European Commission

Migrant access to social security and healthcare: policies and practice

European Migration Network Study 2014

Disclaimer: This document is currently being updated concerning data relevant to the Austrian situation and context. The current data pertaining to Austria in this document should therefore be disregarded. The Austrian data update is expected to be finalised by September 2014

Home Affairs

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

EMN European Migration Network

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Disclaimer

This Synthesis Report has been produced by the European Migration Network (EMN), which comprises the European Commission, its Service Provider (ICF International) and EMN National Contact Points (EMN NCPs). The report does not necessarily reflect the opinions and views of the European Commission, EMN Service Provider (ICF International) or the EMN NCPs, nor are they bound by its conclusions. Similarly, the European Commission, ICF International and the EMN NCPs are in no way responsible for any use made of the information provided.

The Main Study was part of the 2013 Work Programme for the EMN.

Explanatory note

This version of the Synthesis Report was prepared on the basis of National Contributions from 25 EMN NCPs (**Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden**, **United Kingdom**) according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

National contributions were largely based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports and information from national authorities. Statistics were sourced from Eurostat, national authorities and other (national) databases. The listing of Member States in the Synthesis Report results from the availability of information provided by the EMN NCPs in the National Contributions.

It is important to note that the information contained in this Report refers to the situation in the above-mentioned (Member) States up to and including 2013 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Contributions and it is strongly recommended that these are consulted as well.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this Study, but have done so for other EMN activities and reports.

Executive summary

The purpose of this EMN 2013 study is to map the policies and administrative practices that shape third-country nationals' access to social security, including healthcare. The aims and objectives of the study are set out in **Section 1**. **Section 2** reviews the range of social security benefits that exist in Member States, indicating the importance of contributory and non-contributory systems of financing the benefits and the categories of third-country nationals that have access to these benefits. **Section 3** provides a more detailed analysis of the eligibility rules attached to the social security benefits that may directly or indirectly affect access by third-country nationals. **Section 4** examines a number of administrative practices, including the use of discretionary conditions to determine eligibility, which may also affect access to social security benefits by third-country nationals. **Section 5** explores the bilateral agreements reached by Member States with third-countries for the specific purpose of co-ordinating social security. **Section 6** uses three case-studies to highlight differences and similarities between the social security systems of Member States in terms of their coverage of third-country nationals. A short summary and conclusions are set out in **Section 7**.

The study contains four annexes. **Annex 1** further explains the EU competences in the area of social security for third-country nationals. **Annex 2** provides an overview of the national institutional framework relating to the administration of social security. **Annex 3** includes a glossary of terms used in the study. **Annex 4** contains a table indicating the discretionary powers that Member States apply when deciding on the eligibility of social security claims, by category of social security benefit.

What did the study aim to do?

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

What did the study conclude?

The **equal treatment provisions** contained in the EU's Migration Directives have influenced national legislation and practice, in particular as regards the social security rights of third-country nationals holding long-term residence permit and EU Blue Card holders. (The timing of the research conducted for this study did not permit analysis of the impact of the Directives in most Member States on other groups of third-country nationals, including Single Permit holders[1]). However, in the absence of Union-level harmonisation of social security policies, **significant variations** exist in relation to the range of benefits available in Member States, the way these benefits are financed (insurance

[1] Poland is an exception as the report reflects the latest changes introduced in Poland following the transposition of the Single Permit Directive (2011/98/EU).

contributions, general taxation or both) and the conditions under which the benefits are granted.

There appears to be a connection between the systems used to finance social security benefits and their accessibility by third-country nationals. Third-country nationals that are **holders of long-term residence permits** generally have access to all of the benefits reviewed in this study. However, equal treatment for third-country nationals that are **holders of fixed-term residence permits** tends to be granted more readily in relation to benefits that are financed through contributions by employers and employees (e.g. sickness cash benefits, invalidity benefits, old-age pensions, survivors' benefits, and benefits in respect of accidents at work and occupational diseases) than in relation to benefits that are financed through general taxation (e.g. family benefits, long-term care benefits and guaranteed minimum resources i.e. social assistance).

Member States use different mechanisms to regulate access by third-country nationals to social security benefits. These include **migrant-specific eligibility rules**, where third-country nationals are required to hold a particular residence permit, authorisation of stay or visa; as well as eligibility rules that apply to third-country nationals and Member State nationals alike, such as minimum residence periods; restrictions on exporting certain social security benefits; minimum employment (or contribution) periods; and the use of administrative discretion in order to determine eligibility. The eligibility rules that apply equally to third-country nationals and Member State nationals may represent a **greater hurdle for third-country nationals** whose presence in the country tends to be more recent and temporary.

In the majority of Member States, claiming social security benefits – in particular **social assistance** – can have some **negative impact on the legal status** of third-country nationals in procedures for residence permit renewal, applications for long-term residence permits, naturalisation and family reunification. This negative impact is foreseen in the Directive on the admission of researchers (2005/71/EC) and the Directive on EU Blue Card holders (2009/50/EC) which require the researchers and EU Blue Card holders to have sufficient resources to meet his/her expenses without having recourse to the Member State's social assistance system.

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

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

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

The EU Migration Directives foresee a number of **derogations and exceptions** from the equal

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

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

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

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

These different systems of financing the social security benefits are important in the context of this study as it appears that equal treatment for third-country nationals who hold fixed-term residence permits tends to be granted more readily in relation to contributory benefits than in relation to benefits that are financed through general taxation.

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

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

Evidence of an applicant's physical presence in the country is a common eligibility condition for most social security benefits. However, **minimum residence periods** are not normally required before

third-country nationals (and Member State nationals) can take up the benefits. The exceptions are in relation to old-age benefits where such a minimum residence period is required by five Member States; unemployment benefits where it is required by one Member State; and guaranteed minimum resources where it is required by most Member States.

National legislation in most Member States includes **restrictions on the export of benefits to third countries** for third-country nationals and Member State nationals alike. These restrictions are in some cases lifted in bi-lateral agreements reached with third-countries for certain types of benefits (see section 5 of the report). Restrictions in national legislation apply to healthcare (in kind) benefits in all Member States but one; to maternity and paternity benefits, except in seven Member States; to family benefits, except in one Member State; to unemployment benefits except in three Member States; and to guaranteed minimum resources in all Member States. In contrast, the national legislation of most Member States (17 out of 25) allow old-age pensions to be exported to third countries.

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

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

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

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

Certain Member States apply administrative discretion in other ways, including when deciding whether to waive certain eligibility conditions, in the course of applying a means-test, or when assessing a third-country nationals' motives for entering the Member State. Whilst most discretionary assessments apply to nationals and third-country nationals alike, they are more likely to affect the outcomes of social security claims made by third-country nationals whose

presence in the country tends to be more recent and temporary.

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

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

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

All Member States have concluded bilateral agreements on social security with third countries. These bilateral agreements have generally been negotiated independently of each other. As a result, there is significant variation in the provisions of the agreements, both in relation to their **material scope** and **geographical coverage**. The network of bilateral agreements is 'fragmented' in that a large number of agreements have been signed with a small number of countries (especially Canada, Australia, the United States, Serbia and Bosnia Herzegovina) and no bilateral agreements exist with a significant number of third countries.

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

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

The European Commission has recently issued a Communication on the External Dimension of EU Social Security Coordination, which underlined the need for **better cooperation** on national bilateral agreements

and for the development of a common EU approach. The Communication also considers the **possibility of establishing EU-wide social security agreements**, which would allow a more flexible approach than is possible under association agreements and could also be concluded with third countries with which no association or cooperation agreement exists.

1 INTRODUCTION

1.1 RATIONALE

Social security systems, including access to healthcare, constitute one of the most powerful tools to reduce poverty and inequality and promote social inclusion. By providing security for individuals against specific social risks, including unemployment, sickness and invalidity, social security systems aim to enhance productivity, increasing employability and support sustainable economic growth. While EU Member States share a common commitment to ensuring the well-being of their populations through effective social security systems, their rules on who is entitled to social security and healthcare, which benefits are granted and under what conditions vary significantly.

Two of the most challenging trends to which policymakers in Europe must respond are population ageing and increasing volatility in labour markets. Both of these major challenges may require adjustment of social security and healthcare systems, to meet increased demands for growing retired populations and to meet the needs for income maintenance of displaced workers. Migration from third countries is regarded in many Member States as one part of the solution to meet workforce needs to support Europe's changing population, but such migrants may be particularly exposed to cyclical economic downturns and may face complex national rules on the conditions for entitlement to benefits.

National policy-makers in charge of developing social security and healthcare regulations face conflicting pressures. On the one hand, as labour migration increases and takes more complex forms (including temporary, circular and cross-border migration), there is growing recognition that social security and healthcare systems must be adapted in order to address the needs of migrant third-country workers. These adaptations can in turn play a role in EU[2] and Member State strategies to attract migrant third-country workers and maximise the contribution they can make to European economies. On the other hand, budgetary constraints and a popular perception of immigrants as excessive users of benefits[3] make it financially and politically difficult to extend social security and healthcare entitlements to new groups.

1.2 STUDY AIMS

The overall objective of the study is to map the policies and administrative practices that shape third-country nationals' access to social security, including healthcare.[4] There is substantial variation in how third-country nationals experience the social security system in EU Member States, as complex administrative rules and practices related to nationality, periods of employment, contributions, residency or transferability shape the pattern of take up of social security, including healthcare among migrant groups.

By investigating the policies and administrative practices that shape migrant access to social security and healthcare, this study represents a necessary first step towards understanding how social security, including healthcare policies work for third-country workers and their families, within a managed migration system. EU and Member State policymakers may use the resulting "snap-shot" of access across the EU to

[2] EU competences in the field of immigration and welfare policies are limited in those Member States that have not adopted the EU's legal migration Directives (Denmark, Ireland and United Kingdom, with the exception of the Researchers Directive as far as Ireland is concerned). For all Member States the decisions on the number of third-country nationals accepted for the purpose of seeking an employment and the design and implementation of the social welfare systems rests with the respective Member State.

[3] Driven to a large extent by the populist discourses of certain right-wing political parties.

[4] As explained later on in this introductory section, and in the glossary, for the purposes of this study, social security is understood as encompassing the eleven 'branches' of social protection listed in the national guides produced for each Member State for the European Commission's Mutual Information System on Social Protection (MISSOC) (see section 1.4.2 below).

find more effective ways of meeting the basic needs of migrant workers while ensuring that immigrants do not become a burden for the Member State.

The specific aims of the study are to:

- Outline the formal EU and national rules that shape entitlements to social security and healthcare for third-country nationals in EU Member States; the study builds upon information available (primarily from DG EMPL) on the functioning of social security systems for MS and other EEA nationals;
- Examine how the entitlements of third country nationals compare to the entitlements of nationals of the Member State in which the third-country nationals reside;
- Investigate the administrative practices that determine how the formal rules on eligibility for third-country nationals are applied in concrete cases, especially when implementing the 'habitual residence test' and other eligibility rules that contain a discretionary element;
- Identify the circulars, guidelines and other forms of support (e.g. training) provided to government officials involved in processing social security and healthcare claims in order to ensure that the discretionary criteria (e.g. in relation to the 'habitual residence test') are implemented consistently in individual cases within a Member State;
- Review the reciprocal agreements that exist between EU Member States and third countries that affect the entitlement to social security and healthcare of certain groups of immigrants.

The study does not assess the take-up by migrants of the various social security payments available, nor compare take-up by nationality grouping, but rather investigates the national policies and institutional structures which may influence the patterns of such take-up. Having said this, actual and perceived differences between the take-up of benefits by migrant and non-migrant groups form an important political backdrop to the study.

1.3 POLICY AND POLITICAL CONTEXT

In contrast to much public commentary, where immigrants are widely characterised as 'welfare burdens', the existing literature on the take-up of benefits by migrant and non-migrant groups reflects a more complex reality. One important finding is that immigrants (mostly defined as non-EU immigrants, though in certain cases studies also cover EU citizens from other Member States) have higher rates of welfare receipts compared to nationals in some EU member states, but not in others.[5]

Another finding is that the intensity of welfare consumption by third-country nationals, compared to nationals varies depending on which types of welfare benefits one looks at. One study found that immigrants are more likely to be in receipt of unemployment and family-related payments than to receive old-age, sickness and disability payments.[6] Another study found that immigrants are more likely to be in receipt of non-contributory benefits (such as social assistance and housing benefits) but less likely to be in receipt of contributory benefits (such as old-age pensions, sickness cash benefits and unemployment benefits), especially in countries with the more generous welfare

[5] Anastasa, L. and T. Paligrova (2005) "Why immigrants manage to grab more social benefits? Empirical cross-country analysis", CERGE-EI Working Paper 263, Centre for Economic Research and Graduate Education – Economics Institute; Barrett, A. and McCarthy, Y. (2008) Immigrants and Welfare Programmes: Exploring the interactions between immigrant characteristics, immigrant welfare dependence and welfare policy", IZA DP No. 3494, Forschungsinstitut zur Zukunft der Arbeit, Institut for the Study of Labour.

[6] Zimmermann, K.F., M. Kahanec, C. Giulietti, M. Guzi, A. Barrett and B. Maitre (2012): Study on Active Inclusion of Migrants, IZA Research Report No. 43 (Report for the European Commission).

states.[7] A further study, which took into account all types of benefits, found that immigrants, on balance, tend to be less intensive users of welfare relative to natives after controlling for their socio-economic characteristics.[8]

In a 2013 study, the OECD found that receipt of social benefits generally does not vary a lot between immigrants (in this case including both third-country nationals and EU migrants) and the native-born population. Social assistance represents an exception to this rule, with immigrant households found to be twice or three times more likely to be in receipt of social assistance in certain Member States (the Nordic countries and Belgium, respectively). The study attributes this to the fact that these Member States have significant populations of humanitarian migrants, and the incidence of unemployment among their migrant populations is twice as high as the native-born. Employment is the single most important determinant of migrants' net fiscal contribution to the host country's economy.[9]

National statistics gathered in the context of this study add further complexity to this picture. Data on take-up have been provided by ten Member States (**Belgium**, **Czech Republic**, **Estonia**, **France**, **Hungary**, **Ireland**, **Italy**, **Poland,** **Portugal**, **United Kingdom**).[10]

In **Belgium**, Statistics on Income and Living Conditions[11] presented in the national report show that third-country nationals are overrepresented in the take-up of unemployment benefits (for third-country nationals by origin) but sharply underrepresented in receiving income from pension benefits.

- In the **Czech Republic** data shows take-up of social security benefits by third-country nationals to be lower than for Czech nationals, although recent years show that the gap is narrowing.
- In **Estonia**, take-up of old-age benefits and unemployment benefits among third-country nationals is higher, but take-up of child allowance is lower.
- In **France**, third-country nationals benefit more from housing and unemployment benefits, but less from health and retirement benefits.
- In **Ireland**, there is little evidence of a large or systematic over-representation of immigrants among welfare recipients. Third-country nationals are under-represented among recipients of unemployment benefit, disability benefit and pensions, while they are over represented among child benefit recipients (likely reflecting the age structure of the population).

Whilst the 'intensity' with which migrants and non-migrants use welfare continues to be the subject of debate, and variations exist from country to country, one clear trend that is observable in all Member States is that third-country nationals appear to be at greater risk of poverty than Member State nationals (and EU migrants).[12]

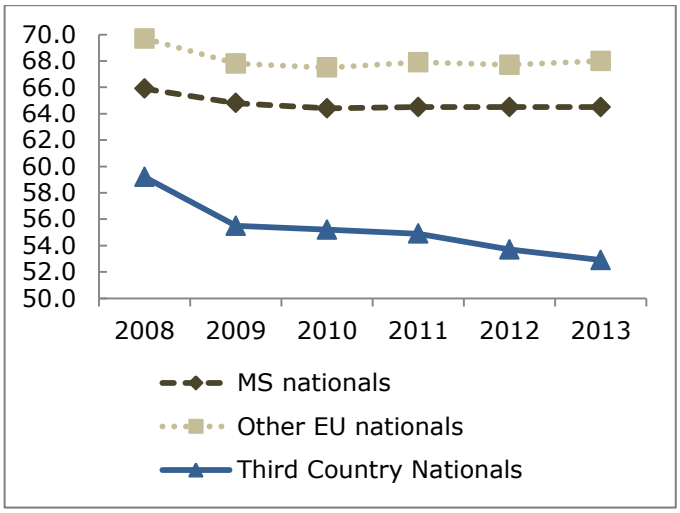
Eurostat data from 2012 (latest available year) show that for all Member States the share of third-country nationals aged 18 and over at risk of poverty or social exclusion is higher than for Member State nationals

[7] Boeri, T. Immigration to the land of redistribution", Economica (2009), vol. 77, pp.651-687.
[8] Barrett, A. and B. Maitre, Immigrant Welfare Receipt across Europe" (2011), IZA Discussion Paper no. 5515.
[9] Liebig, T. and J. Mo (2013), "The fiscal impact of immigration in OECD countries", in OECD (Ed.) *International Migration Outlook*, chapter 3 (2013 Edition).
[10] However, for five of these Member States (HU, IT, PL, PT and UK) data is not disaggregated by MS national/EU national/TCN so have not been cited here.
[11] These statistics were collected as part of the EU's Statistics on Income and Living Conditions (EU SILC) survey aimed at collecting data on income, poverty, social exclusion and living conditions across EU Member States.
[12] Barrett and Maitre (2011) and Barrett forthcoming.

and (except for Malta) for EU nationals.[13] This is also due to third-country nationals having more limited access to the labour market vis-à-vis EU nationals.

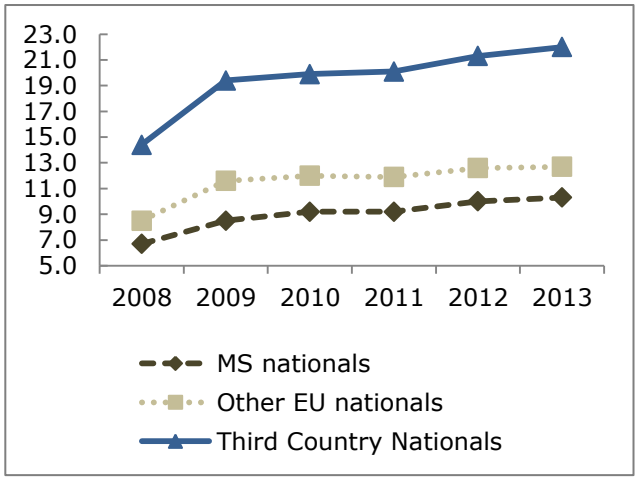
This picture is further illustrated in the most recent Eurostat data, which shows that employment rates for third-country nationals are generally lower than for Member State nationals or EU nationals, while unemployment and inactivity rates are higher.

Figure 1 EU-average trends in employment rates for Member State nationals, other EU nationals and Third Country Nationals, 2008-2013 (%)[14]



Explanatory note: Data gaps on TCN and/or other EU-nationals, for some or all years for Bulgaria, Croatia, Lithuania, Romania, Slovenia and Slovak Republic; low reliability of data for Bulgaria, Estonia, Croatia, Latvia, Lithuania, Poland, Slovenia

Figure 2 EU-wide trends in unemployment rates for Member State nationals, other EU nationals and Third Country Nationals, 2008-2013 (%) [15]



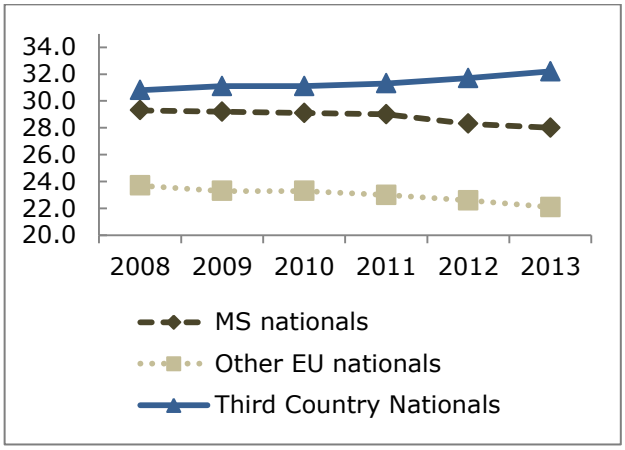
Explanatory note: Data gaps on TCN and/or other EU-nationals, as well as for females, for some or all years for Bulgaria, Croatia, Estonia, Latvia, Lithuania, Poland, Romania, Slovenia and Slovak Republic. Low reliability of data for Bulgaria, Estonia, Croatia, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovak Republic, Slovenia

[13] Source : EU-SILC available online [ilc_peps05]. For the comparison between Member States nationals and Third Country Nationals, no data are available for Ireland, Hungary, Romania and the Slovak Republic. For the comparison between EU nationals and Third Country Nationals, no data available for Bulgaria, Croatia, Ireland, Lithuania, Hungary, Poland, Romania, Slovak Republic

[14] Source: Eurostat, Labour Force Survey (data has recently been made available for 2013 and will be added to the graph in version 2 of the Synthesis Report). http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_unemployment_lfs/data/database

[15] Source: Eurostat, Labour Force Survey (data has recently been made available for 2013 and will be added to the graph in version 2 of the Synthesis Report). http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_unemployment_lfs/data/database

Figure 3 EU-average trends in inactivity rates for Member State nationals, other EU countries and Third Country Nationals, as a share of the population of the respective group, 2008-2013 (%) [16]



Explanatory note: Data gaps on TCN and/or other EU-nationals, as well as for females, for some or all years for Bulgaria, Croatia, Estonia, Latvia, Lithuania, Poland, Romania, Slovenia and Slovak Republic. Low reliability of data for Bulgaria, Estonia, Croatia, Latvia, Lithuania, Poland, Slovenia, Romania and Slovak Republic.

Limited data are available from the EU-SILC database on the take-up of social security benefits. Given the general underrepresentation of migrants in these surveys, the unavailability of data on specific benefits and the fact that much of the data available is flagged as unreliable and confidential, EU-SILC data are not used in this Synthesis Report for comparing Member States.

[16] Source: Eurostat, Labour Force Survey (data has recently been made available for 2013 and will be added to the graph in version 2 of the Synthesis Report). http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_unemployment_lfs/data/database

1.4 SCOPE

1.4.1 CATEGORIES OF THIRD-COUNTRY NATIONALS

The study focuses on the rules, institutions and administrative practices that affect access to social security and healthcare of third-country nationals only. The issue of access is particularly relevant to third-country nationals who may be exposed to the double risk of losing entitlements to social security and healthcare benefits in their country of origin through absence, while facing restrictions to these benefits in their destination country.

The issue of access can also interact in important ways with the mobility patterns of third-country nationals. In some Member States, for example, reliance on social security may have an adverse impact on third-country nationals' access to other rights, including the right to renew a residence permit, apply for naturalisation or apply for family reunification. These provisions also exist in EU legislation, with the Directive on the admission of highly qualified workers, for example, allowing Member States to withdraw or refuse to renew an EU Blue Card "wherever the EU Blue Card holder does not have sufficient resources to maintain himself and, where applicable, the members of his family, without having recourse to the social assistance system of the Member State concerned."[17]

The study concentrates on the following categories of third-country nationals in particular:

- Third-country nationals holding long-term residence permits either under EU or under national legislation;[18]

[17] Directive on the admission of highly-qualified workers (Directive 2009/50/EC), Article 9(3)(b). See also definition of "social assistance" in Annex 3 Glossary.

[18] In most Member States that have adopted Council Directive 2003/109/EC, third-country nationals can hold a long-term residence permit as provided for under Articles 4 to 7 of this

- Salaried third-country nationals holding time-bound (or fixed-term) residence permits, including EU Blue-card holders, researchers[19], seasonal workers and frontier workers;
- Self-employed third-country nationals;
- Unemployed third-country nationals (or third-country nationals who are job-seekers);
- Family members of third-country nationals.

Not all benefits apply equally to all of these categories of third-country nationals; the study attempts to clarify the differences.

The following categories of third-country nationals have not been covered in this study, either because their social security rights have already been analysed in the context of other recent studies, or because they raise special challenges to Member States that deserve to be treated separately:

- Cross-border workers and those who have been posted[20] and transferred from one Member State to another;
- Third-country nationals who are family members of EU nationals;
- Students;
- Asylum-seekers and refugees;
- Victims of trafficking of human beings;
- Tourists and other types of visitors from third-country nationals; and,
- Irregular migrants.

In addition, the specific aspects of mobility between EU Member states of third-country nationals as well as their family members and survivors are not analysed *per se*, although such persons' access to social security is considered in the respective Member States[21].

While the social security and healthcare entitlements of EEA nationals and Member State nationals do not constitute the focus of the study, these rules form an important backdrop to the study since they will allow us to understand the extent to which third-country nationals are treated differently. This is also particularly important since EU law requires that third country nationals in principle are given the right to equal treatment compared to nationals in the country of destination.

1.4.2 BRANCHES OF SOCIAL SECURITY

The significant variations in the way social security and healthcare systems are structured in each (Member) State make comparative analyses in this area challenging. The study addresses this challenge by reviewing the eligibility of third-country nationals for the benefits and programmes listed in the guide produced on their (Member) State for the European Commission's Mutual Information System on Social Protection (MISSOC).[22]

While the MISSOC national guides are drafted in order to provide information to mobile EU nationals insured under national law, and not third-country nationals, their categorisation of social security benefits – under eleven groups or 'branches' dedicated to specific 'risks' – provides a useful basis for analysing the variety of

Council Directive, or they can hold a long-term residence permit as defined by national legislation on more favourable terms than those laid down by the Directive.

[19] It is recognised that not all researchers receive salaries (in some cases they receive grants or scholarships). However, the equal treatment provisions of Directive 2005/71/EC on the admission of researchers from third countries apply in any case.

[20] While not having been covered in the study as such, posted workers are referred to in section 5.2 in the wider context of key provisions in bilateral social security agreements.

[21] For more information on intra-EU mobility of third country nationals, see EMN study on this topic published July 2013.

[22] The MISSOC national guides are drafted in order to explain the rights that EU citizens who move from one (Member) State to another enjoy as a result of Regulation (EC) no. 883/04 on the coordination of social security systems. They are accessible here: http://ec.europa.eu/social/main.jsp?catId=858&langId=en

social security benefits that exist in each Member State.[23]

The eleven 'branches' are:

(i) Healthcare

(ii) Sickness cash benefits

(iii) Maternity and paternity benefits

(iv) Invalidity benefits

(v) Old-age pensions and benefits

(vi) Survivors' benefits

(vii) Benefits in respect of accidents at work and occupational diseases

(viii) Family benefits

(ix) Unemployment benefits

(x) Guaranteed minimum resources

(xi) Long-term care benefits.

1.5 STRUCTURE OF THE REPORT

In **section 2**, the study reviews the range of social security benefits that exist in Member States, indicating the importance of contributory and non-contributory systems of financing the benefits and the categories of third-country nationals that have access to the benefits. In **sections 3 and 4**, the study presents more detailed analysis of the eligibility rules and the administrative practices that affect access by third-country nationals to a sub-set of the benefits covered in the MISSOC national guides, focusing on those benefits that are deemed particularly relevant to third-country nationals. In **section 5**, the report explores the bilateral agreements reached by each Member State with third-countries for the specific purpose of co-ordinating social security. In **section 6** three case-studies are used to highlight the differences and similarities between the social security systems of Member States in terms of their coverage of third-country nationals. Finally, in **section 7**, the study's key findings are summarised.

[23] With the exception of "guaranteed minimum resources", these 'branches of social security' are covered in Article 3(1) of Regulation (EC) no. 883/04 on the coordination of social security systems. For the purposes of Regulation (EC) no. 883/04, benefits which fall under the category of "guaranteed minimum resources" are considered social assistance and are not subject to EU coordination rules, since according to article 5.5 (a) the Regulation does not apply to social and medical assistance.

2 OVERVIEW OF NATIONAL SOCIAL SECURITY SYSTEMS AND HOW THEY APPLY TO MIGRANTS FROM THIRD COUNTRIES

Key findings

In the absence of Union-level harmonisation of social security policies, significant variations exist in relation to the range of benefits available in Member States, the way these benefits are financed and the conditions under which the benefits are granted across the eleven 'branches' of social security listed in the MISSOC guides. Notwithstanding these variations, the following general observations can be made regarding the financing of social security benefits, including healthcare:

- A majority of Member States rely on insurance-based systems to finance sickness cash benefits, invalidity benefits, old-age pensions, survivors' benefits, benefits in respect of accidents at work and occupational diseases.
- General taxation is the predominant mechanism across most Member States for financing family benefits, guaranteed minimum resources (i.e. social assistance) and long-term care benefits.
- Most Member States use a combination of general taxation and insurance-based contributions to finance healthcare (in kind) benefits, maternity and paternity benefits and unemployment benefits.

As regards access to social security benefits by different categories of third-country nationals:

- **Long-term residents** generally have access to all the benefits available across the eleven MISSOC 'branches' (as long as they satisfy the general eligibility conditions attached to the benefits).
- **Salaried workers with fixed-term residence permits** have more restricted access:
  - In most Member States they have access to healthcare benefits and sickness cash benefits as long as they fulfil the general eligibility conditions;
  - They have access to insurance-based maternity and paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, and benefits in respect of accidents at work in all Member States (but more restricted access to tax-based benefits available in certain countries under these branches);
  - In most Member States they do not have access to (predominantly tax-based) family benefits, guaranteed minimum resources and long-term care benefits, although there are a number of exceptions (such as **Luxembourg** and, as of 1 May 2014, **Poland**).
- **Self-employed third-country nationals'** access to social security benefits varies across Member States;
- **Family members of third-country nationals** mostly only enjoy derived rights to social security in relation to healthcare.

This section reviews the range of social security benefits and programmes that exist in Member States; the importance of contributory and non-contributory systems of financing the benefits and programmes; and the categories of third-country nationals that have access to the benefits and programmes. The section also considers the extent to which social security and immigration policies in Member States are linked, as well as any recent or planned changes to social security policies that may have an impact on access by third-country nationals. The section begins with a brief summary of the European Union policy framework within which Member States develop their social security policies. An overview of national social security systems in terms of the institutions involved in the delivery of social security benefits and programmes can be found in Annex 2 of this Synthesis Report.

