA state – whose employment in Austria is imperative in terms of labour market or economic policy can be sent to Austria. Pre-conditions include a transfer permit, granted for a limited time, and a work permit. Only highly qualified workers, for whom no alternative exists, can be transferred. Their employment must not undermine the national wage and working conditions of Austrian employees. Grounds for refusal include infringement of the provisions of the AÜG, the labour and social security laws and unlawful employment agency services. First, the Austrian employer applies for the transfer permit and then for a security certificate. Afterwards, the foreign national applies for a visa and the employer for the work permit (AÜG: §§16 III–VII, 19; Deutsch, Nowotny and Seitz 2018: 369–370; Schindler 2018: §16a).

If workers are transferred from Austria to a third country a specific permit pursuant to §16 II AÜG is required (Tomandl 2017: 35). The prerequisites are that there are no labour market policy or economic reasons opposing a transfer to a third country and no concerns about workers' protection. The permit is issued for a limited duration and number of workers (Niksova 2020: 390–392).

The general rules of Austrian labour law also apply to temporary agency workers, but are modified by certain provisions of the AÜG (Tomandl 2017: 28). Wage provisions for temporary agency workers are stipulated in §10 AÜG. This is applicable irrespective of the nationality of the temporary agency workers and obliges each Austrian employer to pay the appropriate remuneration (AÜG: §§1, 10). Those workers have a right to a minimum wage and equality in working hours and holiday entitlements compared with regular temporary agency workers of the Austrian employer. There is a termination period of 14 days for the contract between the agency and the employee. This period does not apply in case of more favourable provisions. Access is also given to the employer's company welfare facilities in Austria (Schrattbauer 2020: 223–226).

## 5. Third-country nationals during the Covid-19 pandemic

Recently, the entry of harvest/seasonal workers or nursing staff was discussed within the framework of the Covid-19 pandemic. The relevant provisions are constantly changing, however, and contain mainly requirements and conditions of entry (test, quarantine, without restriction, registration) (Covid-19-Einreiseverordnung 2021). Moreover, a special provision for seasonal workers was in force, which allowed the authorities to grant/extend work permits for a period of more than nine months. It expired on 30 June 2020 (AuslBG 2020: §32c). There are special rules on extending visa D for seasonal workers and for eligible grounds during the pandemic if a work authorisation exists. Visa D on eligible grounds may also exceptionally authorise the holder to work during the pandemic if the application for visa D for employment purposes is unreasonable and work authorisation was granted. Applications for renewal and changes of purpose of residence permits must be submitted electronically or by post (FPG: §20 II, VII; NAG: §19 Ia).

## 6. Overview of enforcement and monitoring

The liability of general contractors and corresponding sanctions are laid down in §§26 VI and 28 AuslBG. Certain serious forms of illegal employment are also criminal offences (AuslBG: §28c). §§29, 29a and 30b AuslBG contain the revocable legal presumption of three months duration of illegal employment, liability for unpaid wages and exclusion from subsidies (Ercher/Rath 2011: 165–166). The employer must provide all the documents and information necessary at the workplace and is obliged to provide information (AuslBG: §§3, 26). Moreover, the employer is committed to notify the AMS of the employment of foreigners within three days (AuslBG: §26). Third-country nationals must provide the documents of employment and residence at the workplace for inspection (AuslBG: §3 VI; Rauch 2021: 173). Labour inspection authorities can carry out on-site checks, ask for identification if they suspect that workers are foreigners or arrest them if there is a presumption that they are working without authorisation (Rauch 2021: 198). Various authorities may inspect authorisation and legal compliance (AuslBG: §26; LSD-BG: §§11–13, 19; Kiesenhofer and Traxler 2021: 79–90).

## 2. Belgium

Alexandre de le Court

The Belgian immigration regime related to the employment of third-country nationals can be rather complex because the three Regions (Brussels, Flanders and Wallonia), as well as the German-speaking community, share competences with the federal state. Regional and federal legislation must both be taken into consideration when assessing the authorisation regime. The application of labour market tests, their content and possible exemptions can thus vary between Regions. There is a unified procedure leading to a single permit for work periods above 90 days, however, when the right to stay is dependent on employment authorisation.

### Box 1 Summary of the immigration regime and how it interacts with labour law

To be allowed to stay and work for a period of more than 90 days, third-country nationals must successfully apply for a single permit. For periods of less than 90 days, third-country nationals must apply for a visa (if not exempt) and for employment authorisation (exemptions also exist). Work authorisation, also within the framework of the single permit procedure, is generally dependent on a labour market test. Legislation on work authorisation is a regional competence, so differences exist between Flanders, Brussels, Wallonia and the territory of the German-speaking community. In general, there is no difference between immigration regimes in relation to applicable labour rights (third-country nationals enjoy the full array of labour rights), with exceptions in terms of posting or when the immigration regime is related to work relations not subject to an employment contract (traineeships and au-pair work), but in those cases the specific regime for the protection of working and living conditions is based on the nature of the work and not the immigration regime.

Table 1.2 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Stay of less than 90 days	90 days max	Yes (if conditions for work authorisation fulfilled or exemption)	Yes (work authorisation required for each employer)	No (authorisation to stay is assessed independently, but may depend on sufficient resources)	No (authorisation to stay is assessed independently, but may depend on sufficient resources)
Single permit (work period of more than 90 days)	12 months renewable	Yes (if conditions for work authorisation fulfilled or exemption)	No	Yes	Yes (with 3 months grace period)
European Blue Card	13 months renewable, for periods of 3 years from the 2nd renewal	Yes	Yes (after two years)	Yes	Yes (with 3 months grace period)
Seasonal work	Max 150 days in 360-day reference period	Yes	Yes	Yes	Not if there are sufficient resources

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary intra-corporate transfer	3 years (1 year for trainees – 6 months in Wallonia)	Yes	No	Yes (not for trainees)	Yes
Trainees in private companies (Directive 2016/801/EU)	6 months	Yes	No	Traineeship contract (not employment contract)	Yes
Au-pair work		Yes	No	Not an employment relationship	Yes

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

In the absence of a bilateral agreement, the general rules for visas and authorisations apply to the posting of third-country nationals. In Flanders, no authorisation to work will be granted to posted workers from outside the EU if they do not belong to a category exempted from the labour market test. The Walloon and Brussels regulations do not provide for a clear prohibition in the same situation (so presumably authorisation might be given in case of successful labour market tests, which are however quite restrictive). For intra-EU posting of third-country nationals, no labour market test applies if a series of conditions are fulfilled (the 'Van der Elst exception'), the most significant being the following: the third-country national must have a right to stay of more than three months (and valid until the end of the period of work in Belgium) and a right to work as an employee in the posting Member State.

Concerning working conditions, the same regime is applicable, independently of the intra- or extra-EU character of the posting. During the first 12 months of the posting only provisions in laws and regulations that are sanctioned by criminal law (working time, remuneration, health and safety, among many others) and collective agreements that are declared generally applicable by decision of the government shall apply. After 12 months, the employer must respect all provisions in laws and regulations concerning employment, remuneration and working conditions, except those relating to the conclusion and finalisation of the employment contract (including non-competence clauses).

**Box 3 Hiring temporary agency workers from third countries**

There is no specific prohibition on temporary work agencies hiring third-country nationals and so the general conditions apply. A temporary work agency is considered the same as any other employer and regulations on agency work apply in full (Law of 24 July 1987 on temporary work, temporary agency work, and hiring out of workers). Third-country nationals with residence status in another EU country will thus be allowed to work under the general conditions.

In accordance with the general rules, third-country nationals are subject to the same working conditions as 'local' temporary agency workers.

There is no explicit prohibition or limit on sending third-country nationals hired by temporary work agencies to work in other EU countries.



## Description of the Belgian system

### 1. Overview of third-country nationals in the Belgian labour market

According to a study published in 2020 (Musche et al. 2020), in 2018, 19,203 work permits were issued to third-country nationals (53 per cent in Flanders, 38 per cent in Wallonia and 8 per cent in Brussels). In 2019, Belgium counted around 236,000 intra-EU posted workers, of whom 26,000 were third-country nationals. The six most represented nationalities among posted third-country nationals are Ukrainians, Turks, Bosnians, Brazilians, Kosovans and Serbians. While the majority of non-posted third-country nationals have a higher education background, posted third-country nationals are predominantly lower or intermediate. No numbers exist for posting from outside the EU, but it seems to be exceptional.

### 2. Main entry regimes for short-term or limited time work

If third-country nationals do not fall under a residence regime that involves a right to work under the same conditions as nationals or EU citizens (long-term residents, recognised refugees), the authorisation regime is as follows.

For work periods of more than 90 days, authorisation to stay and authorisation to work depend on one another and a single permit is issued. The authorisation to stay or reside depends on the Federal State and the authorisation to work depends on the Regions (or the German-speaking community). Conditions for the latter thus vary.

The duration of the single permit is limited to the duration of the employment or the posting, with an initial maximum of 12 months and a possibility of renewal for successive periods of a maximum of 12 months. Longer periods exist for certain categories of workers (and a possibility to obtain a single permit of unlimited duration after working for several years).

If a third-country national wants to enter the country for a period of work of less than 90 days, the right to access and stay and the right to work are assessed independently of each other, and the worker will receive a visa (if not exempt) and a work card (*werkkaart/permis de travail B*), and the employer will obtain a work permit (*werkvergunning/autorisation d'occupation*). In these cases, not only do the conditions for granting a work authorisation, if applicable, vary between the regions, but also the obligation to request an authorisation itself.

The general condition for a successful application of a work authorisation (if applicable) is a local labour market shortage. The application of the labour market test and its exceptions, as well as its content, varies between regions. In all three regions, however, a list of professions in which a labour shortage is presumed is

published bi-annually. In Brussels, however, no list seems to have been published by the competent employment services.

Apart from special categories (ICT, seasonal work, European Blue Card, trainees in private companies, au pairs), the following most significant categories of workers to be employed directly in Belgium are exempted from a labour market test (provided that specific conditions are met): workers with a higher education degree, with earnings above a particular threshold, managers and executives (earnings threshold), postdoctoral researchers with a fellowship (maximum three years), professional sportsmen and women, referees, and trainers (earnings threshold), performers (earnings threshold), invited teachers and researchers at higher education institutions and research centres (maximum four years).

For the remainder, most of the specific employment regimes for third-country nationals for limited periods were created for the implementation of EU Directives (European Blue Card, Seasonal Work, Trainees, ICT...).

### 3. Overview of working conditions and wage setting for third-country nationals

Third-country nationals working in Belgium under a contract of employment enjoy the full array of labour rights. The general framework and wage provisions apply, and work authorisation is dependent on receiving the general minimum wage (gross 1,625.71 euros in 2020) or sectoral minimum wages, if applicable.

Migrant workers are covered by collective agreements under the same conditions as other workers.

### 4. Special regimes

#### a. Third-country national seasonal workers

Seasonal work is limited to a maximum of 150 days within a reference period of 360 days (the limitation on the number of working days per year for seasonal work applies to both citizens and non-citizens in the relevant sectors, although this has no direct influence on working and residence permits). It is limited to specific sectors, depending on the region. No labour market test applies. Minimum housing and other conditions are necessary for the permit to be issued.

#### b. Third-country national posted workers

Please see the description above. The working conditions regime of posted third-country nationals is the same as in the case of posted EU workers.

**c. Third-country national temporary agency workers**

Please see the description above. In accordance with the general rules, third-country nationals are subject to the same working conditions as 'local' temporary agency workers.

**5. Third-country nationals during Covid-19 pandemic**

A possibility has been established to extend the right to stay if it is impossible for someone to return to their home country because of Covid-19, as well as to request a work permit (less than 90 days) via a fast-track procedure. Also, periods of unemployment are not considered when calculating the earnings thresholds for such workers (ICT, highly qualified) where it is a condition of their authorisation.

**6. Overview of enforcement and monitoring**

The existence of a visa or authorisation of residence can be checked at points of entry to Belgian territory. The federal inspection authorities have the right to check the correct application of regional legislation and vice versa.

Also, when posting workers to Belgium, employers have to present a LIMOSA declaration (informing the Belgian authorities about various features of the posting), and the client or contractor in Belgium has to receive proof from the worker that the declaration was presented (except natural persons receiving services in a private context), in the absence of which the client is obliged to inform the social security administration. The posting company has also the obligation to appoint a contact person (through the LIMOSA declaration, or if not applicable, directly to the social security administration).

The employer also has the obligation, like any Belgian employer, to hold a copy of the worker's visa and work permit/card.

### 3. Croatia

Sunčica Brnardić

With labour market shortages becoming a new defining feature of Croatian labour market, in 2021 a labour market test system was introduced to replace the previous quota-based system. The new system, however, entails a lot of exceptions and fairly loose criteria for employers, making the system rather liberal. Most workers enter Croatia with a regular single work/residence permit, issued for one year (with the possibility of extension), but no possibility of changing their employer. All third-country nationals on work permits are guaranteed same working rights as nationals, but there are no special enforcement and monitoring mechanisms.

#### Box 1 Summary of the immigration regime and how it interacts with labour law

The main legal regime set out by Croatia's Aliens Act for third-country nationals to enable foreign nationals to enter the country for employment purposes is the single work/residence permit, granted by the Ministry of the Interior. In 2021, Croatia introduced the labour market test system, meaning that the Ministry will issue a permit upon the approval of the Croatian Employment Service (CES). This will be given if the relevant criteria related to the employer's track record and the (un)availability of domestic workers have been met. But there are also many exceptions with regard to the labour market test (such as extension of work permits, occupational shortages). Seasonal workers are provided with single work/residence permits under the same regime. No labour market test is required for seasonal employment under 90 days in certain sectors and for EU Blue Card holders. All third-country nationals issued with a single work/residence permit on the basis of work contract with a Croatian employer are guaranteed all legal rights, including equal treatment with nationals in relation to working conditions.

Table 1.3 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Single work/residence permit	Maximum of one year, extensions possible	Yes	No	Yes	Yes
Single work/residence permit for seasonal workers	Up to 90 days or up to 6 months	Yes	No	Yes	Yes
Single work/residence permit for EU Blue Card holders	Up to 2 years, extensions possible	Yes	No	Yes	Yes
Confirmation of work declaration (for the purpose of performing contracted work/providing a service)	Up to 30 or 90 days	Yes	No	No, but adequate service contract	Yes

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

Posting third-country nationals directly from third countries to Croatia is possible and regulated by the Act on Posting Workers to Croatia and Cross-border Enforcement of Decisions on Material Sanctions.\* The Act states that such posting is based on multilateral or bilateral international agreements, although no bilateral agreements with specific countries to regulate posting of workers were identifiable at the time of writing this report. The same rules that apply to posting of workers from the EU/EFTA apply to these workers as well, including minimum wage guarantees. A third-country national posted directly from a third country needs a single work/residence permit to work in Croatia. While there are no specific regulations on this, it is presumed that these workers can be 're-posted' to other Member States.

\* Available in Croatian at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2017\\_10\\_101\\_2320.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_101_2320.html)

### Box 3 Hiring temporary agency workers from third countries

It is possible for a temporary work agency in Croatia to hire a third-country national. The agency must submit a request for a single work/residence permit to the Ministry of the Interior, along with all necessary documents. It also needs to submit the contract between the temporary work agency and the user-undertaking. The Croatian Employment Service will grant approval if the user-undertaking fulfils the necessary conditions. If the user-undertaking changes, the temporary agency as employer is obliged to submit to the Ministry of the Interior the new contract for the assignment to the user-undertaking. There are no other specific rules on hiring temporary agency workers from third countries.

## Description of the Croatian system

### 1. Overview of third-country nationals in the Croatian labour market

Third-country nationals are becoming an increasingly important group in the Croatian labour market. From 2016 to 2019 the number of permits issued for third-country nationals rose sharply from 2,428 to 70,637, most of them in construction and tourism/hospitality. The trend can be ascribed to labour market changes. A country that had been characterised by high unemployment rates suddenly became a country facing serious labour shortages. Thus, in 2021 the Aliens Act was amended to abandon the quota-based system and introduce the so-called labour market test system. This redesign was met with some criticisms from trade unions as too loose, especially as there are still no accompanying policy instruments, such as migration policy or bilateral agreements with other countries.

### 2. Main entry regimes for short-term or limited time work

The main entry regime for short-term or limited time work is the single work/residence permit, granted by the Ministry of the Interior. Both third-country nationals and employers can apply, although in practice it is likely to be the employer. The Ministry grants a permit on the approval of the Croatian Employment Service (CES). CES will issue its approval if the labour market test has shown that there are no available unemployed persons in Croatia corresponding to the employer's needs. In addition, the employer will be assessed, for example, with regard to its business activity in Croatia, debt or criminal convictions in relation to labour relations and social security, and whether at least 25 per cent of its employees are EU/EEA citizens. The model foresees many exceptions to the need for CES approval (including the labour market test), including extensions of work permits, shortage occupations and strategic interests, as well as EU Blue card candidates.

The permit will be issued for a maximum of one year, with a possibility of extension. Permits for EU Blue Card holders will be issued for a period of two years, and those for intra-corporate transfers for three years. Third-country nationals are allowed to work only on tasks for which they have been issued their permit/confirmation, and for the employer with which/whom employment relationship was commenced.

Without a single work/residence permit, third-country nationals can work if they have been issued a confirmation of work declaration for the purpose of performing contracted work (providing a service). This declaration can be issued up to 30 or 90 days depending on the nature of work (for example, foreign media reporters, artists).

### 3. Overview of working conditions and wage setting for third-country nationals

According to the law, third-country nationals issued a single work/residence permit on the basis of work contract with a Croatian employer are guaranteed the right to equal treatment with nationals in relation to working conditions. This is interpreted to also include collective agreements whose application had been extended and which therefore have legal force erga omnes. Currently there is only one such collective agreement in Croatia, in the construction sector. Articles regulating the rights of seasonal workers and intra-corporate transfers specifically mention that these categories of workers realise their rights in accordance with Croatian legislation and collective agreements binding on the employer.

### 4. Special regimes

#### a. Third-country national seasonal workers

Seasonal workers are issued single work/residence permits under the same main regime. They can be issued either up to 90 days, in which case no labour market test or CES approval are necessary in certain sectors, or up to six months. They can be extended only once for the same or a different employer, but seasonal work employment for third-country nationals cannot last longer than six months.

#### b. Third-country national posted workers

Third-country nationals can be posted directly from third countries to Croatia under Croatian legislation, based on multilateral or bilateral agreements. This seems to be a rare occurrence, however. Rules applying to workers posted from EU/EFTA countries under the Posted Workers Directive will also apply to these workers. A third-country national posted directly from a third country needs a single work/residence permit to work in Croatia.

#### c. Third-country national temporary agency workers

Temporary work agencies can hire third-country nationals under the same conditions as other employers. In addition, it will need to submit the contract between the temporary work agency and the user-undertaking. The CES will check the conditions for granting approval in relation to the user-undertaking.

### 5. Third-country nationals during the Covid-19 pandemic

With the Aliens Act adopted in late 2020, many voices were raised against the liberalisation of employment procedures on general and technical grounds. These concerns were highlighted by the Covid-19 pandemic. It was expected that the Covid-19 pandemic would reduce the need for foreign workers, raise the domestic unemployment rate and facilitate a significant return of Croatian migrant workers

from other EU countries. No specific measures were adopted regarding these workers during the Covid-19 crisis, however, and no discussions on the rights of third-country nationals in Croatia at the time of the crisis. The Aliens Act was amended in March 2020 to allow for automatic extension of work/residence permits for third-country national workers.

## 6. Overview of enforcement and monitoring

Short-term migrants and posted third-country nationals are not subject to particular checks or formalities in comparison with the local workforce. Upon issuing a single work/residence permit the Ministry of the Interior notifies the Croatian Employment Service, the Tax Administration, the Croatian Pension Insurance Institute, the Croatian Health Insurance Institute and the State Inspectorate to ensure compliance with all conditions for a valid permit.





## 4. Cyprus

Zaphiro Tsitsiou

The Republic of Cyprus' (RoC or Cyprus) immigration regime is based on temporary residence.<sup>1</sup> The statute under which third-country nationals can enter Cyprus for a short- or limited work period is the *Aliens and Immigration Act* (Cap. 105) ('the Law'). The Ministry of the Interior's Civil Registry and Migration Department (CRMD) is responsible for implementing the Law and issuing temporary residence and employment permits to third-country nationals. The Ministry of Labour, Welfare and Social Insurance is responsible for third-country national employment policy and granting approval to employers or companies for third-country national employment. Permits may be granted to employers for the employment of third-country nationals if the employer's specific needs cannot be met with workers either from the local labour market or the European Union (EU).

### Box 1 Summary of the immigration regime and how it interacts with labour law

*The Aliens and Immigration Act* applies to all third-country national short-term employment. Third-country nationals' short-term employment is shaped according to the type of work through Cabinet decisions, which are based on Ministerial Committee recommendations on the employment of migrants.

Third-country nationals can enter and work in Cyprus based on various immigration criteria. Domestic workers, employees of international companies, people under a general employment regime, intra-corporate transferees and seasonal workers must show an employment contract to enter and work. Domestic workers, who usually enter the country via private temporary employment agencies, sign a contract drafted by the CRMD that must be signed upon their arrival.\* None of these categories can work for multiple employers. Third-country nationals usually have one month to find another job or lose their residence upon dismissal. Although tertiary students do not need a contract to enter, they can work only for a specific number of hours and undertake jobs defined by the Ministry of Labour and Social Insurance (Labour Department). Seasonal workers can work for no more than eight months out of twelve. International companies' employees and ICT (inter-corporate transfer) workers are subcategorised according to their position in their company, and their permits vary accordingly.

*The Aliens and Immigration Act* includes provisions on the labour rights of seasonal and ICT workers, based on the principle of equal treatment. These include employment conditions, such as minimum working age, pay, dismissal, working hours, leave and holidays, and occupational health and safety requirements, not to mention the right to strike and take trade union action. Additionally, they have freedom of association and participation in workers' or professional organisations and the rights and benefits conferred by such organisations, including the right to negotiate and conclude collective agreements. Domestic workers and other short-term employees are not explicitly referred to in the Act.

\* The contract has been subject to criticism. For example, see Pavlou (2016).

1. In the case of *Cresencia Cabotaje Motilla v The Republic of Cyprus* (2008) 3 AAD 29, the Supreme Court found that a Filipino domestic worker who had been legally and continuously residing in the country for more than five years was not eligible for long-term residence because her initial residence permit was temporary.

Table 1.4 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Domestic workers	Temporary work permit initial validity: 4 years Renewal: 2 years Maximum stay for work purposes: 6 years. After the lapse of 6 years, renewal is allowed if a domestic worker continues to work for the same employer.	Yes	No	Yes. The CRMD issues a contract of employment between domestic workers and their employer. Without signing it, third-country nationals cannot be legally employed and reside in Cyprus.	Termination of the employment contract can occur if there is a mutual agreement between the employer and the domestic worker, signing a 'release' document. This gives domestic workers 1 month to find a job. During this month, a domestic worker can stay and work in their previous employer's house, except when that is impossible due to a serious issue (labour dispute, sexual harassment). Otherwise, they are obliged to leave the Republic.
General employment	Maximum validity: 4 years. Maximum validity for work in the agriculture and livestock sectors: 6 years. There is no maximum validity for highly skilled personnel employed in companies with turnover of more than a million or hundreds of thousands of euros and with activities within the priorities set for economic development.*	Yes	No	Yes	A release document can be signed if there is mutual agreement between employer and employee at any point during their contract. That gives the employee one month to find a job. Otherwise, they are obliged to leave the Republic.
Employees of international companies	Employees are granted a temporary stay and work permit depending on their employment contract's duration. It can be up to two continuous years. Directors, Key Personnel and Specialists (Categories 1–3) can stay without a time limit if they hold a temporary residence and employment permit. For Support Staff (Category 4), the restrictions concerning 'general employment' are applicable.	Yes	No	Yes. All categories must submit a signed copy of their contract together with their application for an entry permit, register, and temporary residence permit.	Employees can change employer and work for another company in foreign ownership, regardless of their length of stay, provided that they find a job within one month of the termination of their previous employment and that their new employer company can operate in the Republic. If they did not complete their maximum stay under the general employment regime, employees can change employer and work for an employer that is not a company in foreign ownership.

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Seasonal workers	Work should not exceed 8 months in total, out of 12 months. No seasonal work permit is allowed after the lapse of 6 years of work in total.	Yes	No	Yes. A signed contract or a binding job offer should be submitted for entry and work permits before the worker's arrival in the Republic.	Third-country nationals should leave the Republic unless granted a residence permit for purposes other than seasonal work.
Intra-corporate transferees (ICT)	An intracompany permit should not exceed 3 years or be equal to the transfer if the transfer is less than 3 years, for: (Category 1) Staff holding senior and leading positions, and (Category 2) Staff with specialised knowledge, essential to the business's activities or management. The permit should not exceed one year or be equal to less than a year for (Category 3) Workers with a university degree, holding traineeship positions.	Yes	No	Yes. All categories should submit an employment contract before their arrival and, if necessary, a letter of assignment of responsibilities from their employer, certified by the Labour Department.	After the lapse of the period allowed for each category, third-country nationals should leave Cyprus unless they are granted a residence permit on another ground.
Tertiary education students	Expected duration of studies. If a third-country national enrolled in a tertiary education institution is systematically absent or has dropped out, they must leave the Republic within two months.	Students can work only if accepted at a recognised tertiary education institution and are attending a full-time course. According to Decree 25/2020, to work, students should have been in the Republic from 10/05/2019. Students can obtain an employment contract attached to their course timetable and be checked and certified by the Labour Department. The working hour limit is 20 hours per week, and during school breaks working hours should not exceed 38 per week. The Labour Ministry determines the employment sectors students can work in.	No	No	No

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Self-employed	Maximum work permit validity: 4 years.	Yes, but only in specific sectors, listed in Regulation 5 of the Aliens and Immigration Regulations of 1972 to 2013. A permit is granted only if the Immigration Control Committee recommends approval to the Minister of the Interior. The minister confirms that a third-country national can be self-employed in one of the specific sectors.** In 2017, the Council of Ministers approved a policy on startup businesses.	N/A	No	N/A

Notes: \* See the CRMD website, <http://www.moi.gov.cy/moi/crmd/crmd.nsf/All/BDEF8347CE1FEB98C2257D2C0039FE33?OpenDocument>. \*\* Sectors in which self-employment is permissible: (a) agriculture, cattle breeding, bird breeding or aquaculture (under various monetary and property requirements and provided that the work does not negatively affect the general economy); (b) mining enterprises (as long as the relevant permit is acquired, monetary requirements are satisfied, and the job does not negatively affect the general economy); (c) a trade or profession (if they have obtained the relevant permits and the monetary requirements are satisfied); and (d) work in a profession or science (if they have the necessary academic and professional qualifications). Applications for an immigration permit must be submitted to the CRMD directly or through the police's district Aliens and Immigration branches. Categories B, C and D also concern individuals who intend to work as self-employed entrepreneurs.

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

The posting of workers from EU Member States is regulated by the Posting of Workers in the Framework of the Provision of Services Law of 2017 that, together with the Amending Law 158(I)/2020 and Regulations of 2017 (Κ.Δ.Π 196/2017), provide harmonisation with Directives 96/71/EC, 2014/67/EU, and 2018/957/EU. Although there has been a full framework of protection of workers posted to Cyprus to perform temporary work since 2004, the legislation's scope of application is particularly narrow, because, at a practical level, it involves only a small number of enterprises and workers.

*The Aliens and Immigration Act*, however, explicitly allows the posting of workers in the context of an intra-corporate transfer for specific categories of ICTs, posted directly from third countries, something that is distinct from the posting of workers from the EU. The Act provides a mechanism under which transferees can perform their duties in companies belonging to the same group and located in the same or other EU countries. The possibility of moving between companies located in other EU countries is called 'mobility' under the Law.

\* Available in Croatian at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2017\\_10\\_101\\_2320.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_101_2320.html)

### Box 3 Hiring temporary agency workers from third countries

‘Temporary agency work’ as a separate type of employment relationship was only relatively recently introduced in the Cypriot legal context with the *Temporary Agency Work Act (74/2012)* in 2012. Article 13(5) of the Act maintains that agencies should avoid any discrimination concerning the temporarily employed, following the *Equal Treatment in Employment Act of 2004*, the *Equal Treatment of Men and Women in Employment and Vocational Education Act of 2002*, and the *Persons with Disabilities Act of 2000*. Nonetheless, Article 5(1) of the *Equal Treatment in Employment Act* states that differential treatment because of nationality falls outside its scope. Additionally, it states that it does not affect the provisions and intentions concerning the entry and residence of third-country nationals and stateless persons in the EU, nor the treatment resulting from their legal status.

*The Private Employment Agencies Act of 1997 (8(I)/1997)* maintains that no private employment agency (PEA) can offer services to Cypriot or EU citizens and that private agencies cannot provide services to third-country nationals, except if this service is mentioned in the agency’s operation license. In addition, the Act provides criteria for the establishment of private employment agencies, restrictions on their activities, provisions for wage protection, and sanctions. Currently, many domestic workers use private employment agencies to find employment.

## Description of the Cypriot system

### 1. Overview of third-country nationals in Cyprus's labour market

Because of labour shortages, Cyprus has been attracting labour migration for the past two decades, and many work permits have been issued to third-country nationals to cover shortages of low-skilled labour. Many third-country nationals reside in the Republic, and according to recent Eurostat data on population by citizenship, there were 42,204 third-country nationals in 2020.<sup>2</sup>

### 2. Main entry regimes for short-term or limited time work

*The Aliens and Immigration Act* applies to all categories of short-term third-country national employment. Third-country nationals' short-term employment is shaped according to the type of work, based on Cabinet decisions, which are based on Ministerial Committee recommendations on the employment of migrants. Third-country nationals can enter and work in Cyprus based on various immigration criteria. Domestic workers, employees in international companies, those under a general employment regime, intra-corporate transferees, and seasonal workers must show an employment contract to enter and work. Notably, domestic workers' contracts are drafted by the CRMD and must be signed upon their arrival. The contract does not include working hours, breaks, and overtime, while they earn almost half the statutory minimum wage under their contract and visa regime. None of these categories can work for multiple employers. Generally, third-country nationals have limited time (usually one month) to find another job or lose their residence upon dismissal. Although tertiary education students do not need a contract to enter, they can work only for a specific number of hours and undertake jobs defined in Ministry of Labour decrees. According to the decree of May 2019, students can be employed mainly in blue-collar jobs. Seasonal workers can work for no more than eight months out of twelve. Employees in international companies and inter-corporate transferees are subcategorised according to their position in their company, and their permits and employment vary accordingly. The Aliens and Immigration Act includes provisions on seasonal workers and inter-corporate transferees in particular, according to which national and foreign citizens have the same access to social protection.

### 3. Overview of the working conditions and wage setting for third-country nationals

The Aliens and Immigration Act regulates the working conditions and pay of seasonal workers and inter-corporate transferees. Third-country nationals'

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2. See, Eurostat Online Database, <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

general working conditions and wages have been reported as low compared with the wages paid to Cypriots for the same work (Trimikliniotis and Demetriou 2011).

The case of domestic workers is illustrative. The CRMD issues their employment contracts. Unless they sign them domestic workers cannot be legally employed and reside in Cyprus. Tied to a visa regime and a controversial contract, domestic workers' working hours, breaks and overtime remain undefined, as they are not included in the contract (Hadjigeorgiou N and RoC Ombudsman 2020). Moreover, domestic workers' wages are not governed by collective agreements or the national minimum wage for specific professions, which in 2017 was 870 euros upon recruitment and 924 euros for employees completing six months of work for the same employer. Therefore, because domestic workers' gross minimum wage is set at 460 euros and employers can deduct 10 per cent for accommodation and 15 per cent for food, domestic workers' actual wages come to 309 euros.

## 4. Special regimes

### a. Seasonal workers

*The Aliens and Immigration Act* defines seasonal workers as third-country nationals whose primary residence is a third country but who legally and temporarily reside in Cyprus and work on fixed-term employment contracts agreed between them and their employer. The sectors of seasonal employment are defined by decrees issued by the Cabinet of Ministers, after a proposal by the Minister of Labour, Welfare and Social Insurance.

Interested employers apply to the Ministry of the Interior or a person authorised to obtain a work permit. The application must fulfil specific criteria, such as the place and type of work, employment duration, pay, and hourly or monthly work. For this, a signed contract or a binding job offer must be adduced. Moreover, although the law says that after their arrival in Cyprus third-country nationals must submit proof of health insurance covering the risks usually protected for Cypriot nationals, since 2020 seasonal workers can access public health care through the General Health System (GHS).

Applications for a seasonal work permit must also include confirmation from the Labour Department that the third-country national will have suitable accommodation. The Act makes a rather general reference to the quality of accommodation as something that meets the Republic's safety and hygiene standards and ensures satisfactory living conditions. Additionally, it states that the rent should not be excessive compared to third-country nationals' net remuneration and the quality of the accommodation. Furthermore, the rent must not be deducted automatically from the seasonal worker's wages. Lastly, the employer should offer the seasonal worker a lease or an equivalent document stating the rental terms.

The seasonal work permit is issued for stays not exceeding 90 days. Additionally, the maximum length of a seasonal worker's stay should not exceed eight months



out of 12. After expiry of this period, third-country nationals must leave the Republic's territory unless granted a residence permit for purposes other than seasonal work. Finally, the Act provides for third-country nationals' re-entry and sanctions against employers and procedural guarantees.

Seasonal workers have the right to equal treatment with Cypriot citizens with regard to employment conditions, such as minimum working age, pay and dismissal, working hours, leave and holidays, and occupational health and safety requirements. Furthermore, seasonal workers have the right to strike and take trade union action. The statute explicitly refers to the freedom of association and participation in workers' or professional organisations and the rights and benefits conferred by such organisations, including the right to negotiate and conclude collective agreements. The same Article provides that seasonal workers have the right to be paid all arrears owed them by their employers. Other rights conferred on third-country nationals employed on a seasonal basis are access to goods and services other than housing, access to advisory services by employment agencies, education and vocational training, the recognition of diplomas, certificates, and other professional qualifications and tax benefits.

#### **b. Third-country national posted workers**

The posting of workers from EU Member States is regulated by the Posting of Workers within the Framework of the Provisions of Services Act of 2017 that, together with the Amending Act 158(I)/2020 and the Regulations of 2017 (K.Δ.Π 196/2017), provide harmonisation with Directives 96/71/EC, 2014/67/EU, and 2018/957/EU. Although there has been a full framework of protection of workers posted to Cyprus to perform temporary work since 2004, the legislation's scope of application is particularly narrow, and at a practical level, it involves only a small number of enterprises and workers (Soumeli 2008).

*The Aliens and Immigration Act*, however, explicitly allows the posting of workers in the context of an intra-corporate transfer for specific categories of workers posted directly from third countries. The Act provides a mechanism under which transferees can perform their duties in companies belonging to the same group and located in the same or other EU countries. The possibility of moving between companies located in other EU countries is called 'mobility' in the Act. It states that third-country nationals holding a valid intra-corporate transfer permit issued by another Member State can reside in the Republic of Cyprus and work in any other entity that belongs to the same company or group for 90 days out of any period of 180 days. Also, mobility can be of longer duration, that is, more than 90 days, so-called 'long-term mobility'. A long-term mobility permit is referred to as 'mobile ICT' and provides the holders of an intra-corporate transfer permit with the right to reside and work.

Intra-corporate transferees' rights are explicitly provided for in the Act, as well as their right to equal treatment. The Act provides that intra-corporate transferees enjoy equal treatment to the people addressed by the *Posting of Workers within the Framework of the Provision of Services Act* regarding the terms of employment. Additionally, intra-corporate transferees enjoy equal treatment to

Cypriot nationals regarding freedom of association and their registration and involvement in employers' or employees' organisations, including the rights and benefits ascribed by those organisations.

One of the conditions for issuing the residence permit is that during an intra-corporate transfer (ICT), all legal, regulatory or administrative provisions, or collective agreements of general application that are applicable to intra-EU posted workers in similar conditions in respective employment sectors, should be applied to ICT workers. In the absence of generally applicable collective agreements, the Director of the Labour Department should make sure that employers comply with collective agreements applicable to all similar undertakings in the respective sector of employment, and that are applicable in the same geographical area, or alternatively, those that have been concluded by the most representative employers' and workers' organisations. Lastly, during their transfer, intra-corporate transferees' pay should not be less favourable than that of Cypriot nationals working in similar positions.

### **c. Third-country national temporary agency workers**

Temporary agency work as a separate type of employment relationship was only recently introduced in the Cypriot legal context, with the implementation of the *Temporary Agency Work Act (74/2012)* in 2012. Article 13(5) of the Act lays down that agencies should avoid any discrimination concerning the temporarily employed, in accordance with the *Equal Treatment in Employment Act of 2004*, the *Equal Treatment of Men and Women in Employment and Vocational Education Act of 2002*, and the *Persons with Disabilities Act of 2000*. Nonetheless, Article 5(1) of the *Equal Treatment in Employment Act* states that differential treatment because of nationality falls outside its scope. Additionally, it states that it does not affect the provisions and intentions concerning the entry and residence of third-country nationals and stateless persons in the EU, nor the treatment resulting from their legal status.

The *Private Employment Agencies Act of 1997 (8(I)/1997)* maintains that no private employment agency (PEA) can offer services to Cypriot or EU citizens and that private agencies cannot provide services to third-country nationals, except if this service is mentioned on the agency's operational license. In addition, the Act provides criteria for a PEA's establishment, restrictions on their activities, provisions for wage protection, and sanctions. Currently, many domestic workers use private employment agencies to find employment.

## **5. Third-country nationals during the Covid-19 pandemic**

Because of the forced long-term closure of many businesses, mainly in tourism, food and hospitality, many third-country nationals lost their jobs. The government implemented a series of support packages to businesses to help them continue operating and secure jobs. But although some third-country nationals managed to keep their jobs, many illegally or temporarily employed people could not benefit from these programmes and were dismissed. That, together with third-country

nationals' limited access to banks during the first lockdown – most do not use online banking (Morsheimer et al. 2020: 8), meant that they were unable to pay rent for their already very crowded places of accommodation.

## 6. Overview of enforcement and monitoring

A procedure has been established for the examination of complaints regarding violations of terms of employment. The Labour Relations Department, first, examines complaints and a report is prepared after hearing both parties. The report states the findings and suggestions regarding possible violations of employment contracts. The report is then forwarded to a tripartite committee responsible for formulating a final proposal for the Minister of the Interior.