2.1 EU COMPETENCES IN THE FIELD OF SOCIAL SECURITY

EU Competences in the field of social security are limited to the coordination of social security systems between Member States. These social security coordination regulations, most notably Regulation 883/2004, as amended by Regulation 465/2012 and Regulation 987/2009, do not replace or modify the national social security systems in the Member States, but rather enshrine a set of principles aimed at providing social security rights to EU citizens who

move from one Member State to another, and to members of their families.

The principles enshrined in these regulations include the principle that EU citizens are only covered by the social security legislation of one country at a time, so that they only pay contributions[24] in one country; the principle of equal treatment, where EU citizens enjoy the same rights and obligations as nationals of the country where they are covered; the aggregation principle, which ensures that previous periods of insurance, work or residence in other countries are taken into account; and the principle of exportability, where cash benefits accrued in one country can usually be exported to another.

Since January 2011, Regulation 1231/2010 has extended the coordination of social security systems (provided for in Regulations 883/2004 and 987/2009) to third country nationals legally resident in the EU and in a cross-border situation. The EU's social security regulations also define the set of branches of social security that are to be coordinated between Member States.

Since 2003, the Commission has also introduced provisions on social security in the main legal migration instruments adopted at Union level,[25] namely:

- The Directive on long-term residents (2003/109/EC);
- The Directive on the admission of researchers from third countries (2005/71/EC);
- The Directive on the admission of highly-qualified workers (EU Blue Card) (2009/50/EC);
- The Single Permit Directive (2011/98/EU);
- The Seasonal workers' Directive (2014/36/EU); and,
- The Directive on intra-corporate transferees (2014/66/EU).

Third-country nationals who hold residence permits under the terms granted by the first four Directives listed above - long-term residents, researchers from third-countries, EU-Blue Card holders and Single Permit holders - should enjoy equal treatment regarding the branches of social security as defined in Regulation (EC) No. 883/2004, as compared to Member State nationals – even where there is no mobility between Member States involved. Exceptions and derogations are in certain cases foreseen, linked for example to the duration of stay/work of the third-country national. In the Single Permit Directive, for example, Member States can restrict equal treatment to third-country workers in employment or registered as unemployed after having worked at least six months. It should also be noted that the Single Permit also extends the equal treatment right to family members joining third-country nationals (Directive 2003/86/EC), provided they have access to the labour market.

Directive 2003/109/EC additionally grants long-term residents equal treatment with Member State nationals as regards social assistance and social protection as defined by national law – again even though there is no mobility between Member States involved. Box 1 provides a summary of the equal treatment provisions

[24] Please note that the coordination Regulations do not cover taxes.

[25] After completion of the research for this study, two new Directives which also include provisions on equal treatment in access to social security were agreed at EU level. These are the Seasonal workers' Directive (2014/36/EU) and a Directive on intra-corporate transferees (2014/66/EU). These Directives are to be enacted by 2016, and are not considered in this study. Provisions on equal treatment as regards social security are also included in the Commission proposal for a Directive on the conditions of entry and residence of third – country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing ((COM(2013)151), still under negotiation.

in the Directives on long-term residents, on the admission of researchers, on the EU Blue Card and on Single Permit holders.

Box 1 Right to equal treatment of relevance to social security in the Directives on Long-term residents, on the Admission of researchers, on the EU Blue Card and on Single Permit holders

- Third-country nationals who hold residence permits under the four Directives shall enjoy equal treatment with nationals regarding:
  - the branches of social security as defined in Regulation (EC) No 883/2004;
  - access to goods and services and the supply of goods and services made available to the public; and,
  - working conditions, including pay and dismissal.
- Third-country nationals who hold long-term residence permits under the Directive on Long-term residents shall enjoy equal treatment with nationals compared to Member State nationals, regarding social assistance and social protection as defined by national law.
- Third-country nationals who hold EU Blue Cards under Directive 2009/50/EU shall enjoy equal treatment with nationals regarding the payment of income-related acquired statutory pensions in respect of old-age when moving to a non-EU country.
- Member States can restrict equal treatment for long-term residents under the Directive on Long-term residents to core benefits and to cases where the registered or usual place of residence lies within the national territory. Under the Single Permit Directive, equal treatment can be restricted to third-country nationals in employment, or registered as unemployed after having worked at least 6 months.
- Member States may withdraw, or refuse to renew, the residence permit of a researcher or EU Blue Card holder if he or she does not have sufficient resources to maintain him/herself without having recourse to the social assistance system. The residence permit of EU Blue Card holders can also be withdrawn, or not renewed, if he or she is unemployed for more than three consecutive months, or if unemployment occurs more than once during the validity of the EU Blue Card.

Notwithstanding these equal treatment provisions, the Directives do not introduce Union-level harmonisation of social security policies: it remains for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted.

When considering the application of the social security provisions in the EU's legal migration Directives, it must be noted that Denmark, Ireland and United Kingdom have not adopted the Directives and are therefore not bound by their provisions, with the exception of the Researchers Directive as far as Ireland is concerned. In addition, the present study was conducted during a transition period between the adoption of the Single Permit Directive and its implementation date (25 December 2013). For this reason, the majority of national provisions described in this report correspond to the period prior to the transposition of the Directive.

A more detailed summary of the Directives, as well as related case-law of the European Court of Justice, is provided in Annex 1 of this Synthesis Report.

2.2 RANGE OF BENEFITS AND PROGRAMMES THAT EXIST IN MEMBER STATES, THEIR FINANCING MECHANISMS AND THEIR ACCESSIBILITY BY THIRD-COUNTRY NATIONALS

This section describes the range of social security benefits and programmes that exist in Member States, their financing mechanisms and the extent to which they cover third-country nationals. It does so by reviewing the social security benefits and programmes identified in each Member State's contribution to the European Commission's Mutual Information System on

Social Protection (MISSOC).[26] In some Member States, additional benefits and programmes exist that are not contained in the MISSOC guides (e.g. Belgium, Czech Republic, Estonia, Hungary, Ireland, Finland, Latvia, Luxembourg, Malta, Netherlands, Poland, Slovenia, United Kingdom). This study focuses exclusively on the MISSOC-listed benefits and programmes in order to facilitate comparisons between the national schemes. The section reviews the benefits and programmes that fall under each of the eleven 'branches' of social security as listed in the MISSOC guides.

2.2.1 HEALTHCARE

While the provision of healthcare is a key responsibility of all governments in the EU, significant variations exist in the administration, financing and delivery of public healthcare in each Member State. This section focuses on the different mechanisms used by Member States to finance the provision of health care benefits - both in terms of benefits in kind and cash benefits, such as compensation for transport costs incurred in connection with healthcare - and variations in the rights of third-country nationals to access these benefits.

Most Member States' social security systems include a wide range of healthcare benefits in kind, including primary and secondary care, preventive care, dental treatment, medicine and medical equipment. Certain Member States include additional cash benefits, such as reimbursement for the cost of private healthcare and compensation for transport costs incurred in connection with healthcare (e.g. **Finland** and **Luxembourg**).

The financing of healthcare benefits in the EU varies across Member States. **In Finland, Italy, Latvia, Portugal, Spain, Sweden** and **United Kingdom**, healthcare benefits are financed through general taxation. In **Finland** and **Sweden**, the financing and delivery of healthcare services is the responsibility of municipalities and/or (in in the case of Sweden) regional governments, who have the right to decide how much tax should be levied for this purpose. However, KELA, Finland's Social Insurance Institution is responsible for reimbursing applicants for the costs for medicine, transportation and the use of private healthcare.[27] In **Ireland**, health-care benefits are primarily tax-funded with additional contributions from private health insurance and out-of pocket payments. Access to free medical care in Ireland is subject to a means-test for both Member State nationals and third-country nationals.

In **Austria, Germany, Hungary, Lithuania** and **Slovak Republic**, healthcare benefits are financed through national insurance contributions made by the worker and/or his/her employer. In these Member States, individuals who fail to establish a social insurance entitlement need to resort to private healthcare or social assistance in order to receive medical treatment. In **Luxembourg** any legal resident can be covered by healthcare either through compulsory contributions (via their employment) or through voluntary contributions. In case persons cannot afford to make voluntary contributions, these will be covered by social assistance or social aid.

In the **Czech Republic**, contractual health insurance (obligatory for third-country nationals not having

[26] The MISSOC national guides are accessible here: http://ec.europa.eu/social/main.jsp?catId=858&langId=en

[27] The Finnish healthcare system is divided into public and private healthcare and the Finnish system differs from most other countries in that Finland has two publicly funded schemes. 1) The responsibility for the organisation of the public healthcare lies with the municipalities. Public health care services are funded by tax revenue and client fees. 2) Compensation for medical expenses paid by Kela complement the system by allowing the person to receive certain amounts of compensation for medicine, transportation and the costs arising from the use of private healthcare. Compensations related to the use of private healthcare are funded by the sickness insurance contributions as well as the Finnish state.

public health insurance) provides access to public healthcare.

In a third group of Member States (**Belgium, Bulgaria, Cyprus, Estonia, Greece, France, Malta, Netherlands, Poland** and **Slovenia**), healthcare benefits are financed through a combination of insurance-based contributions and the state budget (general taxation).

Box 2 Financing healthcare through contributions and the State Budget in Slovenia

In Slovenia, besides emergency healthcare (which is always financed from the State Budget), the method of financing healthcare services depends on whether the recipient has mandatory insurance as an employed or self-employed worker, and/or whether he/she is receiving financial social assistance.
In the case where recipients are receiving financial social assistance, the State Budget is used to cover the costs of their mandatory health insurance as well as the coverage of the difference to full value of health treatment (otherwise covered by voluntary health insurance). This Budget financing of mandatory health insurance is only available for the period that financial social assistance can be allotted.

The healthcare benefits available in Member States vary according to the category of third-country national. Third-country nationals with long-term residence permits have access to healthcare benefits in all Member States except for **Malta**, where the only third-country nationals who qualify for free medical care are refugees, if they satisfy a means-test. In Member States with contributory and mixed healthcare systems, the long-term residents (just as the Member State nationals) will additionally need to be making employment contributions, as illustrated in section 3 of this Synthesis Report.[28]

Salaried workers with fixed-term residence permits (including EU Blue Card-holders, researchers, seasonal workers and frontier workers) have access to healthcare benefits in most Member States, as long as they meet the residence or contribution-based requirements that are analysed in sections 3 and 4 of the Synthesis report. The exceptions are:

- **Latvia**, where third-country nationals with temporary residence permits must have a private medical insurance and only spouses of Latvian citizens have access to pregnancy care and assistance at birth (EU Blue Card-holders and researchers have no access to pregnancy care and assistance at birth in Latvia);
- **Lithuania**, where workers admitted under national long-term visas from 2013 are not covered by state healthcare insurance (they need to have a private health insurance);
- **Malta** and **Slovenia**, where salaried workers with fixed term residence permits do not have access to non-contributory healthcare benefits;
- **Belgium**, where healthcare benefits are not extended to frontier workers who reside in Belgium but are covered under foreign social insurance schemes;
- **Estonia**, where seasonal workers and family members of third-country nationals who reside on short-term residence permits must take out private medical insurance[29]; and,
- **Finland, Ireland, Italy** and **Sweden**, where general healthcare benefits are not available to third-country nationals with fixed term residence

[28] In some Member States, such as **Poland**, the contribution can be paid by other bodies and not necessarily by third-country nationals, i.e the employment offices in case of unemployed persons or universities in case of students.
[29] However, this is not the case for family members who are raising a child under 3 years of age and for family members who have less than 5 years to acquiring an old age pension.

permits that are valid for less than a year.[30] However, in **Finland**, this is only the main rule, which does not apply in the case of EU Blue Card holders and their family members, who are entitled to healthcare.

Self-employed workers can access healthcare benefits in almost all Member States, as long as they meet the residence or contribution-based conditions analysed in section 3 of this study. The exceptions are **Bulgaria, Malta and Poland**, where they must take out a voluntary or commercial insurance. In **Slovenia**, the self-employed are subject to the same mandatory health insurance requirements as other third-country nationals, but they do not have access to the non-contributory benefits.

In most Member States with contributory healthcare systems, the family members of third-country nationals enjoy the right to healthcare benefits derived from their insured family member.[31]

The exceptions are **Bulgaria, Hungary, Malta and Slovak Republic**, where family members must be insured (and therefore involved in gainful activities) in their own right. In **Lithuania** family members must be insured separately and only minor children enjoy the right to healthcare benefits derived from their insured family members. In **Poland** family members enjoy derived rights to healthcare benefits provided that they do not have their own entitlement to health insurance benefits. In residence-based healthcare systems, family members must meet the residence-based conditions in their own right.

Certain Member States, such as **Italy**, provide all third-country nationals with access to healthcare benefits, but these have to pay a surcharge. In the **United Kingdom** third-country nationals who are permanent residents and those granted refugee status or humanitarian protection receive free healthcare. However, most temporary migrants who are coming to the UK for more than six months will need to pay a health surcharge. This new policy is currently in the process of being implemented.

2.2.2 SICKNESS CASH BENEFITS

Sickness cash benefits are designed to replace the loss of earnings of an employee or a self-employed person during a temporary inability to work due to sickness or injury. For this category of benefits, it is presumed that inability to work as a result of a medical condition will be temporary and that a return to work can be expected. If the medical condition appears to be permanent, and a return to work is therefore unlikely, then the claimant will usually be transferred to an invalidity or permanent incapacity benefit (MISSOC Category V).[32]

In addition to coverage for loss of work due to injury or illness in the form of payment (available in all Member States), sickness cash benefits could include the following:

[30] In Finland, there is furthermore a universal right to urgent medical care. In addition, persons who intend to engage in paid employment in Finland for a minimum of four months, or who have completed at least four months of self-employment, are covered by sickness insurance and entitled to compensation for expenses arising from the use of private healthcare.

[31] In France, for example, this includes the spouse and dependent children under certain conditions; parents, descendants and collaterals under certain conditions; people living in a marital relationship with the insured person or who have concluded a civil solidarity pact, and who are dependent on him; all other persons who have lived with the insured person for at least 12 consecutive months and who are dependent on him.

[32] MISSOC (2012), "Cross-cutting introduction to Sickness Cash Benefits", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_3.pdf

- Funeral grants (**Czech Republic**[33], **Greece, Latvia, Lithuania**[34], **Luxembourg, Portugal, Slovak Republic**[35]);
- Death grants (**Bulgaria, Cyprus**[36], **France, Ireland, Latvia, the Netherlands**);
- Caring for a sick child and/or relatives (**Bulgaria, Czech Republic, Estonia, France, Hungary, Latvia, Luxembourg, Poland, Portugal, Slovak Republic, Slovenia, Spain** and **Sweden**);
- Maternity benefits (**Bulgaria, Estonia, Hungary, Greece, Latvia, Lithuania, Slovak Republic, Poland**);
- Vocational rehabilitation/re-training (**Finland**, **Luxembourg, Poland**);
- Rehabilitation allowance (**Poland**).

In most Member States sickness cash benefits are financed by insurance contributions paid by the employer and/or the employee (**Austria**, **Bulgaria, Czech Republic, Germany, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Sweden, Slovenia, Slovak Republic, Spain** and **United Kingdom**). In some Member States (**Belgium, Cyprus, Finland, France, Greece** and **Italy**), sickness cash benefits are based on mixed contributory and non-contributory financing mechanism, whereby in addition to insurance contributions a share of the benefits are funded by the state budget. In **Estonia**, **Hungary** and **Poland** sickness cash benefits are mainly financed by insurance contributions but can be partially financed by the state in some circumstances.

In **Estonia** sickness cash benefits are financed by insurance contributions paid by the employer or the employee. However, the State pays Social Tax on behalf of some categories of non-active persons or persons for whom Social Tax is not paid. This includes persons receiving a state unemployment allowance, a non-working parent of a disabled child receiving the Caregiver's Benefit, persons raising a child up to 3 years of age and a non-working parent in a family with 3 or more children where the youngest child is less than 8 years of age. Some categories for whom no social tax is paid are considered as having equal status as the insured person. These persons are: a pregnant woman; a person under 19 years of age; a person receiving state pension granted in Estonia; an insured person's dependent spouse, who is no more than 5 years away from attaining the age limit for old-age pension; pupils (there are age limits); a student, who is permanent resident.

In **Poland** sickness cash benefits are financed by the state in case of shortages in the Social Insurance Fund.

In **the Netherlands**, sickness cash benefits are financed by sectoral funds of the Employee Insurance Agency and the General Unemployment Fund. These funds are financed by contributions paid by all Dutch residents and non-residents who work in the Netherlands and pay income tax. In the Netherlands, income protection in the case of an employee's illness is largely privatized. Employees who become ill during a contract period are entitled to continued payment of their wages by the employer for up to 104 weeks. Employees who no longer have an employer may appeal to the public health care system.

[33] In the Czech Republic funeral grants are considered to be part of benefits in respect of accidents at work
[34] Only for long-term residents and highly qualified workers.
[35] Funeral grants are considered as a survivors benefit in Slovak Republic.
[36] However, in Cyprus, death grants are not categorised as sickness cash benefits.

Table 1 below provides an overview of the financing mechanisms for sickness cash benefits in Member States.

Table 1 Financing mechanisms for sickness cash benefits

Contributory	Non-contributory	Mixed
Austria, Bulgaria, Czech Republic, Estonia*, Germany, Hungary*, Ireland, Luxembourg, Latvia, Lithuania*, Malta, Netherlands, Poland*, Portugal, Spain, Sweden, Slovak Republic Slovenia, United Kingdom	Lithuania	Belgium, Cyprus, Finland, France, Greece, Italy

** mainly contributory, but can be financed by the state budget in some circumstances*

Access to sickness cash benefits is available to third-country nationals in all Member States. As this benefit is designed to protect employed persons from temporary loss of employment, in the majority of Member States, access to sickness cash benefits is conditional upon having accumulated minimum insurance contributions and/or employment periods (see section 3 of this Synthesis Report) and it is not dependent on a particular type of residence permit.

Regarding self-employed persons, provisions vary across Member States. In some Member States, self-employed persons are subject to compulsory insurance (e.g. **Luxembourg** and **Spain**), while in other Member States insurance is optional (e.g. **Czech Republic, Poland**). In **Finland,** self-employed persons are insured retroactively from the date of beginning self-employment after completing a minimum of four months of self-employment. In **France**, only some categories of self-employed persons have access. These provisions apply to third-country nationals and Member State nationals alike.

In most Member States, family members of third-country nationals will only be eligible for sickness cash benefits if they are in employment. In some cases, third-country nationals may be eligible for certain benefits deriving from the rights of the insured third-country national, such as death and funeral benefits. (e.g. **Lithuania, Luxembourg** and **Slovak Republic**)

2.2.3 MATERNITY AND PATERNITY BENEFITS

Maternity and paternity benefits refer to benefits in cash or in kind paid to female or male workers who take leave from work in the event of childbirth or adoption of a child. In all Member States, national legislation provides for certain periods of prenatal and postnatal leave. Maternity benefits are provided as a continued payment by the employer, usually calculated as a percentage of salary paid for the maternity period stipulated in legislation (MISSOC IV).[37]

In addition to the basic maternity cash benefits, Member States have expanded the package of maternity and paternity benefits to include:

- Additional adoption-related benefits (**Belgium, Cyprus, France, Ireland, Luxembourg, Portugal, Slovenia, Sweden, United Kingdom**);
- Benefits for occupational rehabilitation due to pregnancy and lactation (**Bulgaria**);
- Parental subsidies (**Estonia, Finland, France, Latvia, Portugal, Slovenia**);

[37] MISSOC (2012), "Cross-cutting introduction to Maternity and Paternity Benefits", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_4.pdf

- Subsidies for interrupted pregnancies and stillbirth (**Bulgaria, Portugal**);
- Benefits in kind that cover medical care during pregnancy, childbirth and maternity (**Austria,**[38] **Bulgaria, Finland, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Spain**).
- Compensatory allowance **(Slovak Republic)**
- Maternity grant in the form of a lump sum benefit **(Cyprus).**

With regard to paternity leave, **Austria**, **Belgium, Bulgaria, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Spain, Sweden** and **United Kingdom** provide for paternity allowance or leave, which can be organized and administered in a number of ways in the different Member States.

The financing of maternity and paternity benefits varies across Member States. In some Member States (**Czech Republic, Estonia, Germany, , Latvia, Lithuania, Luxembourg, Slovak Republic, United Kingdom**), entitlement to maternity and paternity benefits is solely established on the basis of insurance contributions accumulated for a specific period of time. This is also the case in **France**, even though there the benefits are funded through a mixed mechanism.

In other Member States (**Bulgaria, Hungary, Portugal, Spain, Sweden**) contributory and non-contributory maternity and paternity benefits exist in parallel. In these cases, maternity allowance may be payable to individuals who do not satisfy the insurance conditions. In other Member States, the financing of specific maternity and paternity benefits is mixed (**Austria, Belgium, Bulgaria, Cyprus, Greece, Italy, Netherlands, Slovenia**). In **Malta**, on the other hand, the financing system is entirely non-contributory.

Table 2 below provides an overview of financing mechanisms in Member States.

Table 2 Financing mechanisms for maternity and paternity benefits

Contributory	Non-contributory	Mixed
Czech Republic, Estonia*, Germany, Hungary*, Ireland**, Lithuania*, Latvia, Luxembourg, Netherlands*, Poland*, Portugal*, Sweden*, Slovak Republic, Spain*, United Kingdom	Bulgaria**, Finland**, Hungary**, Malta, Portugal**, Spain**, Sweden**,	Austria, Belgium, Bulgaria, Cyprus, Finland***, France, Greece, Italy, Netherlands, Slovenia

** mainly contributory, but can be financed by the state budget in some circumstances*
*** only some benefits are non-contributory*
**** only some benefits are mixed*

In Member States that rely on insurance contributions (**Czech Republic, Estonia, Germany, Latvia, Lithuania, Luxembourg, Poland, Slovak Republic, United Kingdom**), all employed or self-employed third-country nationals have access to maternity and paternity benefits, regardless of their nationality or type of residence permit. This also applies to Member States where both contributory and non-contributory benefits exist in parallel (**Bulgaria, Hungary, Portugal, Spain, Sweden**).

In Member States that finance maternity and paternity benefits through general taxation, only third-country nationals who are long-term residents (**Bulgaria**[39]**, Hungary**[40]) or those deemed habitual, ordinary or permanent residents (**Finland, Sweden**) have access to the benefits.

[38] Covered by healthcare provisions.

[39] Relates to benefits in kind and aid for uninsured mothers
[40] Relates to Birth grant

In **France**, cash benefits are available to all third-country nationals in employment, while benefits in kind related to pregnancy and birth are available to those third-country nationals in employment and who live in France on a continuous and effective basis.

In **Malta**, only limited categories of third-country nationals can access maternity and paternity benefits, namely those holding long-term residence permits; those with refugee status; those who have an employment licence (i.e. work permit) and who are nationals of countries under the European Social Charter; as well as third-country nationals married to EU nationals.

2.2.4 INVALIDITY BENEFITS

Invalidity benefits are designed to support persons with long-term sickness or disability who are unable to undertake employment. A key element in the establishment of entitlement to invalidity benefits is a need for a medical examination, necessary to determine the level of incapacity for work. Continued receipt of the benefit is usually conditional upon a review of medical circumstances.[41]

In all Member States, invalidity benefits include as a minimum invalidity pensions or allowances that consist of regular cash payments. Invalidity benefits can also include sanatorium and resort treatment (**Bulgaria**), benefits for reassignment (**Bulgaria**), rehabilitation (**Czech Republic, Estonia, Finland[42], Germany, Hungary, Latvia**), social rehabilitation services for persons with visual and hearing impairment (**Latvia**), occupational or vocational rehabilitation (**Latvia, Lithuania, Poland** and **Slovenia**), fuel allowance (**Greece**). In addition, several Member States provide for care, attendance and nursing benefits (**Czech Republic, Finland, Italy, Latvia** and **Lithuania**) and survivors' pension (**Poland**).

Invalidity benefits tend to be partially or fully financed by the state budget in most Member States. In **Austria, Belgium, Bulgaria, Cyprus, Finland[43], France**, **Italy, Latvia and Poland**, the funding system for invalidity benefits is mixed, i.e. it is mainly based on social security contributions supplemented by the state budget.

In **Estonia, Germany, Hungary, Ireland, Luxembourg, Malta, Netherlands, Slovenia and Slovak Republic**, the financing system is solely contributory, while **Greece**, **Sweden and Finland** (most benefits)[44] finance invalidity benefits on a non-contributory basis. In a number of other Member States, contributory and non-contributory benefits exist in parallel depending on the economic resources and social situation of the recipient (**Czech Republic, Lithuania, Portugal** and **United Kingdom**).

Table 3 below provides an overview of the financing mechanisms for invalidity benefits in Member States.

Table 3 Financing mechanisms for invalidity benefits

Contributory	Non-contributory	Mixed
Czech Republic*, Estonia*, Germany, Hungary, Ireland, Lithuania*, Luxembourg,	Czech Republic**, Finland**, Greece,	Austria, Belgium, Bulgaria, Cyprus, Finland ***, France,

[41] MISSOC (2012), "Cross-cutting introduction to Invalidity Benefits", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_5.pdf

[42] This refers to rehabilitation allowance.

[43] This concerns the disability pension and rehabilitation allowance under the statutory earnings-related pension system.

[44] In Finland, the disability pension under the national pension system, guarantee pension, pensioners' care allowance, pensioners' housing allowance and disability allowance for persons aged 16 and over) are non-contributory.

Contributory	Non-contributory	Mixed
Latvia*, Malta, Netherlands, Poland*****, Portugal*, Slovenia, Slovak Republic, United Kingdom*	Luxembourg****, Latvia**, Portugal**, Slovenia, Slovak Republic Sweden, United Kingdom**	Italy, Spain

** only some benefits are contributory*
*** only some benefits are non-contributory*
**** only some benefits are mixed*
***** non-contributory for the employee, contributory for the employer*
****** mainly contributory but can be financed by the state budget in some circumstances*

In most Member States (**Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Germany, Hungary, Ireland, Italy, France, Luxembourg, Latvia, Malta, Poland, Portugal, Slovenia, Slovak Republic, Spain, United Kingdom**) access to invalidity benefits for third-country nationals is contingent on accumulated insurance contributions and/or period of employment and does not depend on type of residence permit.

In **Latvia** and **Lithuania,** non-contributory invalidity benefits are available to long-term residents only and in the **United Kingdom** for third country nationals who have access to public funds, and those who have indefinite leave to remain (i.e. permanent residence). In **Finland** and **Sweden**, the non-contributory invalidity benefits are available to persons who are considered residents (a person who stays or can be expected to stay in the Member State for more than one year). In **Greece**, third-country nationals cannot access invalidity benefits in practice due to the numerous documents required to access the ten programmes for financial support for invalidity.

Access of self-employed third-country nationals to invalidity benefits varies across Member States. In some Member States, invalidity benefits are covered by the compulsory insurance contributions that self-employed persons must pay; in other Member States (e.g. **Austria** and **Finland**) coverage is limited for certain types of self-employed persons only. In **Finland**, for all self-employed persons, the obligation to insure is subject to the completion of at least four months of self-employment and the income from self-employment must be at least EUR 7,309.99 per year (in 2013). The self-employed person is also required to be resident and operate in Finland.

2.2.5 OLD-AGE PENSIONS AND BENEFITS

Ensuring the financial sustainability of individuals who are outside of the labour market because of their age is a key objective of all Member States. The old-age pension schemes set up for this purpose differ in a number of respects, including their mandatory or voluntary nature; the type of benefits they provide (defined benefits, or defined contributions); and the varying role that is played by occupational and individual pension schemes. This section only focuses on variations in the way mandatory, statutory pension schemes are financed and the extent to which the schemes cover third-country nationals.

A majority of Member States finance their old-age pensions through social security contributions made by employees and employers. This group of Member States can in turn be divided into two sub-groupings. In the first sub-group, (**Czech Republic, Germany, Hungary, Latvia, Lithuania, Slovak Republic, Slovenia, Spain**) contributions are the sole source of financing these statutory old-age pension schemes. In these Member States, the State only contributes financially if and when there is a short-fall in the pension funds accrued through contributions. Entitlement to pensions in these Member States is limited to individuals who are insured against this specific risk through the performance of gainful economic activities.

In the second sub-group are Member States (**Austria, Belgium, Bulgaria, Cyprus, Greece, France, Luxembourg, Malta, Netherlands**) where statutory old-age pension schemes are financed through a mixture of contributions by employees and employers, on the one hand, and the compulsory financial participation of the State, on the other hand. In **Belgium** there is a system of global management of social security (including old-age pensions): financing comes from contributions by employers and employers, but also from state subsidies and other forms of alternative state financing (e.g. VAT). All contributions and subsidies are assembled in one fund and then distributed over the different social security branches.

In **Luxembourg**, for example, the system is financed by an equal contribution from the employee, the employer and the State. The global contribution rate is fixed for the period 2012-2022 at 24% of all professional income, including benefits in kind (each contributor pays 8%). In **Austria**, old-age pensions are financed through contributions by employees and employers and are partly financed through the state where needed, mainly in the case of farmers, self-employed and small traders.

In a third group of Member States (**Estonia, Finland, Ireland, Italy, Poland, Portugal, Sweden, United Kingdom**), "dual pension schemes" are in operation where earnings-related pensions[45] operate alongside supplementary or parallel pension schemes that are entirely funded by the State (through general taxation). These supplementary or parallel tax-funded pension schemes are designed to provide, under certain conditions, a minimum pension to those who are not entitled to an earnings-related pension at all, or whose earnings-related pension falls below a certain level. As such, they are usually means-tested[46].

Box 3 Finland's dual pension system

In Finland there is a dual pension system encompassing:

- the statutory earnings-related pension system; and,
- the national pension system (which also includes the guarantee pension[47]).