Third-country nationals can also submit complaints about sexual harassment under the *Equal Treatment for Men and Women in Employment and Vocational Training Act of 2002* (L.205(I)/2002). Sexual harassment cases are examined by a specialised unit of the Labour Department. If a complaint or allegations about sexual harassment arise in a meeting, the Department of Labour should be informed, and gender equality inspectors should examine the case. A complaint can also be submitted directly to the Gender Equality Committee or the gender equality inspectors of the Labour Department.

The 2019 CRMD contract for domestic workers, however, does not mention complaint procedures for those unhappy with their working conditions or remuneration. Clause 4(e) provides that if there is a dispute between the employer and the employee, either of the two parties can file a complaint to the District Aliens and Immigration Unit of the Police, and the Department of Labour Relations to be examined by the Labour Disputes Committee. But there is no explanation of why the police – not least, its Immigration Unit – are supposed to get involved in employment disputes. Moreover, it remains unclear what the parties' rights are during this process; for example, whether employees will continue to be paid by their employer, and, if not, whether they are allowed to look for a job elsewhere (Hadjigeorgiou and RoC Ombudsman 2020: para 10).

Finally, the *Aliens and Immigration Act* provides that the police, government officers or inspectors may be authorised to check the permits or visas of third-country nationals to monitor the employment of illegally staying third-country nationals. In addition, the authorities can monitor, evaluate and inspect compliance with the Law's provisions on seasonal workers under Article 18ΨΘ. But there are no provisions in the Law concerning checks by the authorities regarding intra-corporate transferees.

## 5. Czechia

Jakub Tomšej

There is no doubt that the number of foreigners in the Czech Republic is constantly increasing. This trend can largely be attributed to the fact that employing foreigners, especially those from third countries, has become a literal necessity for many employers in recent years. As of 31 December 2020, there were 634,790 foreign nationals in the Czech Republic, of whom 380,951 were from third countries. This number represents an increase of almost 39,000 on the end of 2019, almost 31,500 of whom are from third countries. Of the foreigners who do not hold a permanent residence permit, 50.8 per cent are in the country for employment purposes.

### Box 1 Summary of the immigration regime and how it interacts with labour law

Three main regimes govern third-country nationals' right to work in the Czech Republic.

- (i) Short-term employment up to 90 days
  - a. Short-term visa for the purpose of employment + work permit
  - b. Short-term visa for the purpose of seasonal work + work permit
- (ii) Employment up to one year
  - a. Long-term visa for the purpose of seasonal work + work permit
  - b. Special work visa + work permit
  - c. Other types of visas + work permit
- (iii) Employment for more than 1 year
  - a. Employment card
    - 1. Dual
    - 2. Non-dual
      - i. with free access to the labour market
      - ii. with work permit
  - b. Blue card
  - c. Intra-Company Employee Transfer Card
  - d. EU Member State Intra-Company Employee Transfer Card

The possibility for third-country nationals of working in the Czech Republic requires the fulfilment of two requirements: legal residence and the right to enter the labour market.

There are nevertheless also migration regimes that do not allow third-country nationals to work, including the majority of short-term visas, long-term visas without separately issued work permits or situations without free access to the labour market or several types of long-term residence permit.\*

\* Such as long-term residence permits for the purpose of 'business'.

Table 1.5 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Short-term visa for the purpose of employment	Up to 90 days	Yes	No	Yes	Yes
Short-term visa for the purpose of seasonal work	Up to 90 days	Yes	No	Yes	Yes
Long-term visa for the purpose of seasonal work	Up to 6 months	Yes	No	Yes	Yes
Special work visa	Up to 1 year	Yes	No	Yes	Yes
Other types of visas with work permit	Up to 1 year	Yes	Yes*	No	No
Dual employment card	Up to 1 year	Yes	Yes**	Yes	Not immediately, possible change
Non-dual employment card with work permit	Up to 2 years	Yes	Yes***	Yes	Not immediately, possible change
Non-dual employment card with free access to labour market	Up to 2 years	Yes	Yes	Yes	Not immediately, possible change
Blue Card	Up to 2 years	Yes	No	Yes	Not immediately, possible change
Intra-Company Employee Transfer Card	Up to 3 years	Yes	No	No	Yes
EU Member-State Intra-Company Employee Transfer Card	Up to 3 years	Yes	No	No	Yes

Notes: \* If multiple work permits are issued. \*\* If it is approved by the Ministry of the Interior. \*\*\* If multiple work permits are issued.

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

A work permit is required if a third-country national is to be posted by their foreign employer, on the basis of a contract with a Czech entity, to perform work in the Czech Republic. These third-country nationals also need residence permits.

A work permit, employee card, intra-corporate transferee card or a Blue Card are not required for the employment of a third-country national posted to the territory of the Czech Republic based on transnational provision of services by an employer established in another EU state. They are entitled to enter without any special conditions.\* The duration of this posting is limited to a maximum of 90 days out of 180 days. This results from the maximum length of stay in the Czech Republic on the basis of a visa or residence permit issued by another EU state.

\* Apart from obligations such as announcing their presence to the police within three days and obligations stemming from the Employment Act for employers employing third-country nationals.

**Box 3 Hiring temporary agency workers from third countries**

This is possible. If a temporary work agency established in Czechia wants to temporarily assign third-country nationals, it must proceed in the same way as other employers. Temporary assignment to the user is limited by Government Regulation No. 64/2009 Coll.

Employment agencies, if they are authorised for the appropriate form of employment intermediation, may carry out employment intermediation in the territory of the Czech Republic or from the territory of the Czech Republic abroad and from abroad to the territory of the Czech Republic. There are no limits on sending third-country nationals hired by temporary work agencies to work in other EU countries, nevertheless they must respect the relevant legislation of a respective EU state.

## Description of the Czech system

### 1. Overview of third-country nationals in the Czech labour market

For third-country nationals the possibility of working in Czechia requires the fulfilment of two requirements: legal residence and the right to enter the labour market. These two requirements sometimes intermingle in the form of a residence permit that serves both as work permit and permission to stay, but sometimes two permissions are required.

If a third-country national is working in Czechia legally they are offered the same kind of protection as domestic employees when it comes to labour law.

### 2. Main entry regimes for short-term or limited time work

#### Short-term employment up to 90 days

Short-term employment up to 90 days is possible by obtaining a short-term visa for the purpose of (i) employment or (ii) seasonal work.

#### (i) Short-term visa for the purpose of employment

An application for this visa may be submitted at the Czech Embassy in a third-country national's home country or in a country where a third-country national has a long-term or permanent residence permit. A work permit issued by the Labour Office is required.<sup>1</sup>

It must be noted that a third-country national's right to work is restricted to work specifically mentioned in their work permit. Changes in working conditions not approved by the Labour Office are illegal.

#### (ii) Short-term visa for the purpose of seasonal work

This type of visa is very similar to the short-term visa for the purpose of employment. What is different is its limitation to employment in sectors listed in the Regulation of the Ministry of Labour and Social Affairs no. 322/2017 Coll.

Again, a third-country national's right to work is restricted to the work specifically mentioned in their work permit.

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1. A work permit is also a general requirement for issuing some of the residence permits listed below. The information given here applies also in those cases, so we will not discuss the work permit in more detail.

### Employment up to one year

#### (i) Long-term visa for the purpose of seasonal work

This visa is awarded for a maximum period of six months. The conditions for obtaining this type of residence permit are similar to those for its short-term variant. An application must be submitted at a Czech embassy in a third-country national's home country.

#### (ii) Special work visa

This visa can be issued only when activated by a particular government regulation. Currently, Government Regulation No. 291/2019 Coll. grants such visas to Ukrainian nationals working in agriculture, the food industry or forestry.

An application must be submitted at a Czech embassy in a third-country national's home country.

#### (iii) Other types of visa

There are other types of residence permit that enable third-country nationals to work, in certain circumstances. This area is fairly complex. For example, the Employment Act lists categories of third-country nationals who have free access to the labour market. It also allows the issuing of work permits to certain third-country nationals and prevents it to certain other groups.

### Employment for more than one year

#### (i) Employment card

Issued for a maximum period of two years with an option to be extended for another two (and then again, repeatedly). Employment cards can be issued under two regimes: (i) the dual regime (dual employment card) and (ii) the non-dual regime (non-dual employment card).

The difference between these two types of employment card is that the dual card serves both as permission to stay and as a work permit, while the non-dual card only provides permission to stay.

*Dual employment card:* Dual employment cards are always issued for specific jobs. That means that any change in working conditions that is not approved by the Ministry of the Interior will render the work illegal. An application must be submitted at a Czech embassy in the third-country national's home country or, if a third-country national is already residing in Czechia based on a long-term visa or long-term residence permit, at the office of the DAMP.<sup>2</sup>

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2. There are exceptions to this rule as some residence permits do not allow third-country nationals to exchange them for employment cards, that is, long-term visas for the purpose of seasonal work.



*Non-dual employment card:* In some special cases a third-country national has the right of free access to the labour market or continues to be subject to the obligation to obtain an employment permit issued by the Labour Office. In these cases, the right of free access to the labour market or the employment permit entitle a third-country national to perform work and the employment card serves merely as a long-term residence permit.

(ii) Blue card

A Blue card serves as both permission to stay and a work permit and relates to a specific job. It grants third-country nationals the right to stay long term and involves the performance of highly skilled work. Highly skilled work is defined as requiring a university education or a higher vocational education, lasting at least three years.

### 3. Overview of working conditions and wage setting for third-country nationals

There are no special provisions on working conditions for third-country nationals in the Labour Code, the Employment Act or the Foreign Nationals Act, but economic migration regimes can impose obligations on employers.

When it comes to accommodation for third-country nationals, the Foreign Nationals Act lays down that it should not be dissimilar to that provided in buildings for a similar purpose in municipalities, districts or regions. Special rules apply to seasonal workers whose accommodation is provided by their employer.

### 4. Special regimes

See above for residence permits for the purpose of seasonal work and special work visas.

**a. Seasonal workers**

See above for residence permits for the purpose of seasonal work.

**b. Posted workers**

A work permit is required if a third-country national employed by a foreign company is to be posted by their employer. These third-country nationals may also need a residence permit, depending on the length of stay (short-term visa for the purpose of employment).

A work permit, employment card, intra-corporate transferee card or blue card are not required to be able to employ a third-country national posted to Czechia within the framework of transnational provision of services by an employer established

in another EU Member State. The duration of such postings is limited to 90 days out of 180 days.

### c. Temporary agency workers

If a temporary work agency established in Czechia wants to employ and temporarily assign third-country nationals, it must proceed in the same way as other employers. Third-country nationals recruited directly from a third country must have a valid residence permit and their access to the labour market must be ensured. There are no limits on sending third-country nationals hired by temporary work agencies to work in other EU countries, but they must be in compliance with national legislation.

Attention should be paid to Government Regulation No. 64/2009 Coll. setting out the kinds of work that temporary work agency workers cannot perform.

## 5. Third-country nationals during the Covid-19 pandemic

Especially during spring 2020 rapid changes were made to the rules on entry to Czechia, changes of employer for third-country nationals with employment cards, extension of the validity of work and residence permits of third-country nationals remaining in Czechia on short-term visas.

Entry to Czechia was prohibited for all foreign nationals, with the exceptions specified in the regulations. These exemptions also changed quite rapidly depending on the current situation in third-country nationals' countries of origin, the need for family reunification and the need to allow the entry of foreign nationals whose presence was in the interest of the country (such as highly skilled workers).

The activities of Czech embassies were also curtailed during this period.

## 6. Overview of enforcement and monitoring

Employers are obliged to inform in writing the relevant regional branch of the Labour Office about the employment of foreign nationals at the latest on the day such persons commence work, and to keep copies of documents proving foreign nationals' right of residence in Czechia.

Monitoring related to employment is carried out by the State Labour Inspection Office and regional labour inspectorates.

Although the residence of foreign nationals is entrusted in particular to the DAMP or Ministry of Foreign Affairs, which are the bodies that issue residence permits, the Aliens Police Department (*cizinecká policie*) plays an important role.



## 6. Denmark

Natalie Videbæk Munkholm

Labour migration to Denmark is a central element in the Danish Aliens Act. Overall, labour migration is based on local demand. Over the past 20 years or so, the regulation of immigration in Denmark has been influenced by significant political and economic shifts. On one hand, some more open migration systems are available for Danish employers to attract foreign labour. On the other, concerns about social dumping and social security costs have resulted in strict control mechanisms. Labour migration to Denmark is still a highly politicised topic, resulting in complex, as well as often changing regulations.

### Box 1 Summary of the immigration regime and how it interacts with labour law

The Danish rules on posting and short-term work in Denmark for third-country nationals are comprehensive.\* In addition, the topic is heavily debated politically, and the rules often change.

The main regulatory framework governing foreign nationals' right to enter, stay, work and study in Denmark is the Statutory Act on Aliens (the Aliens Act). The Aliens Act section 9a (2) nos 1)-14) lists the primary legal regimes under which a third-country national may enter Denmark for the purpose of short-term or limited-term work.

A third-country national must, with few exceptions, obtain a work permit before carrying out paid or unpaid work, or offer services as a self-employed persons (cf. the Aliens Act section 13(1)).

A third-country national has a right to a work permit if they have a right to a residence permit in accordance with Aliens Act section 9a. Residence permits and work permits under section 9a are intended to be for a limited time only.

\* The Danish Immigration Service's website 'New to Denmark' is the official single point of access to information for all visits, residence and work permits. See: <https://nyidanmark.dk/en-GB/You-want-to-apply>

Table 1.6 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Positive list – labour shortages for highly qualified jobs	4 years at a time (eventually 5 years at a time), with no maximum	Yes	No – but if dismissed can find a new employer	Yes – or offer of employment showing salary and working conditions in line with normal levels for the relevant job or sector in Denmark	Not if the contract is terminated for reasons not related to the worker. A 6-month residence permit is provided to seek new employment. A new employment offer can be the basis for a new application for residence and work permit under the scheme

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Positive list – labour shortages for skilled workers	4 years at a time (eventually 5 years at a time), with no maximum	Yes	No	Yes – or offer of employment showing salary and working conditions in line with normal levels for the relevant job or sector in Denmark	Yes – but if new work is found within 14 days, the third-country national can apply for a new work permit
Minimum salary level scheme	4 years at a time (eventually 5 years at a time), with no maximum	Yes	No	Yes – or offer of specific employment with annual salary of minimum 62,000 euros (2023), a minimum 30 hours per week, and other working conditions corresponding to Danish standards	Not if the contract is terminated for reasons not related to the worker. A 6-month residence permit is provided to seek new employment
Researchers	4 years at a time (eventually 5 years at a time), with no maximum	Yes	Yes – may take on supplementary work, that is connected with the research project, such as teaching, presentations, seminars	Yes – or offer of a position at a university or company research department	Not if the contract is terminated for reasons not related to the worker. A 6-month residence permit is provided to seek new employment. A new employment offer can be the basis for a new application for residence and work permit under the scheme
Company traineeships	1 year at a time, maximum of 2 years	Yes – but only in a company that has a strategic partnership with a foreign company	No, but may take on unpaid voluntary work	An agreement between the sending foreign company and the receiving Danish company. Must in addition follow a course relevant to the position while in Denmark	Yes
Educational traineeships		Yes – but only in companies in the green sector, the health sector or in architecture. Possible in other sectors after an individual assessment	No	Yes, an agreement for internship. Must be enrolled in an educational programme in the country of residence. Only for applicants between 18 and 35 years of age (30 years of age in agriculture).	Yes
Special individual qualifications	1 year at a time (then 2 years and 3 years at a time), no maximum limit	Yes – in jobs that can only be carried out by that specific individual, such as professional athletes, coaches, artists, chefs	No	Yes	Yes – but if new work is found within 14 days, the third-country national can apply for a new work permit
Herdsman or farm manager	1 year at a time (then 2 years and 3 years at a time), no maximum limit	Yes	No	Yes	Yes – but if new work is found within 14 days, the third-country national can apply for a new work permit

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Entrepreneurship and innovation scheme – for start-ups	2 years at a time (then 3 years at a time), with no maximum limit.	Yes. Only 75 permits are granted per year	No	No. An innovative high-tech business plan based on new ideas, international network and markets, must be approved. The third-country national must play an active part in establishing and running the business, i.e. not for shareholders or investors only	N/A
Short-term employment	Once per year, maximum 90 days per year, cannot be extended in the same year. No limit to the number of years.	Yes	No	Yes – with pre-certified employers fulfilling a set of criteria	Yes – but if new work is found within 14 days, the third-country national can apply for a new work permit
Working holiday, bilateral agreements	Usually up to 1 year	Usually up to 6 months	Yes	No	No
Fitters	Up to 90 days	Yes – works for the sending entity, not a Danish company	No	A sales agreement between the sending company, where the fitter is employed, and a receiving company in Denmark	N/A – employed by the sending entity

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

Workers with legal residence in another EU Member State and who are employed by an employer established in another Member State are exempt from work permits/visas under the Aliens' Act when posted to work in Denmark. Reposting out of Denmark is possible, as long as the posting entity is informed in line with Statutory Act No. 2566 on Posting of Workers of 13 December 2021.

Third-country nationals employed by employers outside the EU/EEA can be posted to Denmark only according to the rules for work permits/visas in the Aliens Act. Most visas concern work for a Danish employer. At the moment, there are no bilateral agreements in force allowing the posting to Denmark of third-country nationals employed outside the EU. Re-posting out of Denmark is technically possible.

Third-country nationals on short-term work permits in Denmark in accordance with the Aliens' Act can be posted out of Denmark, if the conditions for a work visa are still met. This includes working for a specific Danish employer, receiving Danish salaries, residing in Denmark, not giving up the place of residence in Denmark and not staying outside Denmark for more than six months.

The working conditions, including wages, of all workers posted to Denmark are regulated by the Posting of Workers' Act.

An amendment is underway allowing intra-concern postings from companies established outside the EU/EEA that are in a concern together with a Danish company of up to 50 employees. The intra-concern posting to Denmark will be for two separate periods of up to 15 working days within a period of 180 calendar days.

### Box 3 Hiring temporary agency workers from third countries

Third-country nationals residing in another EU Member State and employed by a temporary work agency established there are exempt from work permits, when posted temporarily to work in Denmark. This is the case only for temporary postings under the Posting of Workers Act. There is no control beforehand\* that the criteria for third-country national temporary agency workers are met. Controls are carried out as part of spot-checks at Danish workplaces.

Third-country nationals residing in another EU Member State and employed by a temporary work agency established there are not exempt from work permits when deployed to work for Danish user entities as labour. This situation is treated as permanent access to the Danish labour market for third-country nationals and requires permits under the Aliens Act (Nilas 2021: 152–153).

Third-country nationals may be employed by a Danish temporary work agency as temporary agency workers, if the normal requirements for a work permit under the Aliens Act are met, including guarantees of salaries and working conditions. The visa is in this case issued for a specific job with a specific employer (a user-entity), and Danish temporary work agencies are not permitted to deploy third-country nationals to several user entities, neither in Denmark nor in other EU Member States.

Danish temporary work agencies may act as recruitment intermediaries between Danish employers and third-country nationals wishing to work temporarily in Denmark. In this case, the third-country national is not employed by the Danish temporary work agency.

\* As assumed in CJEU ruling C-91/13 *Essent* (see also Lind 2014: 85).

## Description of the Danish system

### 1. Overview of third-country nationals in the Danish labour market

The issue of third-country nationals working in Denmark is strongly polarised. The debate is closely connected to labour shortages in Denmark. Employers point to a 'historic' labour shortage which can be remedied only by inviting more foreign labour (Dansk Arbejdsgiverforening 2022), while the trade unions point to available Danish labour and resist more foreign labour (FH 2021). For legislators, while it is important to tackle labour shortages, they know that there is some public concern about access to Denmark for foreigners.

The granting of permits enabling third-country nationals to work in Denmark revolves around the benefits for Danish society. All types of positions and functions are in principle available for third-country nationals, if a need has been clearly identified and the worker will not be a burden on the Danish social security system. Third-country nationals can perform work in sectors with labour shortages, such as the green sector and the health sector. Furthermore, there are specific sectors with shortages, and are listed on the so-called positive lists, one for skilled workers (Danish Immigration Service 2022a) and one for persons with a higher education (Danish Immigration Service 2022b). Similarly, people with specific highly sought after profiles, such as researchers, highly qualified persons and innovative entrepreneurs are also invited to stay and work in Denmark.

### 2. Main entry regimes for short-term or limited time work

The entry regimes for third-country nationals are both detailed, specific and complex. The main regimes include the positive lists, a minimum pay scheme, researchers, traineeships and internships, special individual qualifications, agricultural management, innovative entrepreneurs, short-term employment of up to 90 days, and posted workers from an entity established in another EU Member State.

An amendment is underway allowing intra-concern postings from companies established outside the EU/EEA that are in a concern together with a Danish company of up to 50 employees. The intra-concern posting to Denmark will be for two separate periods of up to 15 working days within a period of 180 calendar days.



### 3. Overview of working conditions and wage setting for third-country nationals

Third-country nationals working and residing in Denmark are subject to the same labour and employment regulation as local workers and other EU citizens.

In Denmark, the main avenue for wage-setting is collective agreements. There is no general statutory regulation on minimum wages. Approximately 84 per cent of all workers in Denmark are covered by collective agreements.

On one hand, the system is 'voluntary'. There are no statutory provisions mandating employers to follow collective agreements. Collective agreements are binding only on employers that are members of the relevant employer's organisation or are individual signatories to a collective agreement.

On the other hand, employers that are bound by a collective agreement must apply the provisions to all employees performing the work concerned, regardless of their unionisation status, nationality, employment terms or visa status. Employers must pay the wages outlined in the applicable collective agreement for work carried out by third-country nationals. Some collective agreements expressly underline that this duty also applies for foreign workers (Industrial Agreement 2020–2023).

Employers that are not bound by a collective agreement can nonetheless be obliged by law to pay people in specific positions according to the collective agreement. This is the case for employers of third-country nationals under the Aliens Act, that is, the Positive Lists Schemes for researchers, trainees, special individual qualifications, agricultural management, and fast-track schemes. As a criterion for the work permit, the employment must offer the 'usual' level of pay and working conditions within the relevant sector or for the relevant position. Collective agreements are perceived as expressing the 'usual' pay and working conditions.

In 2018 a situation with posted Filipino truck drivers accommodated in containers on the Danish/German border<sup>1</sup> raised public awareness and engagement in ensuring decent working conditions for third-country nationals posted to Denmark. The Filipino truck drivers, who were posted from an EU entity, were paid very poorly as well as accommodated in atrocious living conditions, which outraged the public as well as politicians and social partners. The situation gave common ground for the principle that any person working in Denmark, regardless of the legal scheme used, should enjoy protection of fundamental rights as well as decent salaries, working conditions and living conditions. As a result of the Padborg case, a tripartite agreement was concluded in 2020 ensuring minimum pay for cabotage transportation of goods and persons in Denmark. This paved the way for an executive order providing minimum pay for cabotage driving (Executive Order no 115 of 30/01/2023). The rules apply to any cabotage driving, regardless of where the employer is established.

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1. Known as the 'Padborg-case'. <https://www.dr.dk/nyheder/tema/kurt-beier-transport-sagen>

## 4. Special regimes

There are no special regimes for Third-country National Seasonal workers, third-country national posted workers and third-country national temporary agency workers. The Ministry of Integration has sent an amendment through a public consultation process in May 2023 with a view to make internal posting of third country nationals to Denmark easier. The amendment will exempt third country nationals from work permits, if posted from a company established outside the EU/EEA, which is in a concern with a Danish company with minimum 50 employees, and is posted to the Danish company for two separate periods of 15 working days within a time frame of 180 calendar days.<sup>2</sup>

## 5. Third-country nationals during the Covid-19 pandemic

During the Covid-19 pandemic, the topic of third-country national workers in Denmark and their working conditions surfaced only a few times.

One of the first outbreaks of Covid-19 was at a large meat processing plant, where 19 per cent of the staff were infected. An estimated 45 per cent of the staff at the meat processing plant were EU workers working temporarily in Denmark. The fast spread of infection among the workers was in part caused by their close living quarters, as well as poor communication about Covid-19 to the non-Danish speaking workers (Danish Crown 2020). This and subsequent stories about infections in meat processing plants did not draw attention to general Covid-19 related issues affecting foreigners working in Denmark, nor to their general working conditions.

The main focus during Covid-19 was to ensure that people crossing the border into Denmark would not carry infections. During lockdowns people with a valid purpose in Denmark, such as performing work, were allowed to continue to enter Denmark but under a strict testing scheme when crossing the border. In November 2020, the Parliament issued a statutory act temporarily allowing employers to require that employees be tested for Covid-19, as well as to know the results of the test (Statutory Act no 1641 of 19 November 2020). This applies equally to Danish and foreign workers, but the Act was issued with a special focus on border-crossing workers. In April 2021, the Ministry of Health issued an Executive Order on an obligation for employers to isolate and test foreign workers for Covid-19 after their entry into Denmark (Executive Order no 183 of 5 February 2021). This executive order also had a general scope, but the main groups affected were travelling labour within the EU, as well as posted labour from an employer established within the EU. All legislation allowing employee testing has now expired.

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2. The amendment will amend section 24 in the Executive Order on Aliens. The amendment aims to come into force during 2023, but has not yet been passed. Link to suggested amendment: <https://hoeringsportalen.dk/Hearing/Details/67477>

## 6. Overview of enforcement and monitoring

Checks and formalities are carried out before issuing work permits under the Aliens Act. SIRI, the Danish Agency for International Recruitment and Integration, verifies and checks that all information put forward in an application for a residence and work permit is correct.

There are no pre-arrival checks specifically for posted third-country nationals employed by a company established in another EU Member State, whereas the posting entity must register the posting as well as all posted workers in the online Danish RUT registry.

During the work period, short-term migrant or posted third-country national workers are in addition subject to spot-checks performed by SIRI. Spot-checks are carried out for the purpose of comparing information in different registries, such as the tax registry, the building and housing registry, and the CPR registry. Employers, host families or the Danish Customs or Tax Administration are also contacted for supplementary information that cannot be verified on the basis of registered information. Spot-checks are carried out to check whether third-country nationals are employed illegally in Denmark and whether they receive unwarranted benefits related to their residence or work permit. In addition, spot-checks can be carried out at company premises. Additional control measures are provided in the Posting of Workers Act.

An illegal alien working in Denmark in breach of the Aliens Act may be fined, imprisoned for up to one year and/or expelled (cf. section 59(3)). The Danish employer is also sanctioned. An employer who employs a third-country national without the necessary permits or in contradiction of the terms of a permit may be fined or imprisoned for up to two years (cf. the Aliens Act section 59(5)).<sup>3</sup>

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3. New to Denmark, Information for employers: <https://www.nyidanmark.dk/en-GB/EmployersAndEducation/For%20Employers>

## 7. Estonia

Vadim Poleshchuk

The number of short-term third-country national workers in Estonia is small, but steadily on the increase. Estonian law provides for two main entry regimes. A temporary residence permit for employment is a complicated procedure but holders of these permits have a good opportunity to stay in Estonia for a relatively long time. Registration of temporary work is an easy administrative procedure associated with rather significant restrictions on the overall duration of employment. Estonian laws are sufficiently inclusive and guarantee a safe workplace, the right to non-discrimination and membership of a trade union to all employees regardless of their migration status. Blue card holders are not covered in this report because of their marginal presence in Estonia.

### Box 1 Summary of the immigration regime and how it interacts with labour law

There are two major legal regimes for temporary employment in Estonia. First, a temporary residence permit for employment (normally with permission from the Estonian Unemployment Insurance Fund and within annual migration quota). Second, registration of short-term employment, which is a simple and frequently used administrative procedure; such work must be registered in advance. One of the conditions for registering short-term employment is a right to stay in Estonia (a residence permit, a short-term or a long-term visa). In both cases, there is a wage requirement. For those with a temporary residence permit multiple employers are possible but dismissal normally leads to loss of residence. Seasonal, posted, temporary agency and so on workers can use either of the two entry regimes.

Table 1.7 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary residence permit for employment	Up to 5 years (first permit)	Yes	Yes	Yes	Yes
Registration of short-term employment	365 days within 455 day period (270/365 days for seasonal workers)	Yes	No	Irrelevant	Yes

Source: Author's analysis, 2022.

#### **Box 2 Posting of third-country nationals**

Estonian law does not ban the posting of workers directly from third countries. Unlike posted workers from the EU, EEA and Switzerland, posted workers from third countries are subject to stricter wage-related requirements. Another obligation in the temporary residence permit procedure would normally be to obtain permission from the Unemployment Insurance Fund. The wage-related criterion is usually equal to the annual average gross monthly salary last published by Statistics Estonia. Estonia has not entered into any special agreements with third countries regarding posted workers.

#### **Box 3 Hiring temporary agency workers from third countries**

In Estonia, temporary agency workers can use either of the two main legal regimes: temporary residence permit or registration of short-term employment. The employer should be registered in Estonia acting as an intermediary for temporary agency work and having funds in deposit sufficient to cover at least 10 per cent of the remuneration of a third-country national. There are no special rules or restrictions regarding such workers. The Equal Treatment Act specifically addresses the issue of equal treatment of all temporary agency workers regardless of their migration status.

## Description of the Estonian system

### 1. Overview of third-country nationals in the Estonian labour market

A particular feature of Estonia is the large proportion of third-country nationals in the permanent population. This is a consequence of migration processes after the Second World War, when the country was made part of the USSR. In January 2020, 84 per cent of foreign nationals in Estonia were permanent residents (data from the Police and Border Guard Board). In recent years, there has been a rapid increase in the number of newcomers from the former USSR, especially citizens of Ukraine and Russia.

While proficiency in Russian unlocks the Estonian labour market for workers from Ukraine and other post-Soviet countries, significant constraints remain, such as official linguistic requirements. Ukrainian workers mostly apply for jobs previously occupied by members of the substantial Russian-speaking community, who speak poor Estonian, especially in construction or manufacturing. This pattern is not relevant for seasonal work, however, which has never been of particular interest to local minorities. Ukrainian and other temporary workers have become an additional burden on Russian-language community institutions, such as minority language schools or kindergartens.

### 2. Main entry regimes for short-term or limited time work

#### Temporary residence permit for employment

There are two main ways of entering temporary employment in Estonia: a temporary residence permit for employment and registration of short-term employment. While the number of residence permits remains relatively low, the number of registrations has recently increased.

This status requires the fulfilment of several conditions, such as permission from the Estonian Unemployment Insurance Fund, based on the understanding that inviting a foreign worker is a last resort measure. Another obstacle to obtaining a permit is the annual migration quota. The quota is 0.1 per cent of the permanent population and covers different types of residence permits, not only employment. In 2019, 2218 temporary residence permits for employment were issued for the first time (data from the Police and Border Guard Board). Exceptions to the application of the quota are rare (for example, work in IT). The number of available residence permits for employment is clearly below demand.

#### Registration of short-term employment

This is a simple administrative procedure, which has become very popular in recent years. The work must be registered in advance. One condition for registering short-term employment is a right to stay in Estonia. In practical terms, such workers

need a residence permit, and a short-term or long-term visa. In most cases, a visa can be obtained also in Estonia. In 2019, there were 32,245 registrations of short-term employment (compared with 1,086 in 2015) (data from the Police and Border Guard Board).

Employees must have the necessary education and qualifications for the relevant job.

### 3. Overview of working conditions and wage setting for third-country nationals

#### **Temporary residence permit for employment**

Temporary residence permits for employment are granted under clearly defined conditions and to a specific employer, with the possibility of extension (after five years – extension, as a rule, is subject to passing the Estonian language exam at level A2). If an employee changes employer it does not necessarily lead to the cancellation of their residence permit. As a rule, the holder of a residence permit should receive at least the annual average gross monthly salary as published by Statistics Estonia. This requirement clearly hinders the inflow of labour from abroad, in particular high skilled blue-collar workers.

This permit expires in case of dismissal. If the dismissal is due to the economic difficulties of the employer, however, then the permit is automatically valid for another 90 days after dismissal.

#### **Registration of short-term employment**

Short-term employment is possible for 365 days within a 455-day period (270/365 days for seasonal workers). More flexible temporary rules were introduced against the backdrop of anti-Covid measures in 2020 (730 / 931 days). Again, workers are supposed to receive at least the annual average gross monthly salary published by Statistics Estonia. This requirement does not apply to posted workers and seasonal workers, however, but in any case, such wages cannot be less than the statutory minimum wage.

The Occupational Health and Safety Act provides for universal standards of occupational health and safety for employees regardless of their citizenship or other status. The Equal Treatment Act (grounds of prohibited discrimination in employment-related areas: ethnic origin, 'race', colour, religion or other beliefs, age, disability and sexual orientation) and the Gender Equality Act apply to all categories of employees, irrespective of their type of employment, citizenship and other status. Collective agreements are regulated by the Collective Agreements Act, and they cover in a non-discriminatory manner the entire workforce of the country.

#### 4. Special regimes

Seasonal, posted or temporary agency workers can use either of the two ways explained above (temporary residence permits or registration of short-term employment).

In the procedure for temporary residence permits for employment, permission from the Estonian Unemployment Insurance Fund is not required for workers posted from the EU, EEA and Switzerland.

#### 5. Third-country nationals during the Covid-19 pandemic

The issue of short-term employment was hotly debated in 2020 against the background of an economic slowdown because of the Covid-19 restrictions. The relevant legislative amendments concerning short-term employment tended to tighten up requirements for employers and sponsors. The Covid-19 crisis exposed the dependence of some sectors of the Estonian economy on foreign labour, especially seasonal work. In 2020, Parliament changed the law to make it possible to prolong the stay of foreigners on the territory of Estonia and (in case of seasonal work) not to apply to them the wage criterion during the pandemic.

#### 6. Overview of enforcement and monitoring

Short-term immigrants and posted workers are subject to supervision by the Ministry of Foreign Affairs, the Police and Border Guard Board, the Estonian Internal Security Service and the Estonian Unemployment Insurance Fund. There is no special mechanism of enforcement or monitoring to deal with short-term labour migrants in Estonia.





## 8. Finland

Maria Jauhiainen

The need for new workers from abroad is a controversial issue. The main right-wing party, the True Finns, is strongly against it, mainly on the grounds that even workers from third countries and doing low-income jobs receive fairly generous social benefits. At a rough estimate 300,000 foreign workers are needed. The main law covering work-based immigration is the Aliens Act, which is now being reformed. Changes to Chapter 5 will come into force in 10/2022. The proposals aim at preventing the exploitation of foreign workers. Another reform is the so-called D visa, which is aimed at speeding up the immigration of highly skilled workers.

### Box 1 Summary of the immigration regime and how it interacts with labour law

In Finland, labour law is very strong and so is its interaction with the immigration regime. There is also a system of generally applicable collective agreements that cover most workers. According to the latest figures Finland's collective agreement coverage is the second biggest in the world, at 91 per cent. Work performed by third-country nationals is therefore also covered. The only problem is employment contracts that last less than three months because they tend to go under the official radar. More recently, employers' associations have started to undermine this system by refusing to negotiate as associations and referring negotiations to the local level. The Ministry of Labour is concerned by this development and they are now mapping the loopholes in the Immigration Act, mainly Chapter 5.

Table 1.8 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Asylum seekers	For as long as one's application is being processed by the Immigration Service; after that, according to whether one is allowed to stay or not	Yes, but the waiting period is three months if one has presented a valid passport or other travel document to the authorities, and it has been verified as genuine. The waiting period is six months if one has not presented a travel document.	Yes	No	No, but of course, in this case there is initially no residence permit

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Permanent worker residence permit	Permanently or for as long as it is valid	Yes, as it is a worker's residence permit	Yes	Yes	If the residence permit was granted for work and (all) employment ends,* the grounds of residence no longer exist. Then you have to leave Finland when the residence permit expires at the latest unless you have applied for a residence permit on some other ground
Seasonal work	For a fixed period (from 90 days to nine months)	Yes, but according to the seasonal worker residence permit	(Usually) not, but can be allowed to change employers in the same field	Yes	If the residence permit was granted for work and (all) employment ends, the grounds of residence no longer exist. Then you need to leave Finland when the residence permit expires at the latest, unless you have applied for a residence permit on some other ground
Fixed-term worker's residence permit:** either a fixed-term temporary worker's residence permit or a fixed-term continuous worker's residence permit	For as long as mentioned in the permit	Yes, but according to the nature of the worker's residence permit	Yes, but according to the nature of the worker's residence permit (can be for a specific task, field of work or for a specific employer)	Yes	If the residence permit was granted for work and (all) employment ends, the grounds of residence no longer exist. Then you need to leave Finland when the residence permit expires at the latest, unless you have applied for a residence permit on some other ground

Notes: \* If one's residence permit is based on work, it may only give one the right to work for a certain employer or in a certain field of work. If one has been granted a residence permit for a certain field of work, one is usually permitted to change jobs freely if one's residence permit has not expired and one's new job is in the same field. If one has been granted a residence permit for a specific task, one is free to perform this task in the service of another employer. If one's residence permit only allows one to work for a certain employer or if one wishes to change one's field of work, one needs to apply for a new residence permit.

\*\* Types of residence permits: (1) residence permits are either fixed-term or permanent. (2) Fixed-term residence permits are issued for residence of a temporary nature (temporary residence permit) or of a continuous nature (continuous residence permit). The issuing authorities decide on the purpose of residence, taking account of the information given by the alien on the purpose of their entry into the country. (3) Permanent residence permits are valid until further notice. A long-term resident's EU residence permit is considered equal to a permanent residence permit as regards its period of validity.

Source: Author's analysis, 2022.

**Box 2 Posting of third-country nationals**

Posting of workers is based on the Act on Posting Workers (447/2016). According to that, pay and other working conditions are determined in accordance with the generally applicable collective agreement of the sector. If its provisions do not apply, the terms of employment are determined, for example, in accordance with the pay level of comparable work in the host undertaking. All of this also applies to work carried out in Finland by posted third-country nationals (Act on Conditions of Entry and Residence of Third-Country Nationals in the Context of an Intra-Corporate Transfer). Reposting is allowed and posted workers need visas, because all is based on the same system as every other form of work and all the requirements have to be met. The only exceptions are postings for less than three months, when no worker's residence permit is required.

**Box 3 Hiring temporary agency workers from third countries**

The requirements, rules and regulations pertaining to hiring temporary agency workers from third countries do not differ from those governing other forms of work done in Finland by third-country nationals. The main difference is that such workers must have their own residence permits for employed persons, which they need to apply for before entering Finland.