The earnings-related pension system pays an earnings-related pension based on earnings-related pension insurance. The pension is accrued by paid work and self-employment. The national pension system ensures a minimum pension based on residence in Finland to those pensioners who receive no other pension or who have weak pension security. The pension schemes are integrated and when statutory earnings-related pension exceeds a given limit, no national pension or guarantee pension is paid. The statutory pensions paid under the dual pension system (old-age pension, disability pension, survivors' pension) provide a means of support in the event of old age, incapacity to work and the death of a breadwinner.

All Member States provide third-country nationals employed as workers with access to earnings-related statutory pension schemes, as long as they meet the general conditions attached to these schemes concerning level of contributions and length of affiliation (section 3 of the Synthesis Report reviews these conditions). This applies to both third-country nationals with long-term residence and third-country nationals with time-bound residence permits.

[45] In Ireland, the rate of the contributory State Pension is based on the number of contributions paid, rather than on earnings.

[46] In Poland, a certain number of contribution periods is necessary in order to access these benefits.

[47] Kela, the Finnish Social Insurance Institution, began to pay guarantee pension on 1 March 2011. This also marked the end of the payment of special support for immigrants.
A person residing in Finland who receives an old-age pension, for instance, is entitled to the guarantee pension if his or her total gross pension income is lower than EUR 732.13 per month (in 2013). Immigrants who are not eligible for the national pension may also be entitled to the guarantee pension after turning 65 years of age.

On the other hand, the type of residence permit held by third-country nationals does affect their access to the tax-based pension schemes that are available in certain Member States.

In **Italy** and **United Kingdom**, these tax-based pension schemes are only available to long-term residents (or, in the United Kingdom, to persons with indefinite leave to remain).[48] In **Italy**, moreover, they are only available to third-country nationals with a long-term residence permit provided under Council Directive 2003/109/EC. In **Malta**, the tax-based (non-contributory) pension is only available to persons with refugee status, long term residents, third country nationals married to EU nationals and nationals of countries under the EU Social Charter.

This contrasts with the situation in **Estonia, Finland, Ireland[49], Poland, Portugal** and **Sweden**, where the tax-based pension schemes that are available to persons who are not entitled to an earnings-related pension scheme (or whose earnings-related pension scheme falls below a certain level) are also accessible to third-country nationals who have time-limited residence permits, as long as they meet the habitual residence condition and/or other qualifying conditions that are attached to these benefits (section 3 of the Synthesis Report analyses these conditions)

In most Member States, the earnings-related statutory pension schemes also cover self-employed workers, as long as they pay sufficient contributions, although the conditions for their access (in terms of level of contributions and duration of affiliation) often vary. In other Member States (e.g. **Austria**), certain self-employed persons are exempt from coverage. In **Italy**, self-employed workers have access to the contributory pension schemes, but not to the tax-based schemes that are provided to persons whose income does not meet a certain threshold.

Family members of third-country nationals generally do not have access to earnings-related old-age pensions unless they have built up entitlements to these pensions in their own right through work. The situation is less clear in relation to the tax-based non-contributory pension schemes. In **Italy**, the tax-based (means-tested) pension ('social allowance') does cover family members. In **Ireland** and **Poland**, family members of third-country nationals would have to qualify for both (contributory and non-contributory) pensions in their own right.[50]

In **Finland**, family members are entitled to tax-based/non-contributory old-age pension under the national pension scheme, guarantee pension and other old-age benefits if the family member is insured as a resident of Finland pursuant to the Scope of Application Act.

In **Sweden**, family members are only granted pensions if they are entitled to them in their own right, i.e. they have been residing in Sweden for a minimum period.

A deceased spouse's pension (or part of it) is also, generally, transferred to the surviving spouse in the form of survivors' benefits (see section 2.2.6 below).

[48] There are some exceptions to this rule in the United Kingdom. However, persons granted time-bound leave to remain with access to public funds (e.g. refugees and persons given leave exceptionally outside the immigration rules) in most cases fall outside of the scope of this study.

[49] In Ireland, the habitual residence condition is not based on length of time but other factors. The tax-based pension schemes that are available to persons who are not entitled to an earnings-related pension scheme (or whose earnings-related pension scheme falls below a certain level) are also accessible to third-country nationals who are habitually resident in the State and who meet other conditions attached to these payments, e.g. satisfy a means test.

[50] In Ireland, most family members would have a residence permit which precludes them from accessing social security bar a few payments like child benefit.

2.2.6 SURVIVORS' BENEFITS

Survivors' benefits are payments made from a pension plan or fund to the designated beneficiary of an employee (or self-employed person) upon the death of that employee (or self-employed person). The designated beneficiary is usually a spouse or partner, but in some cases also the dependent children and other family members. In most cases, participation in these schemes is compulsory for employees (and in some cases, but less commonly, for self-employed persons too). (MISSOC VII)[51]

Survivors' benefits vary greatly from one country to another (e.g. regarding the family members that can be designated as beneficiaries; regarding the type of payments that are made – flat rate payments, or earnings-related; etc.). This section focuses only on the distinction between contributory and non-contributory (tax-financed) survivors' benefits and the extent to which these benefits cover third-country nationals in different Member States (MISSOC VIII).

In most Member States, survivor's benefits are paid only if the deceased employee (self-employed person) made contributions to the pension system (**Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Slovak Republic, Slovenia, Spain** and **United Kingdom**).

Some Member States also offer non-contributory (tax-financed) survivors' benefits that give coverage to widows (or widowers) whose spouses did not pay (or did not pay sufficient) contributions. This is the case in **Estonia, Finland, Ireland, Portugal** and **Sweden** where tax-financed schemes (existing alongside separate contributory systems) are designed to ensure coverage for all residents. In **Slovenia**, two non-contributory survivors' benefits are provided alongside the contributory ones, providing extra financial social assistance after the death of a family member, including for funeral expenses. In **France and Poland**, the survivors' benefits are mainly financed from insurance contributions and partly from the state budget.

Third-country nationals with long-term residence permits have access to the contributory survivors' benefits in **all Member States**, as long as their deceased spouse made sufficient contributions. Access to contributory survivors' benefits is also provided for third-country nationals with fixed-term residence permits in most Member States (as long as their deceased spouses made sufficient contributions). The exception is **Lithuania**, where the contribution-based survivors' pension is only accessible to third-country nationals who are long-term residents and EU Blue Card holders.

Access for third-country nationals with fixed-term residence permits to the non-contributory survivors' benefits that exist in **Estonia, Finland, Ireland** and **Sweden** depends on a variety of residence-based conditions explored in sections 3 and 4 of this Synthesis Report. In **Slovenia**, third-country nationals with fixed-term residence permits do not have access to the available non-contributory survivors' benefits.

Third-country nationals who are self-employed have the same access to survivors' benefits as those who are in salaried employment, as access depends either on their residence status or on the employment contributions of their deceased spouse. In most Member States, except for **Greece**, self-employed workers also participate in the statutory social security insurance schemes designed to protect the financial sustainability of their surviving spouse (or other

[51] MISSOC (2012), "Cross-cutting introduction to Survivors' Benefits", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_7.pdf

dependent family member) in the event of the self-employed worker's death.

2.2.7 BENEFITS IN RESPECT OF ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

Benefits in respect of accidents at work and occupational diseases are provided to persons, or their survivors, who have suffered from accidents or occupational diseases while conducting work duties. Not all countries have separate systems in place to cover the risk of accidents at work and occupational diseases (e.g. **the Netherlands**). Often, this risk will be catered for through other, related systems, such as healthcare, sickness cash benefits, invalidity or survivors' benefits (MISSOC VIII).[52]

In most Member States, there are packages of benefits in addition to cash benefits that include healthcare benefits in kind (**Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Finland, Germany, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Spain**), a variety of benefits regarding rehabilitation (**Austria, Bulgaria, Finland, France, Germany, Poland, Portugal, Slovak Republic**), social rehabilitation (**Austria**, **Germany**, **Luxembourg**, **Slovak Republic**), (occupational rehabilitation (**Austria, Finland, Germany, Lithuania, Luxembourg, Slovak Republic**), professional reclassification or retraining (**Luxembourg** and **Poland**), tide-over benefit (**Luxembourg**), supplements for care by another person (**Belgium**), invalidity pension (**Austria, Bulgaria, Cyprus, Estonia, Finland, Germany, Poland, United Kingdom**), severance payment (**Germany**), survivor's pension (**Austria, Cyprus, Estonia, Germany, Luxembourg, Poland**), reversionary pension, which is paid to surviving family members in the event of death (**Finland**), orphan's pension (**Austria, Cyprus, Latvia, Luxembourg**), death grant (**Belgium, Germany, Ireland, France, Spain**), funeral expenses (**Austria, Czech Republic, Finland, Latvia, Slovak Republic**), lump sum compensation, including for family members (**Poland**), and final lump sum settlement (**Luxembourg**).

Due to the nature of this branch of social security being strongly correlated to having an employment, the financing mechanism in most Member States is based on insurance contributions. As illustrated by table 4 only in the United Kingdom benefits in respect of accidents at work and occupational diseases are non-contributory. However, in **Latvia**, one specific benefit is non-contributory.

In **Austria, Cyprus, France** and **Greece**, benefits in respect of accidents at work and occupational diseases are based on mixed financing mechanisms. In some Member States (e.g. **Austria, Bulgaria, Czech Republic, Finland, Ireland, Poland**), the contributions are entirely or mostly funded by payment of contributions by employers. In Belgium, benefits relating to accidents at work are financed by insurance premiums paid by the employers to private insurers while benefits in case of occupational diseases are financed through contributions from employers, employees' contributions as well as state subsidies (mixed).

Concerning self-employed persons, provisions vary between Member States. In some Member States, such as **Bulgaria** and **Cyprus**, self-employed persons are not insured against this risk, while in other Member States, self-employed persons can be compulsorily insured.

[52] MISSOC (2012), "Cross-cutting introduction to Accidents at work and occupational diseases", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_8.pdf

Table 4 Financing mechanisms accidents at work and occupational disease

Contributory	Non-contributory	Mixed
Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, Malta, Poland**, Portugal, Slovenia, Slovak Republic, Sweden	Latvia*, United Kingdom	Austria, Belgium, Cyprus, Greece, France

** Compensation for the loss of a provider is paid from the State basic budget.*
*** Mainly contributory, but can be financed by the state budget in some circumstances.*

With regard to access to benefits in respect of accidents at work and occupational diseases, third-country nationals can access benefits under this category as long as they are employed and insured against this particular risk. This condition is equally valid for Member States nationals and third-country nationals and the type of residence permit (regardless whether long-term residence permit or fixed-term residence permit) does not play a role in accessing these social security benefits.

2.2.8 FAMILY BENEFITS

Family benefits can pursue a variety of specific objectives, but their overall aim is to increase opportunities for families and children as well as improving their quality of life. Among other specific objectives, family benefits may seek to alleviate the economic situation of families; provide families with incentives to have children; encourage women to join the labour market; or enable parents to take time off work in order to look after young children. The benefits may consist of allowances, vouchers or tax reductions; or the provision of services such as early childhood care and education services (public nurseries, etc.)[53]

This section focuses primarily on the allowances made available by Member States to families with one or more child/children in the form of child benefits, birth grants, child raising allowances and tax credits.

All Member States participating in this study have a system of child benefits (regular payments to families that have one or more child/children). Seventeen Member States additionally have child-raising allowances, which are benefits paid to one of the parents when he or she gives up their professional activity in order to spend more time caring for their child/children (thereby providing an extended period of maternity or paternity leave). The exceptions are **Greece, Ireland, Malta[54], Netherlands, Spain** and **United Kingdom**, which do not have special benefits of this kind. Twelve Member States also provide birth or maternity grants to families upon the birth of a child (**Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Poland, Slovak Republic** and **Slovenia**). In **Spain**, the birth (or adoption) grant is limited to large families, single parents or mothers with disabilities. In at least four Member States, families with children are also provided with tax credits or tax benefits (e.g. **Austria, Luxembourg[55], Slovak Republic** and **United Kingdom**).

Member States differ in the mechanisms they use to finance family benefits. The majority of Member States finance these benefits through the general taxation

[53] MISSOC (2012), "Cross-cutting introduction to Accidents at work and occupational diseases", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_9.pdf
[54] Although in Malta there are no child-raising allowances, given that in Malta children allowances are means tested, if one of the parents gives up employment, the rate of the benefits are likely to increase.
[55] In Luxembourg if one benefit (BONI) is not received by the beneficiary in cash it becomes a tax deduction.

system. The exceptions are **Greece** and **Italy**, which rely on contributions made by employees and/or their employers. Among the Member States that rely primarily on general taxation to finance family benefits, there are some (e.g. **Hungary)** where child benefits are contributory. This is the case for Hungary's "child care fee" (which a parent can apply for after using up their maternity/paternity leave). In **Austria, Belgium** and **France,** family benefits are financed through a mix of contributions and general taxation.

Access to family benefits by third-country nationals varies across Member States. Third-country nationals with long-term residence permits are provided with access to family benefits in all Member States.

A significant number of Member States exclude third-country nationals with fixed-term residence permits from applying for family benefits. This is especially observable in Member States that rely on general taxation to finance their benefits:

- In eight of these Member States (**Czech Republic, Hungary, Lithuania, Latvia, Malta, Slovenia, Slovak Republic**[56] and **United Kingdom**[57]) third-country nationals with fixed-term residence permits do not have the right to apply for family benefits. The only exceptions are EU Blue Card holders and researchers who have been granted a residence permit on the basis of EU Directive 2005/71 in the **Czech Republic, Hungary** (except for the birth grant), **Lithuania and Malta**.
- In contrast, ten Member States that rely on general taxation (**Estonia, Finland, Germany, Ireland, Luxembourg, Netherlands, Poland** (as of 1 May 2014)[58]**, Portugal, Spain and Sweden**) do provide access to third-country nationals with fixed-term residence permits, as long as they meet the residency conditions analysed in sections 3 and 4 of this Synthesis Report.[59]

The exclusion of third-country nationals with fixed term residence permits from applying for family benefits is also observable in Member States that rely on contributory mechanisms to finance family benefits. One of the Member States that rely primarily on contributions from employees and employers to finance the family benefits (**Italy**) does not provide access to third-country nationals with fixed-term residence permits.

2.2.9 UNEMPLOYMENT BENEFITS

Unemployment benefits usually provide support to persons who have lost their jobs or who have been unable to secure employment. While all Member States provide allowances to persons who find themselves in short-term unemployment (mostly through unemployment insurance systems), fewer Member States provide unemployment assistance to persons who have not yet found a job (MISSOC X).[60]

Special unemployment benefits, targeted measures or incentives are often available for the young (e.g. **Belgium, France, Luxembourg, Slovak Republic and Sweden**) or older unemployed persons (e.g. **Austria, Belgium, Estonia, France, Greece, Hungary, Italy, Lithuania, Luxembourg, Poland, Portugal, Slovak Republic, Slovenia** and **Netherlands**). Certain Member States additionally

[56] In the case of Slovak Republic, it does not apply to all family benefits (5 out of 11 benefits are also available to third-country nationals with fixed-term residence permits).
[57] Unless they are given leave to enter with access to public funds.
[58] This mainly concerns economic migrants.
[59] In the case of Ireland, recipients need to be habitually resident and satisfy other qualifying conditions.
[60] MISSOC (2012), "Cross-cutting introduction to unemployment benefits", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_10.pdf

provide benefits aimed at facilitating the labour market integration of the unemployed, by providing 'retraining' allowances and other 'activation' measures (e.g. **Austria, Estonia, Finland, Germany, Latvia, Lithuania, Luxembourg, Poland[61], Slovak Republic, Slovenia, Spain, Sweden, United Kingdom**). Unemployment benefits sometimes include an extra family supplement (e.g. **Austria** and **Luxembourg**).

Member States also vary in the mechanisms they use to finance unemployment benefits. A number of Member States rely entirely on employer and employee contributions to finance these benefits (**Austria, Czech Republic, Hungary, Latvia, Lithuania,** the **Netherlands, Poland, Portugal** and **Sweden**). Persons who have never secured a job in these Member States must rely on social assistance (e.g. guaranteed minimum resources) rather than unemployment benefits for support.

In seven Member States (**Belgium, Cyprus, Finland, France, Italy, Slovak Republic** and **Slovenia**), unemployment benefits are financed by a mixture of contributions and the State budget.

In a third group of Member States, a dual system of unemployment benefits exists, consisting of insurance-based unemployment allowances for persons who have lost their jobs; and tax-based unemployment assistance covering also persons who do not meet the minimum level of contributions. These Member States include **Estonia, Finland, Germany, Ireland, Malta, Spain** and **United Kingdom**.

- In **Bulgaria**, general taxation is used to finance the labour market integration services, whereas contributory mechanisms finance the benefits that consist of allowances.
- In the case of **Spain**, the tax-based unemployment benefits are also available to unemployed persons who have exhausted their contributory unemployment benefits and have family responsibilities.
- In **Germany**, basic security for job seekers is a tax-based assistance which guarantees minimum resources both to employed persons and to unemployed persons who do not meet the requirements for contribution-based unemployment insurance benefits, and whose claim for contribution-based unemployment insurance benefits has expired or is below the subsistence level.

Box 4 Access by third-country nationals to Finland's residence and employment-based system of unemployment benefits

Finland has a dual unemployment benefit system which guarantees a minimum level of unemployment security to all third-country nationals who are considered residents in Finland (according to the Scope of Application Act[62]), regardless of the type of residence permit they hold. Unemployed third-country nationals have access to:

- Earnings-related allowance if they are members of an unemployment insurance fund and the condition regarding previous employment is met;
- Basic allowance if they do not qualify for the earnings-related allowance; are considered a resident according to the Scope of Application Act; and if they satisfy previous employment conditions;
- Labour Market support if they are considered a resident according to the Scope of Application Act (no need for previous employment history).

[61] These concern special benefits for unemployed persons in pre-pension age.
[62] The Finnish Act on the Application of Residence-based Social Security Legislation (1573/1993): http://www.finlex.fi/en/laki/kaannokset/1993/en19931573.pdf

Luxembourg is the only Member State where the main unemployment benefit does not rely on contributions. It is financed by the State budget through a special 'solidarity tax'.[63]

Access to unemployment benefits by third-country nationals also varies across Member States. All Member States permit long-term residents to access most unemployment benefits, as long as they fulfil the general eligibility conditions (reviewed in Section 3 of the Synthesis Report).

Employed third-country nationals with fixed-term residence permits have the right to apply for unemployment benefits in most Member States, as long as they fulfil the residence- and/or contribution-based conditions described in section 3 of the Synthesis Report. In **Poland**, following the entry into force of new legislation on 1 May 2014, EU Blue Card holders, third-country nationals with work visas, temporary residence and work permits, temporary residence permits for the purpose of conducting research (registered as unemployed) are eligible for unemployment benefits provided they fulfil the same conditions as nationals (employed and paying contributions for Labour Fund for 365 days within 18 months).[64]

In **Czech Republic** and **Hungary**, on the other hand, the only fixed-term residence-permit holders that can access the contributory benefits are EU Blue Card-holders and (in the case of the Czech Republic) the family members of third-country nationals who are permanent residents of the Czech Republic. In **United Kingdom**, third-country nationals subject to immigration control (i.e. who do not enjoy permanent residence) are only able to apply for contributory Job-Seekers' Allowance (not the non-contributory unemployment support which also covers persons who have not been previously employed). In **Bulgaria**, unemployment programmes financed by the State budget are accessible only to holders of long-term residence permit, family members of EU citizens as well as holders of EU Blue Cards.

Self-employed third-country nationals enjoy weaker protection against the risk of financial difficulty when they lose their jobs, although increasing numbers of Member States have extended unemployment protection to this group as well. In **Luxembourg**, for example, unemployment protection for self-employed workers is paid by a special tax, so any third-country national who has contributed during the minimum trial period will have access to the benefits.

In **Belgium**, **Cyprus, Estonia, Poland** and the **United Kingdom**, compulsory unemployment insurance does not cover self-employed workers. In **Malta** no unemployment benefits in cash are provided to the self-employed who become unemployed. This may only be provided in the form of credit. In **Estonia**, the self-employed are, however, covered by the non-contributory State unemployment allowance scheme. Some countries offer self-employed workers the opportunity to join voluntary unemployment insurance schemes (e.g. **Slovak Republic**). In **Austria**, third-country nationals and Member State nationals alike are subject to compulsory insurance if they are employed or free-lancers. However, if they have an income below the marginal income threshold then they are not covered by mandatory insurance. To them, as well as to self-employed persons who have no mandatory unemployment insurance, voluntary insurance is available.

[63] The official name is contribution to the Employment Fund. The tax is equivalent to 7% of the adjustable tax income and 9% for any tax payer class 1 or 1a who has an income greater than 150.000 € or tax payer class 2 with an income greater than 300.000 €).

[64] Previously, in Poland, only workers who were granted EU long-term residence permit (pursuant to Directive 2003/109/EC) in other EU Member States and who were granted fixed-term residence permit in Poland, could apply for unemployment benefits.

2.2.10 GUARANTEED MINIMUM RESOURCES

Guaranteed minimum resources[65] are provisions to meet the subsistence needs of individuals and families who otherwise lack (sufficient) income from employment or other sources (including insurance-based social security benefits). Guaranteed minimum resources are often referred to as social assistance benefits. Typically, these benefits are subject to a means-test of the claimant and his or her family members (MISSOC XI).[66]

The state budget or general taxation finances guaranteed minimum resources in all Member States, except **France** where some benefits for the unemployed under this branch are financed through a mix of contributions and general taxation. Nevertheless, key differences exist in the way that the financing is achieved:

- In **Ireland**, three specific benefits (free travel, living alone increase, household benefits) are not directly contributory, but are only accessible to people who qualify for other social security payments which can be contributory and/or non-contributory.
- In **Belgium**, the social integration benefit is typically financed in part through the state budget and in part through public centres for social assistance.
- In **Latvia, Lithuania** and **Poland**, guaranteed minimum income is in principle financed by local authorities.
- In **Hungary**, local and regional governments manage and grant social assistance.

Third-country nationals with long-term residence permits have access to all or some benefits under guaranteed minimum resources in all Member States except **Greece**:

- In **Greece**, long-term residents do not have access to one particular benefit (income support for young people who are out of the labour market).

Access to guaranteed minimum resources for third-country nationals with fixed-term residence is more variable:

- In ten Member States (**Belgium**, **Finland**, **Germany**, **Greece**, **Hungary**, **Luxembourg**, **Poland**, **Slovak Republic, Sweden**, **United Kingdom,**), their access is limited to certain guaranteed minimum resources only for third-country nationals with certain types of fixed-term residence permits (e.g. in the case of **Poland**, only for third-country nationals with EU long-term resident status in another Member State who, based on this status, have been granted fixed-term residence in Poland[67]);
- In ten Member States, third-country nationals with fixed-term residence permits have no access to guaranteed minimum resources (**Austria**, **Bulgaria**, **Cyprus**, **Czech Republic**, **Estonia**, **Lithuania**, **Latvia**, **Malta**, **Portugal**, **Slovenia**).
- In **Ireland**, guaranteed minimum resources are in principle accessible to habitually resident third country nationals provided they meet other conditions attached to these payments. However certain residence permits may be issued on condition that the applicant does not access social security and become a 'burden on the State', e.g. by accessing most guaranteed minimum resources.

[65] These benefits are not part of the branches covered by Regulation (EC) No 883/2004, covered by the equal treatment extended to third country nationals which makes explicit reference to that Regulation.

[66] MISSOC (2012), "Cross-cutting introduction to guaranteed minimum resources", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_11.pdf

[67] In practice however many municipalities, under certain circumstances, based on their resources, grant benefits under social assistance also to other categories of third-country nationals who, according to the regulations, are not eligible for those benefits.

- In **Italy**, guaranteed minimum resources are in principle accessible to those with fixed-term residence permits, but minimum residence requirements are set at municipal level, a practice recently criticised in relevant case law.
- In **Germany**, third country nationals principally have access to guaranteed minimum resources irrespective of their residence status; however, in the case of third country nationals with certain types of fixed-term residence status whose duration of stay is expected to be limited, some benefits (e.g. integration assistance) can, as a general rule, be provided only on a discretionary basis.
- Also in **Germany**, only social benefits for people of old-age and those with a disability can be provided irrespective of the residence status and are thus not subject to any exclusion.
- In **Hungary**, EU Blue Card-holders only have access to one guaranteed minimum resources benefit.

In most cases, the self-employed enjoy the same access to guaranteed minimum resources as salaried workers. Exceptions include the **Slovak Republic**.

Limited information is available on whether social assistance benefits extend to family members of third-country nationals. In **Ireland**, this is only the case for very few guaranteed minimum resources under certain conditions.

2.2.11 LONG-TERM CARE

Long-term care benefits refer to cash payments or benefits in kind, which cover the cost of care and enable the standard of living of persons in need of constant care due to their old-age or disability (MISSOC XII).[68] Long-term benefits can include cash-benefits (**Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, France, Italy, Latvia, Lithuania, Luxembourg, the Netherlands[69], Poland, Portugal, Slovenia, Slovak Republic, Spain, Sweden, United Kingdom**), medical and patient care (**Austria, Belgium, Bulgaria, Cyprus, Finland, Germany, Hungary, Latvia, Luxembourg, the Netherlands, Poland, Slovak Republic, Sweden, United Kingdom**), an allowance for caregivers (**Bulgaria, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Sweden, Slovenia, Slovak Republic, United Kingdom**), residential care (**Austria, Finland, Germany, Latvia, Luxembourg, Sweden, United Kingdom**), integration benefit for disabled persons (**Belgium, Latvia**), aid and assistance of non-medical nature (**Belgium, Latvia, Poland, Sweden, United Kingdom**).

Long-term care benefits are predominantly non-contributory benefits and financed by the state budget or general taxation. The exception is **Germany**, where long-term care benefits depend on contributions. In **France** and **Greece**, a mixed mechanism of financing is used, while in **Ireland[70]** and **Slovenia[71]** only some benefits are contributory. **Luxembourg** has a special tax for covering this

[68] MISSOC (2012), "Cross-cutting introduction to long-term care", Available at: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/CROSSCUTTINGINTRO/Introduction_Table_12.pdf

[69] Within the framework of an experiment with regard to cash benefits, the insured person can opt not to obtain care provision in kind, but to receive a personal care budget (persoonsgebonden budget, PGB) to enable him/her to purchase care independently. This budget is only available for people with an indication for long stay (accommodation) or an indication for personal care and nursing. The amount of the PGB is dependent on the required care. People who already receive a PGB without having an indication for long stay (accommodation) retain their budget until 1 January 2014. A yearly financial compensation of € 200 is granted to informal caregivers who provide long-term care at home to a person with an indication for long-term care.

[70] In Ireland, the contributory benefits are carer's benefit and constant attendance allowance.

[71] In Slovenia, the contributory benefits include assistance and attendance allowance; invalidity benefit and supplement for care and assistance.

benefit**.** In the **Netherlands**, there is no specific insurance for long-term care, but this type of care is mainly financed on a contributory basis from employed persons. Table 5 below provides an overview of the financing mechanisms of long-term care benefits.

Table 5 below provides an overview of the financing mechanisms for long-term care in Member States.

Table 5 Financing mechanisms long-term care

Contributory	Non-contributory	Mixed
Ireland*, Germany, Slovenia*, Netherlands	Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland**, Hungary, Ireland**, Italy, Lithuania, Latvia, Malta, Poland, Portugal, Spain, Sweden, Slovenia**, Slovak Republic, United Kingdom	Belgium, France, Greece Luxembourg****

** only some benefits are contributory*
*** only some benefits are non-contributory*
**** only some benefits are mixed*
***** is a special contribution that is taken from the taxable income and that is not deductible.*

In a number of Member States (**Bulgaria, Czech Republic, Cyprus, Italy, Latvia, Lithuania, Slovak Republic** and **United Kingdom**[72]), long-term care is only available to third-country nationals which hold long-term, or permanent (**Czech Republic**) residence permits. In the **Slovak Republic**, long-term care benefits are almost exclusively paid to only third-country nationals with permanent residence who are family members of a citizen of the Slovak Republic with permanent residence. In **Sweden,** to access assistance allowance, the third-country nationals must have the right to stay in the country for one year or more. **Spain** and **Luxembourg** make long-term care payments available to third-country nationals with long-term and fixed-term residents alike as long as they meet the conditions established in law.[73] In **Bulgaria**, EU Blue Card holders have access to the state-funded National Programme "Assistants for persons with disabilities". In **Estonia** long term care benefits are also available to both permanent residents and those with a temporary residence permit. In **Poland**, according to the new regulations (as of 1st May 2014) third-country nationals holding temporary residence who are entitled to work or who are exempt from the obligation to hold a work permit can access social pensions.

2.3 CONNECTIONS MADE BETWEEN SOCIAL SECURITY POLICIES AND IMMIGRATION POLICIES IN THE MEMBER STATES

In most Member States, explicit links between social security policies and immigration policies have been made by policy-makers and/or within political debates. The exceptions are **Cyprus**, **France** and **Slovenia**, where it is reported that no such explicit connections exist as per the date of the publication of this report.

The type of connections made in the other Member States vary depending on the policy and political context of immigration policies. In **Austria**, **Hungary**, **Ireland**, and **Italy**, the focus has been on preventing 'social tourism' (where low-skilled migrants might decide to enter the country in order to claim social security benefits), e.g. by establishing minimum income conditions for third-country nationals wishing to enter and remain. However, several Member States highlight the weak or non-existent connections between departments in charge of formulating migration and social security policy, which suggests

[72] Unless they have leave to enter with access to public funds

[73] In Luxembourg, third-country nationals must be affiliated to the CNS and must require regular assistance from another person in order to carry out basic day-to-day tasks owing to illness or physical, psychological or mental disability.

that the debate about preventing 'social tourism' still operates largely within political circles.

In other countries (**Belgium**, **Greece**, **Luxembourg**, **Malta**, **Slovak Republic, Spain**), a link is explicitly made to national policies aimed at integrating legally resident third-country nationals. In **Spain**, the strong contributory component of the Social Security System has to be linked to one of the main objectives of the immigration policy which is to manage an orderly migration model in which economic migrants are integrated in the labour market and contribute effectively to the Social Security System. In addition, access to the Social Security System is linked to regular and effective residence (see Box 5).

Box 5 Managed migration - a boost to Spain's social security system

Spanish immigration policy includes, as an explicit objective, the development of a managed migration system where third-country nationals are integrated into the labour market and become effective contributors to the Spanish social security system.
The nexus between Spanish immigration and social security policies is strengthened in a number of ways.

- When residence and work permits are issued to third-country nationals, these do not take full effect until the individuals concerned have registered with social security.
- Before authorising the renewal of third-country nationals' residence permits, the Spanish authorities check that the applicant's social security contributions are in order.
- Third-country nationals who are in receipt of contributory unemployment benefits, or non-contributory social assistance benefits aimed at facilitating their labour market integration, have their residence permits automatically renewed.

In **Slovak Republic**, improving access by third-country nationals to all forms of social security, including healthcare, is one of the pillars of the "Concept of Foreigners' Integration in Slovakia", the key programmatic document for the integration of third-country nationals adopted by the government of the Slovak Republic on 6 May 2009. In **Greece** and **Malta**, the link to integration focuses specifically on the importance of extending equal treatment to vulnerable migrants, while in **Belgium** and **Luxembourg** the link is an implicit one, since equal treatment is the underpinning principle of both the national integration policy and national social security system.

In a number of Member States, social security policy is linked to the country's efforts to achieve a more 'balanced' migration policy, where the profile of migrants entering the country provides a better match with the country's labour market needs. In the **Czech Republic**, for example, social security policy is explicitly used as a means for attracting high-skilled labour migrants, who are offered unemployment benefits on the same conditions as permanent residents. In **Sweden**, the availability of social security benefits has been discussed in political debates as a means of attracting migrant workers in general (not just the highly-skilled).[74]

2.4 RECENT OR PLANNED CHANGES TO THE ELIGIBILITY RULES FOR SOCIAL SECURITY BENEFITS AND PROGRAMMES THAT MAY HAVE AN IMPACT ON ACCESS BY THIRD-COUNTRY NATIONALS

Thirteen Member States have recently introduced changes relevant to this study (**Belgium**, **Cyprus**, **Czech Republic**, **Finland**, **Hungary**, **Lithuania**, **Latvia**, **Netherlands**, **Poland**, **Portugal**, **Slovenia**, **Spain**, **United Kingdom**). In all cases they involve legislative changes.

In some cases the legislative changes respond to various EU Directives, such as the Single Permit

[74] 2011 Report by Sweden's parliamentary committee on circular migration and development recognised that the availability of social insurance can contribute to a migrant's decision to come to Sweden.

Directive (**Finland**, **Hungary, Poland**), Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (**Finland**, **Lithuania, Poland**).

Other changes relate to the eligibility rules and make access to some benefits more restrictive. This is the case in **Belgium**, **Portugal**, **Spain and United Kingdom.**[75] In contrast, in other Member States the eligibility rules have been relaxed for certain categories of third-country nationals (**Belgium**[76], **Finland**, **Hungary**, **Latvia**, **Lithuania**, **Poland**[77], **Slovenia**).

Other amendments include changing residency requirements (**Finland**, **Lithuania**, **Poland, United Kingdom**), replacement of existing benefits with new benefits (**Slovenia**, **United Kingdom**), shifting of competences for assigning benefits (**Cyprus**), enhancing equal treatment within the system (**Finland**), changes to contribution conditions of old-age benefits (**Italy**), price-level adjustments of benefits when exported (**Netherlands**), proposed ban on export of child benefits (**Netherlands**), and the introduction of the habitual residence requirement for child benefits (**Slovenia**).

In the **United Kingdom**, the Immigration Act received royal assent on 14th May and introduces a surcharge for healthcare for most temporary third-country nationals coming to the UK for more than 6 months. The surcharge will be paid at the same time as the fee for an entry clearance application or a fee for a leave to remain application.[78] Free healthcare will still be available for third-country nationals with permanent residence (those who have indefinite leave to enter or remain) and those granted refugee status or humanitarian protection. These changes are in the process of being implemented.

The recent or planned changes relate to several benefit categories, mainly family benefits (**Finland**, **Hungary**, **Lithuania, Netherlands**, **Poland**, **Portugal**, **Slovenia**, **United Kingdom**), guaranteed minimum resources (**Belgium**, **Portugal**, **United Kingdom**), unemployment benefits (**Finland**, **Latvia**, **Poland**, **Portugal**, **United Kingdom**), old-age benefits (**Hungary**, **Italy**, **Lithuania**), survivor benefits (**Lithuania**, **Slovenia**), healthcare (**Finland**, **Slovenia, Spain, United Kingdom**), invalidity benefits (**Hungary**), social pension (**Poland**).

[75] However, in the case of Spain the changes concern access to healthcare by third-country nationals with irregular status in the country (and therefore who fall outside of the scope of the study).

[76] For third-country nationals with a permanent residence permit

[77] This mainly concerns third-country nationals with temporary residence and work permits as well as, in the case of unemployment benefits, third-country nationals holding work visas.

[78] 'Leave to remain' refers to the right to enter and reside in the United Kingdom. 'Limited leave to remain' provides a right to reside for a limited duration, whilst 'indefinite leave to remain' provides a right to reside for an indefinite period on condition that the third-country national remains present and settled in the country.

3 NATIONAL RULES ON ACCESS TO SOCIAL SECURITY FOR THIRD-COUNTRY NATIONALS

Key findings

Even if third-country nationals are granted access to social security benefits, the eligibility rules attached to these benefits may directly or indirectly prevent third-country nationals from taking up the benefits in the seven MISSOC 'branches' analysed in this chapter. These eligibility rules include:

- **Minimum residence periods**: Evidence of legal residence (in the form of a valid residence permit) and evidence of the applicant's physical presence in the country is a common eligibility condition for most social security benefits. However, a minimum residence period is not normally required before third-country nationals can take-up the benefits. The exceptions are in relation to maternity and paternity benefits (where such a minimum residence period is required in order to access certain benefits in one Member State); old-age benefits (where it is required by six Member States); unemployment benefits (where it is required by one Member State); family benefits (where it is required by two Member States); and guaranteed minimum resources (where it is required by most Member States).
- **Rules governing the export of benefits**: National legislation in most Member States restricts the export of benefits to third-countries. This is the case for healthcare (in kind) benefits (except in one Member State); for maternity and paternity benefits (except in seven Member States); for family benefits (except in one Member State); for unemployment benefits (except in three Member States); and for guaranteed minimum resources (there are no exceptions under this branch). In contrast, the national legislation of most Member States (17 out of 25) allow for the export of old-age pensions to third-countries.
- **Minimum employment periods**: Third-country nationals (and Member State nationals alike) are subject to minimum employment periods in most Member States in order to take up sickness cash benefits (except in three Member States); maternity and paternity benefits (except in nine Member States); old-age benefits (except in three Member States); and unemployment benefits (except in seven Member States, but only for the parallel non-contributory benefits). Minimum employment periods are not usually required for third-country nationals to access healthcare benefits (in kind); family benefits; and guaranteed minimum resources.
- **Migration-specific conditions**: A valid residence permit is required to take up most of the benefits reviewed in this chapter. In some cases, a long-term residence permit is additionally required (see chapter two). Additional migration-specific requirements are reported in a number of Member States, including employment requirements to take up family benefits in one Member State; and specific work permits to take up unemployment benefits in four Member States.

Whilst the previous chapter reviewed the extent to which benefits in all branches of social security are accessible by different categories of third-country nationals, this section provides a more in-depth analysis of the conditions that apply in the case of third-country nationals in order to qualify for the benefits that fall under seven out of the eleven specific branches of social security that are covered in the MISSOC national guides: **healthcare; sickness cash benefits; maternity and paternity benefits; old-age pensions and benefits; family benefits;**

unemployment benefits; and guaranteed minimum resources.

This section focuses on four aspects of the eligibility rules: whether a minimum residence period applies and if so, the length of this minimum residence period; whether the benefits are exportable once the third-country national returns to his or her country of origin; whether a minimum employment period (minimum period of contributions) is attached to the benefits, and if so the length of this minimum employment period; and migration-specific conditions, such as the requirement to participate in integration courses, etc.

The section examines each of these aspects in turn, reviewing the relevance of each aspect for third-country nationals wishing to claim benefits under each of the seven branches of social security mentioned above. An attempt is made to compare the rules that apply to different categories of third-country nationals with the rules that apply to nationals of the Member State. Where there are relevant equal treatment provisions in the EU's Migration Directives in force, these are also recalled.

3.1 MINIMUM RESIDENCE PERIOD

3.1.1 HEALTHCARE

While evidence of legal residence is a requirement for third-country nationals to access the public healthcare system in all Member States (except for emergency healthcare, where this condition is also relaxed in some Member States), no Member State requires that the third-country national live for a minimum period of time in the country before they are eligible to receive public healthcare.

In the case of **Finland, Ireland**[79]**, Italy** and **Sweden**, there are rules that the residence permit needs to be valid for at least one year, but this does not mean that one year must have elapsed before the third-country national can receive public healthcare. However, in **Finland**, special provisions apply to EU Blue Card workers and their family members, who are considered to be resident in Finland on a permanent basis regardless of the type of residence permit they hold and they are entitled to access public healthcare services in exchange for the municipal resident's client fee. As they are covered by sickness insurance, EU Blue Card holders and their family members are also entitled to compensation for medicine, transportation and the costs of using private healthcare.[80]

In **France**, while there is no minimum residence period before third-country nationals become eligible for free public healthcare, they must live in France for six months plus one day during the civil year of the benefit payment. This residency condition applies to Member State nationals as well.

In all other Member States, while no minimum residence period is required by law, in practice a minimum period of time usually has to elapse before the third-country national is able to access public healthcare due to the requirement (reviewed in section 3.3.1. below) for the third-country national to pay employment contributions for a minimum period of time before they are permitted to access the public healthcare system.

[79] In Ireland, the 'ordinarily resident' condition, applied to health services, requires that an applicant has been resident or intends to be resident in the State for at least one year.
[80] In addition, persons who intend to engage in paid employment in Finland for a minimum of four months, or who have completed at least four months of self-employment, are covered by sickness insurance and entitled to compensation for expenses arising from the use of private healthcare.

3.1.2 SICKNESS CASH BENEFITS

Similarly to access to healthcare, evidence of legal residence is a requirement for third-country nationals to access the public healthcare system in all Member States. Due to the nature of sickness cash benefits being predominantly financed by insurance contributions of the active population (see Section 3.3.2 above), Member States do not require that the third-country national reside for a minimum period in the country before becoming eligible to receive sickness cash benefits. Instead of a minimum residence requirement, access to sickness cash benefits is dependent upon a minimum period of insurance contributions (see section 4.3.2. below). In **France**, third-country nationals and Member State nationals alike must also live in the country for a minimum of six months plus one day during the civil year of the benefit payment to qualify for sickness cash benefits.

Third-country nationals must be covered by sickness insurance to access sickness cash benefits in **Finland**. EU Blue Card holders and their family members are covered by sickness insurance as permanent residents pursuant to amendments in the social security legislation following the transposition of the EU Blue Card Directive.

3.1.3 MATERNITY AND PATERNITY BENEFITS

In the vast majority of Member States, no minimum residence period is required for third-country nationals to access maternity and paternity benefits. As the financing mechanism of this social security branch is principally contributory in nature, the main requirement for accessing maternity and paternity benefits is a record of minimum insurance contributions (examined in section 4.3.2. below). An exception is **Finland**, where eligibility for parental per diem allowances requires that the mother (maternity allowance and parental allowance) and the father (paternity allowance and parental allowance) have been resident in Finland for at least 180 days immediately before the expected date of confinement. The same rule applies to Finnish nationals.

In **France**, while there is no minimum residence period, third-country nationals and French nationals alike must have lived in the country for a minimum of six months plus one day during the civil year of the benefit payment in order to qualify for maternity and paternity benefits. This residency condition applies to Member State nationals alike.

In Member States with state-funded non-contributory benefits, access is only provided to third-country nationals who are long-term residents (**Bulgaria**[81]**, Hungary**[82]**, Lithuania**[83]) or who are deemed *habitual ordinary or permanent residents* (**Finland, Ireland**[84]**, Sweden**) – see section 5 for the way these statuses are assessed. In Finland, access to non-contributory benefits in kind (i.e. medical checks at maternity and child healthcare centres during and after pregnancy) is also provided to third-country nationals with a municipality of residence in Finland. EU Blue Card holders and their family members also have access to the state-funded non-contributory benefits in Finland.

3.1.4 OLD-AGE PENSIONS AND BENEFITS

Most Member States do not attach a minimum residence period to the old-age pensions and benefits that are accessible to third-country nationals. While duration of affiliation is often a factor conditioning eligibility in Member States with contributory pension schemes (alongside the level of contributions), the duration of affiliation is different to the period of residence as insurance contributions can, in principle,

[81] Relates to benefits in kind and aid for uninsured mothers
[82] Relates to Birth grant
[83] Related to Assistance granted to pregnant women not eligible for maternity pay
[84] One has to be habitually/ordinarily resident in the State to access these benefits; there is no minimum residence period attached to these payments.

be paid during periods of interrupted residence, as long as the economic activities (and therefore contributions) continue.

Nevertheless, minimum residence conditions are part of the eligibility conditions for receiving certain old-age pensions and benefits in some Member States (**Estonia, Finland**, **Italy, Latvia, Portugal, Sweden**). This affects both contributory and non-contributory benefits in the case of third-country nationals and nationals alike:

- In **Estonia**, a third-country national must have lived as a permanent resident or with a temporary residence permit or temporary right of residence for at least five years immediately before applying for a pension.
- In **Finland**, eligibility for national pension and guarantee pension is subject to, with certain exceptions, the applicant having resided in Finland for a minimum of three years after turning 16. This also applies to Finnish nationals.
- In **Italy**, the tax-based social allowance provided to persons age 65 and over requires a minimum residence requirement of 12 months;
- In **Latvia**, in order to be eligible for the old-age pension, early pension and supplementary pension (all contributory benefits) applicants must have lived 60 months in Latvia, of which the last 12 months must have been uninterrupted;
- In **Portugal**, the (non-contributory) social old-age pension requires an applicant to have lived in the country for 72 months;
- In **Sweden**, eligibility for the earnings-based pension and the guaranteed pension (both contributory) requires a minimum residence period of 12 and 36 months (respectively).

In **Ireland** and **United Kingdom**, respectively the non-contributory pension and pension credit are only provided to applicants who pass the habitual residence test (for more details see section 4 of this Synthesis Report).

In **France**, while there is no minimum residence period before third-country nationals become eligible for old-age pensions and benefits, they must live in France for six months plus one day during the civil year of the benefit payment. This residency condition applies to Member State nationals as well.

3.1.5 FAMILY BENEFITS

Here it should be recalled that the Single Permit Directive (2011/98/EU) allows Member States to exclude family benefits for third-country nationals authorised to work for less than six months or on the basis of a visa.

In two Member States – **Czech Republic** and **Poland** – a minimum residence period is required for applicants to claim family benefits:

- In the **Czech Republic**, a minimum residence period of 365 days is required to claim all family benefits (parent benefit, child benefit, birth benefit and funeral benefit – all of which are non-contributory).
- In **Poland**, following the entry into force of new legislation on 1 May 2014, third-country nationals holding certain temporary residence permits are required to have worked (and stayed) in Poland for at least six months.

In many other countries, Member States make access to family benefits dependent on the physical presence in the country of the applicant or the applicant's child/children for the receipt of payments (see section 3.2.5 below). However, in these countries, national legislation does not specify a minimum residence period before it is possible to claim the family benefits.

The **United Kingdom**, for example, makes it a requirement for third-country nationals with access to

public funds to be ordinarily resident in order to apply for the (non-contributory) child benefit, child tax credit (which is means-tested) and the working tax credit. While UK legislation does not clearly establish a timetable for 'ordinary residence', in the past, the Department of Health's guidelines have suggested that someone who has been in the UK for less than six months is less likely to meet the "settled" criterion of 'ordinary residence'. (See chapter 5 of the Synthesis Report for more detail on the criteria used to establish 'ordinary residence' in the United Kingdom).

In **France**, while there is no minimum residence period before third-country nationals become eligible for family benefits, they must live in France for six months plus one day during the civil year of the benefit payment. This residency condition applies to Member State nationals as well.

The requirement for third-country nationals to be long-term residents in order to claim family benefits in a significant number of Member States (see section 3.4.5 below), also presumes a minimum period of residence, but this minimum period is not explicitly stated in legislation.

3.1.6 UNEMPLOYMENT BENEFITS

The Single Permit Directive (2011/98/EU) allows Member States to restrict equal treatment in the case of unemployed third-country nationals who have worked for less than six months in the territory of the Member State.

For most Member States, in principle no legal minimum residence period is required. However, the requirement for third-country nationals to hold certain types of residence or work permits (see section 3.4.6 below) may create a de facto minimum residence period.

In **France**, applicants must have lived in the country for a minimum of six months plus one day during the civil year of the benefit payment. In **Poland**, following the entry into force of new legislation on 1 May 2014, third-country nationals holding a visa as well as temporary residence and work permits are also required to have worked (and stayed) in Poland for at least six months

3.1.7 GUARANTEED MINIMUM RESOURCES

In at least fourteen Member States (**Austria**, **Belgium**, **Cyprus**, **Germany, Hungary**, **Italy**, **Lithuania**, **Luxembourg**, **Latvia**, **Slovenia**, **Poland**, **Portugal**, **Spain, United Kingdom**) a legal minimum residence period is required in order to access some or all of the benefits that MISSOC categorises as 'guaranteed minimum resources'.

In many cases, this minimum residence period de-facto restricts access to third-country nationals holding permanent residence or a long-term residence permit (**Austria**, **Cyprus**, **Hungary**, **Latvia, Luxembourg**, **Slovenia**), who generally have at least five years of residence.

In **Portugal** the minimum residence period is three years, whereas in **Italy** minimum residence is at least one year but could be more given the discretionary power of municipalities. In **Spain,** there are minimum residence periods attached to two non-contributory pensions categorised as 'guaranteed minimum resources': the non-contributory old-age pension (10 years of legal residence of which two must be consecutive years, and come immediately before the applicant claims the benefit); and the non-contributory disability pension (five years of legal residence of which two must come immediately before the applicant claims the benefit).

In **Cyprus**, in order to access the Social Pension the claimant must have legal residence in Cyprus or in any other EU/EEA member state or Switzerland for a total period of at least 20 years from the date the claimant

reaches the age of 40, or for a total period of at least 35 years from the date the claimant reaches the age of 18 years. In **Poland**, social assistance benefits are also mainly available to a third-country national who has a long-term residence permit.

There is no specific minimum residence period as such in at least ten Member States (**Czech Republic**, **Estonia**, **Finland**, **France, Greece**, **Ireland**, **the Netherlands**, **Slovak Republic**, **Sweden, United Kingdom**). In **Ireland** and **the United Kingdom**, the applicant must satisfy the habitual residence condition.[85] In **France**, the applicant must live in France for six months plus one day during the civil year of the benefit payment. This residency condition applies to Member State nationals as well.

3.2 EXPORTABILITY OF BENEFITS

In this section, the export of benefits refers to situations where the third-country national's ordinary place of residence changes 'back' to the country of origin, rather than residing ordinarily in a Member State. Short periods of residence in the country of origin, where the third-country national retains their residence status in the Member State, are not covered.

National rules governing the export of benefits usually vary according to the type of benefit. However, in some cases general rules apply across all types of benefits. For example, **Finland**'s social security legislation does not apply to persons moving abroad on a permanent basis. However, it applies to persons considered to be permanently resident in Finland if the temporary residence abroad is estimated to be no more than one year. Social security legislation is also applied to those persons residing abroad repeatedly but not exceeding one year at a time, in case those persons are considered to be permanently resident in Finland and have close links with Finland.[86] Furthermore, as a rule, a person does not have a municipality of residence in Finland if he or she moves abroad for a period longer than one year unless he or she has a closer link to Finland than the foreign country of residence. These rules apply to everyone regardless of nationality.

It is worth highlighting in this regard that the Directive on long-term residents permits Member States to restrict equal treatment to cases where the registered or usual place of residence lies within the territory of the Member State concerned.

This section does not review the provisions contained in bilateral agreements, where exceptions to the general exportability rules may be provided. These bilateral agreements are reviewed in Section 5 of this Synthesis Report.

3.2.1 HEALTHCARE

Healthcare benefits (in kind) are generally not exportable to third-countries. Exceptions are made in a number of countries for third-country nationals from certain countries of origin.

The only exception to this general rule is **Luxembourg**, where national legislation has not put into place any restriction to the export of benefits abroad coming from contributions.[87]

[85] In **Ireland** one must have an established 'right to reside' in the State in order to be considered habitually resident and to reside (physically) in the State (apart from short periods) while receiving these payments. There is no legal minimum residence period as such attached to these payments.

[86] There are also certain exceptions primarily concerning posted personnel, students, researchers and their family members.

[87] Normally, the system allows the person insured to be treated in another country and have the costs of treatment reimbursed by the National Health Fund. This situation originates from the 1960s, when Luxembourg put in place its social security legislation. An explicit aim of the system was to protect the benefits accrued by cross-border workers coming from neighbouring countries which, at the time, were not part of the founding members of the EEC.

3.2.2 SICKNESS CASH BENEFITS

In most Member States (**Austria**, **Belgium**, **Bulgaria, Cyprus**, **Estonia**, **Greece**, **Finland**, **France, Ireland**, **Italy**, **Latvia**, **Lithuania**, **Malta**, **Netherlands**, **Slovenia**, **Spain, United Kingdom**), sickness cash benefits are not exportable. Exceptions are made in a number of countries for third-country nationals from certain countries of origin.

In **Belgium**, although sickness cash benefits are not exportable, beneficiaries can be allowed to temporarily go abroad to receive medical care.[88]

In a number of Member States (**Luxembourg, Hungary, Poland, Portugal, Slovak Republic, Sweden**), exporting sickness cash benefits is subject to various conditions. For example, in **Sweden,** some wage-related benefits are exportable to any country as long as there still is a right to the benefit. In **Hungary**, if a third-country national is in receipt of a health care social insurance cash benefit (e.g. pregnancy-confinement benefit, child-care fee, sickness benefit or work accident sickness benefit, work accident annuity) and returns to his/her country of origin during the payment of the benefit, the payment of the benefit is not stopped. This means continuation of the payment to the original bank account.

3.2.3 MATERNITY AND PATERNITY BENEFITS

In most Member States (**Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Malta, Netherlands, Portugal, Sweden, Spain, United Kingdom**), maternity and paternity benefits are not exportable to the country of origin.

In at least seven Member States (**Czech Republic**, **Hungary**, **Lithuania**, **Luxembourg**, **Poland**, **Slovak Republic**, **Slovenia)** export of maternity and paternity benefits is possible. For example, in **the Czech Republic**, the benefit will be paid abroad at the request of the insured person only to the insured person's account, while the fees of the bank transfer are borne by the insured person.[89]

3.2.4 OLD-AGE PENSIONS AND BENEFITS

The EU Blue Card Directive (2009/50/EC) and the Single Permit Directive (2011/98/EU) establish that EU Blue Card holders and third-country workers who move to a third country shall receive income-related acquired statutory pensions in respect of old age under the same conditions as nationals of the MS concerned.

In 17 of the 25 Member States participating in this study **(Cyprus, Czech Republic, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Spain, Sweden** and **United Kingdom)**, national legislation makes it possible for third-country nationals to export (at least some of) the old-age pensions to a third country, if they permanently move abroad. In these Member States, the same exportability provisions therefore apply to third-country nationals as they do to nationals of the respective Member States.

This mostly concerns old-age pension schemes that are contributory in nature:

- In **Ireland** and the **United Kingdom**, for example, only the contributory State pension is exportable. One must reside in the State in order to receive the non-contributory pension;

In **Finland**, only the earnings-related pension can be exported without restrictions; the national pension (non-contributory) can only be paid abroad for a

[88] Art. 294 Royal Decree 3 July 1996, B.S. 32 July 1996.

[89] Section 111 of Act No. 187/2006 Coll., on Sickness Insurance

period of a year from the end of the month when the person concerned

- left the country; Finland's guarantee pension (non-contributory) is not exportable;
- The non-contributory pensions (elements) of old-age pension schemes of **Sweden** are also not exportable.

In **Germany**, if people leave the country before having paid contributions for five years they can have their own (employee) share of pension contributions returned two years after departure.

In the remaining eight Member States (**Austria, Belgium, Bulgaria, Estonia, Greece, Italy, Poland** and **Slovenia**) old-age pensions are only exportable to third countries with which bilateral agreements have been concluded which authorise such exports (see section 6 of this Synthesis Report). This also mostly concerns Member States with contributory old-age pension schemes. In most of these countries, there is a difference in relation to the exportability rights of Member State / EU nationals.

3.2.5 FAMILY BENEFITS

The majority of Member States participating in this study do not permit the export of family benefits when a beneficiary permanently moves to a third country (**Cyprus, Czech Republic, Estonia, Finland, Germany, France[90], Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain** and the **United Kingdom**). Nevertheless, the export of family benefits is permitted by some of these Member States through bi-lateral agreements with specific third-countries (see section 5 of the Synthesis Report).

The export of family benefits is only permitted in **Sweden** but restrictions apply. In **Sweden**, parent benefit, child allowance and child support can be exported for a maximum of 6 months if a parent permanently moves abroad, as long as the child concerned remains in Sweden.

3.2.6 UNEMPLOYMENT BENEFITS

Unemployment benefits are generally not exportable given that they often require residence in the Member State and often include specific obligations for applying to jobs.

Exceptions to this general rule are **Luxembourg** that does allow for the exportability of unemployment benefits. In other cases, exportability is temporary in nature (**Belgium**) or applies to certain third countries, mostly under existing bilateral agreements (**Bulgaria, Luxembourg, Malta, Portugal** and **Slovenia**) – see section 5 below for more details.

In **Belgium** exportability is restricted to older workers who participate in a recognized development cooperation project, youngsters on 'work integration benefits' and other job-seekers who are abroad for purposes of educational projects or internships or people over 60 who do not have to be available for the labour market any more can be temporarily abroad. In **Malta** exportability is in principle limited to three months but extendable for another three if the applicant can prove he/she has prospects of finding a job in another EU Member State.

3.2.7 GUARANTEED MINIMUM RESOURCES

None of the 25 Member States participating in this Study allow for exporting benefits in the category of guaranteed minimum resources.

[90] Except some specific cases

3.3 MINIMUM EMPLOYMENT (CONTRIBUTION) PERIOD

3.3.1 HEALTHCARE

While employment (national insurance contributions) is a requirement for third-country nationals to access the public healthcare in Member States with contributory (or mixed) public healthcare systems, there is usually no minimum employment (contribution) period that needs to be met before access to healthcare is provided. In **Austria**, **Belgium**, **Bulgaria**, **Czech Republic**, **Estonia**, **Germany,** **Lithuania**, **Luxembourg**, **Malta**, **Netherlands**, **Poland**, **Slovak Republic and Spain**, access to public healthcare starts immediately when the third-country national begins to pay his or her contributions.

There are a few exceptions to this rule. In **France**, a pre-condition for third-country nationals (and Member State nationals alike) to receive healthcare treatment include payment of a minimum level of contributions. In **Lithuania**, for example, self-employed third-country nationals must have made contributions for three months before they can access the public healthcare system. In **Luxembourg**, third-country nationals who are paying voluntary contributions (i.e. third-country nationals who are neither employed nor self-employed) must have paid their contributions for three months in order to access the healthcare system.

(No information was received from **Cyprus**, **Greece**, **Hungary** and **Portugal**).

In the case of **Sweden**, access to public healthcare is granted to every person who stays, or can be expected to stay, in Sweden for at least one year. Access to healthcare is based on residence in the country and not on employment.

In some countries where the public healthcare system is financed through general taxation, access can be affected by the length of the employment contract. In **Estonia**, the third-country national must demonstrate that the employment contract lasts a minimum of three months. In **Finland**, third-country nationals who are considered to be 'permanently' settled in the country are entitled to healthcare[91]. Furthermore, EU Blue Card holders and their family members have access to healthcare. In addition to that, persons who intend to engage in paid employment in Finland for a minimum of four months, or who have completed at least four months of self-employment, are entitled to compensation for medical expenses, even if they are not considered to be resident in Finland on a permanent basis.

3.3.2 SICKNESS CASH BENEFITS

Due to the type of sickness cash benefits being contributory in nature, most Member States (**Austria, Belgium, Bulgaria, Cyprus, Estonia, Germany, Greece, Hungary, Ireland, France, Lithuania, Latvia, Malta, Poland, Portugal, Slovenia, Slovak Republic, Spain, United Kingdom**) require a record of certain minimum period of contributions or employment ("qualifying period"). In **Spain and Poland**, this minimum period of contributions in not required in the case of an accident (whether or not it is of an occupational nature) and in case of occupational disease.

In the **Czech Republic**, eligibility for sickness cash benefits is contingent upon participation in sickness insurance, but it is not conditional on a qualifying minimum period of contributions.

In **Finland**, where there is a system of mixed financing, third-country nationals who are considered to be 'permanently' settled in the country are entitled to sickness cash benefits. EU Blue Card holders and

[91] This refers to public health services organised by municipalities and compensation for medical expenses granted by Kela.

their family members also have access to sickness cash benefits. In addition, persons who intend to engage in paid employment in Finland for a minimum of four months, or who have completed at least four months of self-employment, are entitled to sickness cash benefits, even if they are not considered to be resident in Finland on a permanent basis.