## **Description of the Finnish system**

### **1. Overview of the third-country nationals on the Finnish labour market**

The number of people with a foreign background has grown steadily over the past two decades. In 2020, the number of people with a foreign background was 444,031. Of these, 367,417 (83 per cent) had a first-generation foreign background and 76,614 (17 per cent) had a second-generation background. In 2020, the most common origin for people with a foreign background was the former Soviet Union. The next largest foreign background groups were from Estonia, Iraq, Somalia and the former Yugoslavia.

Out of these the first two groups come to Finland to work and the latter three are or have been mainly asylum seekers and refugees. More workers are badly needed, especially in the highly skilled sector.

### **2. Main entry regimes for short-term or limited time work**

There are two types of residence permits in Finland and they can be either fixed-term or permanent. They are the same for people who wish to come to work. The permit is called the residence permit for an employed person or a worker's residence permit. They also form the two main entry regimes into Finland. The only exception concerns mainly experts who come to Finland for less than three months based on an invitation or agreement.

Fixed-term residence permits are issued for a temporary stay (temporary residence permit) or continuous (continuous residence permit). Permanent residence permits are valid until further notice.

### **3. Overview of working conditions and wage setting for third-country nationals**

All working conditions and wages are based on the generally binding collective agreements, which cover approximately 89 per cent of all workers in Finland. No agreement can be made below what is stipulated in these collective agreements. And if some agreements do so, they are null and void. These collective agreements also set the baselevel for wages because there are no minimum wages in Finland.

### **4. Special regimes**

Because all entry systems require a residence permit for employed persons, special regimes do not exist.

#### **a. Seasonal workers**

The only group of workers who need a special permit are seasonal workers who need a temporary seasonal worker's residence permit. It allows a seasonal worker to reside and work in the country for more than 90 days and up to nine months. The grounds for determining this permit are a little bit easier for those who work seasonally less than six months, but after that all is decided according to the Aliens Act Chapter 5 (the normal procedure), from six to nine months.

#### **b. Posted workers**

The rules on posted employees can be found in the Act on Posting Workers (<https://www.finlex.fi/en/laki/kaannokset/2016/20160447>), which entered into force on 18 June 2016. A posted employee is an employee posted from another country who works in Finland on the basis of a contract, as a subcontractor, through internal company transfer or as a temporary worker. The posted employee's usual place of work is therefore a country other than Finland.

Finnish law defines the regulations on working life, which are applied when they are more advantageous from the employee's point of view than the regulations otherwise applicable. In terms of the application of the law, it is irrelevant whether the employer is from another EU country or from outside the EU.

Usually, especially when it comes to the wide range of Finnish collective agreements, also all-binding ones, the better Finnish regulations are applied to posted workers.

#### **c. Temporary agency workers**

Third-country national temporary agency workers usually come to Finland as posted employees. The relevant regulation is found in the Act on Posted Employees, which entered into force on 18 June 2016. A posted employee is one posted from another country who works in Finland on the basis of a contract, also as a temporary worker.

Finnish legal regulations on working life are applied when they are more advantageous from the employee's point of view than the regulations otherwise applicable. In terms of the application of the law, it is irrelevant whether the employer is from another EU country or from outside the EU.

Usually, especially when it comes to the wide range of Finnish collective agreements, also all-binding ones, more advantageous regulations are applied to posted workers in most cases.

### **5. Third-country nationals during the Covid-19 pandemic**

During the Covid-19 pandemic Finland naturally received fewer workers from abroad, but special arrangements were made in order to obtain the very important

foreign berry pickers into Finnish forests during the few summer months. These arrangements mainly concerned easier entry rather than the basic provisions of residence permits for workers. The berry pickers came mainly from Ukraine and Thailand. Entry into Finland is further alleviated by the so-called D visa, which will speed up the process of entry while awaiting a worker's residence permit.

## 6. Overview of enforcement and monitoring

Compliance with all the above is monitored by the labour inspectors of the Regional State Administrative Agencies and the multitude of trade unions. Furthermore, the Ministry of Labour has launched a project to prevent any form of exploitation of foreign workers, which should be ready by the end of October 2022.

## 9. Germany

Effrosyni Bakirtzi

Germany is experiencing labour shortages of qualified workers and its existing needs cannot be covered by the domestic workforce. Therefore, the German government is trying to attract foreign skilled workers. A system of combined residence and work permits is in place which are issued upon meeting specific requirements. The basic legislation regulating labour immigration and labour market access and the legal regime covering third-country nationals is the Residence Act complemented by the Ordinance on the Employment of Foreigners. The Federal Employment Agency plays an important role in monitoring labour migration. Third-country nationals' working conditions must be comparable with those of German or EU nationals. Certain limitations exist only with regard to third-country nationals' access to the labour market.

### Box 1 Summary of the immigration regime and how it interacts with labour law

The basic German legislation regulating labour immigration and, more specifically, access to the labour market, is the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory – Residence Act (*Aufenthaltsgesetz, AufenthG*). Third-country nationals' working conditions must be equal to those of local workers. Limitations exist only with regard to third-country national access to the labour market, which must meet specific requirements.

Table 1.9 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Skilled workers with vocational training qualifications – temporary permit issued for a specific purpose (employment) – Section 18a Residence Act	Up to 4 years	Yes	Not specified in law	A concrete employment offer suffices	Yes
Skilled workers holding a university degree – temporary permit issued for a specific purpose (employment) – Section 18b Residence Act	Up to 4 years	Yes	Not specified in law	A concrete employment offer suffices	Yes
Researchers, short-term mobility for researchers and residence permit for mobile researchers – Sections 18d, 18e & 18f Residence Act	Varies	Yes	Not specified in law	Agreement/ contract with research institute	Yes
Intra-corporate transfer card for intra-corporate transferees, short-term mobility for intra-corporate transferees and mobile ICT Card – Sections 19, 19a & 19b Residence Act	Up to 3 years for specialists/ managers and up to 1 year for trainees	Yes	Not specified in law	Yes, additionally: letter of assignment	Yes
Civil servants (Section 19c Residence Act)	3 years	Yes	Not specified in law	Civil service relationship with a German employer	Yes



Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary residence permit for the purpose of employment for qualified foreigners whose deportation has been suspended – Section 19d Residence Act	2 years	Yes	Not specified in law	Special provisions in law	Special provisions in law
Skilled workers seeking employment – Section 20 Residence Act	Varies depending on third-country national's status	Yes	Not specified in law	No, but presumption that livelihood is secured	No
Seasonal workers	Up to 90 days (within 180 days) and up to 6 months (within 12 months)	Yes – minimum 30 working hours/week requirement	Not specified in law	Employment contract or specific job offer	Yes

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

Third-country nationals can be temporarily posted by a company based in the EEA to provide services if they are normally employed in the country where the company is based (Section 21 of the Ordinance on the Employment of Foreigners – *Beschäftigungsverordnung, BeschV*). If the activities under Section 21 of the Ordinance are performed for up to 90 days within a period of twelve months by third-country nationals who hold long-term residence status in another EU Member State, no residence title is needed for their stay because their activity is not considered to constitute employment within the meaning of the Residence Act. Restrictions to the posting of third-country national skilled workers with vocational training qualifications and skilled workers holding a university degree (Sections 18a and 18b of the Residence Act) apply because for this type of residence/work permit a German employment relationship is required.

### Box 3 Hiring temporary agency workers from third countries

In principle, the Federal Employment Agency's approval of the employment of third-country nationals may be denied if the foreigner intends to take up employment as a temporary agency worker. Certain exceptions apply.

## Description of the German system

### 1. Overview of third-country nationals in the German labour market

For many years now efforts have been made to tackle the demographic problems of an aging society in Germany by attracting labour migrants to fill gaps in the labour market with both qualified and unskilled workers. This also helps to shore up the social security system. The importance of this issue was often raised during the government election campaign of 2021. A system of combined residence and work permit is in place which is issued upon the fulfilment of specific requirements. According to data from 2019, only 6 per cent of total immigrants (both EU and third-country nationals, including for all migration purposes) are third-country national labour migrants (64,219 persons out of 1,127,984 (Mayer et al. 2021: 17).

### 2. Main entry regimes for short-term or limited time work

The basic German legislation regulating labour immigration and more specifically access to the labour market is the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory – Residence Act (*Aufenthaltsgesetz, AufenthG*), whose legal regime does not apply to EU/EEA/Swiss citizens and their family members. In addition, third-country national family members of EU citizens enjoy freedom of movement within the EU pursuant to the provisions of Directive 2004/38/EC.

Recently reforms were made of the legislation on the legal regime of third-country nationals who can enter Germany for the purposes of pursuing economic activity. The Act on Qualified Migrant Workers (*Fachkräfteeinwanderungsgesetz, FEG*) was part of the government migration package transposing a number of EU directives into German law (such as the Seasonal Work Directive 2014/36/EU, and the Directive on Intra-corporate Transfer 2014/66/EU) and entered into force on 1 March 2020. A further modernisation of this Act (Act for the further development of the immigration of skilled workers, *Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung*) aims at improving the legal framework for the entry of skilled third-country nationals.<sup>1</sup> In addition, this Act is complemented by an Ordinance on the further development of skilled labour immigration, which is aimed in particular at attracting professionally experienced specialists and workers and accelerating visa procedures (*Verordnung zur Weiterentwicklung der Fachkräfteeinwanderung*).

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1. The law provides for simplifications in educational migration and the possibility of residence in order to be able to carry out the recognition procedure in Germany. In addition, a transparent and non-bureaucratic points system for job search has been created (opportunity card).

In general, third-country nationals need a residence title (*Aufenthaltstitel*) for entering and residing legally in Germany. Temporary residence titles can take the following form:

- (i) visa (*Einreisevisum*) – Section 6 of the Residence Act;
- (ii) temporary residence permit (*Aufenthaltserlaubnis*) – Section 7 of the Residence Act;
- (iii) EU blue card – Section 18b(2) of the Residence Act;
- (iv) ICT card – Section 19 of the Residence Act;
- (i) mobile ICT card – Section 19b of the Residence Act.

Temporary residence/work permits can be transformed into permanent or long-term ones upon meeting the respective requirements. These permits/visas can be granted exclusively for the purposes foreseen in the Residence Act. The purpose of residence determines the special conditions for entitlement to the residence permit in accordance with Section 5 of the Residence Act. For third-country nationals it is generally permitted to pursue economic activity unless this is forbidden by law (Section 4a of the Residence Act). The definition of economic activity encompasses self-employment, dependent employment as defined in social security law and employment as a civil servant (in accordance with Section 2(2) of the Residence Act).

The main legal regimes for short-term/temporary labour migrants from third countries are summarised in Table 12. In general, third-country nationals need a residence title (*Aufenthaltstitel*) for entering and residing legally in Germany. There are specific administrative formalities for each group of third-country national temporary labour migrants.

### 3. Overview of working conditions and wage setting for third-country nationals

The general provisions for the admission of third-country national foreign skilled employees in Germany and the granting of a temporary residence title are laid down in Section 18 of the Residence Act, which is the basic provision applicable to all categories of the legal temporary labour migration regimes. According to the Residence Act, granting a temporary residence permit is subject to the following general conditions: a concrete job offer, the approval of the Federal Employment Agency (if applicable), permission to practice a profession and equivalence of qualifications, absence of grounds for denying a permit/visa; for third-country nationals above 45 years of age being granted a residence title for the first time under sections 18a or 18b of this Act, there is a required minimum wage (corresponding to at least 55 per cent of the earnings ceiling of the general pension scheme) unless they can prove adequate provision for old age.

Since 2013 there has been a single regulation on the requirements of labour market entry for all types of labour migrants.<sup>2</sup> The Ordinance on the Employment of Foreigners (*Beschäftigungsverordnung, BeschV*) regulates the conditions of admission to the labour market for foreign workers, including foreigners already living in Germany (Section 1 of the Ordinance on the Employment of Foreigners). This Ordinance complements the Residence Act and the provisions of both legal texts lay down the conditions of admission to the labour market and the legal regime of third-country nationals, including working conditions, obligations of employers and need (or not) for approval by the Federal Employment Agency.

A labour market test or priority review (*Vorrangsprüfung*) in contrast to approval by FEA (*Zustimmung*) has been established for third-country nationals from specific countries (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia: West Balkan Arrangement – *Westbalkanregelung* extended until the end of 2023).

The working conditions of third-country nationals must be equal to those of local workers, but according to the Bertelsmann Stiftung's skilled worker migration monitor (*Fachkräftemigrationsmonitor*)<sup>3</sup>, third-country nationals are structurally disadvantaged compared with nationals and EU citizens (Mayer et al. 2021: 23). As demonstrated above, third-country nationals may access the labour market only under specific conditions.

## 4. Special regimes

### a. Third-country national seasonal workers

Regarding third-country national seasonal workers, a new provision was added to the Ordinance on the Employment of Foreigners (Section 15a, *Beschäftigungsverordnung, BeschV*). This provision sets out the conditions for granting a work permit for short-term stays of up to 90 days (within a period of 180 days) and the entry and employment of third-country nationals for a period of six months (within a 12-month period) (time restrictions) for seasonal work in the agriculture and forestry, horticulture, hotels and restaurants, fruit and vegetable processing and sawmills (sectoral restrictions) for a regular working week of at least 30 hours.<sup>3</sup>

Third-country national admission requires a prior bilateral agreement to be concluded by the Federal Employment Agency (*Bundesagentur für Arbeit*) which is authorised to conclude such agreements on the recruitment and placement of seasonal workers from third countries, and the Ministry of Labour or other appropriate institution of the country of origin. Currently, a bilateral agreement concluded in early 2020 is in force with Georgia in the agricultural sector.

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- 2. Before 2013 there were different sets of rules for foreigners already living in Germany and newcomer third-country nationals.
  - 3. Section 15a(1)lit.1 of the Ordinance on the Employment of Foreigners, in combination with the provisions of the Act on Working Time (*Arbeitszeitgesetz*).

Further requirements for seasonal work are a valid visa (not necessary for workers from visa-exempt countries), proof of sufficient health insurance coverage, the availability of adequate accommodation (in accordance with the provisions of Section 15a(2) of the Ordinance on the Employment of Foreigners), the existence of a specific job offer or valid employment contract and a possible labour market test. For seasonal work, the general labour law protection provisions apply. Seasonal work is a typical case of fixed-term work under the provisions of the Act on part-time and fixed-term work (*Gesetz über Teilzeitarbeit und befristete Arbeitsverträge – TzBfG*). Moreover, seasonal workers are also entitled to the minimum wage<sup>4</sup> according to the provisions of the Act on Minimum Wage (*Mindestlohngesetz – MiLoG*) and they should not be employed under less favourable conditions than comparable domestic workers or equivalent employees.

#### **b. Third-country national posted workers**

The main legal regime for third-country national posted workers is regulated in Part 4 (Sections 16–21) of the Ordinance on the Employment of Foreigners (*Beschäftigungsverordnung*). Third-country nationals can be temporarily posted by a company based in the EEA to provide services if they are normally employed in the country where the company is based (Section 21 of the Ordinance).

Additional regulations apply to special professional groups according to Sections 22–27 and 29 of the Ordinance. For very short posting of workers performing some of the activities provided for in the above Sections, no residence title is required for their stay because these activities are not considered to be employment within the meaning of the Residence Act (*Nichtbeschäftigungsfiktion*), according to Section 30 of the Ordinance.

Posting of workers within the meaning of the provisions of Sections 18a (skilled workers with vocational training qualification) and 18b (skilled workers holding a university degree) of the Residence Act are not permitted because for this type of residence/work permit a German employment relationship is required. For posted workers and those employed as part of an exchange of personnel within an international company or group, the provisions on EU Blue Cards are not applicable.<sup>5</sup>

#### **c. Third-country national temporary agency workers**

In principle, Federal Employment Agency approval of the employment of third-country nationals is denied if the foreigner intends to take up employment as a temporary agency worker.<sup>6</sup> Nevertheless, there are certain exceptions. Temporary

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4. Meals and accommodation may be included as part of the minimum wage if an agreement is concluded between the employer and the employee in accordance with Section 107(2) of the German Trade Regulation Act (*Gewerbeordnung – GewO*).

5. Anwendungshinweise des Bundesministeriums des Innern, für Bau und Heimat zum Fachkräfteeinwanderungsgesetz (BGBl. I 2019, p. 1307), 30 January 2020.

6. Section 40(1) number 2 in combination with Section 39 of the Residence Act and Section 1(1) of the Act on Temporary Employment Agencies (*Arbeitnehmerüberlassungsgesetz – AÜG*).

agency work is possible if the third-country national receives an EU Blue Card without the need for Federal Employment Agency approval. In this case, the grounds of refusal of the residence/work permit as provided for by law<sup>7</sup> are not applicable. It is, however, necessary that the third-country national be employed under a German employment relationship and their annual income is above the legal threshold for EU Blue Card holders.

## 5. Third-country nationals during the Covid-19 pandemic

The Covid-19 pandemic hindered migration flows and the movement of persons. Because of the restrictions during the first waves of the pandemic, migration to Germany was reduced drastically (Mayer et al. 2021). In this context several measures were introduced by the Federal Government. One issue that has been relevant for third-country nationals is the short-time work benefit for workers, aimed to promote job retention, in combination with meeting the requirements for maintaining a residence permit for Germany. The income reduction due to short-time working (especially for low-wage workers or part-time workers in low-wage sectors) or unemployment may have an impact on securing these workers' livelihoods. As a result, the financial conditions for maintaining the residence permit may not be met (Walter 2021) (for the opposite opinion please see Mävers 2020: 305–308). In addition, marginal part-time employees ('mini-jobbers') are not fully covered by protection against dismissal which means that they can be dismissed because of business closures due to the pandemic.

At the outbreak of the pandemic, entry to Germany and the employment of seasonal workers was forbidden. As the demand for seasonal workers in the agricultural sector was increasing, the relevant German ministries decided on a common concept to make the entry of seasonal workers possible under strict measures to minimise the risk of infection, such as travelling to/from Germany by air, a medical check on arrival and then quarantine, and strict hygiene rules applied to accommodation and health and safety at work. Moreover, the Federal Employment Agency issued a general approval in order to counteract the short-term labour shortages in the agricultural sector, allowing certain groups of third-country nationals, previously not eligible to perform seasonal work, to take up employment in this sector (for example, third-country nationals currently unemployed owing to the closure of hotels and restaurants).

Lastly, the case of contract workers in the German meat industry is worth mentioning. Large-scale deployment of contract workers from Eastern Europe on precarious employment terms has been observed in the German meat industry. This situation was dealt with by the adoption of statutory provisions restricting the use of contract work and temporary agency work in the meat industry.<sup>8</sup> To assist

7. Section 40(1) of the Residence Act in combination with Section 4(1) of the Residence Act.

8. Gesetz zur Verbesserung des Vollzugs im Arbeitsschutz (Arbeitsschutzgesetz), issued on 22 December 2020, Federal Law Gazette I, number 67, p. 3334.

internationally mobile workers, the German Trade Union Confederation (DGB) has set up advice centres under the ‘fair mobility’ programme (*Faire Mobilität*).<sup>9</sup>

## 6. Overview of enforcement and monitoring

The Federal Employment Agency plays an important role in regulating and monitoring labour migration. In general, a temporary residence permit to take up employment is granted subject to approval by the Federal Employment Agency (FEA – *Bundesagentur für Arbeit*) unless such approval is not required by law, on the basis of the Ordinance on the Employment of Foreigners or an inter-governmental agreement. When approval is required, the Agency examines the working conditions of third-country nationals, which must be comparable with those of German or EU nationals. The working conditions should also comply with collective or other usual conditions.

In general, labour law provisions are enforced in Germany in three ways: before labour courts, by the works councils and trade unions and competent public authorities (for the system of enforcement of labour law in Germany please see Waas 2021). Compliance with obligations under health and safety law is the responsibility of the public authorities who perform proactive and reactive monitoring. These obligations are subject to the control of the Federal States (*Länder*).

The monitoring of working conditions and protection of rights of seasonal workers is performed mainly by the Customs Administration (*Zoll*) and more specifically by the Financial Control of Undeclared Employment (*Finanzkontrolle Schwarzarbeit, FKS*). This authority monitors whether foreign workers are employed illegally and whether working conditions are in compliance with the Act on the Posting of Workers (*Arbeitnehmer-Entsendegesetz*) and the Minimum Wage Act (*Mindestlohngesetz*).

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9. Website: <https://www.faire-mobilitaet.de>



## 10. Greece

Ioannis Katsaroumpas

Historically a country of emigration, from the early 1990s Greece turned into a destination country for successive waves of migration, mostly from the Balkan region, Eastern Europe and the Middle East (Karamessini 2009: 238–239). The long-standing process of developing a more coherent and systematic legal framework for migration culminated in the Migrant and Social Integration Code (enacted by Law 4251/2014 with subsequent amendments). Rather than a coherent and well-coordinated set of rules, however, this framework resembles more a heterogeneous bricolage of various migration, labour law and social security norms with distinct and often conflicting origins, functions and aims.

### Box 1 Summary of the immigration regime and how it interacts with labour law

Greek law recognises a multiplicity of migration statuses. For employment intended to be for at least one year, the principal migration regime is that of ‘dependent employment’, operating according to the invitation-based process of *metaklisi*. Under this system, employers intending to engage third-country nationals should issue invitations to workers, but only up to the regional and occupational quotas set on a biannual basis by the administrative authorities. The law provides a residence permit for ‘special purpose employees’, as defined by special legislation, bilateral agreements or for reasons of public interest, sports and national economy. Under the ‘temporary residence – employment with national visas’ provisions of the Migration Code (Law 4251/2014), there are a variety of statuses, including seasonal workers, fishermen, tour operators, posted workers and athletes/coaches. Special regimes exist for highly skilled workers (Blue Card), intra-corporate transfers and trainees and researchers. As Greek labour law embodies the principle of territoriality, its provisions are universally applicable to all lawfully residing workers, regardless of nationality. Collective agreements apply to all workers within their scope of application, including legally residing third-country nationals. However, labour law and collective agreements typically do not contain any special rules on migration, reflecting the fact that labour law and migration law in Greece develop with almost complete autonomy (Kapsalis 2018: 82).

Table 1.10 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Dependent employment	Initially 1 year (subject to renewals)	Yes	Yes (but for the first year only within the same speciality, region and same insurance agency)	Yes (initial contract of at least 1 year)	Unclear
Special purpose employees	Initially 2 years or equal to the intended stay (subject to renewals every 3 years)	Yes	Yes	Yes	Yes
Seasonal workers	6–12 months (maximum visa validity) 6 months (maximum employment)	Yes	Yes	Yes	Unclear



Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Fishermen	Equal to the duration of employment but may not exceed 11 months	Yes	No (exceptions under the Greek–Egyptian agreement)	Yes	Yes
Posted workers (from within EU/EEA)	Duration of posting which may not exceed 1 year	Yes	No	Yes	Yes
Posted workers (from outside EU/EEA)	Duration of posting which may not exceed 6 months	Yes	No	Yes	Yes
Intra-corporate transfers	Maximum 3 years for managers/specialists Maximum 1 year for trainees	Yes	Only to businesses belonging to the same company/group of companies	Yes	Yes
Blue Card (highly skilled workers)	2 years (subject to renewals)	Yes	Yes, but for the first 2 years only with written agreement of authorities and for highly skilled work	Yes (at least 1 year)	No, but as long as temporary unemployment does not exceed 3 months

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

For posted third-country nationals, the visa is granted for the duration for the posting, which shall not exceed one year for those posted from establishments within the EU/EEA, and six months for other establishments. Postings from non-EU/EEA establishments are restricted to specialised technical personnel engaged in installation, trial operation and maintenance services. No rules exist for re-posting of those workers to other Member States. Posted workers are entitled to non-wage terms of employment as defined by Greek law and universally applicable collective agreements with regard to, among other things, maximum working time and rest periods and duration of minimum annual leave. They are also entitled to equal treatment in relation to minimum gross wages as defined by Greek labour law and collective agreements, which are universally applicable, including wage premia. The law prohibits the more favourable treatment of companies posting third-country nationals from outside the EU/EEA compared with those posting workers from within the EU/EEA.

### Box 3 Hiring temporary agency workers from third countries

There are no special rules in Greek law on hiring temporary agency workers from third countries. Employers should follow the rules depending on work category and relevant migration status.

## Description of the Greek system

### 1. Overview of third-country nationals in the Greek labour market

Historically a country of emigration, from the early 1990s Greece turned into a destination country for successive waves of migration, mostly from the Balkan region, Eastern Europe and the Middle East (Karamessini 2009: 238–239). There were 552,485 third-country nationals in Greece in 2019, corresponding to 5.2 per cent of the population. National visa statistics for 2019 show that the three main categories for short-term employment were ‘tour leaders’, ‘fisheries’ and ‘seasonal employment’.

Table 1.11 Statistics of national visas issued by category

Visa category	Number
Tour leaders	1064
Fisheries	1008
Seasonal employment	851
Posted workers (from outside the EU)	193
Members of artistic groups	83
Posted workers (from within the EU)	10
Sport	5
Third-country national tertiary education students, participating in remunerated traineeship programmes	4
Total	3218

Source: Table from Gemi and Triantafyllidou 2019: 15.

### 2. Main entry regimes for short-term or limited time work

Greek law recognises a multiplicity of migration statuses. For employment intended to be for at least one year, the principal migration regime is that of ‘dependent employment’, operating according to the invitation-based process of *metaklisi*. Under this system, employers intending to engage third-country nationals should issue an invitation to the worker but only up to the regional and occupational quotas set on a biannual basis by the administrative authorities. The law provides a residence permit for ‘special purpose employees’, as provided for by special legislation, interstate agreements or for reasons of public interest, sports and the national economy. Under the ‘temporary residence – employment with national visas’ provisions of the Migration Code (Law 4251/2014), there are a variety of statuses, including seasonal workers, fishermen, tour operators, posted workers and athletes/coaches. Special regimes exist for highly skilled workers (Blue Card), intra-corporate transfers and trainees and researchers.

### 3. Overview of working conditions and wage setting for third-country nationals

As Greek labour law embodies the principle of territoriality and universality, its provisions are universally applicable to all lawfully residing workers, regardless of nationality. Collective agreements apply to all workers within their scope of application, including legally residing third-country nationals.

### 4. Special regimes

#### a. Third-country national seasonal workers

Greek law 4332/2015 sets six months as the maximum duration for seasonal activity. Seasonal worker visas are subject to *metaklisi*, a system according to which employers invite third-country nationals but only up to regional and occupational quotas set on a biannual basis by the administrative authorities. Among the relevant documents, the employee shall submit a signed contract of employment, including remuneration which may not be less than that paid to unskilled workers. The law permits visa extensions in cases of a contract extension with the original employer or of a new contract with a different employer *but only within the maximum legally permitted duration*. Seasonal workers are entitled to equal treatment to nationals for a range of issues, including pay and dismissal, working hours, leave and holidays, health and safety requirements, right to strike and industrial action.

#### b. Third-country national posted workers

For posted third-country nationals, the visa is granted for the duration of the posting, which shall not exceed one year for those posted from establishments within the EU/EEA, and six months for those from other establishments. Postings from non-EU/EEA establishments are restricted to specialised technical personnel engaged in installation, trial operation and maintenance services. No rules exist for re-posting of those workers to other Member States. Posted workers are entitled to non-wage terms of employment as defined by Greek law and universally applicable collective agreements with regard to, among other things, maximum working time and rest periods and duration of minimum annual leave. They are also entitled to equal treatment in relation to *minimum gross wages* as defined by Greek labour law and collective agreements, which are universally applicable, including wage premia. The law prohibits the more favourable treatment of companies posting third-country nationals from outside the EU/EEA compared with those posting workers from the EU/EEA.

#### c. Third-country national temporary agency workers

There are no special rules in Greek law for hiring temporary agency workers from third countries. Employers should follow the rules depending on work category and relevant migration status.

## 5. Third-country nationals during the Covid-19 pandemic

The Covid-19 crisis exposed the heightened vulnerabilities of foreign migrant workers. There have been reports on their precarious position, the inadequacy of health measures in agricultural accommodation and generally the disproportionate level of hospitalisations among migrants compared with nationals (Iefimerida 2020; see also Kukreja 2020). Due to seasonal workers' unwillingness/inability to come to Greece because of Covid-19 restrictions and health and safety considerations, in May 2020 the Greek and Albanian PMs reached an agreement for Albanian workers already in Greece and for those intending to come. The Legislative Decree issued on 1 May 2020 allowed employers to invite workers from countries where no visa was needed (mostly from Albania) for stays up to 90 days within 180 days through an online platform with rapid processing times (around two days). The law granted those workers the right to work, which was not previously allowed. Under the expedited scheme, employers shall merely submit a solemn declaration that they will employ third-country nationals for a minimum period of 20 days, cover all the required insurance contributions, provide suitable accommodation and fulfil all labour legislation obligations.

## 6. Overview of enforcement and monitoring

The labour inspectorate is the main monitoring and enforcement body for the application of labour law, responsible for carrying out regular and emergency inspections based on risk assessment. The Migration Code prohibits public services from dealing with illegally residing workers (except for health services and the courts, among other things), forbids landlords to rent to such workers and imposes a duty on managers of hotels and resorts to notify the police authorities about the arrival and departure of any third-country nationals they host. Illegally residing employees have the right to submit complaints against their employer, either themselves or through Local Workers Centres operating on their behalf and with their consent. These workers have the right to recourse to the relevant courts and authorities for back-payment and all other legal rights in accordance with labour law and pertaining to the execution of judicial decisions against their employers, even if they have returned or have been forced to return to their countries of origin.



# 11. Hungary

Gábor Kártyás

As a general rule, the employment of third-country nationals in Hungary is subject to a permit. To protect the equilibrium of the domestic labour market, the employment of a third-country national is authorised only if there is no relevant labour available in the local workforce. The same labour law provisions apply to third-country nationals as to the local workforce. Hungarian law does not differentiate between the labour law status of posted workers from EU Member States or from third countries. As a general rule, third-country nationals cannot be employed through temporary agency work in Hungary.

## Box 1 Summary of the immigration regime and how it interacts with labour law

There are various legal regimes under which third-country nationals can enter and work in Hungary. The basic difference among them is the purpose of the stay and the period for which the third-country national is permitted to stay in the country. Act I of 2012 on the Labour Code applies to all persons – irrespective of their nationality – who normally work in Hungary [Article 3 (1)]. Thus the same labour law provisions apply to third-country nationals as to the local workforce.

Table 1.11 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Visa	90 days out of 180 days	Only in exceptional cases	No	No	No
Residence permit for earning income or employment	3 years	Yes	No	Yes	Yes
Residence permit for family cohabitation	3 years	Yes	No	Yes	No
EU Blue Card	4 years	Yes	Yes	Yes	Yes
Residence permit for seasonal work	6 months in a 12 month period	Yes	No	Yes	Yes
Residence permit for intra-corporate transfer	1 year	Yes	No	Yes	Yes
Residence permit for studies	1 year	Yes	Yes	Yes	No
Residence permit for research	1 year	Yes	No	Yes	Yes
Residence permit for humanitarian purposes	6–36 months	Yes	Yes	Yes	No

Source: Author's analysis, 2022.

#### **Box 2 Posting of third-country nationals**

The employment of posted third-country national workers is subject to the general rules and checks applicable to third-country nationals employed directly. No work permit is required if a third-country national is posted from an EU Member State within the framework of transnational provision of services (Governmental Decree 445/2013 Article 15 (1) point 7–8). Hungarian law does not differentiate between the labour law status of posted workers from EU Member States or from third countries. Thus, Hungarian law applies to third-country national posted workers as it applies to their counterparts posted from Member States, as prescribed in Article 3 of Directive 96/71/EC (Act I of 2012 Article 295).

#### **Box 3 Hiring temporary agency workers from third countries**

In Hungary third-country nationals cannot be employed through temporary agency work (Governmental Decree 445/2013 Articles 5 (1) points f–h) and 20 (1) point k)), with the following exceptions: seasonal workers, Serbian and Ukrainian nationals (Governmental Decree 445/2013 Article 8 (3) and Article 15 point 26), third-country nationals holding a visa for an intended stay not exceeding 90 days and persons legally residing in the territory of Hungary who are nationals of countries listed in Annex II to Regulation (EU) 2018/1806 (Act 2 of 2007 Article 7/A). Besides, third-country nationals employed by a temporary work agency established in an EU Member State may be assigned to Hungarian user companies and no single or work permit is needed (Governmental Decree 445/2013 Article 15 (1) point 8).

## Description of the Hungarian system

### 1. Overview of third-country nationals in the Hungarian labour market

As a general rule, the employment of third-country nationals in Hungary is subject to a permit, either a single permit or a work permit. To protect the equilibrium of the domestic labour market, the employment of a third-country national is authorised only if there is no available local worker. There is a maximum number of third-country nationals who may be employed in Hungary with single and work permits at a given time. In 2019 the quota was 57,000 persons. No quota was set for 2020.

### 2. Main entry regimes for short-term or limited time work

There are various legal regimes under which third-country nationals can enter and work in Hungary. The basic difference among them is the purpose of the stay and the period for which the third-country national is permitted to stay in the country. The main source of legal regulation is Act 2 of 2007 on the entry and residing of third-country nationals (hereinafter: Third-country National Act). The applicable regimes are summarised in Table 1.

As a general rule, if a third-country national applies for the issue or renewal of a residence permit for the purpose of employment, the permit will be issued in the single application procedure. The permit entitles the applicant to reside in Hungary without geographical restrictions but to work only with the employer and under the conditions specified in the permit. The permit is required for all forms of work and employment.

### 3. Overview of working conditions and wage setting for third-country nationals

Act I of 2012 on the Labour Code (hereinafter: Labour Code) applies to all persons – irrespective of their nationality – who normally work in Hungary [Labour Code Article 3 (1)]. Thus the same labour law provisions (including the minimum wage) apply to third-country nationals as to the local workforce. There are no specific labour law protections for third-country national workers or special obligations for their employers.



## 4. Special regimes

### a. Third-country national seasonal workers

The seasonal work permit can be issued for seasonal agricultural activities. Seasonal work cannot exceed 90 days, with a 180 days annual maximum and the permit can be renewed only once. The permit may be issued also for temporary agency work [Employment Act Article 58 (7), Governmental Decree 445/2013 Article 2/A (1), 7 (1)–(4)].

### b. Third-country national posted workers

The employment of posted third-country national workers is subject to the general rules and checks applicable to directly employed third-country nationals. There is, however, no need for a work permit for short-term postings in which a third-country national performs installation, warranty or servicing activities under a private law contract with a company established in a third country, for a period not exceeding 15 working days within a period of 30 days (Governmental Decree 445/2013 Article 15 (1) point 6). No work permit is required if a third-country national is posted from an EU Member State to work for a Hungarian employer within the framework of the provision of cross-border services in order to fulfil a private law contract. The same applies to third-country nationals who are assigned to Hungary as agency workers by temporary work agencies domiciled in an EU Member State (Governmental Decree 445/2013 Article 15 (1) point 7–8).

Hungarian law does not differentiate between the labour law status of posted workers coming from EU Member States or from third countries. Thus, Hungarian law applies to third-country national posted workers as it applies to their counterparts posted from Member States, as prescribed in Article 3 of Directive 96/71/EC (Labour Code Article 295).

### c. Third-country national temporary agency workers

In Hungary, third-country nationals cannot be employed through temporary work agencies (Governmental Decree 445/2013 Articles 5 (1) points f–h) and 20 (1) point k)), except for seasonal work, Serbian and Ukrainian nationals (Governmental Decree 445/2013 Article 8 (3) and Article 15 point 26), and third-country nationals holding a visa for an intended stay not exceeding 90 days and persons legally residing in the territory of Hungary who are nationals of countries listed in Annex II to Regulation (EU) 2018/1806 (TCN Act Article 7/A). Besides that, third-country nationals employed by a temporary work agency established in an EU Member State may be assigned to Hungarian user companies and no single or work permit is needed (Governmental Decree 445/2013 Article 15 (1) point 8).

## 5. Third-country nationals during the Covid-19 pandemic

A general reaction to the pandemic was to close down the borders in both the first and second waves. Later this general prohibition was gradually relaxed.

## 6. Overview of enforcement and monitoring

The Immigration Authority may check the lawful residence and the identity of third-country nationals. The Aliens Policing Authority may expel third-country nationals who reside or work illegally in Hungary (TCN Act Articles 43 and 67, Governmental Decree 114/2007 Article 146).

If a third-country national is employed in Hungary without a permit, the labour authority shall impose a lump-sum fine on the employer (Governmental Decree 115/2021 Article 19) and the employer may not be awarded any subsidies or benefits from the state budget for two years (Act 195 of 2011 Article 50 (1), Governmental Decree 115/2021 Article 20).

In the event of a serious breach of the law (for example, if it endangers public order, health or safety), the labour authority may request any competent authority to temporarily or permanently close down the employer's establishment or to revoke its authorisation to pursue its economic activity (Governmental Decree 115/2021 Article 15 (2)).



## 12. Iceland

Halldór Oddsson

This report covers basic information on the Icelandic legal system with regard to third-country nationals' right to work in Iceland. The relevant legislation and rules are all fairly open to interpretation, which means that drawing general conclusions about the system can be difficult. The aim is to provide a general overview of the system governing the short- and long-term migration of third-country nationals in Iceland. Because Iceland is a scarcely populated (sovereign) island state in the North Atlantic there are relatively few sources in addition to the texts of the laws and regulations. As a result, this report is somewhat shorter than those on most larger mainland European states.

### Box 1 Summary of the immigration regime and how it interacts with labour law

All general rules and labour market principles that apply to employees in Iceland, including rules regarding wages, labour rights, and occupational health and safety, also apply to third-country nationals.

A third-country national who applies for a work permit in Iceland can obtain either a temporary or a permanent work permit. The former is much more common, as the criteria and procedure for permanent permits are stricter and in fact granted primarily to individuals based on their status as holders of a temporary work permit for a period. The criteria and conditions for granting temporary work permits are fairly straightforward. But third-country nationals can in certain circumstances be granted an exemption from this to participate in the Icelandic labour market. Therefore, third-country nationals can be divided into three categories: (i) holders of temporary work permits; (ii) holders of exemptions from temporary work permits; and (iii) holders of permanent work permits.

Table 1.12 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
<i>Temporary work permits</i>					
Expert knowledge	Two years maximum	Yes	No	Yes	Yes if third-country national is culpable – otherwise they have three months to find new employment within the time-frame of original permit
Shortage of workers	One year – possibility for an additional year	Yes	No	Yes	Yes if third-country national is culpable – otherwise they have three months to find new employment within the time-frame of original permit

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Athletes	One year – possibility for an additional two years	Yes	No	Yes	Yes if third-country national is culpable – otherwise they have three months to find new employment within the time-frame of original permit
Special circumstances	No	Yes	Yes	No	No
Family unification	Period of validity linked to residence permit	Yes	Yes	No	No
Students	While studying	Yes – allowed to work part time (max 40%) alongside studies	Yes	No	No
Young domestic workers (au-pair)	One year maximum	Yes – limited to light domestic work (max 30 hrs per week)	No	Yes	Yes if third-country national is culpable – otherwise they have three months to find new employment within the time-frame of original permit
Specific exemptions	90 days maximum	Yes – special assignments only (high tech specialists, lecturers, artists, athletic coaches, drivers driving foreign tourists, journalists)	No	Not relevant	Not relevant

*Permanent work permits*

Family connection	Unlimited – spouses and children under 18 of Icelandic citizens or other permanent work permit holders	Yes	Yes	No	No
Students	Unlimited – third-country nationals who have completed studies in Iceland that lasted for a minimum of three years	Yes	Yes	No	No
Refugees	Unlimited – for those who have been given permanent permit to stay due to their status as refugees	Yes	Yes	No	No

Source: Author's analysis, 2022.

**Box 2 Posting of third-country nationals**

Workers can be posted to Iceland in relation to a service provided by a certain service provider that does not have an Icelandic establishment. The relevant rules naturally differentiate based on the origins of the service provider. A service provider based in an EEA or EFTA Member State can exercise its freedom to provide services as defined in the relevant fundamental EU treaties. On the other hand, an establishment based outside the EEA and EFTA has very limited options when it comes to posting workers, most commonly third-country nationals, to Iceland. The criteria are strict and generally concern the installation of special machinery and/or technical equipment. Specialised projects and services such as academic or scientific work may also justify the posting of a third-country national.

**Box 3 Hiring temporary agency workers from third countries**

As if the foregoing was not enough to make it clear that it would be almost impossible for a temporary work agency meet the general criteria of the legislation as an employer, it is explicitly stated in the FNRW Act that work permits may not be granted under the act in connection with employment with temporary work agencies. In addition to the special nature of temporary work agencies as employers, it can be assumed that the lawmaker also grounds this rule on the fact that temporary agency workers require special care and protection, as is recognised in Directive 2008/104/EC on temporary agency work.

## **Description of the Icelandic system**

### **1. Overview of third-country nationals in the Icelandic labour market**

The employment and posting of so-called third-country nationals in Iceland is governed by special law No. 97 of 2002, the Foreign Nationals' Right to Work Act (hereafter 'FNRW Act'). The legislation has been amended several times and is supplemented by an administrative regulation based on the law, the Regulation on Foreign Nationals' Right to Work No. 339/2005. A distinction is made in Icelandic law between foreign nationals' right to work and foreign nationals' right to stay in Iceland. The latter is governed by special legislation No. 80/2016, the Foreign Nationals Act (here after 'FN Act'). Therefore, the right to stay in Iceland does not necessarily lead to a right to work. However, everyone who receives a work permit must in all cases also receive a residence permit based on the Foreign Nationals Act. But as the two permits are usually processed together and at the same time, a work permit is rarely issued without a residence permit.

### **2. Main entry regimes for short-term or limited time work**

According to the aforementioned Foreign Nationals' Right to Work Act and related rules, a third-country national who wants to participate in the Icelandic labour market has to apply to the Icelandic Directorate of Labour for a work permit. It has a duty to assess each application and make sure that it is processed in accordance with the relevant legislation.

A third-country national who applies for work permit in Iceland can receive either a temporary or a permanent work permit. The former is much more common, as the criteria and procedure for the permanent permits are stricter and they are in fact primarily granted to individuals through their status as a holder of a temporary work permit for some period. Because of the criteria and conditions for granting temporary work permits, in certain circumstances third-country nationals be granted an exemption from requiring an issued work permit to participate in the Icelandic labour market. Therefore, one can divide third-country national workers into three categories: (i) holders of temporary work permits; (ii) holders of exemptions from temporary work permits; and (iii) holders of permanent work permits.

### **3. Overview of working conditions and wage setting for third-country nationals**

All general rules and labour market principles that apply to employees in Iceland, including rules regarding wages, labour rights, and occupational health and safety, also apply to third-country nationals. In general, wages in Iceland are set by sectoral collective agreements which by law have a so-called *ergo omnes* effect. This means that they apply to everybody working in the relevant sector, regardless

of union membership and/or direct contractual relationship between the relevant union and employer.

## 4. Special regimes

### a. Third-country national seasonal workers

There is no special regime in this case. But seasonal issues in certain sectors, such as agriculture, can have a major effect on assessments of applications for temporary work permits if there are labour shortages, as explained above.

### b. Third-country national posted workers

Third-country nationals already residing within an EU/EFTA state, who are employed by a domestic service provider in the same state, can be posted to Iceland on the same basis as regular EU/EFTA citizens. When a third-country national is posted to Iceland their legal position is the same as that of any other posted worker. Naturally if for some reason a third-country national loses their status as a posted worker in Iceland, most commonly because of termination of employment, the general rules regarding third-country national residence and the Foreign Nationals' Right to Work Act apply.

Under special circumstances it is possible for a company with an establishment outside the EU/EFTA but which does not have a branch in Iceland to post third-country national workers there. Naturally this must be done based on service contracts or collaboration agreements, usually regarding the installation of special machinery and/or technical equipment. Specialised projects and services such as academic or scientific work may also justify the posting of a third-country national.

### c. Third-country national temporary agency workers

Work permits may not be granted under the act in connection with employment with temporary work agencies.

## 5. Third-country nationals during the Covid-19 pandemic

Apart from practical problems of transport and logistics, little changed regarding third-country nationals during the COVID-19 crisis in Iceland. It must be noted, however, that although third-country nationals on a temporary work permit generally do not have the right to unemployment benefits, they have a right to the so-called partial unemployment benefits. Partial unemployment benefits were implemented temporarily to protect general employment. On this basis employer and employee can temporarily reach agreement on changing full-time employment into part-time employment and in return the employee receives partial benefits to limit their financial loss. Originally the measure was based on the general right to unemployment benefits, which would have meant that third-country nationals on a temporary work permit would not have been entitled,



leaving them far more exposed to termination of employment than their fellow workers from the EEA. However, third-country nationals' special status and the possible discriminatory effect of the original plan towards them was considered and necessary amendments made to include them in the partial benefits system.

## 6. Overview of enforcement and monitoring

In general, the administration of permits is in the hands of the relevant governmental institutions, namely the Directorate of Labour and the Directorate of Immigration. General administrative law therefore applies to the procedure and also to checks and monitoring carried out by the directorates. Fraudulent behaviour can lead to fines and even prosecution in the most severe cases.

## 13. Ireland

Michael Doherty, Anthony Kerr and Clíodhna Murphy

Few migration routes are available for short-term migration to Ireland for the purposes of work. Temporary third-country national migrant workers who wish to enter the state for up to three months will usually apply to the Department of Justice for permission under the Atypical Work Scheme (AWS), the purpose of which is to provide a streamlined mechanism to deal with atypical or short-term employment situations. Temporary third-country national migrants can also enter Ireland as the holder of an Intra-Company Transfer or a Contract for Services Permit; or as a posted worker. Legally residing migrant workers are covered by general employment rights legislation (although some employment legislation sets out minimum service qualifying periods). A significant overhaul of the law is currently being proposed, but it is unclear if, and when, this may take effect.

### Box 1 Summary of the immigration regime and how it interacts with labour law

All workers in Ireland, including migrant workers, are covered by general employment rights legislation. Some employment rights legislation, such as the Unfair Dismissals Acts 1977–2015, requires the worker to have been in continuous employment with the employer for more than 12 months. Other legislation, such as that on working time and minimum wages, has no service requirement.

Table 1.13 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Intra-company transfer employment permit	Up to 24 months in the first instance; may be extended to a max stay of 5 years	Yes	No	Remains employed by company outside EU	Yes
Contract for services employment permit	Up to 24 months in the first instance; may be extended to a max stay of 5 years	Yes	No	Remains employed by company outside EU	Yes
Atypical work schemes	Range from 14 days to 1 year (usually less than 3 months)	Yes	No	Depends – may be self-employed in some cases	Not applicable
Working holiday authorisation visa scheme	1 year (2 years in the case of Canada)	Yes	Yes	No	No
Van der Elst visa	Up to a maximum of 12 consecutive months	Yes	No	Remains employed by company outside Ireland	

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

The so-called *Van der Elst* process allows a non-EEA national who is legally employed by a company in an EU country to provide services on a temporary basis to a company in another EU country on behalf of their employer without the need to obtain an employment permit. Under this process, permission to work in Ireland is granted for the duration of a temporary/short-term contract up to a maximum of 12 consecutive months. Since 2016, the vast majority of postings to Ireland come from within the EU/EFTA area (over 95 per cent). The tiny number of postings from non-EU/EFTA countries generally relate to situations in which undertakings headquartered or based in an EU/EFTA Member State are posting workers from a branch located in a non-EU state. Where the workers involved are third-country nationals, an employment permit will be required. The full range of Irish employee protection legislation applies to workers posted to work in the state. The Workplace Relations Commission is the competent authority in Ireland to monitor posting activity and ensure compliance with posting rules.

### Box 3 Hiring temporary agency workers from third countries

The existing temporary or short-term labour migration schemes are not generally intended to accommodate the direct recruitment of third-country nationals by temporary work agencies. Under the Employment Permits Acts 2003–2014, applications for employment permits are not considered from employment agencies where it transpires that the foreign national is to be assigned to work for, and under the direction and supervision of, a person other than the employment agency. Applications can be considered only where the foreign national is to be employed directly by the employment agency itself. Similarly, agency work is generally not permitted under the Atypical Work Schemes. The exception to this is the specific scheme that allows for the recruitment of locum doctors in the hospital and primary care sectors through agencies.

## Description of the Irish system

### 1. Overview of third-country nationals on the Irish labour market

The principal regime under which third-country nationals can enter Ireland to take up employment is the employment permit system, which is regulated by the Employment Permits Acts 2003–2014 and the relevant ministerial Regulations. There are currently proposals to replace this legislation and overhaul the system. The employment permits system is managed by the operation of the ‘critical skills’ and ‘ineligible’ lists for the purpose of granting employment permits. Current government policy in relation to applications for employment permits remains focused on facilitating the recruitment of highly skilled personnel from outside the EU/EEA, where the requisite skills cannot be met by normal recruitment or by training.

### 2. Main entry regimes for short-term or limited time work

Ireland has not opted-in to the Seasonal Work Directive (Directive 2014/36/EU), the Single Permit Directive (Directive 2011/98/EU), or the Directive on Intra-Corporate Transfer (Directive 2014/66/EU).

The only temporary or short-term schemes that come within the remit of the employment permits system are the intra-company transfer employment permit and the contract for services employment permit. Outside the employment permits system, the atypical work scheme provides a streamlined mechanism to deal with atypical, short-term employment or certain other employment situations not governed by the Employment Permits Acts or by current administrative procedures under those Acts. There are currently proposals to introduce a new seasonal permit.

### 3. Overview of working conditions and wage setting for third-country nationals

There is no difference between Irish citizens and non-Irish nationals (EU citizens and third-country nationals) working and residing in Ireland in relation to the application of collective agreements, insofar as they exist in the relevant sector and the employer is covered by the agreement. There are no collective agreements specifically directed at migrant workers.

Employment permits often provide for a minimum annual remuneration which is above the national minimum wage. The legislation governing the intra-company transfer employment permit and the contract for services permit requires that remuneration by the foreign employer meet a minimum threshold of 40,000 euros in Ireland (or 30,000 euros in the case of an intra-corporate transfer involving a trainee). The basic salary must meet the national minimum wage. Payment for

board and accommodation and health insurance may then be added to bring the proposed remuneration up to the 40,000 euros (or 30,000 euros) threshold.

## 4. Special regimes

### a. Third-country national seasonal workers

Seasonal work is not yet specifically provided for within the Irish labour migration framework, although a small number of general employment permits have been allocated to horticulture-sector and meat processing-sector workers pursuant to a recent pilot scheme. From the available information, it seems that the model for the proposed new seasonal employment permit will closely resemble that used in the EU's Seasonal Work Directive; the planned permit envisages facilitating circular seasonal migration and permits being granted for 6–9 month periods.

### b. Third-country national posted workers

Directive 96/71/EC on the posting of workers was transposed into Irish law by the Protection of Employees (Part-Time Work) Act 2001. The Act provides that the full range of Irish employee protection legislation shall apply to workers posted to work in, or otherwise working in Ireland, irrespective of their nationality or place of residence. The Irish transposition of Directive 96/71 makes no distinction between posted EU citizens and third-country nationals legally residing in an EU/EEA country. EU Directive 2014/67/EU was transposed by the European Union (Posting of Workers) Regulations 2016, which imposed a new requirement on foreign service providers, when posting workers to Ireland, to notify the Workplace Relations Commission (WRC) using a prescribed Form of Declaration.

### c. Third-country national temporary agency workers

Under the Employment Permits Acts 2003–2014, applications for employment permits from employment agencies can be considered only where the foreign national is to be employed directly by the employment agency itself. Similarly, agency work is generally not permitted under the Atypical Work Scheme, with the exception of a specific scheme that allows for the recruitment of locum doctors in the hospital and primary care sectors through agencies.

## 5. Third-country nationals during the Covid-19 pandemic

International students with a 'Stamp 2' permission were allowed to work up to 40 hours a week during the pandemic while their educational institution was closed because of Covid-19 (usually they are limited to 20 hours work a week). There has also been some discussion of the shortage of health care workers in Ireland and the need to recruit third-country nationals, resulting in the priority processing of employment permit applications for medical professionals.

## 6. Overview of enforcement and monitoring

Employment compliance is the responsibility of the Workplace Relations Commission (WRC). Within the Commission, there is a team of 52 Inspectors who have extensive powers under a range of legislation, such as on working time, the national minimum wage, and employment permits. WRC Inspectors work closely with the Revenue Commissioners, the Department of Social Protection, the Garda National Immigration Bureau and the Garda National Protective Services Unit as regards the reporting of potential tax, social security, immigration and human trafficking issues encountered during inspections.



## 14. Italy

Silvia Borelli

Third-country nationals can move to and work in Italy via two systems: they can enter the country and then be hired by a local employer or they can be posted by an employer established abroad. In the first case, the burdensome procedure that has to be gone through to obtain a work permit fosters irregularity and forces third-country nationals into permanent dependence on their employers. Consequently, notwithstanding the assertion of the principle of equal treatment, many third-country nationals do not really enjoy the same rights as local workers. In cases of posting, the Italian authorities cannot require a residence permit, but posted third-country nationals do not benefit fully from equal treatment either. Moreover, in cases of bogus posting, they may find themselves without a valid residence permit and thus count as irregular migrants.

### Box 1 Summary of the immigration regime and how it interacts with labour law

Third-country nationals who want to work in Italy must have an Italian residence permit issued by the competent national authority. Indeed, apart from the permit issued to long-term residents, Italy does not recognise the validity of residence permits issued by foreign authorities. This is attributable to the policy aim of controlling migration flows shared with many Member States. This has prevented the EU from reaching agreement on issuing residence permits in the Union and on quotas of third-country nationals permitted to enter its territory.

The various types of work permit and other permits that allow working in Italy are presented in Table 17. Because of the many loopholes in the ordinary procedure, the number of third-country nationals employed in Italy with a residence permit for reasons other than work has constantly increased. Besides, the cumbersome procedure for obtaining a residence permit obliges third-country nationals to pass through a period of irregularity and forces them into a permanent dependence on their employers. Indeed, third-country nationals need their employer's support to apply for a work permit and thus tend to avoid any kind of conflict and accept exploitative practices. Consequently, third-country nationals residing regularly on Italian territory benefit from equal treatment with national citizens only on paper.

Moreover, the principle of equal treatment does not apply to irregular migrants: a contract of employment signed by a migrant without a work permit is void and, even if they are able to claim for wages, social security and other benefits arising from past employment, they risk being charged with the offence of illegal immigration and deported if they report a worker rights violation to the authorities.



### Box 2 Posting of third-country nationals

In cases of posting of third-country nationals from a company based in a Member State of the EU, the Italian authorities cannot demand a residence permit because such a request creates an obstacle to the freedom to provide services under Article 56 TFEU. Therefore, third-country nationals who have a work permit issued by another Member State can be posted in Italy to perform an activity as employee or self-employed. But Italian legislation does not fully respect EU law on this point.

Moreover, in cases of bogus posting, third-country nationals may find themselves without a valid residence permit, and thus may end up being irregular migrants. They may thus be charged with the offence of illegal immigration and deported.

According to EU legislation as implemented in Italy posted third-country nationals do not benefit fully from the principle of equal treatment. Moreover, in Italy, national collective agreements do not have *erga omnes* effect and consequently cannot be fully applied to posted workers.

### Box 3 Hiring temporary agency workers from third countries

Third-country nationals hired as temporary agency workers in Italy should have an Italian work permit or a permit that allows them to work (see Table 1). Consequently, the number of third-country nationals employed by temporary work agencies established in Italy is not very high.

Third-country nationals are subject to the same rules as apply to Italian temporary agency workers. In particular, they benefit from the principle of equal treatment with the user's workers, as well as other rights guaranteed by Legislative Decree 81/2015, which regulates temporary agency work in Italy.

Third-country nationals posted in Italy as temporary agency workers by an EU or extra-EU agency are regulated by Legislative Decree 136/2016. During their period of employment, temporary agency workers posted to Italy shall benefit from working conditions at least equal to those that apply to the user's workers performing the same tasks or work of equal value. But there are no provisions on travel and accommodation for temporary agency workers in Italian law or collective agreements.

All temporary agency workers hired in Italy, regardless of nationality, can be posted abroad. According to EU law, however, the host country can demand that its legislation on work permits is complied with.

Table 1.14 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Work permit	One year in case of fixed-term contracts; two years in case of open-ended contracts	Yes	Yes	Yes	No
Residence permit for job seeking	One year or longer if the third-country national receives income support	Yes	Yes	No. This permit is issued to third-country nationals that have lost the job for which they obtained a work permit	No
Seasonal work permit	Max 9 months	Yes but only in agriculture and tourism sectors	After three months the seasonal work permit can be converted into a work permit but only within the available quotas established by the Flow Decree	Yes	Yes, if the worker does not find another job
Permit for self-employment	Max two years	Yes	Yes	No. The third-country national has to demonstrate sufficient economic resources to meet requirements to perform the activity they intend to perform in Italy, to have suitable accommodation and an annual income of at least 8,263 euros	No
Blue card	Two years in case of an open-ended contract; for the duration of the contract plus three months in other cases	Yes but during the first two years of their stay in Italy, the third-country national cannot perform an activity different from the highly qualified one for which they received their Blue Card	Yes but the third-country national can be hired by a different employer only on authorisation of the competent public administration and must perform the same activity for which they received their Blue card	Yes	No
Intra-corporate transfer (ITC) permit	Intra-corporate transfers can have a maximum duration of three years for managers and specialised workers and one year for workers undergoing training	Yes but only for the company that has requested the permit	No	Yes. Moreover, the third-country national must have had at least a three-month job relationship before the transfer	Yes
Permit issued to posted workers	The permit is valid for the duration of the service provision and can be prolonged in case of delays in contract execution	Yes but only for the company that requested the permit	No	Yes	Yes

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Residence permit for social protection	6 months. The permit is renewable for one year or for a longer period during which the trial takes place	Yes	Yes	No. The permit is issued when situations of violence or serious exploitation (including work exploitation) are identified and there are concrete dangers to the third-country national's safety, because they have escaped from a criminal organisation or due to testimony they gave during investigations or in a trial	No
Permit for victims of severe work exploitation	The permit is renewable for one year or for a longer period of the trial	Yes	Yes	No. The permit is issued to victims of severe work exploitation who reported it and are collaborating with the authorities	No

Source: Author's analysis, 2022.

## Description of the Italian system

### 1. Overview of third-country nationals on the Italian labour market

Migrant workers are extremely important in several sectors (such as long-term care, agriculture and construction) of the Italian labour market. However, the number of third-country national workers or self-employed who can enter Italy under 'ordinary' permits is usually very low, as they are subject to the quota laid down in the annual Flow Decree (*Decreto flussi*). Moreover, due to its cumbersomeness, people rarely pursue the ordinary procedure for obtaining a work permit. Often third-country nationals arrive in Italy for a short stay or get a permit for reasons other than work, and then look for a job. Once their visa or their residence permit has expired, many foreigners remain in the country and work without a residence permit, becoming irregular migrants. As such, they can claim for wages, social security and other benefits arising out of past employment (Article 2126 Italian civil code; Article 3 Legislative Decree no. 109/2012 implementing the Directive 2009/52/EU). If they report a worker rights' violation, however, they risk being charged with illegal immigration (Article 10bis Legislative Decree 286/1998 - TUI) and being deported.

Moreover, the number of third-country nationals employed in Italy with a residence permit for reasons other than work has constantly been increasing.<sup>1</sup> Some of these permits (such as permits issued to those who, if rejected, expelled or extradited, risk being subject to torture or inhuman treatment) do not allow the holder to perform economic activities. Consequently, if a third-country national wants to earn some money, for example, to pay back a debt to human traffickers or to help their family in the country of origin, they have to accept undeclared work. Once more, Italian immigration law fosters rather than prevents such irregularity.

### 2. Main entry regimes for short-term or limited time work

The main work permits for short-term or limited time work in Italy are the seasonal work permit and the permit issued to posted workers.

The seasonal work permit allows employment in the agriculture and tourist sectors. It is issued by the *Questura* (local police office) at the request of a third-country national who has entered Italy following a work authorisation issued to an employer and has signed a residence contract at the Single Desk for Immigration (SUI). In order to obtain authorisation for work, the employer must ask the SUI for authorisation to hire one or more workers, respecting the quotas for seasonal workers indicated in the annual Flow Decree. Currently the quotas for seasonal

1. In 2019, 177,254 new residence permits were issued, out of which only 11,315 were for work. In 2023, the Italian right wing Government decided to limit the cases in which a special protection permit can be issued (i.e. the permit issued to those who, if rejected, expelled or extradited risk being subjected to torture or inhuman treatment).

work permits (44,000 out of 75,705 permits authorised in 2023) are the only realistic way of obtaining a work permit in Italy.

A third-country national who demonstrates that they have come to Italy at least once in the past five years in order to carry out seasonal work can obtain a multi-annual seasonal work permit; this permit is issued every year, for a duration of up to three years (Article 5 co. 3-ter TUI). The multi-year seasonal work permit is issued by the *Questura* at the request of a third-country national who has arrived in Italy on the basis of a work authorisation issued to the employer within the available quotas established by the Flow Decree. For entry to Italy subsequent to the first one, third-country nationals can obtain a visa upon presentation of an offer of a contract of employment originating from any employer, regardless of the quotas for seasonal work (Article 24 co. 11 TUI).

Permits for posted workers are issued outside the quota system. They can be obtained by third-country nationals posted in order to perform a service according to a contract concluded by their employer and a natural or legal person established in Italy (Article 27 letter i) TUI).

The client established in Italy has to demand the authorisation for work to the SUI, enclosing the posted worker's contract of employment. If the posting employer is established in an EU Member State, the authorisation for work is replaced by evidence of the service contract provided by the client and an employer's declaration containing the names of the posted workers certifying that they reside regularly in the employer's home country and are regularly employed there. This is submitted to the SUI, which then issues the residence permit.

When Directive 2014/67/EU was implemented and prior notification was imposed on all posting employers (Article 10 Legislative Decree No. 136/2016), the abovementioned rule was not amended. Consequently, in cases of posting of third-country national workers, the employer shall fulfil both the procedure outlined in Article 27 letter (i) TUI and the notification regulated by Legislative Decree 136/2016. This is not in compliance with Article 56 TFEU.

In cases of temporary agency work, Article 56 TFEU does not prevent the host state from requiring compliance with its legislation on work permits (Court of Justice 10.2.2011, joint cases from C-307/09 to C-309/09, *Vicoplus*). Consequently, third-country nationals posted to Italy as temporary agency workers should have an Italian work permit. Because of the difficulty involved in obtaining a work permit, the number of third-country nationals posted to Italy as temporary agency workers is very low.<sup>2</sup>

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2. From 27 December 2016 to 31 December 2019, only 443 out of 10,858 temporary agency workers posted in Italy came from third countries (Ministero del lavoro e delle politiche sociali, Osservatorio distacco, I primi dati. <https://drive.google.com/file/d/19Rc72H6XYeh7eZX-ob77flplsOPNV05f/view>).

### 3. Overview of working conditions and wage setting for third-country nationals

According to Article 2 co. 3 TUI, all foreigners regularly residing on Italian territory have the right to equal treatment with Italian workers. This rule is strengthened by Article 43 TUI that forbids any discrimination on the ground of nationality in relation to employment, housing, education, training, social and welfare services. In case of collective discrimination trade unions can take legal action (Article 44 TUI).

Notwithstanding the application of the equality principle, many problems persist. First of all, the principle of equal treatment does not apply to irregular migrants. Furthermore, any public authority (such as labour inspectors) who during a check detects evidence of a crime shall collect any information useful for a prosecution (Article 220 of the implementing regulation of the Code of Criminal Procedure). This rule applies also in case of illegal migration (a crime punishable under Article 22, par. 12 TUI). Consequently, in case of checks on working conditions carried out by public inspectors, irregular migrants risk being discovered and reported.

Regularly residing migrants who dare to report their employer could be dismissed, losing their income and sometimes their accommodation. An unemployed third-country national can remain in Italy for at least one year (Article 22 co. 11 TUI) but should find another job in order to keep their work permit, a task that could be difficult because 'litigious' third-country nationals are often blacklisted. This happens even more often in case of short-term employment contracts. Once a contract has expired, the third-country national needs to find a new job and they know that this could be hampered by previous complaints against employers.

Consequently, both irregular and regular migrants are exposed to infringements of workers' rights, social benefits, and provisions on transport and housing conditions.

Moreover, many third-country nationals, especially in case of posting and short-term migration, do not have sufficient knowledge of Italian and are unaware of their rights. They do not have contacts with trade unions and cannot afford to pay the cost of legal proceedings. Consequently, in many cases, third-country nationals renounce their rights. If working conditions are too harsh, they prefer to look for another job rather than to sue the employer. For this reason, foreigners usually carry out arduous and underpaid work which Italian citizens generally tend to avoid (so-called '3d jobs': dirty, dangerous, demanding).

## 4. Special regimes

### a. Third-country national seasonal workers

Many seasonal workers in Italy are third-country nationals. Third-country national seasonal workers with a valid residence permit benefit from the same rights as Italian workers. However, Article 25 TUI rules out unemployment benefits and family allowance (see Italian report on social security).

### b. Third-country national posted workers

In Italy, posting of workers is regulated by Legislative Decree 136/2016, which was recently amended in order to implement Directive 2018/957. The main rules of Legislative Decree 136/2016 apply also to employers established outside the EU that post workers to the country (Article 1 co. 5).

One of the main problems in case of posting to Italy is that national collective agreements do not produce *erga omnes* effects; consequently, they can be applied to posted workers only if the conditions established by Article 3 §8 of Directive 96/71/EC are respected, a fact that is not always easy to ascertain. Moreover, posted workers do not fully benefit from the principle of equal treatment: indeed, Italian legislation applies only to the matters listed in Articles 4 co. 1 and 4 bis of Legislative Decree 136/2016 (that reproduces, respectively, Article 3 par. 1 and par. 1a of the Directive 96/71).

According to Italian law, in case of bogus posting the posted worker is considered to be engaged by the user (Article 3 co. 4 Legislative Decree No. 136/2016). This rule does not provide any remedy for third-country nationals. Indeed, in case of bogus posting, Italian work permits issued to posted workers are void and third-country nationals can obtain a residence permit only if they prove work exploitation (Article 22 co. 12 quarter TUI). Moreover, the user cannot apply for a work permit for third-country nationals in this case because they have committed the offence of illegal employment of foreigners (Article 22 co. 5bis TUI). Consequently, in case of bogus posting, the third-country national becomes an irregular migrant, loses their employment and can be deported. The user can be held liable for an offence and for the corresponding administrative sanctions and is liable for the payment of wages to the third-country national, while the posting employer is subject only to an administrative sanction (Article 3 co. 5 Legislative Decree 136/2016).

Finally, it should be mentioned that third-country nationals legally residing in Italy can be posted abroad. However, this phenomenon is not very widespread: from 27 December 2016 to 31 December 2019, only 3,013 out of 45,359 workers posted to Italy were third-country nationals.<sup>3</sup>

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3. Ministero del lavoro e delle politiche sociali, Osservatorio distacco, I primi dati. <https://drive.google.com/file/d/19Rc72H6XYeh7eZX-ob77flplsOPNV05f/view>

### c. Third-country national temporary agency workers

Third-country nationals hired as temporary agency workers in Italy should have a work permit (or a permit that allows working). Indeed, Italian law does not establish specific rules to allow temporary work agencies to recruit workers directly from third countries, nor are temporary work agencies allowed to hire third-country nationals legally present in an EU Member State.

Foreign temporary agency workers are subject to the same rules that are applied to Italian temporary agency workers. Consequently, they benefit from the principle of equal treatment with the user's other workers, as well as other rights guaranteed by Legislative Decree 81/2015 that regulates temporary agency work in Italy (Articles 30–40).

All temporary agency workers hired in Italy, regardless of nationality, can be posted abroad; however, according to EU law, the host country can impose its legislation on work permits.

Third-country nationals posted in Italy as temporary agency workers by an EU or extra-EU agency are regulated by Legislative Decree 136/2016. During their mission, temporary agency workers posted in Italy shall benefit from working conditions at least equal to the ones applying to the user's workers that perform the same work or work of equal value (Article 35, Legislative Decree 81/2015). However, neither the law nor the collective agreements include rules on travel and accommodation for temporary agency workers.

## 5. Third-country nationals during the Covid-19 pandemic

The fact that in Italy migrant workers are necessary to keep several sectors running was clear during the Covid-19 crisis when, due to mobility restrictions, many employers complained about labour shortages. During the pandemic, third-country nationals also lamented their unsafe and unhealthy living and working conditions; in particular, irregular migrants were forced to work without the necessary protective equipment and were allotted accommodation that was unsuitable for respecting social distancing.

Third-country nationals' protests and the increasing demand for labour pushed the legislator to approve a regularisation whose outcomes have been disappointing. First, regularisation was selective, affecting only foreigners in certain sectors (care, domestic service and agriculture). Besides, because of the strict conditions imposed, only 207,542 requests were presented, out of which 29,500 were for agriculture and the remainder for care and domestic work. Moreover, the procedure was extremely slow (in May 2023 only 31,5 per cent of applications were examined<sup>4</sup>).

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4. <https://erostraniero.radicali.it/regularizzazione-maggio2023>



## 6. Overview of enforcement and monitoring

Workers' rights violations are widespread in sectors in which third-country nationals are mainly employed (agriculture, care, tourism) because of the very precarious working and living conditions and migrants' vulnerability. Besides, in some of these sectors labour inspections are difficult to carry out because of the peculiar workplaces and working time.

One of the main problems detected in agriculture and in other labour intensive sectors is the so-called 'gangmaster system' (*caporalato*). The gang masters (*caporali*) act as intermediaries for employers recruiting workers outside normal employment channels and without respecting wages, working conditions and health and safety standards established by law and collective agreements. Moreover, gangmasters often withhold part of the salary and force workers to pay for transport to the workplace.

In order to fight the gangmaster system and other forms of work exploitation in agriculture, a triannual Plan was adopted in February 2020 (*Piano triennale di contrasto allo sfruttamento lavorativo in agricoltura e al caporalato 2020–2022*). The Plan aims at strengthening labour inspections, preventing unfair trading practices, guaranteeing decent transport and living conditions, assisting the victims of work exploitation, and improving job matching. Its implementation has been severely hampered by the pandemic, however.

## 15. Latvia

Natalja Preisa

The Latvian labour market has strict rules on the employment of third-country nationals. A work permit is a precondition for employment. In order to employ a third-country national, the employer has to follow a certain legal procedure and in certain conditions to make sure that there are no local workers available for the position in which the employer intends to employ a third-country national. In recent years, after discussions among social partners and state institutions regarding acute local labour shortages, some of the strictest conditions have been eased.

### Box 1 Summary of the immigration regime and how it interacts with labour law

A third-country national can arrive in Latvia, for instance, as a seasonal worker, a posted worker, a highly qualified employee, an intra-corporate transferee or an employee-trainee. To be employed, a third-country national needs to have the right to employment specified in either their visa or a temporary work permit. To be employed in Latvia for a short period of time (not exceeding one year) a third-country national has to obtain a visa that includes a work permit. For long-term employment (exceeding one year) workers need a temporary residence permit with the right to employment (a work permit). The employer is fully responsible for third-country nationals' employment, including restrictions on remuneration, health care and departure costs. If the circumstances on the basis of which a third-country national obtained a temporary residence permit no longer pertain or they have changed, the temporary residence permit shall be annulled. Therefore, when an employee is dismissed, the temporary residence permit is revoked, which means that the worker has to leave the country.

Table 1.15 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Seasonal workers	Up to 6 months over a 12-month period	Yes	Yes	Yes	Yes
Posted workers	Period of posting (period allowed by visa or temporary residence permit)	Yes	No	Yes	Yes
Highly qualified employees	No longer than 5 years	Yes	–	Yes	No
Intra-corporate transferees	Up to 3 years	Yes	No	Yes	Yes
Employee-trainees	Up to 1 year	Yes	No	Yes	Yes

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

Latvian labour law recognises the posting of workers within the EU. A posted third-country national can enter Latvia for employment purposes as a worker already employed in another EU/EFTA country. At the same time, immigration law allows the posting of workers from third countries for the purpose of providing services. Therefore, a company in a third country can conclude a service agreement with a Latvian company and post workers to Latvia. In this case provisions regarding the posting of workers provided by labour law – for instance, the obligation to ensure minimum employment conditions, including remuneration in accordance with Latvian law – do not apply. However, a third-country national posted from a third country must be ensured remuneration not lower than the average gross monthly pay of people working in Latvia. Third-country nationals posted directly from third countries are granted employment rights with the restriction that they are permitted to work only for a particular employer in a particular profession. Posted third-country nationals can be employed in Latvia within the period allowed by visa or temporary residence permit. It is unlikely that workers posted to Latvia from a third country can be further posted to another country from Latvia. There are no bilateral agreements regulating this issue.

### Box 3 Hiring temporary agency workers from third countries

Temporary worker agencies as employers of third-country nationals generally have the same obligations as other companies regarding work permits (visa or temporary residence). If a third-country national has a permanent residence permit or a residence permit as a long-term resident of the EU, they are granted the right to employment without restrictions. Temporary worker agencies are obliged, when issuing invitations, to provide information on each invited worker regarding the expected duration of employment at the user company and the place where work will be performed. If a posted third-country national is already employed in another EU country, Latvian temporary worker agencies have to ensure that they are registered with the State Labour Inspectorate (SLI).

The principle of equal treatment applies if a third-country national is sent to Latvia by a temporary worker agency. Labour law does not differentiate between local and third-country national workers in this context. As the employer of a third-country national a temporary worker agency has the same obligations towards third-country nationals as towards local workers, including tax contributions. In addition, temporary worker agencies are fully responsible for third-country national employment, including restrictions related to remuneration, health care, and departure costs.

## Description of the Latvian system

### 1. Overview of third-country nationals on the Latvian labour market

As a result of increasing labour shortages, the role of migrant third-country nationals in Latvia is growing. In 2021 the total number of third-country nationals granted employment rights increased by more than 30 per cent on the previous year, rising to 16,400. The majority of third-country nationals are employed in transport, construction or IT and come from Ukraine, Belarus, Uzbekistan, Russia and India.<sup>1</sup>

### 2. Main entry regimes for short-term or limited time work

A third-country national can arrive in Latvia, for instance, as a seasonal worker, a posted worker, a highly qualified employee, an intra-corporate transferee or an employee-trainee. To be employed, a third-country national needs to obtain the right to employment specified in either a visa or a temporary work permit. In order to be employed in Latvia for a short period (not exceeding one year) third-country nationals have to obtain a visa that includes a work permit. This is possible only if they have valid health insurance.

### 3. Overview of working conditions and wage setting for third-country nationals

Special requirements apply to third-country national remuneration. They must be ensured no less than the average gross monthly pay of persons working in the Republic of Latvia in the previous year, if they receive a visa with the right to employment.<sup>2</sup> Currently, the minimum wage for third-country national employees is 1,076 euros (gross). If a third-country national obtains a visa and the right to employment as a seasonal worker in the agricultural, forestry, and fish farming sectors, the pay must not be below the average gross monthly wage in the sector. For instance, wages currently must be at least 887 euros in crop production, animal husbandry and hunting, 1183 euros in forestry and logging, and 932 euros in fisheries.

1. This review was drafted prior to the war in Ukraine, which increased the number of third-country nationals arriving from Ukraine as refugees. The employment of Ukrainian refugees is regulated by special legislative instruments, including the Law on Assistance to Ukrainian Civilians. <https://likumi.lv/ta/en/en/id/330546-law-on-assistance-to-ukrainian-civilians>.

2. Every year in March the Central Statistical Bureau publishes statistical information which is the basis for next period of wage calculations as of 1 April. These calculations are provided as of 1 January 2021. Calculations for 2023 are available here: OCMA (2023) Necessary subsistence. Regarding legal provision for subsistence for receipt of a residence permit. <https://www.pmlp.gov.lv/en/necessary-subsistence-o>

Higher remuneration requirements apply to EU Blue Card holders – their wages must be one and a half times average monthly gross pay. The minimum wage in this case is 1614 euros (gross). Lastly, if a third-country national obtains an EU Blue Card and is employed in a profession on the list of professions in which significant labour shortages are expected, wages must be at least 1.2 times average gross monthly pay, currently 1,291 euros.

Third-country nationals employed in Latvia shall be subject to labour law provisions on collective agreements. In other words, if there is a company collective agreement it applies to them too. The employer has a duty to inform workers about any collective agreement in force in the enterprise.

## 4. Special regimes

### a. Third-country national seasonal workers

Cabinet Regulation No. 272 regarding seasonal work provides a list of types of seasonal work for which it is possible to enter into an employment contract for a specific period. A seasonal worker can receive a long-stay visa for up to six months over a 12-month period. If the long-stay visa has been issued for a period that does not exceed 6 months over a 12-month period, but the foreigner wishes to continue the seasonal work employment relationship with the same employer or wishes to conclude a new seasonal work contract with another employer, they can request a new long-stay visa.

There are special rules regarding accommodation for seasonal workers. If an employer invites a seasonal worker and provides them with a place of residence, it has to comply with legal requirements regarding residential space and rent cannot be excessive compared with net remuneration. Rent may also not be deducted automatically from seasonal workers' wages.