As mentioned in this section above, the qualifying requirements are the same for everyone, irrespective whether the person is a Member State national or a migrant third-country national possessing a long-term or a fixed-term residence permit. The qualifying period is defined differently across Member States. For example, In **Lithuania** the minimum period of payment of contributions for sickness allowances is at least 3 months over the last 12 months or at least 6 months over the last 24 months. In **Poland**, the requirement is 30 days in case of obligatory insurance and 90 days in case of voluntary insurance.[92]

3.3.3 MATERNITY AND PATERNITY BENEFITS

In most Member States (**Bulgaria, Cyprus, Czech Republic, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg[93], Portugal, Slovenia, Slovak Republic, Spain, Sweden, United Kingdom**) a qualifying period of minimum accumulated contributions exists as a condition to granting access to maternity and paternity benefits. This condition is not migration-specific and applies to Member State nationals as well. Moreover, as mentioned in section 2, in six of these Member States (**Bulgaria, Hungary, Lithuania, Portugal, Spain and Sweden**) non-contributory maternity benefits also exist in parallel to the contributory benefits.

In **Finland**, those third-country nationals who are considered to be permanent residents are entitled to maternity and paternity benefits (parental per diem allowances and benefits in kind). Furthermore, EU Blue Card holders and their family members have access to benefits in kind even if they would not have municipality of residence in Finland.

The qualifying periods and conditions for the contributory benefits vary across Member States.

- For example, in **Hungary** the pregnancy-confinement benefit is due to the beneficiary who was insured for 365 days within two years prior to giving birth, and who gives birth during the insurance term or within 42 days after the termination of insurance. Pregnancy-confinement benefit is provided for 168 days.[94]
- In **Spain**, in order to access maternity benefits, the period of minimum contributions varies depending on the age of the beneficiary:
  - If she is less than 21 years old at the time of giving birth, there is no period of minimum contributions;
  - If she is between 21 and 26 years old, a minimum of 90 days of contributions are required within seven years prior to giving birth, or 180 days in total;
  - If she is older than 26 years, a minimum of 180 days within the last seven years are required, or a total of 360 days.

[92] For further details on the qualifying period for sickness cash benefits, please consult the MISSOC comparative tables at this link: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch.jsp

[93] For benefiting of maternity leave and cash benefits the employee must have been working for the employer for at least 6 months during the year before her maternity leave (confinement). There is no minimum employment period for the maternity allowance and the birth grant.

[94] For further details on the qualifying period for maternity and paternity benefits, please consult the MISSOC comparative tables at this link: http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch.jsp

3.3.4 OLD-AGE PENSIONS AND BENEFITS

Most Member States participating in this study require a minimum employment/ contribution period in order to start receiving a state pension. The exceptions are **Belgium, Netherlands** and **Poland**[95], where any period of insurance gives entitlement to a pension, as long as the beneficiary has reached the official retirement age. In **Estonia** and **Finland**[96], guarantee state pensions are available to persons who have not provided any contributions.

Of the 22 Member States that require a minimum period of contributions in order to start receiving part of a state pension:[97]

- The lowest periods are required in **Sweden** and **United Kingdom**[98] (1 year), **Germany** (5 year qualifying period) followed by **Ireland**, **Latvia** and **Luxembourg** (10 years in each), and **Malta** (10-15 years).
- For most Member States that have a minimum contribution period to start receiving a state pension (**Austria, Bulgaria, Cyprus, Czech Republic, France, Hungary, Italy, Lithuania, Poland**[99], **Portugal, Slovak Republic, Slovenia, Spain**), this period amounts to 15-35 years.

The same minimum period of contributions is required of third-country nationals and Member States nationals. In all cases, the minimum periods of contribution operate alongside other requirements, mostly concerning age.

3.3.5 FAMILY BENEFITS

In most Member States participating in this study (**Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France**[100], **Italy, Ireland,**[101] **Latvia, Lithuania, Luxembourg**[102], **Poland, Slovak Republic, Slovenia, Spain, Sweden** and **United Kingdom**), family benefits are not conditional on a minimum period of employment contributions.

The exceptions are **Greece, Hungary and Luxembourg**, where minimum periods of employment/contribution are required to access certain family benefits:

- In **Greece**, receiving family benefits is conditional on the applicant having worked for a minimum of 50 days or having received regular unemployment subsidies for at least two, or at least a two month

[95] In the case of Poland, this only applies to the new pension scheme which was introduced in 1999 and mostly applies to people born after 31 December 1948. Under the old pension scheme, a minimum contribution period is required. A minimum contribution period is also required with regard to the minimum pension (granted to those pensioners who receive no other pension or who have weak pension security.)

[96] In Finland, persons considered to be permanent residents in Finland (according to the Scope of Application Act) are entitled to old-age pension under the national pension scheme and guarantee pension (both non-contributory). A minimum employment period/contribution period is not required.
When a person begins employment in Finland, he or she will be immediately covered by insurance and will start to accrue a pension under the earnings-related pension system, provided that the insurance conditions concerning pay and the person's age are met. An employee has to be insured if he or she receives a monthly salary for the work of at least EUR 55.59 (in 2013).

[97] Employment (contribution) periods can be much longer in order to receive a full state pension. In the United Kingdom (for example) for pre-2010 retirees, contributions must have been paid or credited for 44 years for a man and 39 years for a woman in order to qualify for a full basic pension; post 2010 retirees, require 30 years of contributions for the full pension.

[98] However, for people reaching pension age prior to 2010 the minimum period of contributions is 10 years in the United Kingdom.

[99] Only under the old (pre-1999) pension scheme and minimum state pension.

[100] In France, there is no minimum employment or contribution period for family benefits, except for the supplement for free choice of working time (CLCA) and optional supplement for free choice of working time (COLCA).

[101] With the exception of Family Income Supplement, which by definition supplements an income: an applicant must be in full-time employment for 38 hours or more every fortnight which is likely to last for at least 3 months.

[102] The only condition is that the child resides legally in the territory with the exception of third-country national cross-border workers.

absence from work due to invalidity or pregnancy. For seasonal workers, the minimum employment period is 100 days of work in the previous 12 months.

- In **Hungary**, in order to claim the child care fee, applicants must have worked for 365 days within the 2 years prior to giving birth to the child. Eligibility for other family benefits is not affected by a minimum contribution period.

- The only exception in **Luxembourg** is the eligibility for the parental leave benefit, which requires a third-country national salaried worker or self-employed person to have worked for the same employer for at least one year prior to commencing leave.

The same rules apply to nationals of the respective Member States.[103]

3.3.6 UNEMPLOYMENT BENEFITS

A minimum employment period exists for third-country nationals to access the contributory unemployment benefits in all Member States. No such minimum employment period exists to access the non-contributory unemployment benefits that additionally exist in **Estonia, Finland, Germany, Ireland, Malta, Spain** and **United Kingdom**.

Conditions vary widely between Member States, but the minimum contribution period start from 4 months (**France),** 26 weeks (**Luxembourg, Netherlands**) or 6 months (**Sweden**), to 34 weeks (**Finland**) and 9 months (**Slovenia**), two years (**United Kingdom**) and go up to two years and 365 days (**Bulgaria, Poland**). However, it must be noted that there are wide differences in the time in which this contribution period must be completed. The time in which the contributions need to take place, in order to access unemployment benefits also varies for employed and self-employed workers. In **Spain**, for example, an employed worker must have contributed for 365 days within a six year period prior to becoming unemployed; whereas a self-employed person must have contributed for 12 months within a 48-month period prior to ceasing activities.

In at least two Member States the contribution period is age-dependent (**Austria**, **Belgium**), though this is relevant for the duration rather than access to the benefits.

The same provisions apply to Member State nationals.

3.3.7 GUARANTEED MINIMUM RESOURCES

The condition of minimum employment does not generally apply to guaranteed minimum resources as these benefits are mostly non-contributory. Moreover, persons in formal employment often have resources above the minimum threshold, although there are exceptions.

In **Belgium**, the Guaranteed Income for the Elderly requires having worked a minimum of 312 full working days for third-country nationals. However, this requirement does not apply in the case of third-country nationals with long-term residence permits as per Council Directive 2003/109/EC, who can receive the Guaranteed Income regardless of minimum employment contributions.

3.4 MIGRATION SPECIFIC CONDITIONS FOR ACCESSING THE BENEFITS

Migration specific conditions are attached to individual benefits in most Member States. In some Member States, certain migration-specific conditions may apply to all social security benefits. In **Finland**, immigrants are required to participate in the measures and

[103] In Ireland third-country and EU child benefit recipients must certify that they are in employment every six months. Irish nationals are randomly checked.

services specified in an integration plan.[104] If an immigrant refuses, without a valid reason, the drawing up or amendment of an integration plan, or refuses to participate in measures and services specified in the integration plan, such as Finnish language studies, the right to labour market support or social assistance may be restricted or reduced.

In **Sweden**, on the other hand, one of the guiding principles of social security policy is that immigrants should not be subject to specific, separate rules only affecting them as a group on the basis of their nationality or immigrant status.

Box 6 Equal rights to social security in Sweden

Equal rights to social security are an important basic feature of the Swedish welfare system. This means that the nationality or immigration status of a person is normally not a criterion for their access to social security benefits. Instead, rights and entitlements are based either on residence, or work, in Sweden.

As far as residence-based access to the welfare system is concerned, any person who stays or can be expected to stay in Sweden for more than one year will normally be considered a resident – irrespective of his or her nationality or immigration status (i.e. type of residence permit).

As far as work-related social security is concerned, this is based on a person working in Sweden. Even in this regard, no differences are generally made on the basis of nationality or immigration status (i.e. type of residence permit).

3.4.1 HEALTHCARE

In twelve Member States (**Austria**, **Belgium**, **Czech Republic**, **Estonia**, **France, Hungary**, **Luxembourg, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden**) the only migration specific condition that third-country nationals must satisfy in order to access healthcare benefits is evidence of a valid residence permit (regardless of whether the permit is for long-term or fixed-term residence).[105]

Additional migration-specific conditions for accessing the healthcare benefits are identified in other Member States. These relate to the requirement to hold a particular residence permit, authorisation of stay or visa. In **Bulgaria**, for example, third-country nationals must hold a long-term residence permit; in **Ireland**, and the **United Kingdom**[106], third-country nationals must be 'ordinarily' resident in the country; in **Finland**, persons having municipality of residence have access to public health services. Furthermore, EU Blue Card holders and their family members are entitled to public health services. There is also universal right to urgent medical care. In principle, those third-country nationals holding residence permits of a permanent or continuous nature (P, P-EU or A) qualify for municipality of residence – holders of temporary residence permit (B) with a period of validity of at least one year on a case-by-case basis.

3.4.2 SICKNESS CASH BENEFITS

Third-country nationals receiving sickness cash benefits are usually required to be employed or self-employed in the Member State as well as to have a valid residence permit (regardless of whether the permit is for long-term or fixed-term residence).

[104] In Finland, immigrants are provided with financial support (known as integration assistance) to ensure that they have secure means of support for the duration of the integration plan. Integration assistance consists of labour market support or social assistance.

[105] In Czech Republic, however, contractual health insurance may have exclusions in comparison with the public health insurance.

[106] However, this is changing in the United Kingdom. Changes being implemented since the Immigration Act will mean that most third-country nationals with fixed-term residence permits who will be in the United Kingdom for longer than 6 months will need to pay a surcharge for healthcare.

3.4.3 MATERNITY AND PATERNITY BENEFITS

Third-country nationals are usually required to be employed or self-employed in the Member State as well as to have a valid residence permit in order to have access to maternity benefits (regardless of whether the permit is for long-term or fixed-term residence).

In some Member States (**Bulgaria**[107], **Hungary**[108], **Lithuania**[109]), only long-term residents or those considered *habitual, ordinary or permanent residents* (**Finland, Sweden**) have access to some maternity benefits. For example, in **Finland**, maternity, paternity and parental allowances are granted on the basis of residence and are, as a rule, available to those holding residence permits of a permanent or continuous nature. Holders of temporary residence permits can access these benefits on a case-by case basis. In **Ireland**, an ordinary residence condition applies to benefits in kind, it does not apply to other benefits. Third-country nationals are expected to be in the State for the duration of their claim.

In **Estonia**, third-country nationals holding a temporary residence permit have access to these benefits if they are Estonian residents living permanently for the purposes of the Aliens Act or the Citizen of the European Union Act. In **Malta**, only limited categories of third-country nationals can access maternity and paternity benefits, namely those with long-term residence status; those with refugee status; those who have an employment licence and who are nationals of countries under the European Social Charter as well as third-country nationals married to EU nationals.

[107] Relates to benefits in kind and aid for uninsured mothers
[108] Relates to Birth grant
[109] Related to Assistance granted to pregnant women not eligible for maternity pay

3.4.4 OLD-AGE PENSIONS AND BENEFITS

In 21 out of the 25 Member States participating in this study, third-country nationals who wish to claim an old-age pension or benefit do not need to fulfil any migration-specific conditions, besides holding a valid residence permit. The exceptions are **Italy** and **Malta**, where third-country nationals are required to hold a long-term residence permit (although in Malta this does not apply to the contributory old-age pension). The type and period of validity of the residence permit that a third-country national holds can also affect his or her access to a residence-based old-age pension in **Finland** (the old-age pension under the national pension scheme and the guarantee pension). However, Finland's earnings-related pension system does not include a residence requirement for employed persons. Access to the pension is based on gainful employment solely. In the **United Kingdom**, anyone who has built up the necessary contributions can claim the contributory pension. For the non-contributory pension credit, third country nationals with access to public funds would need to satisfy the habitual residence test.

3.4.5 FAMILY BENEFITS

In some of the countries participating in this study, (**Belgium, Estonia, France, Italy, Netherlands,** and **Slovenia**) migration-specific conditions are not attached to family benefits, besides holding a valid residence permit.

In Member States where migration-specific conditions exist, these relate to the need to hold a specific residence permit or a specific record of employment. In **Poland**, following the entry into force (on 1st May 2014) of the new regulations, this can either be a long-term residence permit or certain types of temporary residence permit, including those granted to foreigners who are entitled to work (provided that the work permit was granted for a period exceeding 6 months) or who are exempt from the obligation to hold

a work permit (except for students). As mentioned in section 2, ten Member States with non-contributory family benefits restrict these to long-term or permanent residence permit holders, EU-Blue Card holders and researchers (**Bulgaria, Czech Republic, Hungary, Lithuania, Latvia, Luxembourg, Malta, Slovenia, Slovak Republic**[110] and **United Kingdom**).

Other Member States, such as **Austria, Cyprus, Finland, Ireland, Luxembourg and Sweden** do not require third-country nationals to hold long-term residence permits (or at least not to all types of family benefits). However, these Member States apply other conditions to access the family benefits that are specific to third-country nationals:

- In **Austria**, the third-country national must demonstrate 'habitual residence' in the country' (see chapter 4 of this Synthesis Report).
- In **Cyprus**, third country nationals must have their habitual residence in the country for at least the last three years and have a valid residence permit for that period.
- In **Finland**[111] and **Sweden**, the third-country national must have a residence permit that is valid for at least one year and must be considered, on a case-by-case basis, to intend to reside in Finland permanently and in Sweden for at least a year;
- In **Germany**, third-country nationals who have been issued a temporary residence permit that cannot be extended cannot claim benefits (such as seasonal workers)
- In **Ireland**, third-country nationals[112] in receipt of certain family benefits must certify in written form every six months that they are in employment, while Irish nationals are subject to random checks;
- In **Luxembourg**, the third-country national child must have a valid residence permit in order for the parents to apply for family benefits.[113] Third-country nationals must also have worked for the same employer for at least a year prior to taking up parental leave. This latter requirement does not apply in the case of other family benefits.

3.4.6 UNEMPLOYMENT BENEFITS

In eleven Member States (**Austria**, **Bulgaria**, **Czech Republic, Finland, Germany**, **Italy**, **Luxembourg**, **Malta**, **Poland**, **Slovenia**, **United Kingdom**) further migration specific conditions are reported. In **Czech Republic**, for example, although eligibility for contributory benefits is generally dependent on the period of payment of insurance contributions, this is not the case for unemployment benefits. Access to contributory unemployment benefits is dependent on the type of residence permit, whereby only permanent residents, holders of an EU Blue Card and holders of residence on the grounds of family reunification with an EU citizen is required. Similarly, in **Slovenia,** third-country nationals can access mixed-financed unemployment benefits if they hold certain types of residence permits.

In **Austria and Germany**, third country nationals can access unemployment benefits if they are entitled to access the labour market. In **Bulgaria**, a short-term, prolonged or long-term residence and work permit is required. **Italy** requires a valid work permit for 1 or 2 years (or less in case of seasonal workers).

[110] Only some of these benefits are restricted to long-term residence permit holders in the Slovak Republic.
[111] In Finland, the type and period of validity of the residence permit are taken into account when considering whether residence in Finland is permanent (which gives access to family benefits and other residence-based social security).
[112] EEA nationals are subject to the same checks.
[113] The only exception to this rule is in the case of children of third-country national cross-border workers.

Other requirements include having a valid residence permit (**Luxembourg, Spain**), a residence status certificate (**Malta**), a long-term residence permit, certain types of temporary residence permits or work visa (**Poland**), a personal work permit with a validity of three years or indefinite time (**Slovenia**) and passing a habitual residence test to access the non-contributory job seekers allowance[114] (**United Kingdom**).

In **Finland**, receiving unemployment benefits is subject to, among other requirements, the unemployed person registering as a jobseeker. Such registration is possible for a foreign national that has been issued a permanent (P) residence permit or a long-term resident's EC residence permit (P-EU) as well as for a person that has the right to gainful employment on the basis of a continuous (A) or temporary (B) residence permit in case such residence permit is not subject to employer-related restrictions.[115]

3.4.7 GUARANTEED MINIMUM RESOURCES

Thirteen Member States (**Austria**, **Belgium**, **Bulgaria**, **Cyprus, Germany, Ireland**, **Lithuania, Luxembourg**, **Poland**, **Portugal**, **Sweden**, **Slovenia**, **United Kingdom**) report further migration specific conditions. These relate to the requirement to hold a particular residence permit, authorisation of stay or visa.

- In **Austria** third-country nationals need to be holders of a permanent residence permit (according to Directive 2003/109/EC).
- In **Belgium** and **Lithuania**, in order to access some benefits under this branch of social security a person needs to be registered in the population registry, which is only possible for people with permanent residence.[116] However, all legally residing persons are eligible for other benefits under this branch.
- In **Bulgaria**, **Latvia, Poland** and **Slovenia** a long-term residence permit is required, whereas in **Cyprus** and **Poland** that long-term residence permit may also have been obtained in another Member State (in accordance with Directive 2003/109/EC), provided that, based on this, they have also been granted a fixed-term residence permit in Cyprus and Poland.
- In **Bulgaria** third-country nationals applying for guaranteed minimum resources need to perform community service for 4 hours a week for 14 days.
- In **Luxembourg** and **Portugal** specific age requirements apply (in **Luxembourg**, the applicant must be 25 years old and must have five years of continuous residence in Luxembourg in the last 20 years).

[114] Anyone who has built up the necessary contributions can access contributory JSA

[115] Under current legislation in Finland, in certain situations a third-country national person is not entitled to unemployment benefits due to not being considered to reside in Finland on a permanent basis, even if he or she pays unemployment insurance contributions during employment. This problem primarily applies to persons migrating to Finland directly from third countries. A similar situation may also arise if a person holds a residence permit that allows employment in Finland, but after becoming unemployed, is unable to register as a jobseeker due to the residence permit being restricted to a specific employer.

[116] In Belgium, third-country nationals with fixed-term residence permits are registered in the foreigners' registry. These have access to some of the minimum income resources available to Belgians and people with permanent residence, but are not eligible for others (the amounts available are the same however).

4 ADMINISTRATIVE PRACTICES THAT AFFECT THIRD-COUNTRY NATIONALS' ACCESS TO SOCIAL SECURITY

Key findings

While six Member States do not apply discretionary assessment in determining eligibility of third-country nationals to particular social security benefits and base their decision only on provisions stipulated in national legislation, most Member States exercise discretion in a number of ways:

- In eleven Member States, discretionary criteria are used to determine the residence status of third-country national and Member State national applicants alike, particularly when granting non-contributory benefits.
- In two Member States, discretion can be applied in order to waive eligibility conditions for certain types of social security benefits (family benefits and unemployment benefits), again in the context of claims from both third-country and Member State applicants.
- Eight Member States can exercise discretion in the course of applying a means-test, regardless of nationality, for granting non-contributory benefits.
- In one Member State, discretion is applied when assessing whether to grant emergency support to third-country nationals who have entered the state with the intent of obtaining benefits.
- Predominantly, Member States apply discretion in assessing applications for means-tested and non-contributory benefits. Discretion is rarely applied in the case of contributory benefits.

While most discretionary criteria apply to nationals and third-country national applicants alike, they often represent a greater hurdle for third-country national applicants.

Most Member States that apply some kind of discretion have developed methodological guidance and training for deciding officers, which can take the form of regulations, circulars, guidelines, ad-hoc support and training.

In the majority of Member States, claiming certain social security benefits – in particular guaranteed minimum resources - may have a negative impact on migrants' legal status in procedures for residence permit renewal, naturalisation and family reunification. In some cases, claiming social assistance may result in the rejection of applications for residence permit renewal, naturalisation and family reunification.

Translation, interpretation, information and other forms of support are available in most Member States to support third-country nationals in accessing social security.

This section examines a number of administrative practices that may advertently or inadvertently affect access to social security benefits by third-country nationals. These include: (i) whether, and in what ways, deciding officers exercise a degree of discretion when determining the eligibility of third-country nationals to certain benefits compared to Member State nationals; (ii) whether claiming social security affects the legal status of a third-country national, such as renewing residence permits, application for naturalization or for family reunification, where these aspects are dependent on the individual's ability to be self-supporting; and (iii) whether translation, interpretation or other forms of support are available to third-country nationals wishing to access a social security benefit or programme.

4.1 DISCRETIONARY CONDITIONS IN THE DETERMINATION OF ELIGIBILITY

A challenge that Member States face when implementing social security legislation is the need to apply a consistent set of eligibility rules which take into account the diversity of circumstances facing individual applicants. The challenge has been addressed in a

number of Member States by applying 'discretionary conditions' - that is, conditions that permit deciding officers in charge of scrutinizing applications to exercise a degree of judgement or discretion as to whether eligibility conditions have been met, taking into account all of the individual applicant's circumstances. The exercise of discretion by deciding officers is normally limited to implementing a set of rules that are deliberately flexible in the relevant legislation. This flexibility may be particularly useful in the administration of social security claims by third-country nationals, given the great diversity of circumstances migrants often face; however, discretion is often exercised in the assessment of social security claims by non-migrant applicants as well. This section will also review the steps taken by Member States to ensure the consistent implementation of the discretionary conditions, through the provision of training, guidelines and other types of guidance for deciding officers.

A number of Member States (**France, Italy**, **Latvia**, **Lithuania**, **Luxembourg, and Spain**) do not apply discretionary conditions in the assessment of social security claims. In these Member States, applications are assessed according to an exhaustive list of criteria stipulated in national legislation. In **Italy**, for example, in extraordinary cases where an individual's eligibility cannot be determined, a competent judge is called to adjudicate.

In most Member States (**Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden** and **the United Kingdom**), the eligibility rules for some or all benefits allow deciding officers to exercise a degree of discretion. Annex 4 provides an overview of these discretionary elements by category of social security benefit across the Member States.

In the **Netherlands** discretion is applied to all of the MISSOC categories of social security benefits examined in Section 3 of this study (i.e. healthcare, sickness cash benefits, maternity and paternity benefits, old-age pensions and benefits, family benefits, unemployment benefits and guaranteed minimum resources).

In **Finland** the exercise of discretion on the part of deciding officers does not take place at the point of assessing individual social security claims. Instead, it takes place beforehand, when deciding officers determine whether an applicant's residence in Finland can be considered as permanent or temporary. This determination in turn impacts on an applicant's entitlement to Finland's residence-based social security benefits (which make up a significant proportion of the total).[117]

Predominantly, Member States apply discretion in assessing applications for means-tested and non-contributory benefits. Discretion is rarely applied in the case of contributory benefits as these are most commonly dependent on strictly measurable criteria, such as numbers of months of contributions paid. However, exceptions exist, e.g. **Estonia**, when assessments are made whether to grant (contributory) unemployment benefits to persons who have worked abroad.

Deciding officers can apply discretion when assessing a claim for social security benefits in a number of cases, including:

- When assessing an applicant's residence status (i.e. the strength of their attachment to the country) (**Austria, Cyprus, Estonia,**

[117] The exception is in relation to social assistance under guaranteed minimum resources, which is means-tested and as such contains discretion.

Germany[118], **Ireland, Finland, Malta, Netherlands, Poland, Sweden, United Kingdom**);

- When deciding whether to waive certain eligibility conditions (**Belgium, Czech Republic**);
- In the administration of a "means test" attached to certain benefits (**Belgium, Bulgaria, Estonia, Finland, Hungary, Poland, Portugal, Slovenia, Slovak Republic**).
- In deciding whether to grant emergency support for persons who have entered the Member State with the sole intent of obtaining social benefits (**Germany**).

Each of these cases is examined in the remainder of this section.

4.1.1 DISCRETION IN ASSESSING THE RESIDENCE STATUS OF THE APPLICANT

In a number of Member States (**Austria**, **Cyprus, Estonia, Germany**[119], **Finland, Ireland, Malta, Netherlands, Poland, Sweden and the United Kingdom**), a degree of discretion is applied when determining the residence status (or degree of attachment to the country) of an applicant for social security benefits. Different terms are used to refer to the strength of an applicant's attachment to the Member State, including "ordinary residence", "usual residence", "habitual residence", "centre of interest", "permanent residence" and "focal point".

The term 'habitual residence' is often not defined in national legislation, although case-law of the Court of Justice of the European Union on the implementation of the concept of residence in Regulation (EC) N°1408/71 (now Regulation (EC) N°883/2004) and Regulation (EC) N° 987/2009 has helped to provide some consistency to the way 'habitual residence' is applied in Member States, e.g. by stating that it should include consideration of the length, continuity and general nature of actual residence; the reasons for coming to a Member State; the claimant's 'centre of interest', among others.[120] The European Commission has also produced a Guide to help Member States in how they apply the 'Habitual Residence Test' in the context of social security.[121]

Box 7 Criteria stipulated in Article 11 of Regulation 987/2009

(a) the duration and continuity of presence on the territory of the Member States concerned;

(b) the person's situation, including:

(i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;

(ii) his family status and family ties;

(iii) the exercise of any non-remunerated activity;

(iv) in the case of students, the source of their income;

(v) his housing situation, in particular how permanent it is;

(vi) the Member State in which the person is deemed to reside for taxation purposes.

[118] However, discretion is not used in Germany in relation to basic job seekers security.
[119] However, discretion is not used in Germany in relation to basic job seekers security.
[120] However, it should be noted that this case-law is on the position of EU migrant workers in the context of free movement. Case C-90/97 Swaddling [1999] ECR I-1075; Case C-76/76 *Di Paolo* [1977] ECR 315, paragraphs 17 to 20, and Case C-102/91 *Knoch* [1992] ECR, I-4341, paragraphs 21 and 23.
[121] Practical Guide on the Applicable Legislation in the European Union (EU), the European Economic Area (EEA) and Switzerland (European Commission, December 2013). This Guide also applies to the position of EU migrant workers in the context of free movement.

An applicant may need to demonstrate different degrees of attachment, depending on the benefits in question. Two types of discretionary assessments can be identified in this regard:

- An assessment aimed at testing an applicant's ordinary residence in the country, which does not require that the applicant intends to live in the country permanently;
- An assessment aimed at testing an applicant's residence or attachment to the country on a more permanent basis.

These are subsequently examined below.

Discretionary assessment to test an applicant's ordinary residence

This type of discretionary assessment is made by deciding officers in **Ireland** and **the United Kingdom**[122] in the context of healthcare; and in **Poland**, mainly in the context of social assistance.

- In **Ireland**, access to healthcare free of charge is contingent on satisfying the '*ordinarily resident*' condition which requires that an applicant has been resident or intends to reside in the State for at least one year. The burden of proof lies with the third-country national who must present the necessary documentary evidence.
- In the **United Kingdom**, ordinary residence has been defined by the House of Lords as referring to "*a person's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being whether of short or long duration*". Ordinary residence can begin immediately on arrival to the UK and to be an ordinary resident, third-country nationals are not required to intend to live in the UK permanently.[123]
- In **Poland**, a third-country national applying for social assistance must have a domicile and must be phisically present in Poland. A community interview is carried out with the applicant in his/her place of residence in order to verify this.

Discretionary assessment to demonstrate residence or attachment to the country on a more permanent basis

In a number of Member States, applicants for certain social security benefits have to demonstrate residence or attachment to the country on a more permanent basis. In these Member States, deciding officers evaluate and apply discretion as to whether the Member State is the applicant's "habitual residence" (**Cyprus, Ireland, Netherlands, United Kingdom**), "centre of interest" (**Ireland**, **Sweden**); "usual residence" (**Germany**[124]); permanent residence" (**Finland)** "focal point" (**Estonia**) or "fixed residence" (**Malta**).

Austria, Cyprus, Ireland, Netherlands and the **United Kingdom** apply a Habitual Residence Test (HRT)[125] to determine whether a close association exists between the applicant and the country from which payment is claimed.

- In **Sweden**, in order to be granted residence-based benefits, the Swedish Social Insurance Agency will assess if Sweden is the applicant's "centre of interest" and the real domicile, based on a number of determining factors.

[122] However, this is changing in the United Kingdom. When the changes set out in the Immigration Act (passed on 14th May 2014) have been fully implemented, most third-country nationals with fixed-term residence permits who will be in the UK more than 6 months will pay a surcharge and only permanent residents and those granted refugee status or humanitarian protection will have free access, rather than those considered an 'ordinary resident'. These changes are in the process of being implemented.

[123] While this is changing in relation to healthcare, whether or not a person is an ordinary resident is still applied in the United Kingdom to non-contributory family benefits.

[124] However, discretion is not used in Germany in relation to basic job seekers security.

[125] The HRT applies also or mainly to EU nationals in cross-border situations.