### b. Third-country national posted workers

Third-country nationals posted from a third country for the purposes of service provision have to be granted employment rights in a visa or temporary residence permit. Latvian service users have to submit an invitation request to the OCMA. On the basis of this invitation, the OCMA can grant employment rights with restrictions to a particular Latvian company (service receiver) inscribed either in the visa or in the temporary residence permit. Posted third-country nationals must be ensured remuneration not less than the average gross monthly wage of Latvian workers. Latvian labour law recognises posting of workers as an activity that can be performed within EU, that is, only from another EU/EFTA country. A posted third-country national can enter Latvia for employment purposes as a worker already employed in another EU/EFTA country. At the same time immigration law allows the posting of workers from third countries for the purpose of providing services. Therefore, a company in a third country can conclude a service agreement with a Latvian company and post workers to Latvia. In this case the provisions regarding posting of workers in Latvian labour law – for instance, the obligation to

ensure minimum employment conditions, including remuneration – do not apply. Nevertheless, the Latvian company (the service receiver) and the foreign company (service provider) have strict obligations regarding employment rights for posting workers. Moreover, wage requirements are higher in the case of workers posted from outside the EU.

#### **c. Third-country national temporary agency workers**

Temporary work agencies as employers of third-country nationals generally have the same obligations as other companies regarding work permits (visa or temporary residence). If a third-country national has a permanent residence permit or a residence permit as a long-term resident of the EU, they are granted the right to employment without restrictions. Temporary work agencies are obliged, when issuing invitations, to provide information on each invited worker regarding the expected duration of employment at the user company and the place where work will be performed. If a posted third-country national is already employed in another EU country, Latvian temporary work agencies have to ensure that they are registered with the State Labour Inspectorate (SLI). The principle of equal treatment applies if a third-country national is sent to Latvia by a temporary work agency.

### **5. Third-country nationals during the Covid-19 pandemic**

The requirement to self-isolate was lifted for foreigners who arrived in Latvia to perform seasonal work in agriculture, forestry, fisheries and food production if they did not display signs of an acute respiratory disease, and they obtained a negative Covid-19 test.

### **6. Overview of enforcement and monitoring**

Checks and inspections are performed in relation to third-country nationals at the same level and frequency as for local and EU workers. The SLI inspects the existence and content of employment contracts, as well as aspects of occupational safety. The State Revenue Service (SRS) performs tax audits and inspections to check whether the employer is making the mandatory contributions. The State Border Control (SBC) carries out inspections together with the SLI, establishes the legal basis for a third-country national's stay, as well as their legal basis for employment. The SLI may identify illegal employment regardless of a person's legal status in the country. If an SLI inspector finds that a third-country national is staying in the country illegally, this information is passed on to the SBC.



## 16. Malta

Charlotte Camilleri

For the past few years Malta has faced a massive labour shortage in all sectors of industry and thus has resorted to the employment of third-country nationals. Because of the impact of Covid-19 on the economy, all third-country nationals who had lost their jobs and in respect of whom a return decision and a removal order had been made in accordance with Article 14 of the Immigration Act, either left the island of their own free will or were repatriated. The country is once again facing a labour shortage. Minister for Finance and Employment Clyde Caruana said that the workers who left the island last year because of the Covid-19 pandemic were mostly unregulated employees.<sup>1</sup> It is estimated that in excess of 20,000 third-country national workers left Malta. During the pandemic, David Spiteri Gingell was commissioned to assist the Identity Malta Agency to work on a three-year strategy to help facilitate the employment of third-country nationals.

Table 1.16 Overview of the link between immigration regime and labour market rights

Third-country national categories	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers	Yes <sup>(1)</sup>	Yes	No <sup>(2)</sup>	No <sup>(3)</sup>	No <sup>(3)</sup>	Yes <sup>(4)</sup>
Intra-corporate transfers	Yes	Yes	No	No – third-country nationals are expected to support themselves and cannot rely on social assistance	Yes	Yes
Seasonal workers <sup>(5)</sup>	Yes	Yes	Yes	Yes	Yes	Yes
Temporary agency workers	N/A	N/A	N/A	N/A	Yes	N/A
High-level professionals	No	No	No	No – third-country nationals are expected to support themselves and cannot rely on social assistance	No	No
Self-employed	Yes	Yes	To qualify for self-employed status, a third-country national must invest in Malta at least 500,000 euros within 6 months from the date on which the Jobsplus licence is issued. Long-term residents, refugees, subsidiary protection, humanitarian protection and asylum seekers are exempt from these criteria. Therefore, a self-employed third-country national is not eligible for this benefit unless one of the above applies.	Self-employed third-country nationals are expected to support themselves and cannot rely on social assistance	Yes	Yes

1. <https://timesofmalta.com/articles/view/number-of-foreign-workers-stalls-for-first-time-in-over-a-decade.848679>



Notes: <sup>(1)</sup> Generally, third-country nationals require both a residence permit and an employment permit to reside and work in Malta. If a third-country national satisfies the minimum legal requirements by obtaining a single permit for the purpose of employment and is paying social security contributions in Malta then they are eligible for social security benefits.

<sup>(2)</sup> Third-country nationals should be eligible for unemployment benefits in their home country.

<sup>(3)</sup> Third-country nationals are expected to support themselves and cannot rely on social assistance.

<sup>(4)</sup> With regard to child allowances, if a third-country national is paying social security contributions in Malta and satisfies the minimum requirements, then yes, it is awarded from birth if a minor is born after its parents are already in employment, where claimants and children are both living in Malta, both parents have valid residential permits, and one or both parents is/are in employment. Entitlement is based on possession of a permit. If they hold a residence or work permit, claimants will be entitled to child allowance with effect from the sixth month of employment; if a claimant has a Blue Card / International Protection / Subsidiary Protection / Humanitarian Protection permit (including Temporary Permits), they will be entitled to child allowance from the start of employment; if a claimant is holding a long-term residence permit, they are entitled from the date of the permit, whereas holders of intra-corporate transfer permits will be entitled from the ninth month of employment. Seasonal workers and/or student third-country nationals are not entitled to child allowance if they do not hold any of the permits mentioned above.

<sup>(5)</sup> In Malta, seasonal Workers are eligible for sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits.

Source: Author's analysis, 2022.

## Description of the Maltese system

### 1. Main entry regimes for short-term or limited time work

#### 1.1 Key Employee Initiative

The Key Employee Initiative (KEI) provides a fast-tracked service for highly-skilled third-country nationals who are seeking employment in Malta. Applications for a single permit under the KEI initiative may be submitted either while the applicant is physically in Malta or residing abroad.

#### 1.2 Single Permit

Third-country nationals need to apply for a single permit, which incorporates both a residence and a work permit. This permit is issued by Identity Malta Agency, is valid for a period of one year and may be renewed. Applicants are required to proceed with the renewal 90 days from the date of expiry. Renewal of applications may be submitted only while their current permit is still valid.

#### 1.3 Employment License (EL)

Third-country nationals who satisfy the criteria are eligible for an employment license, issued by Jobsplus+. The need for such a license derives from the Immigration Act (Chapter 217 of the Laws of Malta ) which regulates the entry and stay of non-Maltese citizens in Malta. With regard to third-country nationals, Article 11 of the Immigration Act provides that such persons shall not exercise any profession or occupation or hold any appointment or be employed in Malta by any other person or engage in business without a licence from the Minister. In terms of Subsidiary Legislation No. 217.05, employment licenses are needed for people with long-term residence status. These licences are not subject to labour market restrictions. Third-country nationals who are irregular immigrants in Malta may apply and will be given an EL by Jobsplus+.

### 2. Working conditions and wage setting for third-country nationals

The Employment and Industrial Relations Act (EIRA) applies to all persons in employment in Malta, whether they are Maltese citizens, other EU nationals or third-country nationals. The EIRA stipulates that employers should not engage foreign nationals under working conditions (that is wages, hours and so on) less favourable than those established for work of the same category by national laws and regulations. All third-country nationals legally residing and working in a Member State enjoy the same rights as comparable local workers. Such equal treatment applies only to third-country nationals in employment. But the right to equal treatment is without prejudice to Malta's right to withdraw or to refuse to renew a residence permit, once issued.

### 3. Special regimes

#### a. Seasonal workers

Article 2 of Subsidiary Legislation 217.20 states that ‘seasonal worker’ means a third-country national who retains their principal place of residence in a third country and is staying legally and temporarily in Malta to carry out a seasonal activity, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in Malta. Such activities are carried out exclusively in the hospitality, agriculture and marine aquaculture sectors.

#### b. Posting of workers

Under the Posting of Workers Regulations<sup>2</sup> the law does not differentiate between a posting from within or outside the EU/EFTA. The Regulations shall apply if there is an employment relationship between the undertaking making the posting and the relevant worker. Third-country national workers are required to register such postings with the competent authority in Malta, which is the DIER. Apart from widening the concept of equality of treatment to include remuneration, not just pay, posted workers’ right to accommodation, where applicable, and to allowances or reimbursement to cover travel, board and lodging expenses, the new provisions lay down rules on long-term postings and posted workers who are also temporary agency workers. Legislation makes it clear that allowances specific to a posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure incurred on account of the posting, such as on travel, board and lodging. Other than this, in Malta the principle of equal treatment applies regardless of nationality and any preferential or less favourable treatment is prohibited because regulations apply to all posted workers, regardless of nationality. Equality of treatment with comparable employees applies. The right to equal treatment does not prejudice Malta’s right to withdraw or to refuse to renew a residence permit, once issued. Allowances specific to the posting are considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

#### c. Temporary agency workers

The Temporary Agency Worker Regulation entered into force in 2011 by means of Subsidiary Legislation 452.106. This regulation does not differentiate between EU workers and third-country nationals. The same rules apply to all temporary agency workers. The Regulations stipulate that the Agency is the employer, not the user undertaking. Moreover, if a temporary agency worker is on an indefinite employment contract and is paid by the Agency between assignments, then they shall not benefit from equal treatment with comparable workers. Furthermore,

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2. Posting of Workers in Malta Regulations, Legal Notice 223 of 2016, as amended by Legal Notices 262 of 2020, 232 of 2021 and 266 of 2022

if a temporary agency worker is not paid between assignments then the equal treatment principle will start to apply only after four weeks of the end of the assignment. If the temporary agency worker is replaced during the assignment, the replacement will benefit from equal treatment from day one.

#### 4. Third-country nationals during the Covid-19 pandemic

As a Covid relief measure, the government introduced a wage supplement to help businesses with specific NACE Codes. This wage supplement is available for all their employees. The agreement reached by the social partners is that employers have to top up this supplement. Because of the equality of treatment principle no distinction is made between local nationals, other EU nationals or third-country national workers. As regards the wage supplements, from the outset the government deducted the portion allocated for employees' social security contributions as a prepaid employee share of social security contributions.<sup>3</sup>

Article 42 of the EIRA provides that employment conditions can be changed if two criteria are satisfied: first, employees have to agree to the proposed change and second, it has to be authorised by the director responsible for industrial and employment relations. This authorisation is granted for a period of four weeks and has to be renewed. Hundreds of companies asked the relevant director to authorise a reduced working week so that the government supplement could cover employees' wages. This applies to all employees, including third-country nationals.

The government introduced another measure whereby businesses were given a deferral for payment of their employees' social security contributions.

#### 5. Enforcement and monitoring

For a single permit to be issued to a third-country national a labour market test has to be conducted to ensure that there is no Maltese or other EU citizen available for the job.

Third-country national posted workers do not need a single permit but the Department of Industrial and Employment Relations (DIER) needs to be notified. Other third-country nationals who require but are not in possession of a single permit may be repatriated. Article 4 of the Subsidiary Legislation 452.82 (Posting of Workers in Malta Regulations) governs the identification of a genuine posting, as well as the prevention of abuses and circumvention. Moreover Article 6 stipulates that it is the duty of the service provider posting the worker to Malta to notify the competent authority of their intention prior to the date of posting. Such notifications must contain the information necessary to allow workplace inspections.

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3. <https://finance.gov.mt/en/news/Pages/NOTICE-TO-EMPLOYERS.aspx>

Article 5 (5) of the Posting of Workers in Malta Regulations stipulates that when a worker is posted to Malta, inspecting the relevant terms and conditions of employment is the responsibility of the DIER, in cooperation, where necessary, with the original Member State.

‘Inspections carried out are based primarily on a risk assessment which may identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated. The carrying out of large infrastructural projects, the existence of long chains of subcontractors, geographic proximity, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers may in particular be taken into account.’

Because of the impact of Covid-19 on the economy, all third-country nationals in respect of whom a removal order had been issued in accordance with Article 14 of the Immigration Act<sup>4</sup> either left the island of their own free will due to the adverse impact of the pandemic or were repatriated. Minister of Finance and Employment Clyde Caruana said that the workers who left the island due to the Covid-19 pandemic were mostly unregulated employees (Times of Malta 2021). It is estimated that in excess of 20,000 third-country national workers left Malta. During the pandemic, David Spiteri Gingell was commissioned to assist Identity Malta Agency to work on a three-year strategy to help facilitate the employment of third-country nationals.

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4. Chapter 217 of the Laws of Malta.

## 17. The Netherlands

Jan Cremers

The main regulatory framework for foreigners' rights and duties, for admission, stay and residence, and for permits related to the performance of work, study or other visits is formulated in the Aliens Act 2000. The second basic act is the Foreign National Employment Act 1994. Immigration of third-country nationals is almost exclusively on the initiative of employers. Recruitment is meant as a last resort; a work permit will be refused if there is sufficient labour present on the labour market. The country applies its own points and wage based system for high-skilled workers. Available data suggest that relatively few third-country nationals come for work purposes.

### Box 1 Summary of the immigration regime and how it interacts with labour law

The Foreign National Employment Act requires that an employer obtains a valid work permit for all foreign workers. Such work permits are not required for employees from a country within the EU/EEA or Switzerland. As a general rule, persons (EU/EEA citizens and third-country nationals) working and residing in the Netherlands are treated with regard to pay and working conditions in the same way as resident Dutch nationals. If restrictions are specified – for instance, years of service or waiting periods – they apply equally to nationals and foreign workers. Recognition of diplomas is not guaranteed for third-country nationals, while comparable diplomas of EU citizens are recognised. Some collective agreements stipulate special provisions (for housing, travel or medical expenses) for workers not living permanently in the Netherlands. All employees are entitled to the statutory minimum wage that consists of a basic wage and a number of allowances, such as for shift work and irregular working hours. Also posted workers are covered, based on transposition of the EU Directive. Some income components, such as overtime pay or expenses and end-of-year allowances, are not included in the calculation of the minimum wage. For younger workers (below 21 years of age) a sliding scale of mandatory minimum wages applies.

Table 1.17 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Highly skilled workers/points and wage based national system	For duration of contract	Yes	No, although change of contract is possible, if wage threshold is respected	A valid employment contract of more than three months with a Dutch employer that complies with the wage threshold	Withdrawal of work permit means loss of right to stay. Departure period is determined on a case-by-case basis. The standard period is 4 weeks (28 days). Failure to comply means repatriation
Work in paid employment via 'sponsorship'	For duration of contract	Yes	No	a) Workers must have a valid residence permit that includes the phrase 'Employment is freely permitted. Employment permit not required'; b) they must hold a valid passport with an officially accepted sticker for residence remarks, and which includes the remark 'Work is freely permitted. Work permit not required'; c) the employer has a valid work permit for the foreign worker concerned	Withdrawal of work permit means loss of right to stay. The departure period is determined on a case-by-case basis. The standard period is 4 weeks (28 days). Failure to comply means repatriation
Posting (including temporary workers)	Depending on the posting period	Yes	No	Third-country nationals posted from another Member State are exempt from the requirement to have an entry visa or to apply for a work permit	End of posting period means return to the other Member State
Family/study/asylum	Varies	Varies	Varies	No	Not applicable

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

Posting straight from outside the EU, with no intermediate Member State, is rather rare. Third-country nationals who enter through posting do not need to apply for a Dutch work permit, if they are legally employed in one of the EU/EEA countries or Switzerland and are temporarily posted to the Netherlands. If a posting undertaking registers a third-country national, this registration must indicate the validity period of the work permit that was issued by the sending EU/EEA country. These posting undertakings are subject to the WagwEU, the Dutch implementation of the Posting of Workers Directive (1996/71/EC) and the Enforcement Directive (2014/67/EU). The lack of registration makes it difficult to provide reliable figures and to quantify the total number of third-country nationals posted to the Netherlands. The equal treatment of EU/EEA nationals and third-country nationals is meant to prevent wage dumping, undercutting the salary levels of national workers. A relatively high percentage of third-country nationals posted to neighbouring countries were originally engaged as temporary workers in the Netherlands. Large Dutch temporary work agencies use the potential 'third country labour reservoir' for their recruitment.

**Box 3 Hiring temporary agency workers from third countries**

In principle, it is not possible for temporary agency workers from outside the EU to enter another Member State through the ordinary free movement of workers, because their work permit is bound to the country of entry. Third-country workers who enter EU/EEA territory can be posted to another Member State within the framework of the free provision of services. For temporary agency workers posted to a Dutch user undertaking the working conditions shall apply of generally binding collective agreements to which the user undertaking is subject. Compliance control with collective agreements is a civil matter. In the temporary agency sector, the social partners created a Special Compliance Office (the SNCU) in 2004. Unions and employer organisations transferred the competence to go to court to this institution. The SNCU has set up a reporting point in several languages that gives workers the possibility to report cases of non-compliance with collective agreements.



## Description of the Dutch system

### 1. Overview of third-country nationals on the Dutch labour market

Available data suggest that relatively few third-country nationals come for work purposes.<sup>1</sup> According to the European Commission, a net inflow of 33,000 citizens of working age came to the Netherlands from outside the EU/EEA in 2018. In that year, only 14.6 per cent of all third-country nationals came as high-skilled migrants and 7.4 per cent as other labour migrants. The latest data can be found in the next overview.<sup>2</sup> Short-term stays (less than four months) are not included in the data.

Third-country nationals entering the Netherlands	2016	2017	2018	2019	2020
Highly skilled	8,100	9,700	11,800	12,800	7,000
Paid work	4,400	5,200	6,000	7,600	5,000

### 2. Main entry regimes for short-term or limited time work

The Dutch legislator has formulated a number of general conditions that apply to all purposes of stay.<sup>3</sup> The focus here is on the most relevant legislative provisions related to third-country labour migrants.<sup>4</sup> The main regulatory framework for foreigners' rights and duties, for admission, stay and residence, and for permits related to work, study or other visits is formulated in one general act, the 2000 Aliens Act (*Vreemdelingenwet 2000*).<sup>5</sup> The second basic legal act is the Foreign National Employment Act 1994 (*Wet arbeid vreemdelingen 1994, or WAV*).<sup>6</sup> This act provides regulations on labour market access and the employment of third-country nationals.<sup>7</sup> Both are implemented in detailed subordinated acts that describe the legal provisions and requirements. As in other EU Member States, vacancies shall in principle be filled by job-seekers from EU countries. The country has seen a large growth in active intra-EU movers from inside the EU/EEA countries.<sup>8</sup> The Dutch migration policy for third-country nationals is almost exclusively at the initiative of employers (demand-driven policy). Recruitment of

1. The Netherlands belongs to the category with the lowest percentage of third-country nationals in the total population (4 per cent in 2019, European Commission 2020), with a large segment of third-country nationals originating from Morocco or Turkey.

2. <https://www.cbs.nl/nl-nl/nieuws/2021/29/vooral-minder-immigranten-van-buiten-de-eu-in-2020>

3. [https://ind.nl/en/Pages/General\\_conditions.aspx](https://ind.nl/en/Pages/General_conditions.aspx)

4. For an overview of residence permits available for work: <https://ind.nl/en/forms/3086.pdf>

5. For an English translation, visit: <http://hrlibrary.umn.edu/research/Netherlands/Alien%20Act%202000.pdf>

6. <https://wetten.overheid.nl/BWBR0007149/2018-01-01>

7. At the time of writing, a consultation concerning a revision of the WAV was running: <https://www.internetconsultatie.nl/wijzigingwetarbeidvreemdelingen/reacties>

8. However, there has been an increase in retired EU/EEA citizens and a drop in working-age inflows.

third-country nationals is meant as a last resort; a work permit will be refused if there is sufficient labour already.

For a stay of fewer than 90 days, workers need a short-stay visa. They can apply for such a visa at the Dutch embassy in the country of origin or country of continuous residence. For a longer stay (more than 90 days), workers need a residence permit. They can only obtain a residence permit for the purpose of work if they have an ensured job in the Netherlands.

The standard residence permit in the Netherlands is for paid employment. Several such permits exist with specific rules (work at a foreign company collaborating on a project or joint venture with a Dutch company; paid employment for the assembly and repair of equipment delivered by foreign companies; paid employment in the Netherlands in relation to the delivery of goods to a foreign company; work at an international group of companies and a transfer to the Netherlands as a trainee, key staff member or specialist; cultural work, journalists, work in paid employment for an international non-profit organisation in the Netherlands).

The Netherlands applies a different national policy and strategy to attract highly-skilled migrant workers. In this system, a highly-skilled worker of 30 years or above must earn a monthly wage of at least 5,008 euros (in 2023); for younger workers below 30 years of age this is 3,672 euros per month. The salary threshold is substantially lower than for the Blue Card. The scheme requires a valid employment contract of more than three months with a Dutch employer that complies with the salary threshold. It includes incentives to attract (highly) qualified migrants with controversial tax advantages (offering a tax-free salary of 30 per cent for the extra costs incurred when working in the Netherlands). Although both the migrant worker or the employer can apply, the scheme can be characterised as an employer-led approach driven by ‘supply and demand’: that is, the focus is on addressing labour shortages and identifying third-country nationals who can add high value to the national labour market.

### 3. Overview of working conditions and wage setting for third-country nationals

As a general rule, foreign persons (EU/EEA citizens and third-country nationals) working and residing in the Netherlands are treated in the same way as all other residents with regard to pay and working conditions. If specified restrictions exist – for instance, years of service or waiting periods – they apply equally to nationals and foreign workers. Recognition of diplomas is not guaranteed for third-country nationals, while comparable diplomas of EU citizens are recognised.

Some collective agreements stipulate special provisions (for housing, travel or medical expenses) for workers not living permanently in the Netherlands. Parties involved in the development of a collective agreement can ask the Minister of Social Affairs and Employment to declare the provisions of the agreed industry collective agreement generally binding for all employers or employees in the industry or sector, irrespective of nationality.

All employees are entitled to the Dutch statutory minimum wage that consists of a basic wage and a number of allowances, for example, for shift work and irregular working hours. Some income components, such as overtime pay or expenses and end-of-year allowances, are not included in the calculation of the minimum wage. For younger workers (below 21 years old) a sliding scale of mandatory minimum wages applies. This general rule applies to all workers within the territory, independent of origin or nationality. Posted workers are also covered, based on transposition of the EU Directive.

#### 4. Special regimes

##### a. Third-country national seasonal workers

The Netherlands transposed the Seasonal Work Directive (2014/36/EU) in a rather neutral way. The Directive seeks to promote temporary and circular migration as a means to solve Member States' demand for low-skilled migrants, without giving the migrants falling within its scope the prospect of integration and long-term residence in a host Member State. As in Malta, Luxembourg and Germany, no third-country seasonal workers have been admitted to the Netherlands so far (there were no authorisations in the period 2017–2019). The requirements and conditions when applying for seasonal work, as well as the rights and obligations of seasonal workers are published on a government website in English and Dutch. In general, the entry and stay of seasonal workers are not part of an overall migration policy. The official policy is that the country does not rely on seasonal workers from third countries and thus does not need specific policies to attract them. The idea is that seasonal labour market demands can always be met through nationals, EU/EEA citizens and third-country nationals legally residing in the country and available on the labour market. Thus, the relevance of Directive 2014/36/EU is limited.<sup>9</sup>

##### b. Third-country national posted workers

The condition for entry through posting is that the third-country national is legally allowed to work and reside in another EU/EEA country or Switzerland. The employer must notify entry at least two days beforehand. The introduction of the notification requirement in 2019 (identical for all posted workers, whether intra-EU or third-country workers) might lead to stronger verifiability of posted work. The decision of a third-country national resident in one Member State to settle in a second Member State, even if all necessary (formal and administrative) conditions for acquiring a visa and/or residence permit have been met, is restricted by a number of measures already mentioned (activities in line with the national economic interest, evidence that the position cannot be filled by EU/EEA/EFTA nationals).

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9. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/oo\\_eu\\_seasonal\\_workers\\_study\\_inform\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/oo_eu_seasonal_workers_study_inform_en.pdf)

### c. Third-country national temporary agency workers

In principle, it is not possible for temporary agency workers from outside the EU to enter another Member State through the free movement of workers, because their work permit is bound to the country of entry. Once third-country workers have entered EU/EEA territory, however, they can be posted to another Member State within the framework of the free provision of services. Posted temporary third-country agency workers remain on the payroll of the foreign agency and their social security contributions are paid in the country of establishment. The management and supervision of temporary agency work is not the responsibility of the service provider (the temporary employment agency), but of the hirer (the service recipient or user undertaking). However, the temporary employment agency remains responsible for the temporary agency worker's terms of employment. For temporary agency workers posted to a Dutch user undertaking the working conditions of generally binding collective agreements shall apply that the user undertaking has to respect for its regular workforce.

## 5. Third-country nationals during the Covid-19 pandemic

With a residence permit, third-country nationals can obtain permission to remain abroad for a certain period of time. How long their stay outside the Netherlands can be depends on the type of residence permit. If foreign workers are unable to travel back in time to the Netherlands because of Covid-19 measures, there will be no consequences with regard to the residence permit if they can show that this was not their fault. In the pandemic, travel bans did not apply to third-country nationals who were key workers in certain well-defined sectors and occupations. If a third-country worker who was abroad could not return, for instance because a Covid-19 related entry ban applied, their employer had to report this to the IND. As part of the obligation to provide information, employers have to report changes to the IND within four weeks.

The monthly wage criterion for certain categories of highly skilled third-country nationals or for work in paid employment still applied during the Covid-19 period. It was announced that the IND would handle the situation flexibly and not revoke residence permits if people temporarily were receiving lower salaries.

## 6. Overview of enforcement and monitoring

In general, the Immigration and Naturalisation Service (the IND) is the competent authority for the application of third-country national entry regulations. The Dutch Equal Treatment Act guarantees protection against discrimination for all persons on Dutch territory, and equal treatment with Dutch citizens. There is little case law in this area, however. Enterprises from other EU/EEA countries or Switzerland who temporarily come to the Netherlands with posted workers within the framework of the free provision of services are subject to the WagwEU, the Dutch implementation of the Posting of Workers Directive (1996/71/EC) and the Enforcement Directive (2014/67/EU). Compliance with collective agreements is

a civil matter; in most industries this is performed by the social partners, or joint institutions established by the social partners. In the temporary agency sector, the social partners created a special compliance office (the SNCU) in 2004. Unions and employer organisations transferred the competence to take matters to court to this institution. The SNCU has set up a reporting point accessible in several languages. It gives all workers the possibility to report cases of non-application of collective agreements or to ask questions.<sup>10</sup>

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**10.** The SNCU has uploaded a series of YouTube films to its website in several languages to inform foreign temporary agency workers about wages, working conditions and living in the Netherlands. <https://www.sncu.nl/en/working-as-a-temporary-agency-worker/>

## 18. Norway

Kristin Alsos

Immigration of third-country nationals to work in Norway is regulated and demand-driven. As a main rule only skilled workers and seasonal workers will be permitted to enter the country to work, but skilled workers could enter both as individual workers and as posted workers. To obtain a permit, a concrete offer of employment must be made at going rates and working conditions for the industry.

### Box 1 Summary of the immigration regime and how it interacts with labour law

The Norwegian Immigration Act lays down that labour migrants from third countries need a residence permit in order to work. Such a permit can be issued to skilled workers who have skills that are in short supply in Norway, as well as to seasonal workers and posted workers. A permit is issued for a specific employment contract but seasonal workers may have more than one employment relationship. A skilled worker with a valid permit might apply for a new job if they are dismissed from the one the permit is based upon.

Table 1.18 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Skilled workers	1–3 years (depending on skills required)	Yes	No	Yes	No, as long as permit is valid workers may apply for a new job for max 6 months
Seasonal workers	6 months	Yes	Yes	Yes	Yes
Posted workers	6 years	Yes	No	Yes	Yes

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

Employees of a foreign enterprise that has entered into a contract with a principal in Norway to provide services of limited duration may be granted residence permits for up to six years. It is a condition that the employee has qualifications as a skilled worker. The employee has to have an employment contract between the applicant and a third-country national employer. Even if reposting is not mentioned in the regulations, a reasonable interpretation would be that permits do allow for reposting or for the employee to be sent on to work in another EEA state.

### **Box 3 Hiring temporary agency workers from third countries**

Staffing agencies cannot recruit seasonal workers, and third-country nationals cannot be posted to a staffing agency in Norway. Employees hired by a staffing agency established in Norway will be covered by the same regulations, regardless of whether they are recruited from the EEA area or a third country.

## Description of the Norwegian system

### 1. Overview of third-country nationals on the Norwegian labour market

Norwegian companies may use labour and service providers from countries outside the EEA area, so-called 'third countries'. These workers must have a residence permit in Norway to be able to work, and such permits are granted to employees with skills that are in short supply in Norway (skilled labour), and to seasonal workers. In order to facilitate the recruitment of necessary skills, the conditions for granting a permit have been liberalised. In 2002, the so-called 'specialist permit' was extended to apply to people with skills at upper secondary level.

### 2. Main entry regimes for short-term or limited time work

According to Norwegian law, third-country nationals must have a residence permit that gives them access to work. Work permits or work visas as such do not exist. The regulation sets out the main conditions for individual (skilled workers and seasonal workers), posted workers, independent contractors and independent business activities.

The main conditions for individual permits and seconded permits are more or less the same:

- the applicant must be aged 18 or older;
- pay and working conditions must not be inferior to those prescribed by the current collective agreement or pay scale for the industry concerned;
- the applicant must be subject to a quota fixed by the Ministry, or the position cannot be filled by domestic labour or labour from the EEA or EFTA area;
- a specific offer of employment has been made. For individual permits the employment offer shall as a general rule apply to full-time employment for a single employer, although exceptions may be made based on individual assessment of the nature of the position.

### 3. Overview of working conditions and wage setting for third-country nationals

It is a condition that the pay and working conditions should not be inferior to those provided for in the applicable collective agreement or pay scale for the industry in question. If no such collective agreement or pay scale exists, the pay and working conditions must not be inferior to what is normal for the occupation and place concerned.

As a rule, only financial compensation is taken into account when considering whether the wage is in compliance with the requirements.



## 4. Special regimes

### a. Third-country national seasonal workers

Employees may be granted a residence permit for a period of up to six months for work in a seasonal activity or in connection with ordinary holiday replacement. For work in seasonal activities in agriculture or forestry, it is a condition that employees must be within the quota for seasonal work in agriculture and forestry.

If no quota has been established, the quota has been filled or the application concerns work in other seasonal industries, a permit may be granted when the position cannot be filled by domestic labour or labour from the EEA or EFTA area.

As a rule, a temporary work agency cannot be accepted as the responsible employer.

Residence permits for seasonal workers do not form the basis for permanent residence permits.

### b. Third-country national posted workers

Employees of a foreign enterprise that has entered into a contract with a principal in Norway to provide services of limited duration may be granted residence permits for up to six years. This is conditional on employees having qualifications as skilled workers. Such employees must provide employment contracts between the applicant and a third-country national employer.

The posting has to be a direct contract between the employer and the receiving firm. The receiving firm cannot be a temporary work agency.

Residence permits require that employers have contracts with firms established in Norway, and tied to the assignment specified in the contract.

As for workers, principals may be granted a permit (group permit) to use a specific number of foreign service providers (seconded employees). Exemptions are made from the requirement that it is not possible to procure domestic labour or labour from the EEA or EFTA area to carry out the assignment. A group permit granted to an employer is tied to the assignment specified in the contract.

### c. Third-country national temporary agency workers

See above.

## 5. Third-country nationals during the Covid-19 pandemic

Skilled workers temporarily laid off their positions were able to stay in Norway as long as their permit lasted. At the beginning of 2021, the green sector was listed as an industry critical to society. Employers in the industry could thus recruit workers from abroad. In such cases, employees were exempted from the strict entry restrictions.

## 6. Overview of enforcement and monitoring

The Labour inspectorate, the police, the Directorate for Immigration (UDI) and the tax authorities might undertake single or coordinated inspections in order to check whether employees have work permits, conditions in the work permit have been complied with or whether taxes are being paid. Such inspections are usually risk based. The Labour inspectorate is also tasked with controlling whether minimum wages as laid down in legally extended collective agreements are being complied with. This is important for third-country nationals posted to Norway from the EEA area, where a residence permit is not required.

The principal shall ensure that the applicant's employer abroad satisfies the requirement regarding pay and working conditions during the assignment, and should be able to present documentary evidence of this upon enquiry from the supervisory or immigration authorities.



## 19. Poland

Izabela Florczak

Economic migrants from third countries are currently very numerous on the Polish labour market. They are mainly Ukrainian citizens working in Poland either under the simplified procedure (on the basis of a registered declarations of entrusting the work to a foreigner), or on the basis of a work permit combined with a residence permit. A growing group are citizens of Belarus. A number of Indians are also present on the Polish labour market. It is noticeable that migrants are employed through temporary work agencies and with the use of civil law contracts, which do not guarantee rights resulting from the labour law regime.

### Box 1 Summary of the immigration regime and how it interacts with labour law

Many non-EU citizens are required to obtain a visa to enter and stay in Poland. The visa does not guarantee entry into Poland, however, as the Border Guard has the right to deny foreign nationals entry. If a foreign national intends to stay in Poland beyond the period of stay permitted by the visa, they should apply for another visa, visa extension or residence permit.

The visa may be issued for a number of purposes, as indicated on the visa sticker. Visas entitle migrants merely to enter Poland, not to work.

Citizens of Belarus, Moldova, Ukraine and the Republic of Armenia (the so-called 'five countries') may take up employment without needing to obtain a work permit for a period not exceeding 24 months on the basis of a declaration registered by an employer that they are offering work to a foreign national. The consequences of the war in Ukraine have led to changes in the law, introducing a new way of legalising work. This is procedurally the easiest, reserved not only for third-country nationals fleeing Ukraine, but also for all Ukrainian citizens legally residing in Poland. It involves submitting a notification of the employment of a foreign national via an online form.

Foreign nationals who intend to legalise their stay in Poland in connection with the commencement or continuation of work should apply for a temporary residence and work permit (joint application).

Table 1.19 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
National visa	Entitles holder to entry and continuous stay in Poland or to several consecutive stays totalling more than 90 days; period of validity of national visa cannot exceed 1 year	Yes, if purpose of issuing the visa is related to work	Yes, but only if: a) declaration of offering work to a foreigner is registered by each employer; or b) a work permit is issued for each employer	Yes	No, as residence is based on visa, not on permit to stay
Non-visa movement	90 days within each 180-day period	No	No	No	No
Temporary stay permit	From 3 months to 3 years	If basis of residence permit is not work – only if additionally a) declaration of offering work to a foreigner is registered;* or b) a work permit is being issued	If basis of residence permit is not work – only if: a) declaration of offering work to a foreigner is registered by each employer; or b) a work permit is being issued for each employer	Yes, if work is only basis for stay	Yes, if work is only basis for stay

Note: \* Such a situation is very rare. The basis for stay of such migrants are rather visas than temporary stay permits.

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

Employers from third countries may post their employees to work temporarily in Poland. They must comply with regulations concerning, among other things, the legality of foreign nationals' residence and work in Poland.

The obligations of an employer posting an employee to Poland include submitting a statement to that effect to the National Labour Inspectorate. An employer who is posting an employee (not a temporary employee) to Poland must ensure proper conditions of employment and minimum protections (such as minimum wage).

The terms and conditions of employment guaranteed to temporary employees posted to Poland should be, from the first day of the posting, no less favourable than those of domestic temporary employees.

**Box 3 Hiring temporary agency workers from third countries**

The legal requirements regarding employment by a temporary work agency are the same as for employers who employ workers directly. A temporary employment agency is treated as an employer in accordance with national legislation. Applications for a work permit/submission of declaration of offering work to foreign nationals must indicate the so-called 'user employer' (user undertaking) for whom the foreigner will work. If the user employer changes, a change of permit is required.

Temporary employment agencies are obliged to (i) provide foreign nationals with a written translation of their contract into a language they understand before they sign it; and (ii) inform them in writing about the rules concerning foreign nationals' entry, stay and work in Poland.

Labour law provisions do not refer to the principle of equal treatment between 'local' workers and third-country nationals hired by a temporary employment agency. This principle derives from the general rules on equal treatment of persons employed under the same conditions, irrespective of their nationality.

## Description of the Polish system

### 1. Overview of third-country nationals on the Poland labour market

It is estimated that about 2 million foreigners are currently (beginning of 2023) active on the Polish labour market. The vast majority are citizens of Ukraine. In 2021, 504,172 temporary work permits were issued (325,213 for citizens of Ukraine). Also in 2021, 1,979,886 declarations of entrusting the work to foreigners were registered (1,635,104 for citizens of Ukraine). In 2022, 786,142 employment notifications were reported.

In 2020 temporary work permits were issued for:

- 139,637 industrial and craft workers;
- 123,649 workers performing simple tasks not elsewhere classified;
- 82 435 machine and plant operators and assemblers.

In 2020 declarations of work offers to foreign nationals were registered for:

- 235,633 manufacturing workers not elsewhere classified;
- 119,858 workers performing simple tasks not elsewhere classified;
- 103,880 warehousemen and related workers.

The main issues discussed in relation to the employment of third-country migrants concern:

- the need to extend the group of countries from which foreigners may perform work on the basis of registered declaration of work offers to foreign nationals;
- the need to prevent the employment of foreigners outside the protective regime of labour law (under civil law).

### 2. Main entry regimes for short-term or limited time work

If a foreign national intends to stay in Poland beyond the period of stay permitted by the visa, they should apply for another visa or residence permit at the Polish consulate abroad.

The visa may be issued for a number of purposes, as indicated on the visa:

- 04 – performance of business activity;
- 05 – performance of work by a foreigner for a period of up to six months during 12 consecutive months, on the basis of a statement of intention to offer work to a foreign national registered with the district labour office;
- 05a – performance of work by a foreigner for a period of less than 6 months during 12 consecutive months on the basis of a declaration on offering work to a foreigner;
- 05b – performance of work by a foreigner on the basis of a seasonal work permit for a period shorter than 9 months within a calendar year;

- 06 – performance of work on the basis of documents other than a statement of intention to offer work to a foreigner, such as a work permit.