- In **Finland**, where the majority of social security benefits are residence-based, deciding officers must use a degree of discretion to determine whether the applicant lives in Finland on a permanent basis. Discretion is applied by different authorities, such as the Social Insurance Institution (Kela) and the municipal authorities, depending on the types of social security benefits.
- In **Estonia,** if an applicant for unemployment insurance benefits has worked in another country and applies for unemployment insurance benefit, a decision is made exercising a degree of discretion as to whether Estonia can be considered the applicant's "*focal point*".
- In **Germany,** for certain types of social welfare benefits which require "usual residence" it is necessary that the applicants' personal circumstances show that his or her residence is not only of a temporary nature.
- In **Malta**, the residence of the applicant is assessed based on a number of required documents certifying that the applicant has a "fixed residing address".

In order to establish the residence status of the applicant, a number of determining factors evaluating the personal circumstances of the applicant may be examined. In **Cyprus** and **the Netherlands**, the habitual residence test is assessed according to criteria established in Article 11 of the Regulation 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, presented in Box 7 below.

In **Estonia, Finland, Ireland, Poland, Sweden** and **the United Kingdom**, consideration of the applicant's personal circumstances is determined by applying a number of factors, which are presented in table 4.1 below.

Table 6 Examples of factors taken into consideration when applying a residency test

Factors	Member States
(Intended) duration of stay in the Member State	Estonia, Ireland, Finland, Sweden, United Kingdom
Family ties	Ireland, Finland, Poland, Sweden, United Kingdom
Professional activity	Ireland, Poland, Sweden, United Kingdom
Duration of employment contract	Estonia, Finland, Ireland, Sweden, United Kingdom
Evidence of integration into society, e.g. membership in a club	Ireland, United Kingdom
Ownership of property in the Member State	Ireland, United Kingdom,
Ownership of property in the country of origin	Ireland, United Kingdom
Reasons for leaving the country of origin/coming to the Member State	Estonia, United Kingdom
Close personal and occupational links with the state of residence	Estonia, Ireland, Poland, United Kingdom
Being a taxpayer in the Member State	Finland

4.1.2 DISCRETION IN WAIVING ELIGIBILITY CONDITIONS FOR SOCIAL SECURITY BENEFITS

Discretion can be applied in the decision to waive certain eligibility conditions for specific social security benefits (**Belgium** and **Czech Republic**). In both Member States, this possibility applies to applicants who are third-country nationals and Member State nationals alike. The examples below indicate how this possibility can be relevant to third-country nationals in particular:

- In **Belgium**, for example, the Ministry of Social Affairs has a discretionary power to grant exceptions to certain conditions for family benefits, *including exceptions on conditions that the child has to be raised in Belgium; required affiliation between the child and the family member to whom the family benefits are attached and conditions that the child has to be educated in Belgium.*

- In the **Czech Republic**, the Ministry of Labour and Social Affairs can wave the conditions for applicants to receive family benefits and foster care benefits (e.g. the condition that a third-country national must be a long-term resident).

4.1.3 DISCRETION APPLIED DURING A MEANS TEST FOR GRANTING NON-CONTRIBUTORY BENEFITS

Although not specifically migration-related, in some Member States (**Belgium, Bulgaria, Estonia, Finland, Hungary, Poland, Portugal, Slovenia**) a discretionary element is applied when assessing whether a person is entitled to non-contributory, means-tested benefits. This is usually a general assessment applied due to the nature of the benefits which require evaluation of the financial situation of a person regardless of nationality, i.e. to Member State nationals as well as to third-country nationals eligible to access the particular benefits.

- In **Belgium**, this test is called "social examination" whereby a social worker undertakes a fact assessment to establish the financial situation of the applicant.
- In **Bulgaria** and **Poland**, social workers in the "Social Assistance" department or local centres for social assistance are responsible for the establishment of the conditions for exercising the right to social assistance, which involves checking the home of the person and / or family, study of documentation and information gathering.
- In **Estonia**, upon assessing the assets owned by the person it is considered if these assets are such that would ensure subsistence to the person. Thereby, the value of the assets is not as significant as the kind of income the asset could earn the person.

Table 7 Examples of factors taken into consideration in means-tested assessments

Factors	Member States
Personal and/or family income	Belgium, Bulgaria, Estonia, Finland, Hungary, Poland, Portugal, Slovenia
Housing status	Belgium, Poland Portugal
Ownership of property	Belgium, Bulgaria, Estonia, Finland, Poland, Portugal
Ownership of assets	Belgium, Estonia, Finland
Family status	Belgium, Bulgaria, Hungary, Poland, Portugal, Slovenia
Health status	Belgium, Bulgaria, Poland, Slovenia
Employment status	Belgium, Bulgaria, Poland
Educational status	Bulgaria
Age	Bulgaria
Willingness to work	Belgium, Estonia
Other personal circumstances	Bulgaria, Poland

4.1.4 DISCRETION APPLIED WHEN ASSESSING WHETHER TO GRANT EMERGENCY SUPPORT FOR PERSONS WHO HAVE ENTERED THE MEMBER STATE WITH THE INTENT OF OBTAINING SOCIAL BENEFITS

In **Germany**, some social benefits cannot be claimed if the reason for entry was the intent of obtaining social security benefits or if the right of residence is solely for the purpose of seeking employment. National jurisprudence entitles persons who entered with the intent of obtaining social security benefits to obtain an emergency financial support covering costs and fares for the return to their country of origin. The discretionary decision whether to grant emergency support is based on the overall circumstances (e.g. whether the person has family members eligible to remain in Germany) and other factors (e.g. previous length of residence, health status and ability to travel)

and requires, furthermore, that the person is not eligible for basic security for job seekers.

4.2 METHODOLOGICAL GUIDANCE FOR DECIDING OFFICERS IN CHARGE OF IMPLEMENTING DISCRETIONARY CRITERIA

Methodological guidance for the consistent implementation of discretionary criteria is provided to deciding officers in a number of Member States. (**Belgium, Bulgaria, Czech Republic, Finland, Estonia, Ireland, Italy, Netherlands, Poland, Portugal, Slovenia, Sweden** and **the United Kingdom**). This can take the form of regulations and circulars; guidelines; trainings and ad-hoc support as well as online resources.

Regulations and circulars

In **Belgium, Estonia, Ireland** and **Italy**, circulars have been issued that instruct deciding officers as to how discretionary criteria can be applied. In **Belgium**, ministerial circulars provide a list of the general exceptions of the eligibility rules for unemployment benefits. In **Estonia**, explanatory memorandums of the relevant legislative provisions are developed as supporting materials. In both **Estonia** and **Italy**, circulars provide guidance on court judgments about specific aspects related to social security and welfare laws.

Guidelines

In **Bulgaria, Estonia, Finland, Ireland, the Netherlands, Sweden** and **the United Kingdom**, guidelines have been produced to support deciding officers in assessing social security applications. In **Finland**, among other guidelines, the Ministry of Social Affairs and Health issued a Handbook with recommendations for the Application of the Act on Social Assistance, while KELA issued a guide on insurance which has detailed information on decision-making concerning residence- based social security. In **Ireland**, operational guidelines are available to deciding officers which provide guidance on the Habitual Residence Test condition. In the **Netherlands**, sample questionnaires for applicants are available as information collection tools.

Training and support

Training and support to the responsible authorities is provided in **Belgium, Bulgaria, Estonia, Finland, Germany, Ireland, Poland, Slovenia and United Kingdom**. In Estonia, local governments have the chance to participate in different trainings including trainings that focus on discretionary decisions upon exercising administrative proceedings. In the **Czech Republic**, a related workshop was organized by EURES in 2013. In **Ireland** and the **United Kingdom** training on applying the Habitual Residence Condition is offered to frontline staff.

Online resources

In **Belgium**, **Finland** and **Ireland**, deciding officers have access to online resources that are designed to facilitate their decisions. In **Belgium**, a technical portal contains a database of instructions, a practical syllabus on entitlements and explanations on legislation. In **Finland**, the Social Insurance Institution Kela provides online courses for new officers (Basic and advanced course in insurance decisions). In **Ireland**, guidelines are available on the Department of Social Protection website and intranet.

4.3 EFFECT OF APPLICATIONS FOR SOCIAL SECURITY ON THE LEGAL STATUS OF THIRD-COUNTRY NATIONALS

Claiming certain social security benefits can have a negative impact on the legal status of third-country nationals in procedures for residence permit renewal, applications for long-term residence permits, naturalisation and family reunification.

This negative impact is foreseen in both the Directive on the admission of researchers (Article 10(1) read in

conjunction with Article 6(2)(b), which requires the researcher to have sufficient monthly resources "without having recourse to the Member State's social assistance system", and the EU Blue Card Directive (Article 9(3)(b)), which permit Member States to withdraw, or refuse to renew, the residence permit of a researcher or EU Blue Card holder if he or she does not have sufficient resources to meet his/her expenses without having recourse to the Member State's social assistance system. Withdrawal or refusal to renew an EU Blue Card is also permitted if the holder is unemployed for more than three consecutive months, or if unemployment occurs more than once during the validity of an EU Blue Card.

4.3.1 EFFECTS ON RESIDENCE PERMIT RENEWAL

In a number of Member States, in addition to fulfilling other eligibility conditions, applicants for residence permit renewals must be able to demonstrate they have:

- Sufficient means for subsistence (**Austria, Bulgaria, Czech Republic, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovak Republic, United Kingdom**). It is to be noted that the fact of demonstrating sufficient means of subsistence is a "standard" admission (and renewal) condition in the majority of the migration Directives.
- Employment (**Belgium, Finland**[126]**, Luxembourg**[127] **and Poland**[128]); and/or,
- Health insurance (**Austria**, **Belgium, Germany, Hungary, Lithuania, Poland**).

In some Member States, if the third-country national on a temporary residence permit receives certain social security benefits the residence permit could be not granted or withdrawn (**Austria**, **Belgium**[129]**, Czech Republic, Estonia, Finland, Germany, Ireland, Luxembourg, the Netherlands, Poland**[130]**, Portugal, Slovak Republic**). In almost all cases this concerns social assistance payments (guaranteed minimum resources. In certain cases (e.g. **Belgium**, **Luxembourg** and **Portugal**), receiving unemployment benefits and (in the case of Belgium) sickness cash benefits may also affect the renewal of a residence permit. In **Belgium** and **Portugal**, this is decided on a case-by-case basis; in **Luxembourg**, if a third-country national is receiving unemployment benefits when applying to renew his or her fixed-term residence permit, the residence permit can only be renewed for a maximum of one year.

In **Estonia, Luxembourg** and **Slovak Republic,** EU Blue Card holders who claim non-contributory benefits can have their residence permit withdrawn, or can receive a refusal upon applying for its renewal. In **Estonia,** a residence permit for an EU Blue Card holder will not be extended or will be terminated, if the person has received subsistence benefits. However, the Police and the Border Guard Board do not have immediate access to the social services and allowances database and they need to submit a query to the Ministry of Social Affairs to acquire this information. As of 2013, there were no such cases of revoking of an

[126] In the case of residence permits applied for on the basis of employment.
[127] In the case of Blue Card holders, the fact of claiming unemployment benefits does not trigger the withdrawal of the residence permit, except if the unemployment is extended more than three months or it happens more than once during the validity of the residence permit. In the case of salaried workers, if the renewal of the residence permit occurs during the period in which the person receives unemployment benefits the residence permit will only be renewed for a maximum duration of one year.

[128] In the case of residence permits applied for on the basis of employment.
[129] The Immigration Department can still decide otherwise on a case-by-case exercise
[130] This only applies to third-country nationals with EU long-term resident status in other Member States, on the basis of which they were granted temporary a residence permit in Poland as only this group of third-country nationals (holders of temporary residence permits) is entitled to receive social assistance in Poland.

EU Blue Card residence permit due to receipt of subsistence benefits as well as no inquiries by the competent authorities have been submitted. In **Luxembourg**, the residence permit of an EU Blue Card worker will be revoked if the person is unemployed for longer than three months.

In certain Member States, this process incorporates a discretionary element.

- In **Ireland**, for example, immigration officers exercise discretion in the attachment of conditions to a third-country national's residence permit. When deciding which conditions to attach to a person's residence permit an Immigration Officer is obliged to take account of all the circumstances including a person's income, earning capacity and other financial resources.
- In **Finland**, even if the third-country national does not have sufficient means of financial support, discretion can be applied in individual cases, as outlined in Box 8 below.
- In **Germany,** family members of third-country nationals who do not have their independent right of residence can be subject to discretionary expulsion if they claim social security benefits.
- In the **Slovak Republic**, the relevant authorities are obliged to examine the effects in terms of private and family life of withdrawing a temporary/long-term residence permit in cases where the condition regarding sufficient resources is not satisfied.

Box 8 Applying discretion in assessing residence permit renewal in Finland

In Finland, although having insufficient means of financial support can result in the withdrawal of a fixed-term residence permit, an overall assessment of the personal circumstances and the person's link to Finland is taken into consideration. The withdrawal of a residence permit may be considered unreasonable if the decrease in the third-country national's income is the result of:

- Illness;
- Accident;
- Having a child;
- Temporary unemployment for reasons outside of the applicant's control.

In contrast, in Spain, one of the explicit reasons for renewing a third-country national's residence permit is that he or she is in receipt of contributory benefits and/or non-contributory benefits that are aimed at facilitating the third-country national's social or labour market integration.

4.3.2 EFFECTS ON APPLICATION FOR NATURALISATION

In **Austria**, **Belgium, Bulgaria, Czech Republic, Estonia, Germany, Ireland**[131]**, the Netherlands** claiming social security benefits – particularly guaranteed minimum resources – may have a negative effect for a third-country national when applying for naturalisation. In **Bulgaria**, **Estonia**, **Germany** and **the Netherlands**, having proof of sufficient income without resorting to the social security system is a condition for granting naturalisation status of a third-country national. In most cases this refers to social assistance payments; however, applications for naturalisation in certain countries may also be affected by receiving other types of social security payments (e.g. needs-based family benefit payments in

[131] Finding based on NGO research.

Estonia). In **Belgium**, proof of a certain employment history and a certain amount of insurance contributions is a requirement for naturalisation. In **Ireland**, having proof of sufficient income is not a set condition but accessing social security may have negative consequences in relation to naturalisation unless there is good reason for doing so.[132]

4.3.3 EFFECTS ON FAMILY REUNIFICATION

Claiming social security benefits – particularly guaranteed minimum resources – may also have a negative effect on applications for family reunification where such payments compensate for a lack of stable, regular and sufficient resources[133] (**Austria**, **Belgium, Bulgaria, Estonia, Finland, Germany, Ireland, Latvia, the Netherlands, Poland** (although not directly)**, Portugal, Slovenia, Spain, Sweden**).

In some Member States (e.g. **Bulgaria, Germany, Ireland, Luxembourg, Poland**), a residence permit for family reunification can be denied if the third-country national cannot financially provide for dependent family members. In other Member States social security payments cannot be included as a source of income used to demonstrate that the applicant is able to support the family member(s).(e.g. **France**, **Ireland** and **Spain**).

In **Belgium**, for example, minimum income resources (such as an integration income, social aid, guaranteed child benefits), as well as child benefits and 'waiting benefits' for unemployed youngsters are not taken into account to calculate the income of the applicant. However, if the applicant does not have a sufficient and stable income, the application for family reunification is not automatically rejected. The competent authorities will perform a needs analysis for the entire family; the decision is based upon this analysis.

In contrast, other Member States, such as **Slovenia**, permit applicants for family reunification to include all sources of funding, including any social security payment, in the calculation needed to prove sufficient funds for supporting family members.[134]

4.4 TRANSLATION, INTERPRETATION AND OTHER FORMS OF SUPPORT TO THIRD-COUNTRY NATIONALS IN ACCESSING SOCIAL SECURITY

Ensuring that third-country nationals understand their rights and the procedures for accessing social security benefits can have an impact on their take-up of benefits. The availability of translation, interpretation and information services can therefore be instrumental in facilitating third-country nationals' access to social security.

4.4.1 TRANSLATION

Translation services are, to a certain extent, provided to third-country nationals in the context of claiming social security benefits in a number of Member States (e.g. **Cyprus, Finland, Germany, Ireland** and **Luxembourg, Poland**). In **Latvia and Estonia**, State authorities may accept and review documents received in Russian or English without a Latvian/Estonian translation. In **Estonia, Finland** and **Hungary** application forms for social security benefits are available in different language versions. In **Spain**, the

[132] A revised naturalisation application form was introduced in 2011, which allows applicants to explain the reasons behind access to social welfare.

[133] The Court of Justice of the European Union has held that "recourse to the social assistance system" must be interpreted as referring to general assistance, rather than special assistance. Member States are not allowed to refuse family reunification to a sponsor who proves that he/she has stable and regular resources which are sufficient to maintain him/herself and the members of his/her family, but who may be entitled to claim special assistance to meet exceptional, individually determined, essential living costs (Cases C-356/11 and C-357/11, O.&S., 6th December 2012, para 73; Case C-578/08, Chakroun, 4 March 2010, para 52).

[134] In Poland, this is also the case except for social assistance payments.

official Social Security website, which contains information on access rights, benefits, procedures and the relevant legislation, is available in English and French translation.

4.4.2 INTERPRETATION

Interpretation is provided to third-country nationals claiming social security benefits in a number of Member States (e.g. **Austria, Belgium, Czech Republic, Finland, Ireland[135], Italy, Netherlands, Poland, Sweden**).

- In **Italy**, linguistic and cultural mediators facilitate communication with social security institutions.
- Telephone interpretation is provided in **Belgium, Ireland, Luxembourg** and **Sweden.**
- In **Latvia**, the only category for which interpretation is provided is victims of trafficking in human beings.
- In **Finland** and **Hungary**, the relevant authority has a legal obligation to arrange interpretation services only in *ex officio* matters that are initiated by the authority. However, Finland's Social Insurance Institution (Kela) has a policy of arranging interpretation even in matters initiated by the third-country national.
- Interpretation is provided in hospitals a **Luxembourg** and **the United Kingdom**.
- In the **Czech Republic, Luxembourg and Poland,** interpretation is mainly provided by non-profit organisations.
- In **Estonia**, third-country nationals can communicate in the state customer service offices in Estonian, Russian, and English.

4.4.3 PROVISION OF INFORMATION

In a number of Member States (**Belgium, Cyprus, Estonia, Finland, France, Greece, Latvia, Netherlands, Poland, Portugal, Slovak Republic and Sweden**), information on social security is provided through web-sites. For example, in **Finland**, the Infopankki web-site[136] maintained by the City of Helsinki and co-funded by the Social Insurance Institution (Kela) contains information on access to social security in 12 languages. In **Germany** and **the Netherlands**, brochures on access to insurance and healthcare are available in several languages.

4.4.4 ADDITIONAL SUPPORT PROVIDED

In a number of Member States additional support services facilitate third-country nationals' access to social security (**Czech Republic, Finland, Greece, Latvia, Poland).** These include counselling, legal and mediation services. In **France**, large companies offer support with administrative procedures to third-country nationals, in particular EU Blue car workers, staring work in France. In the **Czech Republic, Ireland and Poland**, this additional support is mostly delivered through NGOs.

[135] In local offices with large numbers of migrant clients.

[136] www.infopankki.fi

5 EXTERNAL DIMENSION OF SOCIAL SECURITY

Key findings

Existing bilateral social security agreements reached by Member States with third-countries have created significant exceptions to national rules governing access to social security rights for third-country nationals in EU Member States. The result is significant variation in the social security rights that third-country nationals enjoy both across Member States and often within individual Member States.

- All Member States have concluded bilateral agreements with third countries, but there are wide variations in their scope in terms of benefits or benefit categories covered.
- Most bilateral agreements cover benefits that are contributory or partially contributory, in particular old-age benefits and healthcare; a much smaller number of bilateral agreements also cover non-contributory benefits, including social assistance and family benefits.
- Most bilateral agreements foresee the possibility for workers from a third country to work in the Member State while remaining subject to the social security legislation of the sending state exists, but this provision is usually of a temporary nature and only covers posted workers and sometimes other groups such as civil servants and diplomatic staff.
- Most bilateral agreements grant equal treatment between the third-country nationals of the contracting state and nationals of the Member State with regard to the social security rights identified in the agreement, but the material scope of the equal treatment principle is not always the same in all bilateral agreements signed by a Member State.
- All bilateral agreements foresee the export of benefits to third countries, but conditions vary extensively. In most bilateral agreements, the exportable benefits are contributory or partially contributory (mixed system), while there are a few instances of non-contributory benefits that are also exportable; these mainly concern family benefits.
- A majority of bilateral agreements apply the principle of the aggregation of periods of insurance for the purposes of qualifying for benefits.

EU Member States have generally negotiated bilateral agreements independently of each other. This has led to significant variation in the provisions of the agreements, both in relation to their material scope (branches of social security which they cover) and the personal scope (whether the agreements only apply to nationals of the signatory countries, or whether they apply to all persons covered by the social security legislation). This "fragmentation" reflects the very different social security systems that exist in the EU. While the resulting bi-lateral social security agreements aim to strengthen the social security rights of the third-country nationals concerned, the variety of provisions they contain may have negative effects on the transparency as to what non-EU migrants' rights are. Moreover, the network of bilateral agreements is by no means complete, with no bilateral agreements in existence with a significant number of third countries. This may mean loss of acquired social security rights for persons moving out of, or back into, the EU.

The EU's Migration Directives in force include provisions which ensure that the Directives shall be without prejudice to more favourable provisions contained in bilateral agreements negotiated between Member States and third countries.[137]

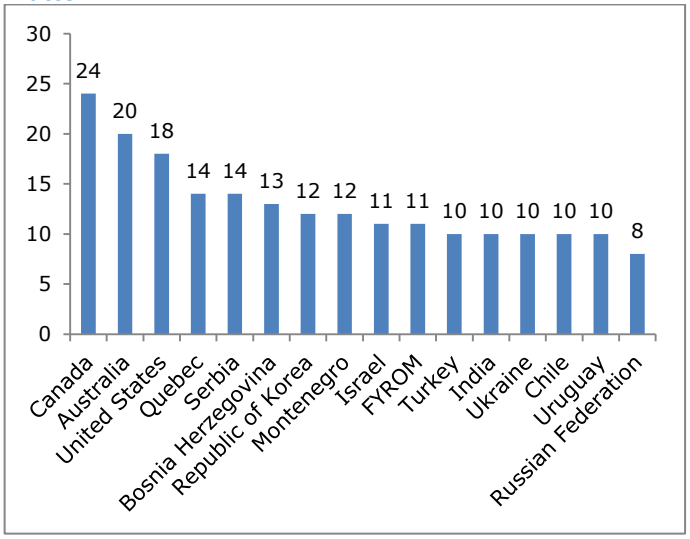
5.1 MEMBER STATE BILATERAL AGREEMENTS ON THE CO-ORDINATION OF SOCIAL SECURITY WITH THIRD COUNTRIES

All Member States participating in this study have concluded bilateral agreements on social security with third countries.

[137] Article 3(3)(b) of the Directives on long-term residents, Article 4(1)(b) of the Directive on the admission of researchers, Article 4(b) of the Blue Card Directive, and Article 13(1)(b) of the Single Permit Directive.

Twenty five Member States have signed around 325 bilateral agreements with 76 different Third Countries or competent (regional) authorities in Third Countries.

Figure 4 Number of bilateral agreements concluded with most common third countries or (regional) authorities that have relevant competence in this matter

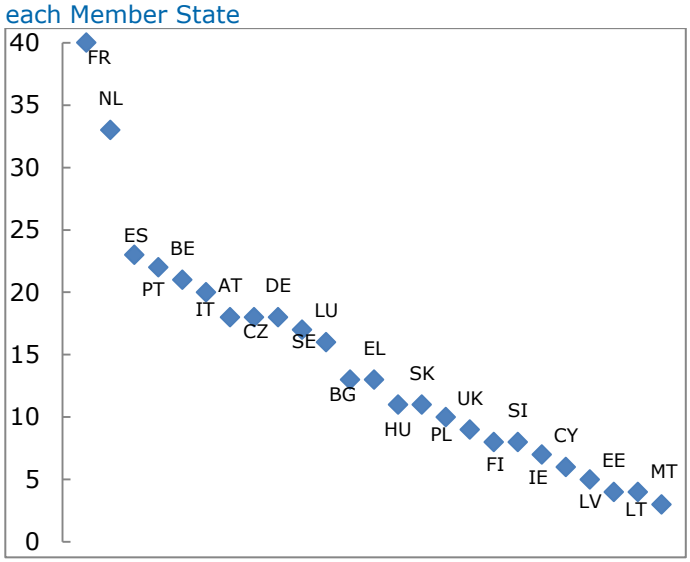


Note: Agreements with India (Finland), Uruguay (Germany and France), Canada (France) and Brazil (France) are to come into force in 2014

Most agreements have been signed with Canada (24), Australia (20), the United States of America (18) and Québec[138] and Serbia (14). A total of 34 third countries or (regional) authorities have signed only one agreement with a Member State, sometimes reflecting cultural or historic ties. Examples of these bilateral agreements are the bilateral agreements with Angola (**Portugal**), Indonesia and Surinam (**Netherlands**), Holy See (**Italy**), São Tomé and Principe (**Portugal**), Cameroon, Ivory Coast, Benin, Madagascar, Mauritania, Mali, Niger, Senegal and Togo (**France**), Dominican Republic, Mexico and Peru (**Spain**).

The number of bilateral agreements on social security and/or health care also vary significantly across Member States, from 4 (**Malta**) to 40 (**France**), with an average of 12 bilateral agreements per Member State.

Figure 5 Number of bilateral agreements concluded by each Member State



Note: - where MS indicated 'Yugoslavia', the number has been counted for each of the successor state it applies to (where possible)

- For MS that indicated separate social security and healthcare agreements, in case of a bilateral agreement with a third country for each of these two types, the agreements have been counted separately and not as one (i.e. twice).

Some Member States have signed additional agreements, such as the European Convention on Social Security, ratified by seven Member States (**Austria**, **Belgium Italy**, **Luxembourg**, **the Netherlands**, **Portugal, Sweden**), and the ILO convention on Equality of Treatment (Social Security), (parts of which have been) ratified by eight Member States[139] (**Denmark**, **Finland**, **France**, **Germany**, **Ireland**, **Italy**, **Norway**, **Sweden**). **Spain** has also signed the multilateral Ibero-American social security

[138] Certain regions have the power to sign international treaties, including bi-lateral social security agreements.

[139] The Convention was also signed and ratified by the Netherlands but denounced in 2004

agreement with Bolivia, Brazil, Chile, El Salvador, Paraguay and Uruguay.

Where information is available on the specific benefits covered under each of the bilateral agreements, it shows that in general agreements relate to healthcare and old age benefits or retirement pensions. Social assistance in the form of guaranteed minimum resources does not appear in bilateral agreements, while family benefits rarely feature.

5.2 KEY PROVISIONS IN THE BILATERAL SOCIAL SECURITY AGREEMENTS

5.2.1 POSSIBILITY FOR WORKERS FROM A THIRD-COUNTRY TO WORK IN THE (MEMBER) STATE WHILE REMAINING SUBJECT TO THE SOCIAL SECURITY LEGISLATION OF THE SENDING STATE

All Member States participating in this study allow certain categories of workers from a third-country bound by the bilateral agreements to work in the Member State while remaining subject to the social security legislation of the sending state.

Table 8 Categories of workers that bilateral agreements allow to remain under the social security system of the sending country

Category of worker	Member State
Posted workers	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Sweden, Slovenia, Slovak Republic, Spain United Kingdom
Civil servants	Austria, Bulgaria, Estonia, Finland, France, Hungary, Italy, Netherlands, Poland, Portugal, Malta, Slovak Republic
Diplomatic personnel or administration and technical staff of diplomatic missions/consular offices	Austria, Bulgaria, Finland, France, Hungary, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic
Aircrew	Austria, Estonia, Finland[140], Hungary, Netherlands, Malta, Poland, Slovak Republic
Railway crew	Estonia, Poland
Ship crew (incl. seafarers, mariners)	Austria, Estonia, Finland, Hungary, Italy, Malta, the Netherlands, Poland, Slovak Republic
Drivers	Malta, Netherlands, Poland
Frontier workers	Italy, Malta
Travelling personnel	Italy, Malta , Poland
Employed staff	Malta
Self-employed	Austria, Czech Republic, Finland, Malta, Poland,S lovak Republic, Spain
Staff of transport companies	Austria, Estonia, Finland, France, Italy, Malta, Poland, Portugal, Slovak Republic

Note: The list shows which categories of workers exist as separate categories for which there are specific provisions. The table does not indicate whether this allows for some or all bilateral agreements. It also does not imply that the agreements in question all have the same scope.

For most Member States the possibility is only extended to third-country national posted workers, while in some other cases it also relates to frontier

[140] Aircrew are only mentioned in Finland's bilateral social security agreement with India. This agreement is expected to enter into force on 1st August 2014.

workers (**Italy and Malta**) or specific other categories of third-country nationals, such as seafarers, international transport workers, public employees or people who are serving in the armed forces, which (for some categories of workers) is the case for at least nine Member States (**Estonia**, **France**, **Hungary**, **Italy**, **Malta**, **Netherlands**, **Poland, Portugal, Slovak Republic**).

There are not only differences in this area between Member States, but also between the bilateral agreements of any given Member State. For at least sixteen Member States (**Belgium**, **Cyprus**, **Czech Republic**, **France**, **Finland**, **Germany, Ireland**, **Italy**, **Latvia**, **Luxembourg**, **Portugal**, **Poland**, **Slovak Republic**, **Sweden**, **Spain, United Kingdom**) provisions on whether a third-country national can remain subject to social security of the sending state exist in all bilateral agreements.

In at least six Member States (**Bulgaria**, **Estonia**, **Greece**, **Hungary**, **Netherlands**, **Slovenia**) (some) bilateral agreements do not permit third-country nationals to remain subject to the social security legislation of the sending state.

Table 9 Bilateral agreements that do not foresee the possibility to work in the Member State while remaining subject to the social security legislation of the sending state

Member State	Third country
Bulgaria	Turkey, Libya
Estonia	Moldova, Russia
Greece	Canada, Quebec, New Zealand, Australia, Argentina, Brazil, Uruguay, Venezuela, Egypt
Hungary	*Not specified*
Netherlands	Surinam, other agreements not specified
Slovenia	Australia, Yugoslavia, Russia, Ukraine

Most Member States have also indicated specific time limitations for allowing a third-country nationals to be exempt from social security obligations in the country. These time limitations range (depending on the agreement) from a maximum of up to 24 months (**Cyprus**, **Estonia, Poland**) to 5 years (**Austria, Belgium, Bulgaria**, **Czech Republic**, **Finland, Greece, Hungary, Ireland**[141], **Luxembourg**, **Netherlands**, **Poland, Slovak Republic**, **Sweden**, **United Kingdom**). This means that five years is currently the maximum period allowed by bi-lateral agreements for third-country nationals to remain covered by the social security system of their country of origin, rather than the receiving country's social security system.

Table 10 Time limitations for allowing a third-country national to be exempt from social security obligations

Time range	Member State[142]
No information	Germany, Italy, Lithuania, Poland (only for some agreements), Portugal, Slovenia
Up to 5 years	Austria, Belgium, Bulgaria, Czech Republic, Finland, Greece, Hungary, Ireland[143], Luxembourg, Netherlands, Poland[144], Slovak Republic, Spain, Sweden, United Kingdom
Up to 4 years	Latvia
Up to 24 months	Cyprus, Estonia, Poland[145]

[141] However, this time limitation is not included in all of Ireland's bilateral agreements.
[142] In Malta there is no maximum time limitation for allowing a TCN to be exempt from social security obligations. This is subject to request to the director of social security and approval thereof but there is no time limitation.
[143] However, this time limitation is not included in all of Ireland's bilateral agreements.
[144] In some of Poland's bilateral agreements.
[145] In some of Poland's bilateral agreements.

5.2.2 EQUAL TREATMENT IN THE SYSTEM OF THE HOST STATE IN RESPECT OF PARTICULAR BENEFITS

Reciprocity for citizens of the two contracting parties when they are living in the other state and equal treatment on social security can refer to extending the same rights and obligations to the agreement's subjects as those enjoyed by citizens of the other contracting party.

Conventions from the Council of Europe and International Labour Organisation specify that adhering members grant equality of treatment to third-country nationals as compared to their own nationals regarding coverage and the right to benefits that the adhering members have accepted.

All Member States recognise and guarantee equal treatment in respect of particular benefits, while one Member State (**United Kingdom**) does not explicitly guarantee such equal treatment (although this may be afforded in practice).

At least for some bilateral agreements, some Member States follow the principle of reciprocity (**Malta**, **Sweden**), whereas most other Member States grant third-country nationals of countries with which bilateral agreements have been signed, treatment on equal footing as Member State nationals.

Sixteen Member States (**Belgium**, **Bulgaria**, **Czech Republic**, **Cyprus**, **Estonia**, **France**, **Finland**, **Hungary**, **Ireland**, **Italy**, **Lithuania**, **Luxembourg**, **Poland**, **Sweden**, **Slovak Republic, Spain**) have incorporated equal treatment provisions in all of their bilateral agreements, while eight Member States (**Germany**, **Greece**, **Latvia**, **Malta**, the **Netherlands**, **Portugal**, **Slovenia, United Kingdom**) have only included this principle in certain agreements with third countries.

Table 11 Bilateral agreements that do not offer any provisions on equal treatment

Member State	**Third country or regional authority**[146]
Germany	*Not specified*
Greece	Canada, Quebec, USA, New Zealand, Australia, Argentina, Brazil, Uruguay, Venezuela, Egypt
Latvia	Russia
Malta	Libya
Netherlands	Surinam, *others not specified*
Portugal	Andorra, Argentina, Australia, Brazil, Ontario, Chile, Uruguay, USA, Ukraine, Venezuela
Slovenia	Australia, Argentina, Canada, Quebec

The equal treatment provisions in some bilateral agreements (e.g. those reached by **Belgium**, **Estonia, Finland** and **Poland**) explicitly refer to all benefits within the material scope of the agreement in question. Other Member States have, depending on the specific bilateral agreement, only made reference to certain benefits:

- Healthcare (**Italy**, **Ireland**, **Sweden**, **Slovenia**)
- Pensions (**Ireland**)
- Unemployment benefits (**Portugal**)
- Sickness benefits (**Portugal**)
- Social assistance (**Italy**)

The fact that a bilateral agreement specifically refers to a certain benefit, does not imply that the general principle of equal treatment foreseen in the EU's Migration Directives for certain categories of third-country nationals does not apply to other benefits or contravenes the rights of the relevant Directives.

In most cases equal treatment applies to contributory or mixed benefits, but for at least three Member States

[146] Certain regions have the power to sign international treaties, including bi-lateral social security agreements.

(**Ireland**, **Italy, Poland**) this applies to non-contributory benefits.

5.2.3 PROVISIONS IN BILATERAL AGREEMENTS ON THE EXPORTABILITY OF BENEFITS

All Member States participating in this study have included the principle of exportability in some or all of their bilateral agreements. At least four of these Member States have adopted some bilateral agreements that do not refer to exportability (**Malta**, **Portugal**, **Sweden**, **Slovak Republic**).

Bilateral agreements vary in terms of the types of benefits that can be exported, the date or time period of the conclusion of the agreement, and the specific conditions that regulate exportability.

Table 12 Bilateral agreements that do not allow for exportability of any benefits

Member State	Third country or regional authority[147]
Bulgaria	Libya
Malta	Libya
Portugal	Ontario
Sweden	Bosnia-Herzegovina, Israel, Cape Verde, Morocco, Serbia, Turkey, USA, South Korea, India
Slovak Republic	Russia

Greece only provides for export to EEA countries.

The following specific benefit categories or benefits have been identified as 'exportable' in some (not necessarily all) bilateral agreements and for certain aspects of benefits, either temporarily or permanently or only in specific exceptional cases:

- Old-age benefits (all Member States);
- Sickness benefits (**Austria**, **Belgium**, **Bulgaria**, **Hungary**, **Greece**, **Lithuania**, **Luxembourg**, **Netherlands**, **Poland**, **Portugal**, **Slovak Republic**, **Sweden**);
- Maternity benefits (**France**[148], **Hungary**, **Greece**, **Lithuania**, **Luxembourg**, **the Netherlands**, **Poland**, **Portugal**, **Slovenia**, **Slovak Republic**, **United Kingdom**);
- Invalidity benefits (**Finland, France**, **Ireland**, **Luxembourg**, **Malta, Netherlands**, **Poland, Portugal**, **Slovenia**, **Slovak Republic**);
- Survivor benefits (**Belgium**, **Cyprus**, **Finland, France**, **Ireland**, **Luxembourg**, **Malta, Netherlands**, **Poland, Portugal**, **Slovak Republic**, **United Kingdom**);
- Family benefits (**Austria, Belgium**, **France**[149], **Luxembourg**[150], **Poland, Portugal**, **Slovenia**, **Sweden**);
- Unemployment benefits (**Austria, Bulgaria**, **Lithuania**, **Luxembourg**, **Portugal**, **Slovenia**);
- Work-related accidents and occupational diseases benefits (**France, Poland**) and,
- Certain types of healthcare benefits can be exported according to bilateral agreements reached by four Member States (**Austria, France**, **Luxembourg**, **Netherlands**, **Poland**, **Sweden**).

No Member States allow for the export of guaranteed minimum resources.

Benefits that can be exported are often those that are contributory or partially contributory (mixed) in nature, which is especially the case for sickness

[147] Certain regions have the power to sign international treaties, including bi-lateral social security agreements.

[148] In some cases.
[149] In some cases.
[150] Luxembourg only allows the exportability of family benefits in the cases of Cape Verde and Brazil. The principle is that family benefits are financed by general taxation and they cannot be exported. All the previous agreements have been renegotiated to change this clause with the exceptions mentioned above.

benefits. There are exceptions and some exportable benefits are non-contributory, such as unemployment benefits (**Luxembourg**[151]), maternity benefits (**Portugal**), invalidity benefits (**Portugal**), survivors' benefits (**Portugal**), family benefits (**Poland**[152], **Portugal**, **Slovenia**, **Sweden**). In the case of **Sweden**, family benefits can only be exported temporarily (often up to six months) as they are residence-based.

Bilateral agreements mostly provide for the possibility of exporting cash benefits, but there are some exceptions.

5.2.4 OTHER PROVISIONS IN BILATERAL AGREEMENTS

At least sixteen Member States (**Belgium**, **Bulgaria**, **Cyprus**, **Estonia**, **Finland**, **Germany**, **Hungary**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Poland**, **Slovak Republic**, **Slovenia**, **Spain**, **Sweden**) allow for the aggregation of periods of insurance for the purposes of qualifying for benefits. **Estonia, Netherlands**, **Spain** and **United Kingdom** have not included this provision in all of their bilateral agreements.

Table 13 Bilateral agreements that do not allow for the aggregation of insurance periods

Member State	Third country
Netherlands	India, Surinam

Other provisions that appear in bilateral agreements include:

- Data protection clauses (**Austria, Finland, Poland**);
- Access to additional benefits (**Ireland**);
- Retention of acquired benefits (**Latvia, Poland**);
- Administrative cooperation and assistance between the authorities of the two parties (**Finland, France**, **Slovak Republic**, **Sweden, Poland,**);
- Dispute resolution (**Finland, Poland, Slovak Republic,**);
- Combatting fraud (**France**)
- Exchange of statistical data (**Finland, France, Slovak Republic, Poland,**)
- The language of communication (**Finland, Slovak Republic, Poland,**).

5.3 EXTENT TO WHICH THIRD-COUNTRY NATIONALS HAVE INVOKED THEIR RIGHTS UNDER THE BILATERAL SOCIAL SECURITY AGREEMENTS REACHED BETWEEN THE (MEMBER) STATE AND THIRD COUNTRIES

Data on the extent to which third-country nationals have invoked their rights under bilateral agreements is not readily available in several Member States (e.g. **Cyprus**, **Czech Republic**, **Italy**, **Latvia, Lithuania, United Kingdom)**.

A variety of statistics on take-up of rights under bilateral social security agreements is available in **Bulgaria**, **Estonia**, **Finland**, **Hungary**, **Ireland**, **Malta**, **Netherlands**, **Poland, Slovak Republic** and **Slovenia**.

Most of the statistics available relate to the extent to which certain benefits have been exported. This includes statistics on the export of:

- Pensions (**Bulgaria**, **Estonia**, **Finland**, **Hungary**, **Malta**, **Netherlands**, **Poland**[153], **Slovak Republic**). These range from a few hundred cases per year (**Malta**) to a few thousand (**Hungary**, **Slovak Republic**) and more than ten thousand cases (**Bulgaria**, **Estonia**);

[151] Only temporary export

[152] Only old bi-lateral agreements cover family benefits and in practice this refers only to a limited group of third-country nationals. More recent agreements do not permit the export of this kind of benefits.

[153] In Poland, this data cover old-age pensions, invalidity pensions and survivors' pensions.

- Healthcare (**Hungary** and **Slovenia**);
- Survivors' pensions (**Estonia**, **Netherlands**, **Slovak Republic**);
- Invalidity pensions (**Slovak Republic**); and,
- Child benefits (**Netherlands**).

Further relevant data collected refers to:

- The work permits issued to nationals of countries with which the Member State has a bilateral agreement (**Bulgaria**);
- The number of granted and refused insurance decisions (**Finland**); and,
- Emissions of a Certificate of Coverage as proof of a decision to apply legislation and exemption from social security contributions on the same earnings in the bilateral country (**Ireland**).

6 CASE STUDIES

This section illustrates the findings of the previous chapters regarding eligibility rules by highlighting the varying outcomes of social security claims made by third-country nationals in three hypothetical case-studies.

6.1 CASE STUDY 1

Tho and Lien, a married couple holding Vietnamese citizenship, aged 28 and 30, moved to your (Member) State 10 years ago. They hold long-term residence permits. Tho has worked in a car manufacturing company for the last 8 years, paying obligatory insurance contributions throughout this time. Lien has worked as a chef in the restaurant of a large hotel, also paying obligatory insurance contributions, for the last 2 years. Tho and Lien are expecting the birth of their first child in 6 weeks' time. Last week, the car manufacturing company where Tho works announced that they were making him redundant. Faced with the loss of Tho's income at a time when Lien would need to take time off work, following the birth of their child, Tho decided to apply for unemployment benefits while Lien applied for maternity benefits.

This case study shows that the insurance contributions made by a third-country national and, to a lesser extent, the type of residence permit that they hold are key to understanding their access to unemployment and maternity benefits. As long-term residence permit holders, who have been paying insurance contributions for eight years and two years, respectively, Tho and Lien's social security claims would be successful in all Member States participating in this study with the exception of Tho's unemployment benefit claim in the Czech Republic.

Table 14 Outcome of social security claims made by Tho and Lien (Case-study 1)

Benefits	Successful	Unsuccessful
Unemployment benefits	Austria, Belgium, Bulgaria, Cyprus, Germany, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Sweden, Slovenia, Slovak Republic, United Kingdom	Czech Republic
Maternity benefits	Austria, Belgium, Bulgaria, Cyprus, Czech Republic Germany, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Sweden, Slovenia, Slovak Republic, United Kingdom	

The reasons for the successful / unsuccessful claims are summarised below in relation to the key eligibility conditions explored in sections 2 and 3 of this Synthesis Report.

Unemployment benefits

As indicated in section 3 of the report, access to unemployment benefits is contingent on minimum insurance contributions in most Member States. This explains the success of Tho's claim for unemployment benefits in 24 out of the 25 Member States participating in this study. In most Member States (except **Cyprus**, **Czech Republic**, **Hungary**, **Malta,** and **Poland**), the type of residence permit does not affect eligibility for unemployment benefits as long as

the applicant is legally resident and has made the minimum required insurance contributions.

However, in five Member States (**Cyprus**, **Czech Republic**, **Hungary**, **Malta, Poland**), the type of residence permit held by the third-country national matters regardless of the insurance contributions that he or she may have made. In the **Czech Republic**, Tho's long-term residence permit is insufficient for him to access unemployment benefits; in order to qualify for these, he must also have a permit for permanent residence. Long-term residence permit holders can apply for permanent residence if they have been resident without interruption for a minimum of five years.[154]

A minimum contribution period is required in all Member States in order to access unemployment benefits.[155] Tho's eight years of insurance contributions meets this criterion in all of the Member States participating in this study. (The minimum contribution period to access unemployment benefits ranges from four months to two years in different Member States, see section 3.3.6 of the Synthesis Report).

The value of the unemployment benefit can also differ according to the type of insurance. In **Sweden**, if Tho has a voluntary additional insurance for loss of income the amount can be higher than if he has no voluntary insurance and is thus entitled to a basic insurance and lower maximum amount of cash benefit.

Eligibility for unemployment benefits is not conditional upon minimum residence requirements in most Member State. In **Poland**, however, in order for third-country nationals holding temporary residence and work permits to have access to unemployment benefits, they must have worked (and thus resided) in Poland for at least six months. This condition is fulfilled in the case of Tho. In the context of this case study, for all Member States the unemployment benefits concerns a cash benefit.

Maternity benefits

In all Member States Lien receives at least some maternity benefits, again mostly owing to her payment of insurance contributions through her employment rather than because she is the holder of a long-term residence permit.[156]

In most Member States, the entitlement concerns both maternity leave and cash benefits. Other benefits that Lien would be granted in certain Member States are: family benefits that the new parent(s) become entitled to such as a birth or maternity grant (**Belgium**, **Cyprus**, **Finland, Hungary**, **Luxembourg**, **Slovak Republic, Poland**); child benefit (**Belgium**, **Finland**, **Germany**, **Ireland**, **Lithuania**, **Slovak Republic, United Kingdom**), family allowance or family income support (**Hungary**, **Ireland**[157]**, Poland**[158]) and child tax credit or tax bonus (**Slovak Republic**, **United Kingdom**).

[154] In Cyprus, Hungary and Malta, the requirement is for the third-country national applicant to hold a long-term residence permit, which makes Tho eligible.
[155] Except labour market support, which is part of the Finnish system of unemployment security, and peculiar in that it may be accessible even to people who have never been employed. As such, labour market support is a non-contributory benefit that is not subject to having a previous history of employment.
[156] The exceptions are Bulgaria, Hungary and Lithuania, where a third-country national needs to have a long-term residence permit; Ireland and Sweden where the third-country national must be habitually resident; and Finland, where third-country nationals residing pursuant to the Scope of Application Act are entitled to parental per diem allowances if they have been resident in Finland for at least 180 days immediately before the expected date of confinement. Furthermore, all those having a municipality of residence in Finland (as well as EU Blue Card holders and their family members) are entitled to maternity benefits in kind (medical checks at maternity and child healthcare centres during and after pregnancy).
[157] The family concerned may qualify for Family Income Supplement, but note this is not a specific payment to new parents.
[158] Only if Lien fulfils the income criterion.

In the **Czech Republic** Lien can access one of two benefits. She is eligible for the financial assistance in maternity if she files an application through her (former) employer. However, if Lien is eligible for financial assistance in maternity, she no longer has any reason to apply for compensatory benefit in pregnancy and maternity and is not entitled to this other benefit.

Minimum contributions apply in most Member States, except **Finland, Malta** and **Poland**, but Lien's two years of contributions satisfy this requirement. (The highest minimum contribution period is 12 months in **Hungary**, **Bulgaria**, **Lithuania** and **Slovenia** (though specific conditions as to the period in which the contributions need to be made vary) – for an overview of the minimum contribution period in other Member States see section 3.3.3). In **Malta**, Lien's claim will be vetted against residency requirements and a confirmation that she did not receive any maternity benefits from her former employer. In **Finland**, minimum contributions are not required but a minimum residence period exists as far as parental per diem allowances are concerned.

Contributory maternity benefits are usually not conditional upon minimum residence periods as such. In France, third-country nationals must be 'principally resident' in Metropolitan France or an overseas territory in order to access the benefit, a condition which is fulfilled in Lien's case as it requires the individual to have lived in France for six months and one day during the civil year of benefit payment.

6.2 CASE STUDY 2

Jasmine is a single parent, aged 29, holding Filipino citizenship, who moved to your (Member) State 2 and a half years ago. She has a 2-year old child (also holding Filipino citizenship) that lives with her and another child aged five that lives in the Philippines with Jasmine's mother. She holds a temporary/salaried worker residence permit that has been renewed once. Jasmine has worked as a nurse in a residential day-care unit in your (Member) State for 2 and a half years. She sends a small amount of money every month to the Philippines to help support her daughter. Last month, Jasmine's employer announced significant cuts in staff salaries in response to budget reductions. Faced with a significantly reduced income, Jasmine has moved into a hostel as she can no longer afford to rent private accommodation. She has also been forced to halve the amount of money she sends to her family in the Philippines every month. She has decided to apply for family benefits and guaranteed minimum resources.

Jasmine's case shows that access to family benefits by third-country nationals is mostly dependent on their fulfilment of certain residence-based conditions. In some countries, the type of residence permit held by third-country nationals can also affect their claims. In a smaller number of Member States, the fact of employment and/or having made insurance contributions matters too.

The case-study shows that guaranteed minimum resources are often only available to third-country nationals holding a long-term residence permit, thus disqualifying Jasmine from receiving these benefits in a significant number of countries. Where the type of residence permit is not relevant, other conditions are applied, including minimum residence periods and habitual residence tests.

Table 15 Outcome of social security claims made by Jasmine (Case-study 2)

Benefits	Successful	Unsuccessful[159]
Family benefits	Austria, Belgium, Czech Republic,	Bulgaria, Cyprus, Estonia,

[159] In France, Jasmine would have received family benefits since the birth of her two year old child; she would therefore not be able to make a claim for family benefits following the salary cut described in this case study.

Benefits	Successful	Unsuccessful[159]
	Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland (as of 1 May 2014) Portugal, Sweden, Slovenia, Slovak Republic, Spain	Hungary, Lithuania, Latvia, United Kingdom
Guaranteed minimum resources	Belgium, Estonia, Germany, Ireland, Finland, France, Netherlands, Slovak Republic, Sweden	Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Italy[160], Lithuania, Luxembourg, Latvia, Malta, Poland, Portugal, Slovenia, Spain, United Kingdom

The reasons for the successful / unsuccessful claims in different Member States are summarised below in relation to the key eligibility conditions explored in sections 2 and 3 of this Synthesis Report.

Family benefits

Jasmine's fixed-term residence permit prevents her from accessing family benefits in six Member States (**Bulgaria, Czech Republic, Hungary, Lithuania, Latvia and Malta**). In the **United Kingdom** access to non-contributory benefits depends on whether someone has leave to enter with or without access to public funds. Generally third-country nationals with time-limited leave do not have access to public funds, but there are exceptions.

In the majority of Member States, Jasmine's fixed-term residence permit is not an obstacle for her to apply for family benefits. She is eligible for family benefits in 13 Member States on account of her holding a valid temporary residence permit (**Austria, Estonia, Finland, France, Germany, Luxembourg, Netherlands, Poland, Portugal, Sweden, Slovenia, Slovak Republic** and **Spain**), although additional requirements apply in some of these Member States, including a discretionary decision on the part of a deciding officer in **Austria**, and a minimum income test in **Estonia**, the **Netherlands** and **Poland**. In **Finland**, child benefit is paid for children under the age of 17 who are resident in Finland pursuant to the Scope of Application Act.

In one Member State (**Cyprus**), Jasmine fails to meet the three-year minimum residence condition that would otherwise make her eligible for family benefits.

Jasmine's claim for family benefits, in spite of her fixed term residence permit, is successful in another four Member States as a result of her status as an employed worker (**Ireland** – in the case of the Family Income Supplement - and **Italy**) and the fact that she can be assumed to have been making insurance contributions during the past two and a half years (**Belgium** and **Greece**).

In 14 out of the 18 Member States where Jasmine's claim for family benefits is successful, the benefits in question only cover the child residing with Jasmine in the Member State. In two Member States the benefits are exportable to the Philippines owing to a bilateral social security agreement in the case of the **Netherlands**; and, in the case of **Belgium**, in the event of a positive decision by the Minister who enjoys discretionary competence over such matters.

Guaranteed minimum resources

Jasmine's fixed-term residence permit would deny her access to guaranteed minimum resources in 11 Member States (**Austria, Bulgaria, Cyprus, Czech Republic, Hungary, Latvia, Lithuania, Malta,**

[160] Existing legislation in Italy does not provide for guaranteed minimum income. At the regional or municipal levels there are cases where rent aid can be requested.

Poland[161]**, Portugal and Slovenia**), where only third-country nationals with long-term residence permits can apply for the benefits. In the **United Kingdom** access to non-contributory benefits depends on whether someone has leave to enter with or without access to public funds. Generally third-country nationals with time-limited leave do not have access to public funds, but there are exceptions.

In **Greece**, moreover, Jasmine's citizenship would prevent her from applying for the special allowances aimed at young persons aged between 20 and 29 years of age.

Jasmine's fixed-term residence permit is not an obstacle for her to apply for guaranteed minimum resources in the remaining 12 Member States, but here other conditions apply. In **Finland**, Jasmine can apply for social assistance for an acute need at the social welfare office of the municipality in which she lives regularly.[162] In **Ireland**, Jasmine's status as an employed worker is key to her eligibility for these benefits. In several Member States, Jasmine would be subject to a means-test in order to access the benefits (e.g. **Bulgaria, Ireland, the Netherlands, Slovak Republic, Sweden**).

In **Luxembourg** and **Portugal**, there are minimum residence requirements that Jasmine does not fulfil (five consecutive years and three consecutive years, respectively).

Finally, in **Ireland**, Jasmine's eligibility for guaranteed minimum resources would be subject to a habitual residence test.

In the case of **Estonia, Netherlands and Slovak Republic**, while Jasmine would have the right to apply for guaranteed minimum resources, this application would have implications for her residence status. In **Estonia**, Jasmine's temporary residence permit would be revoked upon expiry and she would not be allowed to apply for a new one. In **Slovak Republic**, the application would cancel her temporary residence and she would have to leave the territory of the Slovak Republic. In the **Netherlands**, a decision would be taken as to whether such an application would constitute an 'unreasonable' burden on the Dutch social security system.

6.3 CASE STUDY 3

Senghor is a high-skilled worker from Senegal. He arrived in your (Member) State six years ago with a temporary residence permit arranged through the IT company that employed him. Senghor is single and does not have children, but has recently succeeded in bringing his elderly mother to the country on the basis of family reunification. Aged 80, his mother is entirely dependent on Senghor's income. Last week, Senghor suffered an accident at work that left him incapable of carrying out the work for which he was employed for a period of 3 years. He decided to apply for invalidity benefits, sickness benefits, family benefits and benefits in respect of accidents at work and occupational diseases.

This case study illustrates the strong link that exists between insurance contributions and the three 'health' related benefits that Senghor applies for: sickness cash benefits, invalidity benefits and benefits in respect of accidents at work and occupational diseases. The case study also shows that, in all but one Member State, family benefits are designed exclusively with the care of children in mind, rather than other family members.

[161] In Poland, besides long-term residence permit holders, third-country nationals holding a specific type of fixed-term residence permit are also entitled to apply for guaranteed minimum resources. However, Jasmine does not hold this specific type of fixed-term residence permit.
[162] Social assistance will only be paid to Jasmine and her child residing in Finland as a last resort if her other income and assets are insufficient.

Table 16 Outcome of social security claims made by Senghor (Case-study 3)

Benefits	Successful	Unsuccessful
Sickness cash benefits	Austria, Bulgaria, Czech Republic, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom	Belgium[163], Cyprus, Estonia, Germany, Italy, Portugal
Invalidity benefits	Austria, Bulgaria, Germany, Estonia, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, United Kingdom	Belgium, Italy, Cyprus, Czech Republic, Greece, Portugal, Sweden
Benefits in respect of accidents at work and occupational diseases	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom	-
Family benefits	Poland (from 1st May 2014)	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Spain, Sweden, United Kingdom

[163] However, in the case of Belgium, sickness cash benefits are included in the category 'benefits in respect of accidents at work and occupational diseases', which Senghor does have access to (see below).

Sickness cash benefits

Sickness cash benefits are available to Senghor in most Member States except in **Belgium, Cyprus, Estonia, Germany, Italy, and Portugal**, where Senghor is instead entitled to receive benefits in respect of accidents at work and occupational diseases (which, in the case of Belgium, include sickness cash benefits).

Senghor's eligibility for sickness cash benefits is contingent on minimum insurance contributions in all Member States except in **Spain and Poland**, where no qualifying period is needed for insured workers who apply for a 'temporary incapacity benefit' in case of an accident.

The only residence-based condition that Senghor is required to have in most Member States is proof of legal residence; Senghor's fixed-term residence permit does not affect his access to sickness cash benefits in any Member State. In **Finland**, Kela (the Social Insurance Institution of Finland) will firstly determine, upon Senghor's application and pursuant to the Scope of Application Act, whether he is covered by Finnish residence-based social security (the insurance decision). Senghor arrived in Finland for the purpose of employment on a temporary (fixed term) residence permit, and the criteria for permanent immigration were not necessarily satisfied in his case initially.

However, he has resided in Finland for six years, so it is likely that he would be considered entitled to Finnish residence-based social security. On the other hand, he would be considered covered by sickness insurance in Finland on the basis of just four months of empoyment. However, the compensation received from the occupational injury insurance (see below) has the highest precedence and it is taken into account in determining whether the sickness cash benefit is paid.

Invalidity benefits

In 17 Member States (**Bulgaria, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, United Kingdom**), Senghor will have access to invalidity benefits on account of his employment (and therefore payment of insurance contributions) and his legal residence status; it does not matter that he is not a holder of a long-term residence permit.

In each of these Member States, Senghor would only qualify for invalidity benefits if his incapacity to work persists for a certain period, or is deemed permanent, thereby replacing his receipt of sickness cash benefits. Senghor's fixed term residence permit affects his eligibility for invalidity benefits in **Lithuania**, where invalidity benefits are only accessible for third-country nationals holding long-term residence permits or EU Blue Cards.[164]

A key element in the establishment of entitlement to invalidity benefits is a need for a medical examination, necessary to determine the level of incapacity for work. For example, in **Latvia** and **Lithuania,** Senghor would be eligible for invalidity benefits, provided that the State Commission of Physicians for Health and Work Capacity Examination confirms the loss of Senghor's capacity to work, determining the percentage of the loss of working capacity and the disability group that he falls into.

In some Member States (**Belgium, Italy, Cyprus, Czech Republic, Greece, Portugal, Sweden**), Senghor is not eligible to apply for invalidity benefits as the costs incurred by his accident would be covered by benefits that fall under the MISSOC branch "Benefits in respect of accidents at work and occupational diseases". In **Finland,** compensation paid from accident insurance also takes precedence over disability pension (paid from the earnings-related pension and national pension systems). This means that the injured person is first paid compensation for the accident at work and he will only receive disability pension if his disability pension would be higher in amount than the compensation for loss of income paid for the accident at work.

Benefits in respect of accidents at work and occupational diseases

Senghor would be entitled to receive benefits in respect of accidents at work and occupational diseases in the 25 Member States participating in the study on account of his employment (and therefore payment of insurance contributions) combined with Senghor's legal residence status.[165] In **Netherlands**, there is no separate scheme for accidents at work, but this risk is covered by sickness cash benefits and invalidity.

In most of these Member States, benefits in respect of accidents at work and occupational diseases are not conditional upon a minimum period of residence or holding a particular type of residence permit. An exception is **Bulgaria**, where certain benefits under this branch of social security - medical care and

[164] Whilst Senghor has so far been employed as a high-skilled worker, the case-study does not mention that he holds an EU Blue Card.

[165] However, in **Finland**, persons residing and working illegally are also entitled to compensation, as the only deciding factor with respect to accident insurance is whether an employment relationship exists.

benefits in kind - are only accessible to holders of long-term residence permits.