For the purpose of implementing Directive 2014/66/EU, two new types of permits for temporary residence were introduced: (i) a temporary residence permit for the purpose of work under an Intra-corporate transfer, and (ii) a temporary residence permit for the purpose of exercising long-term mobility in the case of a management employee, specialist or an employee under training under intra-corporate transfer.

Temporary residence permits in Poland may be applied for by foreign nationals who plan to stay longer than three months, with a maximum of three years. However, the validity of the permit may be shorter and still be in line with the basis for application (for example, work) if such a stay is justified.

### 3. Overview of working conditions and wage setting for third-country nationals

Third-country nationals enjoy the same rights as national workers (also rights covered by collective agreements), but in principle their situation is less favourable because their residence status is closely linked to their work. If a foreigner's residence basis is related to work, and they lose such work (even if termination is the fault of the employer), the foreigner loses the right to legally reside in Poland. In such a situation, a foreigner leaving the country may only file a claim to the court and notify the National Labour Inspectorate. Because the hearing will probably take place without the foreigner (as they will be in their home country) the right to defence is drastically reduced.

### 4. Special regimes

Seasonal work permits (type S) also enable foreign nationals to work. This type of permit is issued for a specified period of time or is the extension of a seasonal work permit not longer than nine months from the date of first entry for the purpose of seasonal work performed in a given calendar year. On the basis of a seasonal work permit a foreigner may perform any type of seasonal work for the entity offering a job, especially if the activity remains connected with the contractual obligations of the foreigner.

If a foreigner has entered Poland on the basis of the visa issued for seasonal work or under the visa-free regime in connection with an application for work permit S, the employer provides them with accommodation and is obliged to conclude a separate written agreement specifying the terms and conditions of the lease.



## 5. Third-country nationals during the Covid-19 pandemic

The Covid-19 pandemic made it necessary to regulate the automatic renewal of residence permits and work permits. They remained valid until 30 days after the end of the last state of emergency. In January 2023, a law came into force that provides for the repeal of the provisions extending foreign nationals' stay, introduced in connection with Covid-19 as of 24 August 2023.

## 6. Overview of enforcement and monitoring

The National Labour Inspectorate is responsible for monitoring the working conditions of migrant workers. The Border Guards are responsible for monitoring the legality of migrants. The Ministry of Family and Social Policy and the Office for Foreign Nationals are responsible for assessing the scope of employment of migrant workers.

## 20. Portugal

**Francisco Xavier Liberal Fernandes and Duarte Abrunhosa Sousa**

Third-country nationals' entry into Portugal depends on the presentation of a valid passport (or other travel document). Third-country nationals should also have sufficient means of subsistence for their stay, as determined by Decree No. 1563/2007 (Art. 11 of Law No. 23/2007, 4–7, approves the legal regime for the entry, stay, exit and removal of foreign nationals from national territory [the Foreign Nationals Act]). Workers are exempt from this obligation, however, if they can prove that accommodation and food will be provided during their stay or if a Portuguese national or a third-country national with residence in the country sign a statement of responsibility. The statement is a commitment to ensure the conditions of a worker's stay (Art. 12 of the Foreign Nationals Act; Art. 2/4, Decree No. 1563/2007). Loss of employment is not, by itself, a reason for deporting a worker before their permit expires. Third-country nationals have access to the courts (Art. 83 Foreign Nationals Act), so starting a legal action against the employer or the contractor is not a motive for compulsory return of third-country nationals to their country of origin.

### **Box 1 Summary of the immigration regime and how it interacts with labour law**

Third-country national residents in Portugal commonly have the same rights and duties as nationals. Dependent work performed by short-term third-country national workers is regulated by the general rules of the Labour Code regarding working conditions for fixed-term contracts (Art. 139 s.). They also benefit from complementary laws, for example, those concerning safety and health at work, accidents at work, and protection in parenthood. If they are self-employed, third-country nationals benefit from the law that prohibits discrimination in self-employment (Law No. 3/2011, 8–2).

Whether employed or self-employed, third-country nationals have the right to social security. In the case of workers with an employment contract, the employer must register their entry and pay social security contributions. Self-employed workers must also register with the tax authorities and the social security scheme for self-employed. Equal treatment in this respect thus depends on whether workers are in Portugal legally. Of course, bilateral agreements may provide otherwise.

Table 1.20 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary stay	Up to a year	Yes	Yes	Promise of employment contract or independent professional activity	Must maintain conditions of stay
Residence visa*	During residence	Yes	Yes	Employment contract or a promised contract; or have the skills for the professional activity. The employer manifests individually an interest	No
Seasonal workers	Up to 90 days	Yes	Yes	Employment contract or a promised contract	Must maintain conditions of stay

Note: \* Third-country nationals must have a residence visa in order to begin their professional activity and apply for a residence permit. Besides all the general conditions already mentioned, a residence visa requires that third-country nationals fulfil at least one of the following conditions: (i) hold an employment contract or a promised contract; or (ii) have the skills needed for the professional activity that they wish to provide in the country and the employer has expressed an interest (Art. 59/5 of Foreign Nationals Act).

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

In relation to the rules of entry and residence, agreements have been signed with the following members of the Community of Portuguese Language Countries (CPLP): Angola, Brazil, Cape Verde, Guinea-Bissau, Equatorial Guinea, Mozambique, Portugal, São Tomé and Príncipe and East Timor. These agreements concern: (i) the granting of multiple entry visas for certain categories of citizens from CPLP countries (Decree No. 35/2003, 30 July), and (ii) the exemption from fees and emoluments for the issue and renewal of residence permits for citizens from Portuguese-speaking countries (Decree No. 37/2003, 30 July).

### Box 3 Hiring temporary agency workers from third countries

Third-country nationals' entry into Portugal depends on the presentation of a valid passport (or other travel document). The validity of this document must be longer than the stay, unless it is a re-entry of a citizen resident in the country. Citizens should also hold a valid and adequate entry visa suitable for the purpose and duration of travel. Additionally they should not be registered in the SEF's Integrated Information System or in the Schengen Information System. There is a visa exemption for third-country nationals identified under Regulation 2018/1806 (Annex II) for stays with a total duration no longer than 90 days in a period of 180 days.

Third-country nationals should also have sufficient means for their stay. Workers are exempt from this if they can prove that accommodation and food will be provided for them during their stay or if a national or a third-country national with residence sign a statement of responsibility.

## Description of the Portuguese system

### 1. Overview of third-country nationals on the Portuguese labour market

Third-country nationals resident in Portugal commonly have the same rights and duties as nationals.

The general rules of the Labour Code regarding working conditions for fixed-term contracts are applicable to them; they also benefit from complementary laws, for example, those related to safety and health at work, accidents at work and protection in parenthood.

If they are self-employed, third-country nationals benefit from the law that prohibits discrimination in self-employment (Law No. 3/2011, of 8-2).

Whether employed or self-employed, third-country nationals have the right to social security. For workers with an employment contract, the employer must register their entry and pay their social security contributions. Self-employed workers must register with the national tax authorities and the social security scheme for the self-employed. Equal treatment with regard to national social security thus depends on being in Portugal legally. Unless, of course, a bilateral agreement has been concluded and is applicable to the specific case.

### 2. Main entry regimes for short-term or limited time work

Temporary residence permits, intra-company relocation, intra-company transfer and residence visas.

### 3. Overview of working conditions and wage setting for third-country nationals

Third-country national residents in Portugal commonly have the same rights and duties as nationals.

### 4. Special regimes

#### a. Third-country national seasonal workers

The entry and stay of third-country nationals for seasonable work depend on short duration visas for work up to 90 days or a temporary stay visa for work longer than 90 days (Art. 51.<sup>a</sup>-A and 56 Foreign Nationals Act).

Besides all the conditions mentioned above, third-country nationals should: (i) hold an employment contract or a promised contract for seasonal work, signed with a

temporary work agency or an employer established in the country – the contract must identify the workplace, working time, type of work, duration, remuneration and paid vacations to which the worker is entitled; (ii) have insurance against accidents at work provided by the employer, protection in case of sickness (similar to nationals) or health insurance; (iii) have decent accommodation provided by the employer or by the contractor according to legal requirements (Art. 56-D, nos. 2 and 4 Foreign Nationals Act); (iv) if Portugal regulates their professional activity, the worker must meet the conditions provided by national law; (v) have a valid passport for the visa's duration and hold a valid transport document for their return (Art. 51-A and 56 Foreign Nationals Act; Art. 17-A and 23-A RD). For seasonal work longer than 90 days, the visa for a temporary stay must have validity equivalent to the employment contract, but it may not be over 9 months in a period of 12 months (Art. 56/3 Foreign Nationals Act).

**b. Third-country national posted workers**

The signing of the employment contract and working conditions of third-country national posted workers are regulated under the general terms set out in the Labour Code (Art. 180 s).

Third-country nationals posted by companies located in WTO third states in the context of the provision of services require a temporary stay visa (Art. 54/1, b) Foreign Nationals Act) or a temporary residence visa (Art. 75 Foreign Nationals Act). Residence permits are subject to the general conditions (see above).

Third-country national posted workers residing in an EU Member State and regularly employed in a company established in the EU are exempt from these visas. These workers must, within three days, declare their entry to the competent entity (Border and Immigration Office), which is responsible for extending the worker's stay for the duration of the posting (Art. 40 of RD).

**c. Third-country national temporary agency workers**

Third-country nationals are subject to the general rules of Portuguese labour law for temporary work agencies, nationals or foreign.

## 5. Third-country nationals during the Covid-19 pandemic

During the Covid-19 the government introduced the following measures: (i) sickness allowance due to prophylactic isolation; (ii) exceptional family support for employees; (iii) assistance for children/grandchildren due to prophylactic isolation. In order to benefit from these measures, applicants have to present documents proving their situation in Portugal, such as prophylactic isolation, school closures and so on. Thus, even in the pandemic, there was no risk of third-country nationals being left unprotected by the welfare system if protected by the social security system of the country of origin.

## 6. Overview of enforcement and monitoring

The situation of third-country nationals is supervised by the SEF (the Foreigners and Borders Service), which controls entry and stay; by the ACT – Authority for Working Conditions – which supervises compliance with legal, regulatory and conventional provisions in relation to conditions of work, and safety and health at work; and by the ISS – the Social Security Institute – which is responsible for compliance with social security rules. The police also monitor the legality of third-country nationals' conditions of residence and must immediately notify the competent authority of any suspected violations.



## 21. Romania

**Felicia Rosioru**

Immigration is not hotly debated in Romania, as a relatively low number of third-country nationals enter the labour market each year. The main sectors in which they work are construction, accommodation and food services. It is rather emigration that is strongly debated, as the departure of many qualified Romanians have led to labour force shortages in many sectors. As a general rule, third-country nationals may work in Romania and their employment contracts have to respect all the employment and working conditions that apply to Romanian workers, established by law or collective agreements.

### **Box 1 Summary of the immigration regime and how it interacts with labour law**

For purposes of work, professional activities (liberal professions, as regulated by the law) and the posting of third-country nationals (foreigners), a long-stay visa is issued, as a general rule for 90 days, with one or more entries. The work purpose visa is issued, as a general rule, upon presentation of an employment contract. Third-country nationals are employees, having the same labour rights as Romanian citizens. Both general conditions (related to labour market access, employer and third-country national) and specific conditions (depending on the status of the worker) have to be met. Priority is given to job seekers from the local workforce (Romanian citizens) or from EU/EEA countries.

The first step has to be taken by the employer. Third-country nationals have no right to enter the country and then look for a job. A short-term residence visa holder cannot extend their stay in Romania, even if they have been promised a job. Foreign nationals have to return to their home country and apply for a long-stay visa after their employer obtains a work permit.



Table 1.21 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Holders of temporary right to study	90 days	Yes	Yes	Yes, part-time contract (max. 4 hours/day)	No*
Work permits for <i>trainees</i>	Up to 6 months, non-extendable	Yes	Yes, if not dismissed on disciplinary grounds	Yes	No*
Work permits for <i>seasonal work</i>	90 days + max. 90 days ≤ 180 days during any period of 365 days	Yes	Yes	Yes	No*
Work permits for <i>au pairs</i>	Maximum one year	Yes	Theoretically, yes	Yes	No*
Work permits for <i>cross-border workers</i>	>9 months	Yes	Yes	Yes	No*
Work permits for <i>highly qualified workers</i>	At least one year	Yes	Yes	Yes	No*

Note: \* Third-country nationals must either find a new employer, or apply for unemployment benefits, if they are entitled to them.

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

Foreign nationals may work in Romania as posted workers or intra-corporate transfer workers based on a posting permit (notice) obtained by the beneficiaries of the services ('host entities'), in accordance with Government Ordinance No. 25 of 2014 (OG 25/2014) on labour market access and posting of foreign citizens in Romania. A copy of the employment contract, duly registered in the country of origin; means of subsistence at the level of the minimum gross basic salary for the entire period of posting; and medical insurance during the validity of the visa are necessary. For third-country nationals posted directly from third countries, according to *lex loci laboris* rule, the Romanian Labour Code applies, except for the more favourable provisions of the legislation in the country of origin. Reposting to other member states is not possible.

## Box 3 Hiring temporary agency workers from third countries

Third-country nationals' access to the labour market in Romania involves an employment contract concluded with the employer who applies for the work permit. It is issued only if the employer genuinely carries out activities compatible with the job offered to the foreigner. As temporary agencies in Romania are authorised only for recruiting and placing workers, not for specific activities, they cannot recruit third-country nationals directly from a third country. The Labour Code provides for equal treatment between temporary agency workers and employees recruited directly by the employer; if third-country nationals are recruited by temporary agencies, they enjoy the same treatment as the local workforce.

Third-country nationals already having residence status in an EU country can be posted to Romania by temporary agencies under the terms of the Posting of Workers Directive (1996/71/EC) and the Enforcement Directive (2014/67/EU).

## Description of the Romanian system

### 1. Overview of third-country nationals on the Romanian labour market

The number of third-country nationals residing and working in Romania is low (about 0.4 per cent of the population). Access to the Romanian Labour market is quite restrictive and there are many conditions for obtaining a work permit. Work permits are requested by and issued to the employer. Citizens of the Republic of Moldova, Ukraine and Serbia (neighbouring countries that are not in the EU) may work in Romania as employees, however, without a work permit for a maximum nine months in a calendar year.

### 2. Main entry regimes for short-term or limited time work

Work permits for *trainees* are issued only to legal persons, for a fixed-term traineeship (up to six months, non-extendable) enabling third-country nationals to obtain a professional qualification or to improve professional training, linguistic and cultural knowledge.

Work permits for *seasonal work* are issued for full-time fixed-term employment contracts (not exceeding 90 days). The right of temporary residence for work purposes may be extended (to a maximum 180 days during any period of 365 days) if seasonal workers earn at least the statutory minimum gross basic wage.

Work permits for *au pairs* are issued to the employer, a member of the host family, to employ a foreign national (aged between 18 and 30 years) with a part-time employment contract, for a maximum of one year, to provide light domestic work and child care. The employer must be of a different nationality, not related to the worker and ensure subsistence, accommodation expenses and health insurance during the entire stay.

Work permits for *cross-border workers* are issued for full-time open-ended/fixed-term (> 9 months) employment contracts for work performed in a border locality in Romania by citizens of a state having common borders with Romania, living in the border area.

Work permits for *highly qualified workers* (post-secondary education or higher) are issued exclusively to legal persons for a full-time open-ended employment contract or a fixed-term contract for at least one year.

### 3. Overview of working conditions and wage setting for third-country nationals

Third-country nationals working in Romania have to have employment contracts, so they are paid at least the minimum wage and are entitled to the same rights

and working conditions as Romanian citizens, as established by law or collective agreements.

To mention a number of particular issues, trainees are employees, with all the relevant rights and duties, but priority is given to professional qualifications and training. For highly qualified workers, extension of their fixed-term employment contracts is possible without a new work permit if the employer undertakes to pay them at least twice the average gross salary a month.

#### 4. Special regimes

##### a. Third-country national seasonal workers

Employment contracts or binding job offers of seasonal workers must specify, according to labour legislation and applicable collective agreements: the place and type of the work; duration of employment; remuneration and the dates of payment; working hours per week or month; paid leave; and other relevant working conditions. Seasonal workers are informed in writing in an international language of their rights and obligations, including the applicable complaint procedures.

Work permit applications must be accompanied by an employer's statement on the provision of accommodation, whether free of charge or for a fee (the rent must not be excessive compared with the worker's net salary and quality of accommodation and it must not be automatically deducted from the salary).

##### b. Third-country national posted workers

Romanian labour legislation applies to third-country nationals posted directly from third countries, except for the more favourable legal provisions in the country of origin. For intra-corporate transfer workers posted from other EU Member States to Romania, wages and other working or employment conditions have to respect Romanian labour legislation and the applicable collective agreements.

To be posted, third-country nationals must have been employed in the posting undertaking or in undertakings belonging to the same group for at least six uninterrupted months, immediately prior to the date of the application for the posting permit for management and specialists, or at least three uninterrupted months for trainees. For posted intra-corporate transfer workers, at least three years of appropriate professional experience are required for specialists, relevant to their fields of activity, techniques or management; for trainees, graduation from a university study programme is necessary.

#### 5. Third-country nationals during the Covid-19 pandemic

Third-country nationals whose employment contracts were suspended because of the Covid-19 pandemic were granted the same benefits as Romanian employees (75 per cent of the basic wage). If third-country nationals' right of residence came

to an end, but they could not leave for objective, unpredictable reasons, they were granted permission to remain for up to six months (extendable for further periods of up to six months) and had access to the labour market, under the same conditions as Romanian citizens.

## 6. Overview of enforcement and monitoring

The same checks or formalities apply for short-term migrant workers as for the local workforce, but specific sanctions apply for the illegal employment of third-country nationals. The Labour Inspectorate checks matters related to the employment relationship; the Romanian Immigration Office may organise and carry out controls in places frequented by foreigners, in public or private institutions or on business premises when there is information that legal provisions regarding foreigners in Romania are not being respected or the identity of foreigners cannot be established.

For posted workers, checks are carried out by the General Inspectorate for Immigration and the territorial labour inspectorate, to whom the beneficiary of the provision of services is required to register the posting of foreign employees, including: identification of the beneficiary of the service and of the foreign posting employer (including, as the case may be, the full name and address of their legal representative in Romania); name and surname of the posted foreigner, date of birth, citizenship, series and number of the travel document, period of posting, position and place of activity.



## 22. Slovak Republic

Viktor Križan

The employment of third-country nationals is a complex matter. Slovakia currently distinguishes four forms of access to employment for third-country nationals: (i) with a certificate permitting the bearer to fill a vacancy; (ii) with a certificate permitting the bearer to fill a vacancy for highly qualified job (related to an application for an EU Blue Card); (iii) with a work permit; and (iv) no requirement for a work permit or a certificate permitting the bearer to fill a vacancy.

An employer may only employ third-country nationals who either: hold an EU Blue Card, have temporary residence for employment based on a certificate permitting the bearer to fill a vacancy, have a work permit and a temporary residence permit for employment, have a work permit and a temporary residence permit for family reunification (during the first 12 months from the granting of such residence), have a work permit and a temporary residence permit for a third-country national who has been granted the status of a long-term resident in an EU Member State (during the first 12 months of such residence), or have taken up employment for which a certificate permitting the bearer to fill a vacancy or a work permit is not required.

### Box 1 Summary of the immigration regime and how it interacts with labour law

The concept of a third-country national is defined by the Act on Employment Services as a national of a country which is not a Member State of the European Union, another Contracting State to the Agreement on the European Economic Area (EEA) or the Swiss Confederation, or is a stateless person. An employer established in the territory of the Slovak Republic may employ a third-country national only if they hold a work permit. The work permit is issued by the Labour, Social Affairs and Family Office local to the intended place of work. The application for a permit must be submitted before the third-country national arrives in Slovakia. The Employment Services Act contains a relatively extensive list of situations in which an employment permit is not required. These are usually cases in which a third-country national is entitled to work in Slovakia in connection with a specific position based on special regulations.

Table 1.22 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary stay for business purposes	For the expected period of business, but for a maximum of three years	Yes, as a self-employed person or a member of a statutory body	No	No	Yes

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary residence for employment	For the estimated period of employment, but not exceeding five years	Yes	No	Temporary residence shall be granted to a third-country national for employment if there are no grounds for rejecting the application based on a vacancy certificate	Yes
Temporary stay for study	For the estimated period of study, but a maximum of six years	A third-country national who is granted temporary residence by the police for study may carry on business during temporary residence	No	No	No
Temporary stay for a special activity	For the time needed to achieve its purpose, but for a maximum of two years. In case of a temporary stay for purposes of sport, the police department will grant a temporary stay for the expected duration of the contract, but a maximum of five years	No	No	No	No
Temporary stay for research and development	For the duration of the hosting agreement, but a maximum of two years	A third-country national who is granted a temporary residence permit by the police department for research and development may engage in business	No	Temporary residence for research and development shall be granted by the police department unless there are grounds for refusing the application to a third-country national carrying out research or development based on a hosting agreement	No
Temporary stay for family reunification	It shall be granted until the expiry of the stay of the third-country national in relation to whom the relevant third-country national exercises the right to family reunification, but for a maximum of five years	Yes, a third-country national who is temporarily resident for family reunification may also engage in business	No	No	No
Temporary stay to perform official duties by civilian components of the armed forces	For a maximum of five years	No	No	No	No
Temporary residence of a third-country national who has the status of a Slovak living abroad	For five years	A third-country national may conduct business	No	No	No

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Temporary residence of a third-country national who has been granted long-term resident status in another Member State	For the time needed to achieve its purpose, but not more than five years	Yes	Yes	Yes	Yes

Source: Author's analysis, 2022.

### Box 2 Posting of third-country nationals

A domestic posting of a third-country national by an employer is possible if the legal conditions are met. The temporary employment agency may not temporarily assign this third-country national to another user-employer as part of the temporary residence granted initially. Thus, posting third-country nationals is not possible for temporary employment agencies.

For third-country nationals posted to the territory of the Slovak Republic, an employment permit is required, therefore a subsequent cross-border posting is not possible (the employment permit is tied to the performance of work in the territory of the Slovak Republic).

### Box 3 Hiring temporary agency workers from third countries

For third-country nationals posted to the territory of the Slovak Republic, an employment permit is required.

Third-country nationals already having residence status in an EU country can be posted to Romania by temporary agencies under the terms of the Posting of Workers Directive (1996/71/EC) and the Enforcement Directive (2014/67/EU).



## Description of the Slovak system

### 1. Overview of third-country nationals on the Slovak labour market

The conditions for migration and employment of third-country nationals are regulated in particular by the Labour Code, the Act on the Residence of Aliens and the Act on Employment Services. If third-country nationals want to carry out gainful activity in the Slovak Republic, they have to apply for temporary residence, permanent residence or ‘tolerated’ residence. A temporary stay for a third-country national is tied to a purpose, which may be employment or running a business.

The decision to grant temporary residence for employment purposes is based on a certificate of occupancy issued by the Labour Centre, as well as an employment permit issued by the local Labour Office unless the third-country national belongs to a group of employees who do not need a work permit. In the case of granting a temporary stay for employment purposes, third-country nationals can be employed only in an employment relationship – it is not possible to employ them on the basis of an agreement on work performed outside the employment relationship or based on another contract.

Temporary residence for employment based on an employment permit shall be granted to a third-country national by the relevant police department unless there are grounds for refusal. Third-country nationals who have obtained a temporary residence permit for employment are obliged to submit to the police a document confirming health insurance and a medical certificate confirming that they are not suffering from a disease that endangers public health within 30 days of receiving the residence permit. After granting a temporary residence permit for employment or seasonal employment, the employer is obliged to inform the relevant institutions about the commencement (and termination) of employment within seven working days from the beginning or termination of employment.

Temporary residence for employment is not required within 90 days from the beginning of the stay in the territory of the Slovak Republic, if the third-country national meets the conditions under Art. 6 of Regulation 2016/399, has fulfilled the reporting obligation (within three working days of entry, reporting to the police the commencement, place and expected length of stay if they have been issued a Schengen visa or a national visa or if a visa is not required, if it is not an obligation). It is also not required if the relevant person:

- works for a major foreign investor in the Slovak Republic;
- is posted by an employer established in an EEA Member State to the territory of the Slovak Republic as part of the provision of services provided by that employer,
- is employed in international public transport, and posted to perform work in the territory of the Slovak Republic by their foreign employer;
- is employed for a specified period for training, in the case of employment with labour shortages, and has applied for a temporary residence permit for employment in the same job;

- is involved in ensuring the supply of goods or services based on a commercial contract and supplies or carries out assembly, warranty and repair work, work related to setting up production equipment systems or carries out programming work or professional training in connection with the supply of goods, if the duration of posting does not exceed 90 days per year;
- is involved in ensuring the supply of goods or services based on a commercial contract and supplies or carries out the assembly, warranty and repair work, work related to setting up production equipment systems, programming work or professional training, during the period for which the decision approving the investment aid was issued for a company to which investment aid has been granted according to Act No. 57/2018 Coll. on Regional Investment Aid and Amendments to Certain Acts;
- is engaged in seasonal employment; or
- provides professional training at a business services centre, if the duration of employment with the centre does not exceed a total of 90 days in a calendar year.

The relevant police department may cancel the temporary residence in certain cases, for example, if the purpose for which the temporary stay ceases, or if the Labour Office cancels the certificate permitting the bearer to fill a vacancy, or for other reasons specified in §36 para. 1 Act on the Residence of Aliens.

Cancellation of temporary residence does not apply for the following 60 days if the job is terminated. During this period, third-country national can seek another job. According to §79 Labour Code, if the employer has given the employee invalid notice or if the employment relationship was terminated without a valid ground, immediately or during the probationary period and if the employee informed the employer that he insists on continuing employment, his employment shall not be terminated, unless a court decides that the employer cannot fairly be required to continue the employment. The residence permit should then be maintained for the third-country national.

On the other hand, according to §59 para 3 of the Labour Code, the employment of a foreign national or a stateless person, if it has not been terminated in another way, shall end on the day on which:

- their stay in the Slovak Republic is to end according to an enforceable decision on the cancellation of the residence permit;
- a judgment imposing on this person the penalty of expulsion from the territory of the Slovak Republic enters into force;
- the period for which the residence permit was issued in the territory of the Slovak Republic has expired;
- the period for which the work permit was granted has expired; or
- the work permit has been withdrawn.

## 2. Main entry regimes for short-term or limited time work

An employer with their registered office in the territory of the Slovak Republic may, according to §21 of the Act on Employment Services, recruit a third-country national if the latter:

- is a holder of an EU Blue Card;
- has been granted a temporary stay for employment based on a certificate permitting the bearer to fill a vacancy – the so-called ‘joint work and employment permit’;
- has been granted a work permit and a temporary residence permit for employment (except in cases where a temporary residence permit is not required);
- has been granted a work permit and a temporary residence permit for family reunification;
- has been granted an employment permit and a temporary residence permit of a third-country national granted long-term resident status in a Member State of the European Union; or
- is a third-country national in accordance with §23a of the Employment Services Act, for which a work permit or a certificate permitting the bearer to fill a vacancy are not required.

An employment permit is required in the case of the employment of a third-country national if they:

- will be employed for seasonal employment for a maximum of 90 days for 12 consecutive months;
- will be employed as a seaman on a ship registered in the Slovak Republic or on a ship under the flag of the Slovak Republic;
- has been granted temporary residence for family reunification, in the period up to 12 months from the granting of temporary residence for family reunification;
- has been granted temporary residence as a third-country national granted the status of a person with long-term residence in a Member State of the European Union, unless the Act on the Residence of Aliens provides otherwise, within 12 months from the beginning of residence in the Slovak Republic;
- if provided for by an international agreement by which the Slovak Republic is bound (for example, an intra-company transfer within the meaning of the WTO Agreement lasting up to 90 days).

The work permit is granted by the local labour office for the intended place of work, based on a written request from the third-country national, the employer or the legal entity or natural person to whom the third-country national will be posted to perform the work. The application for a permit must be submitted before the third-country national’s arrival in Slovakia. The Labour Office may grant a work permit if the vacancy cannot be filled by jobseekers on the jobseekers’ register. When granting an employment permit, the Labour Office shall consider the labour market situation, unless otherwise provided by the Act on Employment Services. The work permit is non-transferable; it is granted for a specific job with a specific employer. There is also no legal entitlement to a work permit.

The employment permit is granted by the Labour Office for a maximum period during which the employment should last, but for a maximum of two years or five years, if provided by an international agreement by which the Slovak Republic is bound, and in the absence of this agreement if reciprocity is guaranteed. At the request of the third-country national, the Labour Office may extend the work permit for a maximum of two years, even repeatedly.

Special conditions apply to an employer who is interested in employing third-country nationals. During the previous five years, they must not have violated the provisions on illegal employment, they must also publish information about the vacancy in due time, have no outstanding obligations to the tax office, social and health insurance, have no debts to the state or employees, nor be in bankruptcy or liquidation.

In the case of labour shortages, the employer may employ a maximum of 30 per cent third-country nationals out of their total workforce. The number of third-country nationals in a temporary employment agency does not include those temporarily assigned to work at user-employers.

### 3. Overview of working conditions and wage setting for third-country nationals

Employers have an information obligation towards the relevant Labour Office regarding the commencement (and termination) of employment of third-country nationals. The same information obligation applies when a third-country national does not take up employment after the granting of an employment permit (Blue Card) or if there is early termination of employment. Seven days are set for the fulfilment of these information obligations, starting from the day when the relevant event occurred. Apart from the abovementioned information obligation, the law does not impose special obligations on the employer with regard to such employees. Nevertheless, employers shall ensure the fulfilment of legal obligations, such as the necessary documents (the documents that the third-country national must submit to the police department when applying for a residence permit also including a certificate of accommodation), interpreter services during training, and translations of employment contracts or documents. At the same time, employers must provide for their accommodation and transport to work and, in most cases, even food costs (Slovak Business Agency, 2019: 48). Everything necessary, from searching for workers, obtaining the necessary permits, accommodation and the like, is provided by agencies within their services. As the recruitment agencies are the employers of third-country nationals in this case, they are also responsible for their stay and work in Slovakia.

In employment relations, the employer is obliged to treat employees in accordance with the principle of equal treatment. This also applies if the employee is a third-country national. They are subject to all the conditions that apply to 'national' employees, including payment.

Similarly, no distinction is made in the case of collective agreements. Collective agreements have an erga omnes normative effect on all employees of the employer, regardless of nationality. Therefore, if third-country nationals have the status of employee, the collective agreement (whether corporate or sectoral) will apply. Only the collective agreement for the glass industry contains regulations on the employment of third-country nationals, namely, the employer's obligation to inform the relevant trade union body of all concluded service contracts with a temporary employment agency, including a foreign temporary employment agency, upon request, and to provide information on the number of posted employees who have a permanent residence in a Member State of the European Union or the Slovak Republic and on the number of temporarily assigned employees from so-called third countries.

## 4. Special regimes

### a. Third-country national seasonal workers

Employers may provide work to third-country nationals in the form of seasonal employment. The special conditions of employment for foreign nationals specified in the Employment Services Act apply to this type of employment. Seasonal employment is work that does not exceed 180 days out of 12 consecutive months and is linked to a period of the year by a recurring event or series of events associated with seasonal conditions during which a significantly higher volume of work is required. The list of branches of seasonal employment is established by Decree of the Ministry of Labour, Social Affairs and Family of the Slovak Republic No. 190/2017 Coll. According to this, seasonal employment of third-country nationals is permitted in the following sectors: agriculture, forestry and fishing, industrial production, construction, accommodation, and food services.

From the point of view of permit processes, it is important to distinguish between a period of seasonal employment of a maximum of 90 days, and a maximum of 180 days within 12 consecutive months. Third-country nationals can perform seasonal employment in the territory of the Slovak Republic:

- with a work permit, if the seasonal employment will last a maximum of 90 days out of 12 consecutive months; or
- with certificate permitting the bearer to fill a vacancy, if the duration of seasonal employment is over 90 days, but not more than 180 days for 12 consecutive months.

When employed for seasonal employment, a work permit may be granted for a maximum of 90 days for 12 consecutive months. At the request of the third-country national, the Labour Office may extend the work permit for seasonal employment if the work permit has been granted for less than 90 days. The total duration of the work permit cannot exceed 180 within 12 consecutive months.

In addition to the usual documents, applications for a seasonal employment permit should be accompanied by

- a document confirming the provision of accommodation that meets the minimum requirements under Act No. 355/2007 Coll. on the Protection, Promotion and Development of Public Health, at least for the foreseeable period of employment in the case of a visa-free third-country national;
- a document confirming the provision of health insurance during the stay in the territory of the Slovak Republic, in the case of third-country nationals not subject to the visa requirement;
- and if the application for a work permit for seasonal employment has also been submitted by an employer who has proved they are not in bankruptcy, liquidation, compulsory administration or restructuring and that they have no registered unsatisfied claims from their employees arising from the employment relationship.

#### **b. Third-country national posted workers**

An intra-corporate transfer is a temporary posting of third-country nationals for more than 90 days for employment or training, which at the time of application for temporary residence is outside the territory of the Slovak Republic and the EU Member States, by an employer established outside the Slovak Republic and Member States with which the third-country national has an employment contract before and during the transfer, with the same employer or with an employer within the same group of employers based in the Slovak Republic. In the case of an intra-corporate transfer, a temporary residence permit for employment purposes is required.

Directive 2009/52/EC was implemented in Slovakia by Act No. 308/2013 Coll. amending the Act on Labour Inspection and the Act on Illegal Work and Illegal Employment. Directive 2011/98/EU was implemented through Act No. 188/2018 Coll. amending Act no. 245/2008 Coll. on Upbringing and Education (School Act) and Amending Certain Acts. It can be stated that the Directives were duly implemented in Slovak law.

§23a par. 1 of the Act on Employment Services allows:

- (i) posting whose duration does not exceed a total of 30 days in a calendar year and the posted employee is a teaching staff member, an academic staff member, a university teacher, a scientific, research or development worker who is a participant in a professional scientific event, or a performer taking part in an artistic event;
- (ii) posting by an employer who, based on a commercial contract, supplies goods or services and supplies or carries out assembly, warranty and repair work, work related to the setting up of production equipment systems or carries out programming work in connection with the supply of goods or services; or vocational training, provided that the duration of their secondment does not exceed a total of 90 days in any calendar year; or
- (iii) posting by an employer established in an EU Member State in the context of the provision of services provided by that employer.

Points (i) and (ii) cover posting by employers established outside the EU. For third-country nationals who are posted to the territory of the Slovak Republic, an employment permit is required. The employment office may grant a work permit based on a written application of the third-country national, employer or legal person or natural person to whom the third-country national will be posted to perform the job if the vacancy cannot be filled by a jobseeker registered for employment. It is also clear that a subsequent posting to another EU country is not possible.

The granting of temporary residence for employment is not required under the Act on the Residence of Aliens when posting third-country nationals from another EU Member State within the framework of the provision of services, if

- the stay in the territory of the Slovak Republic is shorter than 90 days;
- it meets the conditions for residence under a special regulation, which are the conditions for entry for third-country nationals under Art. 6 of Regulation 2016/399; and it
- fulfils the reporting obligation at the police department within three working days of entering the Slovak Republic.

For stays of more than 90 days, third-country nationals must be granted a temporary residence permit for employment and fulfil their reporting obligations to the police department.

The employer must register the start and end of the employment of third-country nationals with the Labour Office by submitting an information card. In the case of a third-country national sent by an employer established in an EU Member State within the framework of the provision of services provided by that employer, the informing organisation shall attach proof of accommodation to the information card form (in the case of a third-country national not subject to a visa requirement), a copy of the certificate of applicable law (A1 form), and a copy of the residence document in the territory of the Member State in which the third-country national normally works if a residence permit is required under the law of the posting state.

An employer who employs third-country nationals for a specified period for training shall also be required to attach a document to the information card form for a maximum of six consecutive weeks in a calendar year in the case of short-term employment. They must also apply for a temporary residence permit for employment, together with all the prerequisites according to the Act on the Residence of Aliens for the same job.

The existence of visas/work permits for third-country nationals posted to the Slovak Republic is checked by the National Labour Inspectorate or the relevant labour inspectorate in cooperation with the Slovak police force. Third-country nationals as employees are particularly monitored during labour inspections, similar to specific groups of employees, such as pregnant women, mothers until the end of the ninth month after childbirth, breastfeeding women, juvenile employees, or employees with reduced working capacity.



### c. Third-country national temporary agency workers

A temporary employment agency may employ and temporarily assign a third-country national to a user-employer only if:

- it has been carrying out the relevant activity for at least three years before applying for a temporary residence permit for employment or an application for the renewal of a temporary residence permit for employment;
- the third-country national is granted a temporary stay for employment based on a certificate permitting the bearer to fill a vacancy;
- the job performed will be on the current list of jobs affected by a labour shortage in the relevant district at the time of submitting the application for temporary residence or renewal of temporary residence for employment.

The temporary employment agency may not temporarily assign this third-country national to another user-employer based on the temporary residence granted. Given the described conditions, posting third-country nationals to work in another EU Member State is not realistic.

As regards the working conditions of the temporarily assigned third-country national, in accordance with §58 para 9 of the Labour Code, working conditions, including wage conditions and conditions of employment of temporarily assigned employees, must be at least as favourable as those of a comparable employee of the user-employer. It makes no difference whether they are local or a third-country national.

## 5. Third-country nationals during the Covid-19 pandemic

Although there was no discussion on third-country national employees and their rights during the Covid-19 pandemic in Slovakia, the legislator, by Act No. 73/2020 Coll., which amends and supplements certain laws within the competence of the Ministry of the Interior of the Slovak Republic in connection with Covid-19, amended the Act on the Residence of Aliens. The upshot of the amendment was that the validity of a temporary stay, permanent stay or tolerated stay that would otherwise have expired during the pandemic, or whose validity would expire within one month of the end of the crisis should be extended for two months after the end of the crisis. According to this, during the Covid-19 pandemic third-country nationals in the following circumstances can continue to work:

- in accordance with §21b of the Employment Services Act (confirmation of the possibility of filling a vacancy), those whose temporary stay for employment expires during a crisis or who has applied for a renewal of a temporary stay during a crisis and whose temporary stay has not yet been renewed;
- in accordance with §22 of the Employment Services Act (employment permit), those whose temporary stay for employment expires, or a temporary stay for family reunification or a temporary stay of a third-country national who has been granted long-term resident status or has



applied for a renewal of those stays but the temporary stay has not yet been renewed at the time of the crisis.

This continuation is subject to these further conditions:

- there is no need to issue a new certificate permitting the bearer to fill a vacancy or a new work permit;
- they are only for employers with whom the third-country national was working at the time of being granted a temporary stay and whose employment contract was concluded under the same conditions as before (that is, there has been no change in the place of work, profession or employer);
- the employer has provided the Labour Office with a valid employment contract.

## 6. Overview of enforcement and monitoring

An employment permit expires at the end of the period for which it was granted or even before that, if employment is terminated. The third-country national is obliged to notify the police department within three working days that the purpose for which the stay was granted has expired.

If the employer, at variance with the conditions laid down in §21 of the Act on Employment Services, employs a third-country national, it would be illegal employment in accordance with the Act on Illegal Work and Illegal Employment. The authority to monitor compliance with the prohibition on illegal work and illegal employment is entrusted to various control bodies, including labour inspectorates, the Labour Centre, and labour offices. During inspections regarding third-country national integration, labour inspectorates shall focus on the conditions of foreigners performing work in the Slovak Republic, the method of their remuneration and employers' respect for their rights and claims. Inspections of persons at an employer's workplace are carried out both as separate labour inspections focused exclusively on monitoring compliance with the prohibition of illegal employment, but mostly as part of labour inspections aimed at compliance with labour law, occupational safety and health regulations and regulations on social legislation (Národný inšpektorát práce 2020).

## 23. Slovenia

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The most important regulations governing the conditions under which third-country nationals can enter, reside and work in Slovenia are the Foreign Nationals Act (Zakon o tujcih, ZTuj-2) and the Employment, Self-Employment and Work of Foreign Nationals Act (Zakon o zaposlovanju, amozaposlovanju in delu tujcev, ZSDT). The employment of workers from Bosnia and Herzegovina and from Serbia is subject to special rules arising from bilateral agreements.<sup>1</sup>

### Box 1 Summary of the immigration regime and how it interacts with labour law

The so-called 'single permit' allows a third-country national to enter Slovenia and to reside and work there. The conditions for obtaining a single permit vary depending on the form of work performed (employment, posted workers, and so on). In general, however, the prior consent of the Employment Service of Slovenia (hereinafter: ESS) is required. In the case of employment, the ESS will, as a general rule, give its consent only if there are no persons on the Slovenian register of unemployed persons who could perform the work for which the employer wishes to employ a third-country national. Furthermore, the employment contract must be attached to the application. A different procedure applies in the case of short-term work (up to 90 days), when it is not necessary to apply for a single residence and work permit (seasonal work in agriculture and forestry, short-term work of company representatives, short-term services with posted workers, and so on). In that case third-country nationals may enter Slovenia with a passport or visa. In the case of short-term seasonal work, the ESS issues a work permit. In the case of company representatives and posted workers the employer only needs to register the work or provision of services online (with the ESS).

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1. [https://www.ess.gov.si/delodajalci/zaposlovanje\\_in\\_delo\\_tujcev/zakonodaja-o-zaposlovanju-tujcev](https://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev/zakonodaja-o-zaposlovanju-tujcev) (31. 8. 2021).

Table 1.23 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work? <sup>(1)</sup>	Multiple employers possible?	Need employment contract to enter? <sup>(2)</sup>	Dismissal entails loss of residence?
Single residence and work permit (1. Regular employment)	The first single permit is issued to a third-country national for the period of validity of the employment contract - but no longer than 1 year <sup>(3)</sup>	Yes	The employee may change job or employer only with the approval of the administrative unit (and with the prior consent of the ESS).	Yes <sup>(4)</sup>	In general, yes – unless a third-country national loses their job and through no fault of their own <sup>(5)</sup> and has acquired the right to unemployment insurance benefits, the permit is not revoked as long as the third-country national receives unemployment benefit (art. 56 ZTuj-2)
Highly qualified employment (EU Blue Card)	Period of 2 years or for a period exceeding the duration of the employment contract by 3 months (if the employment contract is concluded for a shorter period). <sup>(6)</sup>	Yes	In the first 2 years the employee can change employer or job (at the same employer) only with the written approval of the administrative unit	Yes	Same
Seasonal work – for a period longer than 90 days	One or more permits may be issued at different time periods with the same or another employer or hirer. Their total duration may not exceed 6 months in a calendar year	Yes	Yes	Yes	Same
Work of company representatives – for a period longer than 90 days	Period of validity of the employment contract or civil contracts (but for a maximum of 1 year)	Yes	If they want to change job or employer, the company representative needs a new single permit	Yes	Same
Training of employees	A single permit shall be issued for the duration of the contract for the purpose of training a third-country national (but for a maximum of 1 year)	Yes	If they want to change job or employer, the trainee needs a new single permit	Yes	Same
Individual services – special expertise	Maximum of 3 months in a calendar year (except for work in science, culture, sports, health and education for which the permit is issued for a maximum period of 1 year.	Yes	No	Yes	Same
Seasonal work permit	Up to 90 days	Yes	Yes	Yes	No residence permit needed
Work permit for workers from BiH and Serbia (based on bilateral agreements)	A work permit is issued with a validity of 3 years. The employment contract must be concluded for at least 1 year	Yes	Yes (conditional: for the first year, the third-country national must be employed by the employer who applied for the permit. Only after the first year of employment does the third-country national gain free access to the labour market (same as a personal work permit)	Yes	Mutatis mutandis (agreements with BiH and Serbia contain similar rules as for the single permit) <sup>(7)</sup>

Notes: (1) It is also expressly forbidden to perform work or allow the performance of work other than that for which the permit was issued. The ZZSDT imposes heavy fines on the employer (and the third-country national) in the event of a violation of this prohibition, as well as in the case of a third-country national TCN performing work without a permit at all.

(2) Employment contract or other contract for work.

(3) If the conditions are met, the permit may be extended for a maximum of two years.

(4) Given that a third-country national can enter the Slovenian labour market only if they have a pre-agreed employment contract with a specific employer, an application for a single permit can be submitted by either a third-country national or their employer.

(5) Because they were dismissed for business reasons or because the employee terminated the employment contract because of malfeasance on the part of the employer.

(6) The EU Blue card can be extended for 3 years.

(7) The agreement with Serbia additionally stipulates that the permit of a worker who terminates their employment contract because of employer's malfeasance during the first year of employment shall not be deemed to have expired if they conclude a new employment contract within 30 days with another employer for the same job. Although in the first year of employment the worker is otherwise tied to work for the provider who applied for the work permit, in this case they are allowed to work for another employer and still retain the permit.

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

Third-country nationals sent to Slovenia (either from third countries or from EU countries) are treated equally in terms of wages and working conditions, which must be provided by the employer under Slovenian legislation and collective agreements, if this is more favourable.

In the case of short-term postings related to the supply of goods or services, prior to the commencement of the service, the employer must register the services at the ESS, which issues a certificate of registration. The services can be provided continuously for 14 days and for a total of 90 days in a calendar year. In this case, third-country nationals do not need a residence permit. Otherwise, employers from third countries may send their workers to Slovenia only on the basis of a single permit for posted workers or a single permit for a person transferred within the company, which is issued only on the basis of prior ESS consent on fulfilling the conditions of the ZZSDT.

Bilateral employment agreements (BiH, Serbia) do not apply to posting of workers.

Slovenia is known as a transit country (in which third-country nationals are employed and sent by Slovenian companies to other EU Member States).

### Box 3 Hiring temporary agency workers from third countries

A Slovenian or foreign agency may employ – for the purposes of providing work for a user undertaking on Slovenian territory – third-country nationals residing in Slovenia on the basis of the EU Blue Card, as well as those who have obtained a single permit for employment, self-employment or work (a so-called ‘personal permit’),\* and those who have free access to the Slovenian labour market in accordance with ZZSDT\*\* (Art. 7, para. 4 ZZSDT; Art. 167 ZUTD). This means that an agency cannot hire someone from a third country for the purpose of this employment.

\* Such a permit may be obtained by a third-country national with at least a vocational education who has been employed in Slovenia for at least 20 months in the past 24 months; a third-country national who has been employed in Slovenia for at least 30 months in the past three years; or a third-country national who has acquired at least a higher education degree or completed a research work programme in the past two years in Slovenia. This permit (which is issued for three years) allows such persons to be employed by any employer or be self-employed in Slovenia.

\*\* These are third-country nationals who either have a permanent residence permit in Slovenia; a temporary residence permit as a family member of a Slovenian citizen or because they are of Slovenian descent; as well as third-country nationals with a recognised right to international protection.

## Description of the Slovenian system

### 1. Overview of third-country nationals on the labour market

Among third-country nationals employed in Slovenia, by far the most come from Bosnia and Herzegovina (hereinafter: BiH), Serbia, Kosovo, and North Macedonia (see Employment Service of Slovenia 2019: 22–24). Most third-country nationals are employed in construction, manufacturing, transport and storage (Statistical Office of Republic of Slovenia 2018).

### 2. Main entry regimes for short-term or limited time work

As a rule, third-country nationals need a so-called ‘single permit’ that allows them to enter Slovenia and to reside and work there. The conditions for obtaining the single permit vary depending on the form of work (employment, posted workers). (For an overview of the procedure and conditions for obtaining a single permit for different forms of work, see the box *Summary of the immigration regime and how it interacts with labour law* and Table 23.)

A different procedure applies in the case of short-term work (up to 90 days), when it is not necessary to apply for a single residence and work permit (seasonal work in agriculture and forestry, short-term work of company representatives, short-term services with posted workers, and so on) as third-country nationals may enter Slovenia with a passport or visa. In the case of short-term seasonal work, the ESS issues a *work permit*. In the case of company representatives and posted workers the employer only needs to register the work or provision of services online (with the ESS).

### 3. Overview of working conditions and wage setting for third-country nationals

The Employment Relationship Act (*Zakon o delovnih razmerjih*, ZDR-1), which regulates the rights and obligations arising from the employment relationship, applies to all employers with their registered office or residence in Slovenia and all employees employed by them (regardless of whether they are domestic or foreign citizens). Moreover, all these employers and their employees (domestic or foreign) are subject to the Minimum Wage Act (*Zakon o minimalni plači*, ZMinP – the minimum wage in 2021 was 1024.24 euros gross). Allowances for overtime, night and holiday work are granted (calculated) in addition to the minimum wage. The same goes for the part of the salary based on work performance. Thus, third-country national employees in Slovenia are treated equally with domestic workers in terms of pay and working conditions.

## 4. Special regimes

### a. Third-country national seasonal workers

Regarding the single permit or work permit for short-term seasonal work (up to 90 days), see above. A special regime exists for seasonal work in agriculture (for domestic and foreign persons) with a minimum hourly rate set for work on a civil law contract and prescribed (limited) labour law protection.<sup>2</sup>

### b. Third-country national posted workers

Regarding the single permit or short-term posting, see above. A special regime is prescribed in Art. 210 ZDR: the foreign employer posting workers to Slovenia has to comply with the Slovenian regulations (laws and sectoral collective agreements) regarding working hours, breaks and rest, night work, minimum annual leave, salary, safety and health at work, special protection of workers and equality, if the rules according to Slovenian regulations are more favourable for employees than those in the employee's country of employment. The employer's obligations (especially regarding salary) do not apply only in the case of short-term postings (except in the construction sector, in which this exception for short-term work does not apply).

### c. Third-country national temporary agency workers

Regarding the hiring of third-country nationals, see above. There is no special regime as regards working conditions (principle of equal treatment).

## 5. Third-country nationals during the Covid-19 pandemic

At the beginning of the Covid-19 pandemic Slovenia's Catering and Tourism Workers' Union informed the government of the occurrence of unacceptable dismissals of third-country national workers.<sup>3</sup> The Labour Inspectorate also drew attention to cases of extraordinary termination of third-country national employment contracts on the grounds of unjustified absence from work (in cases of quarantine, or because they could not return to Slovenia from their home country).<sup>4</sup>

It was reported that there was a major decline in the number of third-country national seasonal workers in agriculture during the Covid-19 pandemic. In the period from January to May 2019, 6,739 permits and 12,054 single permits for seasonal work were issued, while in the same period in 2020 these numbers fell to

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2. This applies to the prohibition of discrimination, sexual harassment and abuse, the prohibition of child labour, working hours, liability for damages, safety and health at work, and the protection of personal data. See Art. 105b of the Agriculture Act.

3. See: <https://www.sta.si/2742767/sindikatz-opozorili-onedopustnem-nacinu-odpuscanja-tujih-delavcev> (26. 2. 2021).

4. See: <https://www.tax-fin-lex.si/Home/Novica/16241> (26. 2. 2021).

3,883 and 8,732.<sup>5</sup> In connection to these developments, the Parliament enacted an emergency law for 2020 which extended the maximum period of seasonal work on the basis of a permit from 90 to 150 days, and a single permit had to be obtained only for seasonal work lasting over 150 days.

## 6. Overview of enforcement and monitoring

Supervision of the implementation of ZZSDT is carried out by the Labour Inspectorate (which also supervises compliance with general labour legislation, both for domestic and foreign workers). Supervision of legal residence (according to the provisions of ZTuj-2) is carried out by the police, which must immediately notify the Labour Inspectorate of any suspected violations of ZZSDT.

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5. See: <https://www.iusinfo.si/medijsko-sredisce/v-srediscu/265855> (26. 2. 2021).





## 24. Spain

Óscar Contreras Hernández

The issue of immigration has historically been a topic of political and social debate in Spain. However, the number of third-country nationals working there is relatively low (1.6 million or 8 per cent of the labour force). The main sectors in which third-country nationals work are agriculture, household services and construction. Nowadays there are two main groups of third-country national workers who move to Spain to carry out temporary work. The first consists of those recruited by companies for temporary work (migrant workers). The second is made up of those who are posted by their employer within the framework of transnational provision of services (posted workers). This includes companies established in a Member State (to which the EU regime applies) or companies from non-EU or non-EEA countries.

### Box 1 Summary of the immigration regime and how it interacts with labour law

The international and European legal framework concerning the rights and obligations of third-country nationals moving for short-term work in Spain is implemented in various legal and regulatory norms, as well as in numerous orders and instructions.\* This legal regime can be classified into two groups: the first consists of immigration rules that impose obligations related to entry, residence and work permits. The second concerns labour and social security laws that are applicable indistinguishably – albeit with nuances – to Spanish workers, to workers resident in another EU Member State who move to Spanish territory, and also to third-country nationals who move to Spain in order to carry out work or professional activity. The national legal framework affecting the rights and obligations of migrants is vast and complex. It consists of a large group of regulations that include frequent references and linkages between the various situations and requirements foreseen in each case.

In relation to the rules and working conditions applicable to these workers, it should be noted that Article 3 of Law 4/2000, in accordance with the Spanish Constitution, establishes equality between foreign nationals and Spaniards in the legal system in relation to the enjoyment of individual and collective labour rights, provided that they are in a regular situation, have obtained authorisation to work and the employment relationship has been initiated in Spain.

All the regulations listed in Table 25 (see below) establish rules applicable to migrant or posted workers. However, Organic Law 4/2000 and Royal Decree (RD) 557/2011 comprise the main regulatory framework for the conditions under which third-country nationals can enter Spain for the purpose of carrying out short-term or limited duration work. This legal regime is completed by Law 45/1999, which regulates the posting of workers within the framework of transnational provision of services.

\* Information regarding the formalities and procedures for complying with the existing rules in Spain in cases of labour mobility of third-country nationals is available at: <https://extranjeros.inclusion.gob.es/en/redeuropeamigracion/index.html>

Table 1.24 National law related to short-term labour migration and posting of third-country nationals in Spain

Consolidated law	Brief description or main connection with third-country nationals
Spanish Constitution (1978)	Recognises rights and public freedoms of foreign nationals in Spain
Law 14/1994	Law on temporary agency work
Law 45/1999	Law on posting of workers for the provision of services (Transposition of Posting Directive)
Organic Law 4/2000	Law on migrant rights and their social integration
Organic Law 5/2000	Law on labour and social sanctions
Organic Law 8/2000	Reform of Law 4/2000 to incorporate clarifications to Law 4/2000
Organic Law 2/2009	Reform of Law 4/2000 and incorporation of some EU Directives
Royal Decree. 557/2011	Regulation for the implementation of Law 4/2000
Law 14/2013	Law on internationalisation of the Spanish economy and labour mobility
Royal Legislative Decree 2/2015	Workers Statute Law
Royal Legislative Decree 8/2015	Social Security Law

Source: Author's analysis, 2022.

Table 2.24 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity (the time period worker can spend in the country)	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Seasonal workers	9 months within a period of 12 consecutive months	Yes	Yes	Yes	Yes
Fixed-term work permits	12 months	Yes	Yes	Yes	Yes
Third-country national posted workers	Period of service: maximum 12 months	Yes	No	Yes	Yes

Source: Author's analysis, 2022.

## Box 2 Posting of third-country nationals

Immigration regulations in Spain (Law 4/2000 and RD 557/2011) are applicable to third-country national posted workers. These regulations establish that a company must obtain temporary residence and work permits for their workers to enable them to perform their activities in Spain. These residence and work permits will be limited to specific occupations and territorial scope, and their duration will be the same as the working period, with a time limit of one year (Article 110.3 of RD 557/2011). Law 45/1999 establishes in Articles 3.1, 3.4 and 3.5 that such employers must guarantee the working conditions in force in Spain. In particular, the following working conditions shall be applicable to posted workers: working time, remuneration, equal treatment and non-discrimination, prevention of occupational hazards, freedom of association, rights to strike and to assemble. In addition, according to Directive (EU) 2018/957, accommodation conditions and allowances or reimbursement of expenditure to cover travel, board and lodging expenses must be provided.

**Box 3 Hiring temporary agency workers from third countries**

In cases in which third-country nationals are recruited by temporary employment agencies established in Spain, immigration regulations (Law 4/2000 and RD. 557/2011), as well as regulations governing the work of temporary agency workers (Law 14/1994) apply. Within this framework for hiring workers, third-country nationals are employed by temporary employment agencies, which oversee hiring procedures, social security registration, and payment of wages. This is made possible through a service provision contract, which temporarily assigns workers to the user company established in Spain.

According to Article 11.1 of Law 14/1994 temporary employment agencies are required to apply the same working conditions that would apply to temporary workers if they were directly hired by the user company to fill the same position (equal treatment). This includes remuneration, working hours, overtime pay, night work, rest periods and holidays.

## **Description of the Spanish system**

### **1. Overview of third-country nationals on the Spanish labour market**

The number of people registered in the Spanish social security system from non-EU/EEA countries in January 2023 was 1,615,302.<sup>1</sup> By sector, most of these workers were in activities related to household services, hotels and tourism services, construction, and agriculture-horticulture. The rights and obligations of third-country nationals moving for short-term work in Spain are regulated in various legal and regulatory norms, as well as in numerous orders and instructions. The national legal framework consists of a large group of regulations that include frequent references and linkages between the various situations and requirements foreseen in each case.

### **2. Main entry regimes for short-term or limited time work**

Organic Law 4/2000 and Royal Decree (RD) 557/2011 provide the main regulatory framework for the conditions under which third-country nationals can enter Spain for the purpose of short-term or limited-duration work. This legal regime is completed by Law 45/1999, which regulates the posting of workers within the framework of a transnational provision of services and establishes rules and conditions applicable to companies that temporarily send posted workers from an EU country or from third countries – non-EU/EEA – to carry out a temporary activity in Spain.

As a general rule and irrespective of the duration of the work, non-EU/EEA workers wishing to work or engage in professional activity in Spain need an administrative permit to reside and work in the country. The employer must request this administrative permit beforehand and, in any case, it must be supported by an employment contract that guarantees continuous activity during the period of validity of the permit and stay in Spain.

### **3. Overview of working conditions and wage setting for third-country nationals**

In Spain, working conditions laid down in the relevant laws and regulations, as well as in the collective agreements applicable in the place and sector of activity where they provide services shall apply to third-country national workers who have entered into an employment relationship in Spain, in accordance with the principle of equal treatment with national workers or workers from other EU Member States. Differential treatment regarding working conditions would

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1. See: <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10>

amount to discrimination on grounds of nationality, which is expressly prohibited by Article 17 of the Workers' Statute, which prevents the nationality of the worker from being used as a justification for inequality. Thus, third-country nationals authorised to work in the territory of an EU Member State are entitled to working conditions equivalent to those enjoyed by citizens of the Union (Article 15.3 of the EU Charter of Fundamental Rights).

## 4. Special regimes

### a. Third-country national seasonal workers

The special regime that applies to these workers is regulated in Article 42 of Law 4/2000 and RD 557/2011. In the case of seasonal or campaign activities, the duration of the permit shall correspond to the duration of the employment contract, with a maximum limit of nine months within a period of 12 consecutive months.

### b. Third-country national posted workers

In Spain, Directive 96/71/EC was transposed into Law 45/1999, which has been subsequently amended by Directives 2014/67 and 2018/957 (see Contreras Hernández 2021). This law requires that working conditions provided for in existing laws or collective agreements in Spain be respected, and posted workers must be treated equally with local workers (Carrascosa Bermejo and Contreras Hernández 2022).

This law applies to companies established in any EU Member State or signatories to the EEA that temporarily send posted workers to Spanish territory to provide services. Third-country national posted workers posted by these companies, who have already been authorised to reside and work in an EU or EEA country of origin, do not need a new authorisation or work permit in Spain. However, they must provide documentary proof of their legal status, such as a short-stay visa for stays of less than three months (if required according to nationality), together with a passport or identity document proving their residence in the first Member State. For longer stays, a visa and a residence or temporary stay permit must be obtained, in accordance with Article 31 of Law 4/2000 and Article 45 of RD 557/2011.

Law 45/1999 also applies to companies established in third countries (non-EU/EEA) that carry out activities in Spain and send their workers to provided services temporarily. Such companies must comply with the national regulation on aliens, that is, Organic Law 4/2000 and its implementing regulation (RD 557/2011), and therefore must apply for and obtain a temporary residence and work permit for temporarily posted third-country nationals. Like other posted workers, they must receive equal treatment with local workers in Spain (Art. 3.1 Law 45/1999).

**c. Third-country national temporary agency workers**

The law regulating temporary work agencies in Spain covers the transnational activities of temporary work agencies established in the territory of an EU/EEA Member State, but not of non-EU/EEA work agencies (Article 22 of Law 14/1994). In the absence of specific rules, all the standards analysed in the above points regarding temporary residence and work permits, visas, notification of posting and applicable working conditions apply to third-country nationals who are posted to Spain by these companies. In cases of recruitment of third-country nationals by temporary employment agencies established in Spain, immigration regulations (Article 42 of Law 4/2000 and RD 557/2011) and Law 14/1994 will apply. This formula, which is often used in Spain, has given rise to some controversial cases; the main trade union in Spain (CC.OO) has systematically denounced the labour situation of by temporary workers (especially seasonal workers in agricultural activities) who are hired through this formula, which sometimes means that the working conditions established by the relevant collective agreements fail to be applied and, during the pandemic, health and safety measures in the workplace were neglected (see Carrascosa Bermejo & Contreras Hernandez, 2022 p. 69-76. POSTING.STAT Project: spanish reporte).<sup>2</sup>

**5. Third-country nationals during the Covid-19 pandemic**

Exceptionally, several orders were passed to temporarily restrict non-essential travel from third countries to Spain, in line with European guidelines. The measures implemented by the Spanish government to contain the Covid-19 pandemic included the denial of entry of third-country nationals, except for holders of a long-stay visa issued by an EU Member State, cross-border workers, health professionals or care workers on their way to or returning from work, and transport workers in transit (Article 1 of Order INT/356/2020 of 20 April).

Among other exceptional situations, because of the border closures a contingent of seasonal female workers from Morocco – who were in Spain to work in the red fruit harvest in the province of Huelva – found themselves unable to return to their country of origin or work elsewhere in Spanish territory. In response to this situation, on 7 April 2020, the Spanish government approved Royal Decree-Law 13/2020 on urgent measures on agricultural employment. Among other measures, it authorised the extension of work permits for seasonal workers until 30 June 2020 to allow employment in the harvest of other fruit and vegetables in other Spanish regions.

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2. <https://zenodo.org/record/6543137>

## 25. Sweden

Andrea Iossa and Niklas Selberg

Labour migration in Sweden is a topical issue, not least because of recent developments such as intra-EU posting of workers and social dumping, and the restrictions placed to asylum seeking since 2016. Sweden has a long history of labour migration. Since the Second World War, migrant labour has contributed a lot to Swedish economic growth. But the intersection between labour and employment regulations, mainly through collective agreements, and migration law, produces marginality, vulnerability and exposure to possible exploitation among migrant workers. Collective agreements are the main instruments used to set terms and conditions of work, not least minimum wages, which in Sweden are not statutory. Trade union membership is thus a key element enabling workers to obtain access to labour rights. Therefore, workers falling outside the scope of collective agreements and trade union membership, such as temporary migrant workers, risk falling into situations of sub-standard work.

### Box 1 Summary of the immigration regime and how it interacts with labour law

As a general rule, foreigners need a work permit to enter and work in Sweden – with the exception of citizens of other Nordic countries, EU citizens, and foreigners who have acquired a permanent residence permit in Sweden.

Since 2008 Sweden has had an *employer-led immigration regime*, in which labour migration is de facto managed on the basis of the needs of individual companies. A work permit can be issued only temporarily and upon an employment contract, for a period not longer than the length of the employment contract, and in any case no more than two years. A work permit needs to be applied for before a foreign national enters the territory of Sweden. It is issued if the conditions of the employment contract demonstrate that the migrant worker will have a salary that allows them to achieve a 'good livelihood' and that wages and other terms and conditions of work and employment, as well as social security protection are not lower than those set by national collective agreements applicable in the sector. According to a government proposal (May 2023) for a regulation a salary capable of providing a 'good livelihood' should be at least 80% of the median monthly salary (i.e. ca 2,120 euros). These prerequisites are assessed by the Migration Office.

A permanent right to residence and work can be obtained if the third-country national has had a work permit for at least four years within a period of seven years.



Table 1.25 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Labour migrant	Length of employment contract or max 2 years	Yes, with a work permit	Work permit is linked to an employment contract with single employer	Employment contract needed with terms and conditions in compliance with applicable collective agreements and with a wage at least 80% of the median salary	Work permit is linked to employment, but the migrant has three months after the end of the contract (also in case of dismissal) to find another job
EU Blue Card	At least one year, no longer than 2 years	Yes, with a specific work permit	The issuing of the Blue Card is linked to a job offer for a specific employment. This prerequisite ceases after 2 years	Job offer needed with terms and conditions in compliance with applicable collective agreements (but wage needs to be one and half times)	Work permit is linked to employment, but the migrant has three months after the end of the contract (also in case of dismissal) to find another job
Intra-corporate transfer (ICT)	No longer than the time of the assignment. Max 3 years for managers and specialists and 1 year for trainees	Yes, with a specific work permit	Work permit is linked to being employed by the company abroad	Employment contract needed with the same company abroad for at least 3 months and terms and conditions not lower than those of the applicable collective agreements	Work permits for ICT are linked with employment for a company established abroad within the same group and with a specific assignment to be performed in Sweden
Seasonal work	No longer than the period of employment or no longer than 6 months out of a period of 12 months	Yes, with a specific work permit	The work permit for seasonal work is linked to an employment contract with a single employer	Job offer needed with terms and conditions in compliance with applicable collective agreements and special requirements concerning accommodation standards	Work permit for seasonal work is linked to employment, but the migrant has three months after the end of the contract (also in case of dismissal) to find another job

Source: Authors' analysis, 2022.

**Box 2 Posting of third-country nationals**

The Act on Posting of Workers prescribes that rules on annual leave, parental leave, anti-discrimination, health and safety at work and working time, as well as trade union rights shall apply to posted workers, regardless of whether they are third-country nationals. If posting exceeds twelve months, the worker will be deemed to be employed under Swedish law.

Third-country national workers posted to Sweden must have residence and work permits in accordance with the general rules for labour migration from third countries. The permit is granted for a maximum of two years.

No work permit is required for third-country national workers posted from within the EU, given that they already have a right to reside and work in the sending country. This is assessed during the procedure for issuing the permit.

Lately it has become common practice for Swedish social partners to sign collective agreements specifically regulating posted work. Posted workers are entitled to terms and conditions set by these agreements regardless of trade union membership.

**Box 3 Hiring temporary agency workers from third countries**

The general rules on work permits apply to third-country nationals hired by a temporary work agency established in Sweden. The Act on Posting of Workers establishes that the rules that apply to third-country nationals posted to Sweden by a temporary work agency established in another EU Member State shall be the same as those for posted workers.

The Act on Temporary Work lays down the principle of equal treatment for temporary agency workers, which establishes that they are entitled to the same working and employment conditions as if they were employed directly by the client company. This principle applies also when the temporary agency worker is a third-country national.

## **Description of the Swedish system**

### **1. Overview of third-country nationals on the Swedish labour market**

Migrant labour has historically contributed to the growth of the Swedish economy. But the intersection between the Swedish model of labour and employment regulations and migration law, produces marginality, vulnerability and exposure to possible exploitation among migrant workers. On the Swedish labour market, the enjoyment of and entitlement to rights and decent working and employment conditions is ensured by collective agreements and trade union membership. Third-country national labour migrants are often employed in sectors with low coverage rates or in companies that fall outside the scope of collective agreements because they are not affiliated with any employers' organisation. This exposes third-country national migrant workers to substandard work. Third-country national migrant workers are employed mainly in low-qualified sectors, such as agriculture, berry-picking and hotels and restaurants, or in highly qualified employment such as IT and engineering.

Since 2008 Sweden has had an employer-led immigration regime, in which labour migration is de facto managed on the basis of the needs of individual companies. This reform has led to the establishment of what the Organisation for Economic Co-operation and Development (OECD) has defined as 'the most open labour migration regime' among OECD countries.

### **2. Main entry regimes for short-term or limited time work**

As a general rule, a foreigner needs a work permit to enter and work in Sweden – with the exception of citizens of other Nordic countries, EU citizens, and foreign nationals who have acquired a permanent residence permit in Sweden.

A work permit can be issued only upon an employment contract in compliance with the terms and conditions of the applicable collective agreements. The work permit cannot be longer than the contract of employment and in any case the validity cannot be more than two years. The employment contract's compliance with the terms and conditions of the applicable collective agreement is assessed by the Migration Office in collaboration with the trade unions. After the termination of employment (also in case of dismissal), the third-country national usually has three months to find a new job in order not to lose the work permit and the right to residence.

These rules generally apply to the main schemes for short-time labour migration, such as the EU Blue Card, intra-corporate transfers, seasonal work, and posting of workers. Specific rules and enforcement mechanisms exist in each of those labour migration schemes, however.

### 3. Overview of working conditions and wage setting for third-country nationals

Working conditions and wages for third-country national labour migrants are set by national collective agreements negotiated by sectoral trade unions and employers' organisations. The employment contracts of third-country national labour migrants need to comply with those terms and conditions. In practice, third-country labour migrants are often employed in sectors with low coverage of collective agreements (such as agriculture and hotels and restaurants) or in companies not affiliated with employers' organisations and therefore outside the scope of collective agreements. The lack of a collective agreement in the workplace exposes third-country national labour migrants to substandard work and discrimination on the labour market.

### 4. Special regimes

#### a. Third-country national seasonal workers

The Aliens Act provides that a third-country national who receives an offer for temporary employment as a seasonal worker by a company established in Sweden is entitled to a work permit (if the job lasts less than 90 days) or a residence and work permit (if the job lasts longer than 90 days). Excluded from this category, however, are third-country nationals who are resident in the EU or employed by a company established in the EU. The work permit is issued upon certain conditions: the employment shall enable the foreigner to earn a living; salary, social security protection and other employment conditions shall not be lower than those set by national collective agreements; the third-country national shall be in possession of health insurance valid in Sweden and be able to demonstrate access to accommodation at an appropriate standard. The Act provides that a work permit for seasonal work shall not be issued if there is a risk that the worker will not leave Sweden when the employment contract ends. The application for the work permit for seasonal work needs to be submitted before entering Sweden, unless it is an application for prolongation of a permit or for a new permit by a third-country national already in possession of a work permit for seasonal work. A work permit for seasonal work cannot be valid for longer than the duration of the employment, it cannot have longer validity than the third-country national's passport, and the total period of validity cannot be longer than six months out of a period of twelve months.

Special rules exist given the problems related to living conditions of third-country national seasonal workers, mostly recruited from Thailand to work in the berry picking industry in the open fields in the North of Sweden. The Aliens Act states that demonstrating access to accommodation of an appropriate standard is a requirement for obtaining a work permit for seasonal work. Furthermore, the Act imposes conditions on the granting of a permit upon the employer who intends to provide or rent out the accommodation to the seasonal worker: the rent must not be disproportionate to the worker's salary and standard of living; the rent cannot be directly deducted from the worker's salary; a written contract or agreement

concerning the rent has to be provided; and the accommodation has to comply with general health and safety regulations.

Since 2009 the Municipal Workers' Trade Union *Kommunal* has had a mandate from the central confederation LO to negotiate collective agreements with the Federation of Swedish Forest and Agriculture Employers regulating living and working conditions for seasonal migrant workers employed in the berry picking industry. *Kommunal* also negotiates collective agreements with the recruitment agencies, including those established in the country of origin, mostly Thailand.

#### **b. Third-country national posted workers**

The Act on Posting of Workers covers both situations in which a worker is posted to Sweden by a company established in another country and situations in which an employer established in Sweden posts workers to other countries. The Act prescribes that rules on annual leave, parental leave, anti-discrimination, health and safety at work and working time, as well as trade union rights apply to posted workers, regardless of whether they are third-country nationals or not. If posting exceeds twelve months, the worker will be deemed to be employed under Swedish law.

Third-country nationals can be posted to Sweden from outside the EU. These workers must have residence and work permits granted on the same principles as other types of labour migration from third countries, that is, primarily that the employment enables the posted workers to support themselves and that pay, insurance coverage and other terms of employment are not worse than those set by collective agreements applicable in the sector. The permit is granted for a maximum of two years.

Third-country nationals can also be posted from within the EU without a work permit for the duration of the temporary assignment in Sweden. The right of a third-country national to reside and work in the sending country will be assessed during the procedure for the issuing of the permit.

According to the Act on Posting of Workers, if an employer and a Swedish trade union conclude a collective agreement on posted work, the posted workers have right to receive the terms and conditions set in the collective agreement even if they are not member of the signatory union. It has become common practice to sign a collective agreement specifically regulating posted work.

#### **c. Third-country national temporary agency workers**

The general rules on work permits apply when third-country nationals are hired by a temporary work agency established in Sweden. The Act on Posting of Workers establishes that the rules that apply to third-country nationals posted to Sweden by a temporary work agency established in another EU Member States are the same as those for posted workers.

The Act on Temporary Work lays down the principle of equal treatment for temporary agency workers, which establishes that they are entitled to the same working and employment conditions as if they were employed directly by the client company. This principle applies also when the temporary agency worker is a third-country national.

## 5. Third-country nationals during the Covid-19 pandemic

In Sweden, the government adopted an ordinance on a temporary travel ban that set forth restrictions for travelling to Sweden from abroad and listed certain exceptions. Persons with a residence permit or a national visa for more than three months valid for Sweden or any other EEA country were excluded from the travel ban. The ban did not apply to EU citizens or to third-country nationals with a right of residence or a visa for longer than three months. This means that a short-term migrant worker with a valid permit in Sweden or any other country in the EU would be excluded from the travel ban. Other exemptions concerned third-country nationals who have a particularly urgent need or have to perform necessary functions in Sweden, such as workers in the healthcare sector and research; frontier workers; seasonal workers in agriculture, forestry and horticulture; and seafarers.

A debate around travel restrictions and short-term migrant workers emerged in spring 2020 in relation to seasonal work in agriculture. An initial shortage of workforce in the sector was reported by companies when seasonal workers in agriculture were not exempted from the travel bans. Following political pressure, also from employers' organisations, those workers were then included among the exceptions.

Within the restriction period, a third-country national had the right to postpone their arrival to Sweden, but only if their work permit had not yet been issued. Otherwise, they could ask for the permit to be rescinded and perhaps apply for a new one later.

## 6. Overview of enforcement and monitoring

According to the Swedish model of labour market regulation, trade unions are tasked with monitoring the application of and compliance with collective agreements in workplaces, as long as the union has at least one member employed in the company. This rule applies also with regard to the employment of third-country national migrant workers. More specific rules apply to the enforcement of labour law to labour migrants, however.

As part of the application procedure, compliance of the terms of the job offer with the terms and conditions set out by national collective agreements is assessed by the Migration Office in consultation with trade unions and employers' organisations. Substandard working conditions constitute mandatory grounds for revoking a work permit.

When receiving posted workers, employers must inform the Work Environment Agency as well as any trade union to which they are bound by a collective agreement. The Work Environment Agency is also entitled to examine documents and carry out inspections at work sites in which posted workers are present.

In those sectors assessed as having a high concentration of undocumented migrant workers, the Alien Act entitles the police to conduct inspections at work sites and check whether the workers have the proper residence and work permits. Undocumented migrant workers and seasonal workers, as well as posted workers are subject to specific rules as regards wages. Undocumented migrants have a right to back pay from their employer, which, in situations of subcontracting, extends to the person to which the employer is a direct subcontractor.

Special rules exist for seasonal work. For instance, employers who provide housing to seasonal workers must, upon request, provide written information to the Migration Office about the housing arrangements. If a work permit is revoked as a result of wrongdoing on the part of the employer, seasonal workers have a right to the wages that would have been paid if the permit had not been revoked.

# Conclusion<sup>1</sup>

Zane Rasnača and Vladimir Bogoeski

As illustrated by the national reports included in this summary report, national approaches to how immigration regimes interact with third-country national status and rights on the labour market vary significantly from one country to another. The employment and posting of third-country nationals is an exceptional and fast-developing labour market phenomenon characterised by very complex set of rules on gaining access to the European labour market and living and working in it.

Beyond other vulnerabilities faced by third-country national workers that result from their lack of resources, lack of knowledge of local languages and limited expertise in asserting their rights (Rasnača 2022), these reports illustrate in detail how the link between immigration and labour law is a significant vulnerability worth exploring much more closely in its own right. They show that migration policies, which more often than not include an array of restrictions on geographical and labour market mobility (workers' ability to change jobs and location of work), might put third-country national workers in receiving countries in situations characterised by precarity in relation to employment conditions and a certain 'unfreedom' when it comes to immigration law and its link with employment (see also Strauss and McGrath 2017: 200). Individual approaches to such interaction between labour and immigration law, however, differ from country to country.

In the countries in our large sample, the third-country national workforce was often seen as a resource for filling vacancies and addressing labour shortages in the so-called low-wage or low-skilled sectors and jobs. These are essential for economy but rarely adequately awarded in terms of pay and protection (the report on Cyprus provides an excellent example). In many countries, such as Cyprus, Germany, Italy, Malta and Spain, third-country nationals tend to be employed in sectors such as household services, hospitality and tourism, as well as in agriculture, sectors often associated with low pay and poor working conditions. Because worker protection in those sectors is often a challenge in itself (Rasnača 2022), the migration aspect creates additional hurdles, further 'vulnerabilising' these workers. Together with their lack of organisation and collective voice (Rasnača 2022), it is potentially a breeding ground for exploitation and rights' abuses (see also Thörnqvist and Woolfson 2012).

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1. Unless specifically stated otherwise, the summary included in this Conclusion is based on the national reports.



Migrant workers' 'life cycle' in the host country can, overall, be separated into several stages. The first is entry or arrival in the country and its requirements. The second is the workers' rights and possibilities during their stay in the country (for example, opportunities to change jobs, rights in comparison with the native workforce). The third stage is leaving the country or transition to another status. We compare the countries here in terms of this structuring of migrants' working lives in the host country. In addition, special rules may apply to some groups of workers (such as posted workers, temporary agency workers and seasonal workers from third countries). Then, we look briefly at some responses to the situation of third-country nationals during the Covid-19 pandemic, before concluding.

## **1. Entry of third-country national workers**

Entry is the first key juncture at which the employment relationship and migration status are potentially very closely interlinked. In several countries the entry of third-country nationals for the purpose of work is conditional on a labour market test (see also European Commission 2019b: 5). For example, in Belgium the general condition for approval to work is a local labour market shortage. Apart from some special categories of workers (intra-corporate transfer, European Blue card, au pairs and so on) this does not apply only to workers with a higher education with earnings above a certain threshold (managers, executives, professional sportsmen and women, invited teachers and researchers and some other relatively well paid categories). Labour market tests that apply to short-term migrants exist also in other countries (see, for example Germany, Croatia and Malta). Often characteristic of such tests is that they might not concern or apply to high-earning and highly educated workers, but will typically apply to other (low-paid, less educated) categories of workers, perhaps with the exception of seasonal workers. At the same time, for example in Norway there is a quota system also for seasonal work in agriculture and forestry, so even very short-term labour entry is not excluded from the scope of labour market tests.

Approaches to whether a third-country national needs an employment contract to enter the country vary greatly, as do individual migration statuses or visas. For example, in Austria, workers entering for very short period (three or six months) do not need an employment contract on entry. But workers entering within the framework of longer-term regimes (for example, up to two or even three years) typically do need an employment relationship in order to gain entry. In other countries, such as Belgium, short-term work – for example, seasonal work – does require an employment contract before entry can be granted. Other countries require an employment contract for entry in all instances of immigration for work. This is the case in Croatia and Cyprus. Finally, in some countries, such as Czechia, the vast majority of migration regimes require an existing employment contract but some EU-level based regimes, such as intra-company transfer (ICT), do not.

Typically, an employment relationship is required for third-country national workers to enter the country, even if the objective is short-term labour (including seasonal work). This creates a certain dependence on a specific employer and employment relationship from the outset and also a potential risk; for example,

a worker might have signed an employment contract without full knowledge of local conditions of work and accommodation, as well as local work practices, and feels bound by their contract after arrival despite difficult or even exploitative employment conditions. This is potentially a key element in creating an 'unfree' employment relationship and can serve as the first step in increasing the vulnerability of third-country national workers. The International Labour Organization emphasises 'contract substitution' as a practice often associated with the tying together of immigration regime and a specific employment contract with a specified employer. In this scenario the migrant worker is issued with a new contract specifying lower conditions of work and/or pay on arrival in the country of employment superseding a contract they had signed prior to departure (ILO 1999).

One welcome practice in situations in which the need for labour is permanent or structural and seasonal workers come to the country regularly involves multiple-entry visas or permits that provide workers with a certain legal certainty about their access to the host country's labour market and enable them to plan their futures. This is the case, for example, in Portugal where within the Community of Portuguese Language Countries (CPLP) (Angola, Brazil, Cape Verde, Guinea-Bissau, Equatorial Guinea, Mozambique, Portugal, São Tomé and Príncipe and East Timor) agreements have been signed that grant entry visas to certain categories of citizens of these countries and also ensure exemption from fees for obtaining a residence permit. Greater flexibility for workers when it comes to entry might provide them with more practical freedom to avoid exploitative working conditions.

## 2. Staying and working in the country

In many countries the possibility of changing employers can be limited. Limits may also be imposed on the possibility of finding another job. In Cyprus, third-country nationals usually have one month to find another job upon dismissal or lose their residence rights. In Estonia the approach is more gradual; while changing employers does not lead to changes in residence permit, the permit does expire upon dismissal. The only exception is if the dismissal took place as a result of the employer's economic difficulties, in which case the permit is automatically valid for another 90 days following dismissal.

During their working life in the host country, third-country national workers typically enjoy equal treatment with native workers (see reports on Czechia, Denmark, Germany and Iceland). For example, in Cyprus the Aliens and Immigration Act includes provisions about seasonal workers and intra-corporate transfers based on the principle of equal treatment and this includes equal treatment in terms of individual rights (pay, age, dismissal, working time, leave, holidays, and occupational health and safety) and also collective rights (freedom of association, participation in workers professional organisations, and of course the right to negotiate and conclude collective agreements). Importantly, however, domestic workers and other short-term employees are not specifically mentioned in this act, so equal treatment in their case remains an open question. In fact,

it seems that the working hours, breaks and overtime for this group of workers remain largely undefined in Cyprus.

Also in Norway third-country national workers enjoy equal treatment, and their pay and working conditions cannot be inferior to those provided in the applicable collective agreements. If no such agreement or pay scale exists, pay and working conditions cannot be inferior to what are considered ‘normal’ for the occupation and place concerned.

Despite this equality formally enjoyed by third-country national workers, multiple reports mention that in fact their working conditions and wage-setting are often reported as beneath those of the local workforce (among others, reports on Cyprus, Germany, Italy and Spain). In Italy, as in the majority of countries in this report, third-country nationals need their employer’s support to apply for a work permit and thus they might be keen on avoiding possible conflicts and willingly accept abusive practices. As the Italian report aptly puts it: ‘third-country nationals [...] benefit from equal treatment compared with national citizens only “on paper”’. While they enjoy formal equality with the native workforce, it does not seem to be enough. The resulting gap between the promise of individual rights and the achievement of de facto equality is one in which the law’s role should be carefully examined, if one agrees that part of the law’s promise is a concern for justice (Marsden 2019).

An approach based on substantive equality whereby certain special interests and problem areas for third-country national workers are taken into account might be more efficient (see also Rasnača 2022). Currently, only accommodation requirements are to some extent regulated across all Member States, specifically for seasonal workers because of EU-level requirements.<sup>2</sup> Some other measures, such as special rules for enforcement and reporting of abuses, facilitation of recovery of wages and also access to aid and information (via interpreting services, for example) on the employment relationship should be explored to help to address the substantive inequality between native and migrant workforce. Such rules are especially needed for short-term third-country national migrant workers because they are potentially more exposed to abuses by their lack of integration in the host country.

When it comes to enforcement of third-country national workers’ rights, the reports largely indicate that it is regulated in the same way as in relation to local workers, with the exception of immigration law, where there are additional controls and responsibilities. As a result of this interplay between employment and immigration law, overall third-country national workers seem to be subject to fragmented and multi-actor enforcement systems, in which only some public institutions are charged with their explicit protection. For example in Estonia short-term immigrants and posted workers are subject to the control of the Ministry of

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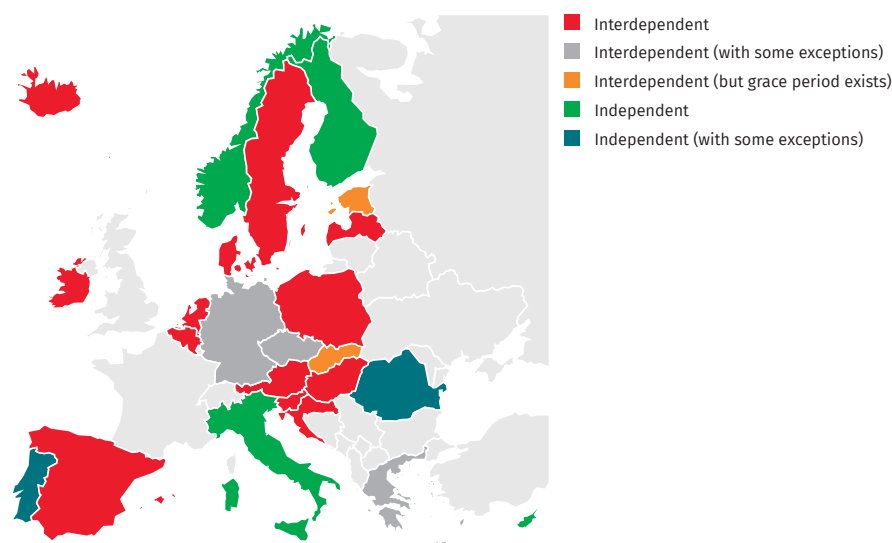
2. See Seasonal Work Directive (Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.2014, p. 375–390).

Foreign Affairs, the Police and Border Guard Board, the Estonian Internal Security Service and the Estonian Unemployment Insurance Fund. Similarly in Poland the National Labour Inspectorate is responsible for monitoring working conditions of migrant workers; Border Guards are responsible for monitoring the legality of stay of migrants; and the Ministry of Work, Development and Technology and the Office for Foreigners are responsible for measuring the scope of employment of migrant workers. Furthermore, in Italy any public authority belonging to the police (such as labour inspectors) that detects evidence of a crime has to collect any information useful for criminal prosecution. This rule applies also in the case of illegal migration (a crime punished by national criminal law). Consequently, in any public inspection of working conditions, irregular migrants risk being discovered and denounced. In Slovakia third-country nationals themselves are obliged to notify the police department within three working days that the purpose for which their permit to remain in the country was granted has expired.

### 3. Exit/transition to another status

In the majority of countries residence permits are interdependent with an existing employment relationship and if the contract is terminated, the third-country national will typically have to leave the Member State within an extremely short time frame (see Figure 1). This is the case, for example, in Austria, Croatia, Denmark, Hungary, Ireland, Latvia, the Netherlands, Slovenia and Spain. Because of this interdependence third-country national workers have to leave EU territory almost immediately if their contracts are terminated. As concisely put in the Latvian report, ‘when an employee is dismissed, their temporary residence permit is revoked, which means that the worker has to leave the country’. This is the situation in the majority of countries.

Figure 1 Relationship between immigration and labour market status for third-country nationals



Source: Authors' analysis, first published in Benchmarking 2021.

In very few countries did we observe ‘better practices’. In some countries (Cyprus, Finland, Italy, Portugal and Romania) the residence permit is not (automatically) cancelled in case of termination, or at least not in the majority of situations (Benchmarking 2021: 69). In others, such as Slovakia and Estonia, there is a grace period within which the worker can find another job. For example in Slovakia, the employment permit, which in principle is granted for a specific job with a specific employer, expires either at the end of the period for which it is granted or when the relevant employment relationship ends. In that case the third-country national is obliged to notify the police department within three working days that the purpose for which the stay in the country was granted has expired. In case of dismissal, however, the cancellation of temporary residence does not apply and during this period the third-country national can potentially find another job or obtain another type of permit. Such ‘more lenient’ approaches to regulating immigration for work purposes are the exception rather than the rule, however.

## **4. Special regimes and exceptions**

During the mapping exercise we specifically looked more closely at three groups of workers from third countries and the rules that apply to them: seasonal workers from third countries, posted workers from third countries and temporary agency workers from third countries. In addition, some other special rules, such as bilateral agreements, are worth highlighting here.

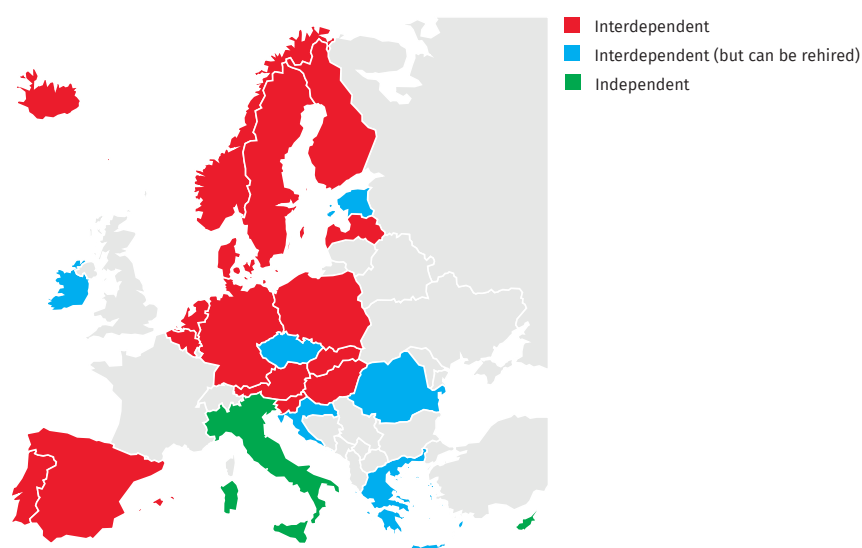
### **4.1 Seasonal workers from third countries**

At least in terms of legislation, the Seasonal Work Directive has influenced third-country national workers’ rights to adequate accommodation. While under other migration regimes third-country national workers would also certainly benefit from some monitoring of whether or not they have access to adequate and inexpensive accommodation, organised by the employer, the only type of workers for which there seem to be special rules on this in all or most countries studied seems to be seasonal workers in line with Article 20 of the Seasonal Work Directive. In a few countries, however, such rules have been implemented beyond seasonal work. For example, in Latvia the accommodation has to comply with the requirements in the laws and regulations for residential space. Rent cannot be excessive compared with net remuneration for work and the quality of the accommodation, and it cannot be deducted automatically from a seasonal worker’s pay.

At the same time, in the case of seasonal workers, even though they are typically in the country for a very limited amount of time, their immigration status is even more dependent on the specific employment relationship (even more so than in the case of other migrant workers – compare Figures 1 and 2). In the majority of countries studied, as soon as a seasonal worker loses their employment, they lose their migration status and have to leave the country. Such dependence does not create the necessary flexibility for them to change jobs if, for example, they are mistreated by their employer (Benchmarking 2021), and instead they risk losing their seasonal work income by having to return to their home country.

Only in a few countries (Cyprus and Italy) is immigration status independent of employment status (but see the report on Italy for other issues faced by seasonal workers). In a few countries a third-country national seasonal worker can also change employers (see reports on Czechia, Croatia, Estonia, Ireland, Greece and Romania). For example, in Greece the law permits a visa extension in cases of contract extension with the original employer or of a new contract with a different employer, but only within the maximum legally permitted duration.

Figure 2 Relationship between immigration and labour market status for third-country national seasonal workers



Source: Authors' analysis, first published in Benchmarking 2021.

Seasonal workers at times face further restrictions in comparison to other third-country national workers. For example, in Czechia seasonal workers are restricted to doing only the work specifically mentioned in their work permit. In Greece the law sets six months as the maximum duration for seasonal activity and seasonal worker visas are subject to *metaklisi*, a system according to which employers may invite third-country nationals, but only within regional and occupational quotas set on a biannual basis by the administrative authorities. A quota system applies to seasonal workers also in Norway.

In many countries in our sample we found two types of seasonal work in temporal terms: short-term and long(er)-term. For example in Czechia there is short-term seasonal work (up to 90 days) and long-term seasonal work (up to six months). The conditions for obtaining a permit for both are typically similar.

The shortness of stay that is typical can also have (unintended) negative consequences when it comes to social security and also employment rights (Bogoeski and Rasnača 2023). For example in Finland, while the collective bargaining system is well-developed and comprehensive, there are coverage issues with collective agreements. Employment contracts that are shorter than

three months and workers working on such contracts often do not benefit from decent labour law protection and collective agreements.

Finally, seasonal work regimes can be affected by a country's labour market needs at relatively short notice. This was the case for Germany and Greece when seasonal work shortages became apparent during the Covid-19 pandemic and steps were taken to encourage the immigration of seasonal workers rapidly, although it was not always well organised. Also, in Iceland, seasonal issues in certain sectors, for example agriculture, can have a big effect on the assessments of applications for temporary work permits based on labour shortages.

## 4.2 Posted workers from third countries

In many countries posting of workers is possible directly from third countries. Often it is enabled by either special laws or bilateral agreements.

For example, posting from third countries directly to Croatia is possible and regulated by the Act on Posting Workers to Croatia and Cross-border Enforcement of Decisions on Material Sanctions. The Act states that this is based on multilateral or bilateral international agreements. In Czechia a work permit is required if a worker is posted from a third country by their foreign employer. It is possible to obtain such a permit on the basis of a (service) contract between foreign and Czech entities to perform work in Czechia. These posted workers still need to obtain a residence permit, however. In fact, in some countries such postings are possible only in accordance with all the rules and procedures for obtaining work permits/visas. In Denmark, for example, there are no special bilateral agreements on this at the moment and most of the visas issued to third-country nationals concern work for Danish employers.

Generally, EU-level rules on posting apply only to intra-EU posted workers and in most of the countries studied they have been implemented in such a way. The EU rules on posting typically apply to third-country national workers only if they have been posted from another EU country and not directly from a third. This is the case, for example, in Latvia, where posting from third countries is possible but the labour law provisions regarding intra-EU workers – for instance, the obligation to ensure minimum employment conditions, including remuneration according to Latvian law – do not apply to them. Instead, third-country nationals posted directly from third countries are granted employment rights with the restriction that they may work only for a particular employer in a particular profession.

In some exceptional countries, however, the EU posting rules have been extended to apply also to workers posted directly from third countries (see, for example, the report on Croatia). For example, in Italy the main rules of Legislative Decree 136/2016 apply equally to employers established outside the EU that post workers in the country. This legislative decree also contains all the intra-EU posting rules. Also in Malta the Posting of Workers in Malta Regulations do not differentiate between a posting from within or outside the EU/EFTA. The Regulations shall apply if there is an employment relationship between the undertaking making



the posting and the worker during the period of posting. Third-country national workers in Malta are required to register such postings with the competent authority. This extension might ensure a sort of level playing field between workers posted from the EU and third countries and also ensure that certain local labour law standards cover all workers working within the territory. At the same time, in the case of third-country nationals compliance with reporting duties under posting rules might create an additional bureaucratic layer to compliance with the immigration regime.

Finally, in yet other countries, the posting of workers from third countries is explicitly limited by the immigration regime itself. For example in Germany, posting of skilled workers with vocational training qualifications and those holding a university degree is not permitted because a German employment relationship is required for this type of residence/work permit. Also in Greece posting from third countries is restricted. It is allowed only for specialised technical personnel engaged in installation, trial operation and maintenance services. Posted workers are entitled to non-wage terms of employment as defined by Greek law and universally applicable collective agreements. They are also entitled to equal treatment in relation to *minimum gross wages* as defined by Greek labour law and collective agreements, which are universally applicable. Interestingly, Greek law prohibits more favourable treatment of companies posting third-country nationals from outside the EU/EEA compared with those posting workers from the EU/EEA.

### 4.3 Temporary agency workers from third countries

Two situations are covered by the national reports. The first is when a temporary work agency based in a third country sends a worker to work in another country (in other words, the temporary work agency is posting a worker). The second is the hiring of temporary agency workers by a local temporary work agency, which is usually less limited.

In some countries in our study the employment of third-country nationals for temporary agency work was explicitly limited. For example, in Germany, in principle – albeit with certain exceptions – approval of third-country national employment is denied by the Federal Employment Agency if the foreign national intends to take up employment as a temporary agency worker. The same approach can be found in Iceland. Also in Hungary third-country nationals cannot be employed through a temporary work agency, except for seasonal work, unless they are Serbian or Ukrainian nationals, or are third-country nationals holding a visa for an intended stay not exceeding 90 days and persons legally residing in the territory of Hungary who are nationals of certain countries. In Cyprus the restrictions are different. There, temporary work agencies are not allowed to offer their services to third-country nationals unless this service is explicitly mentioned in the agency's operating license.

In other countries, such as Belgium, there is no specific prohibition on hiring third-country nationals by temporary work agencies, which are considered to be



like any other employer, and the regulations on agency work apply fully (see also the report on Greece for a similar approach). Also in Croatia there are no issues preventing a temporary work agency from hiring a third-country national. The agency submits a request for a single work/residence permit to the Ministry of the Interior, along with all necessary documents, although they also need to submit the contract with the user-undertaking. Temporary work agencies can hire third-country nationals under the same conditions as other employers. The approach in Denmark is very similar, with the exception that there the visa is issued for a specific job with a specific employer, and temporary work agencies cannot deploy third-country nationals to several user entities, whether in Denmark or in other EU Member States. Also Latvia does not limit employment of third-country nationals by temporary work agencies; however, they have some additional obligations related to remuneration, health care and departure costs of such workers.

When it comes to agencies established outside the country posting workers, the situation is typically rather restrictive. Sending temporary agency workers to Austria is possible only in the case of highly qualified third-country nationals whose employment in Austria is imperative in terms of labour market or economic policy. They can be sent to Austria by a temporary work agency but their employment must not undermine the national wage and working conditions of Austrian employees. Grounds for refusal are infringement of the provisions of the AÜG, the labour and social security laws and unlawful employment agency services. In Ireland, applications for employment permits are not considered from employment agencies where it transpires that the foreign national is to be assigned to work for, and under the direction and supervision of, a person other than the employment agency.

In sum, the approach to and rules on temporary agency work by third-country nationals differ greatly from country to country and range from total bans to a rather lenient approach.

## 4.4 Bilateral agreements

Bilateral agreements play a special role when it comes to migration for labour purposes from third countries. Many countries have such agreements in order to promote such migration and these agreements often contain special rules for workers from specific countries, enabling their migration on simpler conditions than under the general statutory immigration regime (see Ruhs 2006).

For example, in Poland citizens of Belarus, Moldova, Ukraine and the Republic of Armenia may take up employment without the need to obtain a work permit for a period not exceeding six months within 12 consecutive months on the basis of a declaration of entrusting work to a foreigner registered by the employer. In Slovenia the employment of workers from Bosnia and Herzegovina and Serbia is subject also to special rules arising from bilateral agreements (report on Slovenia).

There are also sector-specific bilateral agreements. Such an agreement was concluded by Germany with Georgia in 2020 for the agricultural sector. At

other times the agreements are language-specific; for example, the agreements concluded by Portugal in the context of the Community of Portuguese Language Countries has already been mentioned. These agreements grant multiple entry visas for certain categories of citizens from these countries and create exemptions from fees and emoluments due for the issue and renewal of residence permits for citizens from Portuguese-speaking countries. The impact of these agreements on third-country national rights and their enforcement should be studied more closely in the future.

#### 4.5 Impact of the Covid-19 pandemic on third-country nationals

As a result of business closures, mainly in sectors such as tourism, food and hospitality, many third-country nationals lost their jobs (see, for example, the report on Cyprus). In Cyprus, despite government-led support programmes, many third-country nationals who were working undocumented or on temporary and insecure contracts were dismissed. In Greece the heightened vulnerabilities of third-country national workers were exposed and there were reports on their precarious position, the inadequacy of health measures in agricultural accommodation and generally the disproportionate level of hospitalisations among migrants compared with nationals.

Some Covid-19 measures were introduced to target specific border crossings. For example, in Denmark in 2021 the Ministry of Health issued an Executive Order on an obligation for employers to isolate and test foreign workers for Covid-19 after their entry into Denmark.

However, the Covid-19 pandemic also brought some regulatory changes for certain third-country national workers. This came about because these workers suddenly found themselves stranded. They could not return home easily and thus host states were forced to recognise their needs for certain protections or that they needed third-country national workers to keep their economies going.

Some changes were related to health care access. For example, even though the law says that upon arrival third-country national workers have to submit evidence of health insurance for the risks usually covered for Cypriot nationals, since 2020 seasonal workers in Cyprus have been able to access public health care through the general health system. In Latvia the requirement to self-isolate was lifted for foreigners arriving in the country to perform seasonal work in agriculture, forestry, fishery and food production, as long as they did not display signs of acute respiratory disease and presented a negative Covid-19 test upon arrival.

In other countries the permitted length of stay was increased for some third-country national workers. In Estonia in 2020 as a result of a better understanding of the dependence of some sectors of the Estonian economy on foreign labour, especially seasonal work, Parliament made it possible to increase the period of stay for foreigners, but also made it possible for employers not to apply the average wage criterion in their employment during the pandemic. In Greece, because of

third-country national workers' unwillingness/inability to come to Greece for seasonal work, in May 2020 the Greek and Albanian governments reached an agreement on Albanian workers already in Greece and for those intending to come. The Legislative Decree issued on 1 May 2020 allowed employers to invite workers from countries for which no visa was needed (mostly from Albania) for stays up to 90 days out of 180 days through an online platform, with rapid processing times (around two days). In Norway, skilled workers who had been temporarily laid off were allowed exceptionally to remain in the country as long as their initial permit allowed.

In Germany, one of the issues that has been relevant for third-country nationals is short-time work benefit for workers introduced with the aim of job retention, in combination with meeting the requirements for maintaining a residence permit. As reported in this volume, the income reduction as a result of short-time working (especially for low-wage workers or part-time workers in low-wage sectors) or unemployment may have had an impact on the livelihoods of these workers. Furthermore, the financial conditions for maintaining residence may not have been met thus causing them to leave the country. The German government did not take the needs of such third-country national workers into account when adopting their support system. A good example, in comparison, was Romania, where third-country nationals whose employment contracts were suspended because of the Covid-19 pandemic were granted the same subsidies as Romanian employees (75 per cent of their basic wage), and if third-country nationals' right of residence came to an end, but they could not leave the country for objective, unpredictable reasons, they were granted a respite of up to six months (extendable for further periods of up to six months) and had access to the labour market, under the same conditions as Romanian citizens.

Hence Covid-19 brought along some changes in third-country national rights in certain instances and certainly a changed understanding of the importance of short-term migrant labour for national labour markets and economies. In only few countries, however, did the circumstances experienced by third-country national workers lead to positive changes with regard to their rights.

## 4.6 Good or 'better' practices

Even though the majority of national reports paint a fairly bleak picture and allude to the possible development of 'unfreedom' and 'precarity' via the connection between immigration and employment protection regimes, there are some good practices that deserve to be emphasised that at least partly might have potential to address some of the needs of third-country national workers and reduce their vulnerability.

First, the detachment of immigration status from the employment relationship offers a potential way out of abusive and exploitative situations faced by third-country national workers. If they are allowed to change employers and jobs and are given adequate grace periods in case of dismissal, they are potentially less 'unfree' in relation to their particular employment relationship and less vulnerable

to abuses of their rights. Effective protection of migrants' rights thus requires at least some portability of temporary work permits, enabling migrants to change employers whenever necessary (Ruhs 2006). While, as research shows, temporary migrant workers rarely have to perform work under a direct threat of physical harm, they face significant limits to their ability to enter the labour market and dispose of their labour power. This leaves them in an extremely precarious situation, open to systematic abuse (Gordon 2019). Hence, we suggest that a good practice is a practice that leads to the detachment of a particular employment relationship from immigration status, such as the possibility of changing employer; awarding residence permits or visas on the basis of employment as such rather than for a concrete employer; giving a grace period to find another job following dismissal; and allowing workers to stay until their residence permit expires independently of whether or not they have lost the specific job which was the reason for entering the country. Several countries in our sample (for example, Finland, Portugal and Romania) have adopted some of these approaches for certain groups of workers and this should be encouraged in the future. For example, in Italy an unemployed third-country national can remain in Italy for at least one year (see also grace periods in Estonia and Slovakia).

Second, certain other practices are also worth mentioning. In Iceland, although third-country nationals on a temporary work permit generally do not have the right to unemployment benefits, they do have a right to so-called partial unemployment benefits. Originally, third-country nationals were excluded from the measure, which was implemented temporarily to protect general employment. Third-country nationals' special status, however, and the possible discriminatory effect of the original plan were considered and necessary amendments made to include third-country nationals in the partial benefits system.

In the Netherlands some collective agreements contain special provisions (for housing, travel or medical expenses) for workers not living permanently in the country. Third-country national workers can thus potentially benefit from such rules. In Sweden it has become common practice for Swedish social partners to sign collective agreements specifically regulating posted work. Accordingly, posted workers from third countries can also potentially benefit from such protection. Furthermore, according to the Swedish labour relations model, trade unions are tasked with monitoring the application of and compliance with collective agreements in workplaces, as long as the union has at least one member employed in the company. This rule also applies with regard to the employment of third-country national labour migrants.

In countries that recognise the special vulnerability of this group, special measures have been taken to better protect seasonal workers. For example, in Italy a third-country national who demonstrates that they have come to Italy at least once in the past five years in order to carry out seasonal work can obtain a multi-annual seasonal work permit. This permit is issued every year, for a duration of up to three years, and for entries in Italy subsequent to the first one the third-country national can obtain a visa upon presentation of an offer of a contract of employment originating from any employer, regardless of the seasonal work quotas. In Sweden the problems related to third-country national seasonal workers

have been widely recognised and publicised (see also more in depth Thörnqvist and Woolfson 2012 on this) and accordingly special rules have been introduced in the Aliens Act requiring employer to demonstrate that such workers have access to accommodation with appropriate standards. Furthermore, the rent cannot be disproportionate to a worker's salary and standard of living, nor can it be deducted directly from their salary. A similar approach has been taken in Latvia.

An interesting practice that partly shifts the responsibility from worker to employer when it comes to ensuring that work is being carried out in line with the law can be found in Slovakia. There, special conditions apply to employers interested in employing third-country nationals. During the previous five years, they must not have violated the rules on illegal employment, they must publish information about the vacancy in due time, have no outstanding obligations to the tax office, social and health insurance, may not have debts to the state or their employees, nor be in the process of bankruptcy or liquidation. Such a 'due diligence' approach aimed at employers has the potential to ensure that third-country national workers are employed by decent workplaces and decent employers who have serious disincentives to breach immigration, tax and also employment law in order to obtain the right to employ workers from third countries and keep their businesses afloat.

## **5. Conclusions and outlook**

To our knowledge this report is the first attempt to map the interaction between immigration, labour law and social security 'regimes' in this way and on this scale (25 countries). Hence it serves as a first step towards exploring in more detail the link between immigration and labour law across the EU and the EEA.

When it comes to comparing regulatory approaches to labour-oriented migration from third countries, most countries in this study seem to have one of four 'types' of immigration regime: (i) a short-term (or circular) immigration regime, primarily for 'seasonal' work; (ii) a medium-term employment-based immigration regime, often with some sort of labour market test or requirement that at least the median wage is paid to these workers; (iii) special regimes for specialists or certain categories of workers, most often rooted in EU-level requirements (such as intra-corporate transfer, Blue Card and the like); and (iv) other regimes for self-employed or posted workers based on service provision, usually based on bilateral treaties.

One could argue that, because they are already very much restricted in terms of their migration time, very short-term workers could be given more freedom in terms of their employment relationship to be able to change employers more easily and avoid exploitation. That does not seem to be the case, however. Very short-term labour migrants most often need an employment contract to enter, are not allowed to change employers and the loss of employment automatically results in their having to leave the country. Thus, they often seem most dependent and 'unfree' in their employment relationship in comparison with other categories of workers who can potentially (but not always and not in all countries) start with

job-seeker status, change employers and transition more easily to other statuses, including permanent residence over time. This begs the question of whether the additional restrictions they face within their employment relationship, in addition to the already restrictive (im)migration relationship with the country of destination, do not amplify their ‘unfreedom’ and overall ‘vulnerability’.

Third-country national workers are a structural part of labour markets in most EU and EEA countries. The immigration law approach, however, is more often than not oriented towards a temporary stay for such workers. While certain transition options of course exist, overall, the first years are characterised by a certain level of uncertainty for both worker and employer and by also a significant level of dependence as regards immigration status on the existence of the employment relationship. This latter aspect creates a certain vulnerability and unfreedom for third-country national employment relationships. It may be less of a problem in high-demand and highly-paid positions, and more of one in employment relationships with under-resourced and under-paid workers. But it potentially exists for all kinds of short-term migrant workers whose time trajectories do not match the migration policy’s intended timeframe (or shift over time as workers gradually integrate in the country of arrival). This (legal) vulnerability and unfreedom which has been created by law could be one factor pushing third-country migrants to settle for worse jobs with fewer prospects, thereby perpetuating longer-term inequalities (ETUI Benchmarking 2021: 70).

One special problem arises if the time trajectory envisaged in the migration permit does not coincide with the time trajectories of third-country national workers who either want to stay longer or to transition to documented legal status over time. In Italy, for example, third-country national protests and increasing labour demand have pushed the legislator to approve regularisation. The results of the reform and regularisation have been disappointing, however, because it was highly selective in scope and also involved strict conditions, as a result of which only a small number of third-country national workers have actually benefited from regularisation. According to the report on Italy, because of its cumbersomeness, the standard procedure for issuing work permits is rarely complied with and, as a result, third-country nationals tend to enter the country for a short stay or obtain a permit for reasons other than work, and only then look for a job. Once their visa or residence permit has expired, many foreigners simply remain in the country, becoming irregular migrants. If they complain about any breach of their employment rights, they risk being charged with illegal immigration, and thus the very system pushes them ever deeper into precarity and vulnerability. As our Italian national expert puts it: ‘Once more, Italian immigration law promotes rather than prevents irregularity’.

Third-country national employment in certain countries can also be extremely polarised. A good example of this is given in the Danish report, which reveals how employers point to a historic labour shortage and the need to invite more foreign labour, while trade unions emphasise available Danish labour, particularly older workers, and resist more labour-oriented immigration. The politicians are trying to strike a balance between labour shortages, on one side, and restricting immigration, on the other. Third-country national workers are caught in the



middle of this debate and might suffer as a result, both in terms of their rights and also legal certainty when it comes to how their immigration regime affects their labour relationships, and vice versa. Hence it seems extremely important to ensure that they have adequate means for enforcing their rights, addressing grievances and expressing their voice collectively.

In Spain the main trade union (CC.OO) has been actively advocating on behalf of third-country national migrant workers in temporary jobs and denouncing exploitative employment situations. Such trade union advocacy can potentially amplify the voices of third-country national workers and should be actively supported at both national and European level. Research shows that it is incredibly difficult to organise short-term migrant workers, for example, in the construction sector (Berntsen and Lillie 2016). It should still be attempted, however, perhaps on a more pan-European scale or at the national level, with European-level support mechanisms aiding in this process (see also Greer, Ciupijus and Lillie 2013 for difficulties trade unions face in organising migrant workers).

Collective bargaining coverage and coverage by collective agreements can be an issue for third-country national workers, even in countries with famously well developed industrial relations systems (see also Biering et al. 2017 on this). But third-country national workers can face terrible working conditions even in countries like that (Thörnqvist and Woolfson 2012). For example, on the Swedish labour market decent worker protection is ensured by comprehensive coverage of collective agreements and via trade union membership. But third-country nationals are often employed in sectors with low coverage rates or in companies not affiliated to employers' organisations and thus falling outside the scope of collective agreements. This potentially exposes these workers to substandard working conditions. New avenues of cooperation not only among trade unions but also between trade unions and public institutions could be considered. One such approach, not explored in this report but mentioned in research concerning Mexican workers in the United States, is cooperation with consulates and consulate-level support systems for migrant workers in the host country. Such entities can serve as a unique resource and create a certain legitimacy for third-country national workers' attempts to express their voice. The effectiveness of such consular collaborations, however, depends on synergies with local NGOs and trade unions to increase the efficacy and impact of their efforts in the communities they serve (Bada and Shannon Gleeson 2015).

But even when EU law is implemented adequately, it does not always play a significant role in relation to immigration from third countries. Some items of EU law, such as the Single Permit Directive, make it possible to exempt certain workers (for example, those staying less than six months in the country) from their scope and as many as 18 Member States were reported by the Commission as exercising this option (European Commission 2019b: 4). We also found some indications in our study of a certain irrelevance with regard to other EU law instruments. A particular example in this regard is the Seasonal Work Directive. It is not used as a basis for seasonal worker arrivals in Germany, Malta and the Netherlands. In the latter, for example, no third-country national seasonal workers were admitted

between 2017 and 2019 and ‘the entry and stay of seasonal workers is not part of the overall migration policy’.

At the same time, similarities in national approaches to immigration from third countries go much further than current EU law. Thus there is certainly room for more pan-European approaches to protecting vulnerable third-country national workers and perhaps detaching their labour market and immigration statuses to some extent in order to enable them to escape from the labour ‘unfreedom’ trap created by these rules. In the broader context of the single market, increased protection of third-country national workers would also benefit the single market as such because one of the objectives of EU employment law is to create a ‘level playing field’ of social rights in order to avoid disruption of competition between the undertakings of the various Member States (Ashiagbor 2011; Verschueren 2015).

It is clear, however, that the vulnerability of third-country nationals should be addressed. One way forward, suggested here, would be at least partly detaching immigration from labour law status, at least so as not to tie immigrants to a specific employer and to allow them transitions with decent grace periods and flexibility. Other solutions suggested in the literature, such as addressing employment protection and integration gaps (Grimshaw et al, 2016), improving the application of human rights (Mantouvalou 2020) and tailoring enforcement mechanisms to the needs of migrant workers (Rasnača 2022) should also be implemented.



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All links were checked on 20.04.2023.



# Annex

## Template for country reports

### [Name of the country]

Summary Introduction to the country report (100 words)

Box 1 Summary of the immigration regime short description on how it interacts with labour law (What labour rights correspond to what entry regime in general?) (max 200 words)

[Text]

Table 1 Overview of immigration regimes

Immigration regime	Time of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal means loss of residence?

Box 2 Posting of TCNs: a short table/description (is it possible in the country enabled by e.g. bilateral agreements? If yes, applicable legislation, minimum wage (the same as for local workers), do such workers need visas? Is re-posting to other member states possible?) (max 150 words)

[Text]

Box 3 Hiring TAWs from third countries (is it possible and how does it function) (max 150 words)

[Text]

## Description of the national system (900 words max)

1. Overview of the TCNs on the [country name] labour market
2. Main entry regimes for short-term or limited time work
3. Overview of the working conditions and wage setting for TCNs
4. Special regimes (*if they exist*) for:
  - a. TCN Seasonal workers
  - b. TCN Posted workers
  - c. TCN Temporary agency workers
5. TCNs during Covid-19 pandemic
6. Overview of enforcement and monitoring





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