In the majority of Member States, employers are statutorily obliged to insure employees against the risk of accidents at work. In **Finland**, if Senghor's employer failed to provide insurance contributions, the Federation of Accident Insurance Institutions would be responsible for compensating Senghor. In some Member States (e.g. **France**), benefits in respect of accidents at work and occupational diseases take precedence over invalidity benefits, even though he might be eligible also for invalidity benefits.

In some Member States (e.g. **Austria, Finland, Poland, Slovak Republic, United Kingdom**), Senghor would have access to both benefits in respect of accidents at work/occupational diseases and invalidity benefits, although in some Member States this might influence the amount of the payments received.

Family benefits

As illustrated in Table Z, Senghor will not be eligible for family benefits in any Member State, except **Poland** as of 1st May 2014.

The main reason for Senghor's lack of access to family benefits is that in most Member States these apply to applicants' children and do not include elderly dependents. The only exception is **Poland** following the entry into force on 1st May 2014 of new regulations concerning foreigners entitled to family benefits. These new regulations, in certain circumstances, permit third-country nationals holding a temporary residence permit (rather than only long-term residents) to apply for family benefits. Therefore Senghor would be entitled to receive certain benefits as long as he passes a means-test (although this is not required in order to access other benefits) and provided the parent (his mother) is disabled and requires care.

In addition, a number of Member States (**Finland, France, Greece, Ireland, Poland**[166]**, Sweden, Slovenia**) report that family reunification applies to "the core family" (wife/husband and children) and does not extend to parents. In **Ireland** and **Sweden,** exceptional circumstances would have to apply for a parent to be granted residence on the basis of family reunification.

Additional payments and benefits

Notwithstanding the fact that Senghor and his mother will not be eligible to family benefits, they can qualify for additional payments and social assistance benefits in a number of Member States (**Finland, France, Netherlands, Portugal**).

- In **France**, if Senghor provides care for his mother, he would be eligible for an additional allowance.
- In the **Netherlands**, Senghor's mother will be entitled to Exceptional Medical Expenses and, based on an assessment of the Care Assessment Centre, might be eligible for social support, which could include non-monetary care (such as domestic help, home adjustments, transportation), a personal budget or a financial allowance.
- In **Portugal**, Senghor's mother would be eligible to access monetary funds under the social action subsystem.[167]

Consequences of the social security claims for Senghor's residence status

In some Member States (**Germany, Estonia, Luxembourg, Slovak Republic**) applying for the social security benefits cited in this case-study could

[166] Therefore, in Poland, Senghor's access to the family benefits mentioned in the previous paragraph assumes that his mother's residence in the country did not rely on family reunification.

[167] In Portugal, the objectives of the social action sub system are to prevent and remedy situations of need and socio-economic inequality, dependence, dysfunction, social exclusion or vulnerability, promoting integration into communities.

have negative consequences for Senghor and/or his mother's residence status.

- In **Estonia,** the employer would have the right to cancel the employment contract with Senghor on the basis of a decrease in his capacity to work if Senghor's health did not recover after four months. If Senghor were to lose his job, the legal basis for staying in the country would not be valid and he would have to leave the country. However, the employer is required to offer other work to the employee with the objective to prevent the cancelling of the employment relationship and allow the employee to continue working, thus ensuring his/her income.
- In **Luxembourg** and **Slovak Republic**, a renewal of residence permit for highly qualified workers can be refused as he does not have sufficient resources to maintain himself and the members of his family, without having recourse to the social assistance system. However, in **Luxembourg** and **Slovak Republic**, the fact that Senghor has been resident for 6 years would enable him to apply for a long-term residence permit.
- In **Germany**, if the household income available to Senghor and his mother after the loss of income is below the minimum living wage, she may face discretionary expulsion for claiming social benefits. In practice, however, this situation is unlikely to result in deportation given her advanced age and hardship circumstances. If necessary, Senghor can receive housing allowances in addition to sickness benefits, and disability pension, thereby avoiding having to make recourse to basic social benefits.

7 CONCLUDING REMARKS

This study has examined the policies and administrative practices that shape third-country nationals' access to the social security and healthcare benefits listed in article 3 of Regulation (EC) no 883/2004 as amended and in the European Commission's Mutual Information System on Social Protection (MISSOC).[168] Administrative rules and practices related to nationality, periods of residence, exportability of benefits and periods of employment shape the pattern of take-up of social security, including healthcare benefits among migrant groups. By comparing and contrasting the rules that apply to third-country nationals across Member States, the study provides a first step towards understanding what social security, including healthcare policies are in place for third-country nationals and their families.

The study suggests that the equal treatment provisions contained in the EU's Migration Directives – whereby long-term residents, EU Blue Card holders, researchers and Single Permit holders should have access to the same benefits as Member State nationals under the same conditions – have influenced national legislation and practice, in particular as regards long-term residence permit holders and EU Blue Card holders. Since the majority of the research conducted for this study was completed before the transposition of the Single Permit Directive,[169] the situation reflected in the study does not yet permit analysis of the impact of this Directive. However, current practices identified in the study of extending equal treatment only to third-country nationals holding long-term residence permits are not in line with the Single Permit Directive for the categories of persons falling under its scope.

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

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

Third-country nationals with long-term residence permits generally have access to all of the benefits reviewed in this study. However, equal treatment for third-country nationals who hold fixed-term benefits tends to be granted more readily in relation to contributory benefits than in relation to benefits that are financed through general taxation. There are important exceptions to this rule. For example, fixed-term resident third-country nationals qualify to receive non-contributory guaranteed minimum resources in 15 out of the 25 Member States reviewed in this study;

[168] The MISSOC national guides are accessible here: http://ec.europa.eu/social/main.jsp?catId=858&langId=en

[169] At the time of publication of this 9 Member States had not completed their transposition of the Directive.

non-contributory old-age pensions are available to third-country nationals with fixed-term residence permits (in addition to contributory old-age pensions) in six Member States; and fixed-term third-country nationals have access to non-contributory family benefits in ten Member States. However, in Member States that have non-contributory benefits in place alongside contributory maternity and paternity benefits, invalidity benefits and survivors' benefits, only the contributory benefits under these branches are accessible to third-country nationals that hold fixed-term residence permits.

The study identifies five sets of eligibility rules which shape migrant access to social security benefits. The first set exists specifically to regulate access for third-country nationals. The others are general eligibility rules that apply (with the exception of some discretionary criteria) to third-country nationals and Member State nationals alike.

- Firstly, the social security systems in most Member States include eligibility rules which require third-country nationals to hold a particular **type of residence permit**, authorisation of stay or visa. These rules tend to apply more to social security benefits that are financed through general taxation rather than through contributions made by employees and employers.
- Secondly, a number of Member States attach **minimum residence periods** to certain social security benefits. These minimum residence periods are attached to old-age benefits in Finland, France, Italy, Latvia, Portugal, and Sweden; to unemployment benefits in Poland[170]; to family benefits in Czech Republic and Poland[171]; some benefits listed as maternity and paternity benefits in Finland; and to guaranteed minimum resources in most Member States. On the other hand, a minimum residence period is not normally required before third-country nationals can take up healthcare benefits (in kind), sickness cash benefits, and maternity and paternity benefits.
- Thirdly, **restrictions on the export of certain social security benefits** exist in most Member States. These export restrictions exist in most Member States in relation to healthcare benefits (in kind), maternity and paternity benefits, family benefits, unemployment benefits and guaranteed minimum resources. In contrast, the national legislation of 17 out of the 25 Member States participating in this study allow for the export of old-age pensions to third-countries.
- Fourthly, **minimum employment (or contribution) periods** frequently apply to insurance-based social security benefits. These minimum contribution periods are frequently found in relation to sickness cash benefits; maternity and paternity benefits; old-age benefits; and unemployment benefits. Minimum employment periods are not usually required to qualify for healthcare benefits (in kind); family benefits; and guaranteed minimum resources, although some exceptions exist.
- Finally, **administrative discretion** is used to determine eligibility for particular social security benefits in all but six of the 25 Member States participating in this study. The discretionary criteria are used in a variety of contexts, including in order to determine the residence status of applicants, in order to waive certain eligibility conditions, and in the course of applying means tests. While the discretionary criteria are mostly applied to nationals and third-country national applicants alike, they often represent a greater

[170] However, only with regard to holders of temporary residence permits and visas.
[171] However, only with regard to certain groups of economic migrants.

hurdle for third-country national applicants, whose presence in the country tends to be more recent and temporary.

By granting equal treatment between the third-country nationals of the Contracting Parties and Member States nationals, and by permitting the export of (mostly contributory) social security benefits, bilateral agreements can help migrants from certain third countries qualify for social security benefits that they would not otherwise be eligible for. On the other hand, significant variation in the coverage of these bi-lateral social security agreements, and the absence of bilateral agreements between Member States with a significant number of third countries, means that many third-country nationals may continue to lose acquired social security rights when they move out of the European Union.

ANNEX 1 EU Competences in the field of social security

A1.1 The coordination of social security systems

EU competences in the field of social security are limited to the coordination of social security systems between Member States. These social security coordination regulations, most notably Regulation 883/2004, as amended by Regulation 465/2012 and Regulation 987/2009, do not replace or modify the national social security systems in the Member States, but rather enshrine a set of principles aimed at facilitating the free movement of EU citizens.[172]

These include the principle that EU citizens are only covered by the social security legislation of one country at a time, so that they only pay contributions in one country; the principle of equal treatment, where EU citizens enjoy the same rights and obligations as nationals of the country where they are covered; the aggregation principle, which ensures that previous periods of insurance, work or residence in other countries are taken into account; and the principle of exportability, where cash benefits accrued in one country can usually be exported to another.

Regulation (EC) No. 883/2004 applies to the nationals of the Member States as well as to stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States. It also applies to the members of their families and to their survivors. There is no nationality condition for these members of family. Thus third-country national members of the family of EU citizens are also covered (Article 2 of Regulation (EC) No. 883/2004).

Since January 2011, Regulation (EC) No. 1231/2010 extends the coordination of social security systems (provided for in Regulations (EC) No. 883/2004 and 987/2009) to other nationals of non-EU countries legally resident in the EU and in a cross-border situation.[173] Their family members and survivors are also covered if they are in the EU.

Thus a third-country national must fulfil two conditions in order for the provisions of Regulation (EC) No. 883/2004 to be applicable to that person and also to the members of his family. The third-country national must, first, be legally resident in a Member State and, secondly, not be in a situation which is confined in all respects within a single Member State; the third-country national must have moved from one Member State to another.[174]

A1.2 Legislative instruments providing social security rights to third-country nationals

Relevant provisions on third-country nationals' social rights can be found in different legal migration Directives. Those relevant for this study[175] are reviewed below.

The most significant provisions of the Directives relate to the **right to equal treatment with nationals** which they grant to long-term residents, researchers from third-countries, EU-Blue Card holders and Single Permit holders[176] as regards the branches of social

[172] Before 1 May 2010 this coordination system was laid down in Regulation 1408/71. Some of the directives mentioned further still make reference to Regulation 1408/71, but this reference should be read as a reference to Regulation 883/2004.

[173] Previously, the scope of Regulation 1408/71 was extended to these third country nationals by Regulation 859/2003.

[174] ECJ, case C-247/09, Xhymshiti, paragraph 28 and ECJ, case C-45/12, Ahmed, paragraph 30.

[175] Asylum-related directives as well as the directive on the victims of trafficking of human beings also contain social security provisions for third-country nationals but these are not reviewed in this study as they are not in scope.

[176] Whilst the Seasonal workers Directive (2014/36/EU) was adopted by the time of publishing this report, it has not been taken into account in this study as it has not yet been implemented by Member States. The Directive on intra-

security as defined in article 3[177] of Regulation (EC) No. 883/2004; access to goods and services made available to the public; and working conditions, including pay and dismissal - even where there is no mobility between Member States involved.

Notwithstanding the equal treatment provisions, the Directives do not introduce Union-level harmonisation of social security policies. It remains for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted.[178] Therefore, great disparities still exist in relation to the provision of social security to third-country nationals across the EU. Moreover, the country-specific nature of national bilateral agreements (as further explained below) lead to a situation where third-country nationals not only deal with fragmented social security systems when moving between EU countries but are also confronted with distinctive national bilateral agreements when moving into and out of the EU.

A1.2.1 Directive on long-term residents (Directive 2003/109/EC, as amended by Directive 2011/51/EU)

The Directive introduces the European resident status for non-EU nationals who have legally and continuously resided for a period of five years within the territory of an EU Member State. It also approximates national legislation and practices regarding the terms for conferring long-term resident status and lays down conditions for residence in EU countries.

The Directive's provisions on equal treatment apply to those non-EU nationals who have acquired the long-term resident status. They also apply to long-term residents who made use of the possibility offered by Directive 2003/109/EC to acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status (Article 14, 19 and 21).[179]

This Directive provides equal treatment regarding social security, social assistance and social protection as defined by national law. Article 11 contains a general equal treatment provision which states that long-term residents shall enjoy equal treatment with nationals as regards, amongst others, social security, social assistance and social protection as defined by national law. The equal treatment provision also covers working conditions, including as regards pay and dismissal, and access to goods and services made available to the public.

However, the article also allows Member States to restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned (Article 11 (2)). Moreover, according to Article 11(4), Member States may limit equal treatment in respect of social assistance and social protection to so-called "core benefits". The "core

corporate transferees (2014/66/EU) was adopted on 15 May 2014, shortly in before this study's publication, so it has also not been taken into account. It also should be noted that the input to the study was essentially provided prior to the date for implementation of the Single Permit Directive, and for some Member States a "pre-Single Permit" situation is described.

[177] See also section 1.4.2 of the MISSOC guidelines for more information.

[178] Whilst the legal migration Directives do not harmonise Member State social security policies, they contain provisions concerning equal treatment between the third-country nationals concerned and Member State nationals from which Member States cannot derogate.

[179] Some categories of individuals are excluded from its scope: seasonal workers or workers posted for the purpose of providing cross-border services, and persons residing in order to pursue studies or vocational training. Following the amendment of the Directive, also excluded are persons who have applied for or who have been granted temporary protection, protection other than international protection or those who have applied for international protection and whose application has not given rise to a decision.

benefits" are described in recital 13 as "minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care". The modalities for granting such benefits should be determined by national law.[180]

A1.2.2 Directive on the admission of researchers from third countries (Directive 2005/71/EC)

The purpose of the Directive is to introduce a special procedure governing the entry and residence of third-country nationals coming to carry out a research project in the EU for a period of more than three months. The Directive applies to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of carrying out a research project[181].

Social security rights of third-country nationals are explicitly addressed in this Directive. Article 12 of the Directive, dealing with equal treatment, states that "holders of a residence permit shall be entitled to equal treatment with nationals as regards branches of social security as defined in Regulation 1408/71".[182] The right to equal treatment for third-country nationals under this Directive also covers working conditions, including as regards pay and dismissal, and access to goods and services made available to the public. However, equal access to social assistance is excluded. This Directive adds a very important improvement in the field of social security as the non-discrimination principle also applies directly to persons coming to a Member State directly from a third country. However, recital 16 specifies that it should not grant rights in relation to situations which lie outside the scope of Union legislation like for example family members residing in a third country.

In addition, a residence permit issued on the basis of this Directive can be withdrawn, or renewal of the permit refused, if the conditions under which the agreement with the hosting institutions was signed no longer apply. This includes the condition that during the researcher's stay, he or she must have sufficient resources to meet his/her expenses and return travel costs, without having recourse to the Member State's social assistance system (Article 10(1)).

A1.2.3 Directive on the admission of highly-qualified workers (EU Blue Card) (Directive 2009/50/EC)

The object of this Directive is to improve the EU's ability to attract highly qualified workers from third countries. It is designed to: facilitate the admission of these persons by harmonising entry and residence conditions throughout the EU; simplify admission procedures; set out rules for intra-EU mobility; and ensure equal treatment to nationals on a number of aspects including social security. The Directive applies to highly qualified third-country nationals seeking to be admitted to the territory of a Member State for more than three months for the purpose of highly-qualified employment, as well as to their family members.

Non-EU nationals holding EU Blue Cards should be granted equal social and economic rights as nationals of the Member State issuing the Blue Card. Article 14 (1) (e) guarantees equal treatment regarding the branches of social security as defined by Regulation (EC) No. 1408/71 (now Regulation (EC) No.

[180] See further under point 2.3.1 on the judgment of the ECJ on this provisions in case C-571/10, Kamberaj

[181] However, it does not apply to: applicants for asylum or subsidiary protection or under temporary protection schemes; Doctoral students conducting research relating to their theses as students (as they are covered by Directive 2004/114/EC on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service); Third-country nationals whose expulsion has been suspended for reasons of fact or law; Researchers seconded by a research organisation to another research organisation in a different Member State.

[182] Now Regulation (EC) No. 883/2004.

883/2004).[183] Recital 18 specifies that these provisions on equal treatment as regards social security also apply directly to persons entering into the territory of a Member State directly from a third-country, provided that the person concerned is legally residing as holder of a valid EU Blue Card, including during the period of temporary unemployment, and he/she fulfils the conditions, set out under national law, for being eligible for the social security benefits concerned.

Moreover Article 14 (1) (f) stipulates that, without prejudice to existing bilateral agreements, EU Blue Card holders shall enjoy equal treatment regarding the payment of income-related acquired statutory pensions in respect of old-age when moving to a non-EU country. Article 14 (1) (a) and (g) further extend the right to equal treatment for EU Blue Card holders to working conditions, including pay and dismissal, and access to goods and services made available to the public, as well as information and counselling services afforded by employment offices.

An EU Blue Card can be withdrawn, or renewal refused, if the holder does not have sufficient resources to maintain himself and, where applicable, the members of his family, without having recourse to the social assistance system. However, unemployment shall not be a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or if unemployment occurs more than once during the period of validity of the EU Blue Card.

A1.2.4 Directive on a single application procedure for a single permit for third-country nationals and on a common set of rights for third country workers, also known as the "Single Permit" Directive"(2011/98/EU)

This Directive establishes a single residence and work permit and sets out the related application procedure. It also defines the rights of non-EU workers holding this permit, whether they have just arrived or are already resident in a Member State.

The Directive had to be transposed by 25 December 2013. Since the research conducted at national level for the current study was mostly completed before this date, recent changes to the social security and healthcare entitlements of third-country nationals, brought about as a result of the transposition of the Single Permit Directive, are not all reflected in this report.

Article 12 (e) of the Directive guarantees the right to equal treatment with nationals of the Member State where they reside for all branches of social security, as defined in Regulation (EC) No. 883/2004. According to this provision, the following categories of third-country nationals shall enjoy equal treatment (as referred to in Article 3 (1) (b) and (c) of this directive):

- Third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002; and
- Third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law.

In addition, Article 12 (4) provides that third-country workers moving to a third country, or their survivors who reside in a third country and who derive rights from those workers, shall receive, in relation to old age, invalidity, and death, statutory pensions based on those workers' previous employment, under the same conditions and at the same rates as the nationals of

[183] The reference in this provision to the Annex to Regulation 892/2003 is redundant since Regulation 1231/2010 extending the scope of Regulation 883/2004 to third country nationals has no Annex with exceptions any more.

the Member states concerned when they move to a third country.

Pursuant to Article 12 (2) (b) of this directive, Member States may restrict equal treatment regarding social security, but they shall not restrict such rights for third-country nationals who are in employment or who, after a minimum period of six months of employment, are registered as unemployed.
Member States may, consequently, restrict equal treatment as regards social security for third-country workers who have been employed less than 6 months. Member States may also restrict family benefits for those who have been admitted to work less than 6 months, to non-EU students and those who are allowed to work on the basis of a visa.

Recital 24 further specifies that the provisions on equal treatment concerning social security in this Directive should also apply to workers admitted to a Member State directly from a third country. This Directive, furthermore, should not grant rights in relation to situations which lie outside the scope of Union law, such as in relation to family members residing in a third country. This Directive should grant rights only in relation to family members who join third-country workers to reside in a Member State on the basis of family reunification or family members who already reside legally in that Member State.

The Directive excludes a number of specific categories, in part because they are covered by more favourable existing or foreseen EU Directives.[184]

A1.2.5 Directive on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (2014/36/EU)

This Directive (adopted on 26 February 2014 and entered into force on 29 March 2014) determines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and defines the rights of these workers. It has to be transposed by the Member States into national law by 30 September 2016.

Article 23 (1) (d) provides that seasonal workers admitted by the Member States shall be entitled to equal treatment with nationals of Member States at least with regard to the branches of social security as defined by Regulation (EC) No. 883/2004. However, pursuant to Article 23 (2) (i) Member States may restrict equal treatment by excluding family benefits and unemployment benefits. Member States may also restrict rights in relation to education and vocational training (Article 23(2)(ii)) and tax benefits (Article 23(2)(iii).

It is also stipulated in the final paragraph of Article 23 (1) that seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance the social security legislation of the Member States concerned, under the same conditions and at the same rates as the nationals of that Member State when they move to a third country. Recital 46 further adds that this Directive does not cover social assistance.

A1.2.6 Directive on intra-corporate transferees (2014/66/EU)

This Directive (adopted on 15 May 2014 and entered into force on 28 May 2014) determines the conditions of entry and stay for more than 90 days of third-country nationals and their family members in the

[184] Excluded categories are, among others, long-term resident (covered by 2003/109/EC), researcher applying for permit under Directive 2005/71/EC, seasonal workers, posted workers, intra-corporate transferees and au pairs.

framework of an intra-corporate transfer. It also defines the rights of these third-country nationals. It has to be transposed by the Member States into national law by 29 November 2016.

Article 18 (2) (c) provides that third-country nationals admitted by the Member States in the framework of an intra-corporate transfer shall be entitled to equal treatment with nationals of the Member States at least with regard to the branches of social security defined in Article 3 of Regulation (EC) No. 883/2004, unless the law of the country of origin applies by virtue of bilateral agreements or the national law of the Member State where the work is carried out.

It is also stipulated in Article 18 (2) (d) that intra-corporate transferees moving to a third country, or the survivors of such intra-corporate transferees residing in a third country deriving rights from the intra-corporate transferee, shall – without prejudice to bilateral agreements - receive old-age, invalidity and death statutory pensions based on the intra-corporate transferee's previous employment, under the same conditions and at the same rates as the nationals of that Member State when they move to a third country. Pursuant to Article 18 (3), Member States may restrict equal treatment by excluding family benefits for intra-corporate transferees who have been authorised to reside and work in the territory of a Member State for a period not exceeding nine months. Restrictions may also be applied in relation to procedures for obtaining housing and services afforded by public employment offices (Article 18(2)(e)).

A1.3 European case-law providing social security rights to third-country nationals

A1.3.1 Case-law of the Court of Justice of the European Union

Not many cases have been submitted to the Court of Justice of the European Union (CJEU) on the basis of the above mentioned instruments. Indeed, the Court has only ruled on matters of the attribution of social security rights to third-country nationals pertaining to Directive 2003/109/EC: in the case of Kamberaj,[185] the CJEU interpreted the extent of the "**core benefits**" covered by the Directive.

According to the CJEU in the Kamberaj case, the list set forth in Recital 13 of the Directive shall not be understood as being exhaustive. In that sense, even if no explicit reference is made to housing benefits, these could be included in the core benefits which fall under the principle of equal treatment.

The CJEU understood that the right to social and housing assistance recognised by Article 34 of the Charter of Fundamental Rights of the EU shall inform the interpretation of the derogation of the general rule of equal treatment; public authorities cannot rely on such a derogation unless an explicit mention has been done in the national instruments implementing Directive 2003/109/EC. The right to housing assistance shall be, therefore, granted, unless otherwise specified.

A1.3.2 Case-law of the European Court of Human Rights

Article 14 of the European Convention on Human Rights (ECHR) prohibits discrimination on the grounds of "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".[186]

[185] C-571/10, Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others.
[186] Article 14, ECHR: "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*."

In order for the prohibition of discrimination under Article 14 ECHR to have any application to the regime of social security entitlements provided by a State, a complainant must establish that another free standing right Convention right is engaged (but not necessarily violated).

Historically, this has been done by associating social security rights to the property rights covered by Article 1 of Protocol 1 to the Convention[187] (***Gaygusuz***,[188] ***Poirrez*** [189], ***Stec***[190]). Indeed, in ***Stec,*** the ECtHR stated that Article 1 Protocol 1 applies to all welfare benefits. Once a complainant is able to establish that Article 1 Protocol 1 is engaged, he or she is then able to argue that the denial of an entitlement is discriminatory on the grounds of his or her nationality.

More recently, the Court has started to recognise that the right to family life under Article 8 ECHR may also be engaged where issues of social security rights arise, more specifically for all kind of financial support to families: ***Niedzwiecki, Okpisz****, and* ***Weller***[191] cases. Consequently the ECtHR examined these cases under the prohibition of discrimination, including on grounds of nationality, of Article 14 ECHR.

Not every difference in treatment will amount to a violation of Article 14 ECHR. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this is discriminatory. A difference in treatment is discriminatory within the meaning of Article 14 ECHR if it has no objective and reasonable justification.

For example, in 2009, the Court ruled on the refusal to recognise the years of employment in a third country (the extinct Soviet Union, in this case) in order to calculate the entitlement to a pension of retirement. In the case ***Andrejeva v Latvia***, [192] the Court considered that the Latvian State could not refuse to recognise the years the complainant had worked in the former USSR only on the basis of her nationality. The state reserved the right of being entitled to a retirement pension in respect of the periods of time spent working in the USSR only to Latvian citizens. The Court found this practice to be in violation of Articles 14 of the Convention and 1 of the Protocol (see also: ***Zeïbek v Greece***).

However, in another case the Court did not consider that persons who live outside the United Kingdom in countries which are not party to reciprocal social security agreements with the United Kingdom providing for pension up-rating, are in a relevantly similar position to residents of the United Kingdom or of countries which are party to such agreements. It follows for the Court that there has been no discrimination by refusing the up-rating of the pensions of these persons and that these persons cannot claim this under the ECHR.[193]

A1.4 External dimension of social security

Social security coordination with countries outside the EU is, in the majority of cases, regulated through bilateral social security agreements reached between Member States and third countries. Bilateral agreements are practical tools for coordination, providing States with the flexibility to take into account

[187] Article 1, Protocol 1, ECHR: "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"
[188] Gaygusuz v Austria (17371/90) (1997) 23 E.H.R.R. 364 (ECHR).
[189] Poirrez v France (40892/98) (2005) 40 E.H.R.R. 2 (ECHR).
[190] Stec and others v. the United Kingdom (65731/01 and 65900/01) (2006).
[191] Weller v Hungary (44399/05) (2009).
[192] Andrejeva v Latvia (55707/00) (2009).
[193] Carson v United Kingdom (42184/05) (Grand Chamber; 2010).

the specific conditions of national social security systems[194]. Bilateral agreements contain different provisions and their material scope can vary.[195]

While each Member State is free to conclude their own bilateral agreements, the European Commission has recently issued a Communication on the External Dimension of EU Social Security Coordination[196]. The latter points out that, despite the existence of an internal coordination system of EU social security, there is no real cooperation in respect of third countries[197]. This leads to a "fragmentation", which can have negative effects on the transparency as to what migrants' rights are.

A1.4.1 Social security provisions agreed in association agreements

A common EU approach to social security coordination is contained in association agreements made between the EU, its Member States and certain third countries. Such agreements include a number of principles which oversee the coordination of social security rules for workers, who move between an EU and the associated country.

Within the context of those agreements, the Council adopted in two packages, 10 decisions on the EU position with regard to the adoption of the provisions on the coordination of social security systems. The implementing decisions for each of the Association Agreements are being finalised and should be applicable in the near future[198]. The latter cover the following rights for legally employed workers: equal treatment with workers in the host state; export of the full amount of old-age, survivors' and invalidity pensions and pensions in respect of accidents at work and occupational diseases outside the territory of the paying state; and equal treatment for legally resident family members[199].

Provisions of bilateral agreements concluded between the associated countries and individual Member States will apply if the latter provide for more favourable treatment of nationals of the associated countries.

A1.4.2 Toward a more coherent EU approach to social security coordination with third countries

The Communication on the External Dimension of EU Social Security Coordination underlined the need for better cooperation on national bilateral agreements and for the development of a common EU approach. In other words, it emphasises the need for the EU to strengthen its external profile on social security issues (which would be in line with the Europe 2020 strategy).

For example, the Communication considered the establishment of a new instrument — an EU social security agreement. Such agreement would allow a more flexible approach to social security coordination than is possible under association agreements and could also be concluded with third countries with which no association or cooperation agreement exists. The overall aim of such an agreement would be to establish a coherent EU approach vis-à-vis third countries in the field of social security.

[194] http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_205316.pdf

[195] This variety is underlined in section 5 of this Synthesis report, which reviews the bilateral social security agreements that have been adopted by EU Member States with third countries.

[196] COM(2012) 153 final Communication on the External Dimension of EU Social Security Coordination, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0153:FIN:EN:PDF

[197] With the exception of EEA countries and Switzerland.

[198] 1st package: October 2010 Algeria, Morocco, Tunisia, Israel, Croatia and the former Yugoslav Republic of Macedonia and 2nd package: December 2012 Turkey, Montenegro, Albania and San Marino.

[199] COM(2012) 153 final Communication on the External Dimension of EU Social Security Coordination.

Table A1.1 Equal treatment provisions regarding access to social security in the Migration Directives

		Long-term residents (2003/109/EC)	**Researchers (2005/71/EC)**	**Blue Card holders (2009/50/EC)**	**Single permit holders (2011/98/EU)**	**Seasonal workers (2014/36/EU)**	**ICTs (2014/66/EU)**
Personal scope of equal treatment provisions		Third-country nationals who have acquired long-term residence status according to the Directive, and long-term residents who make use of the opportunity to reside in another Member State	Third-country nationals who have been admitted to a Member State for the purpose of carrying out a research project according to the Directive	Third-country nationals who have been admitted to a Member State for the purpose of highly qualified employment as Blue Card holders[200] according to the Directive	Third-country nationals who have been admitted to a Member State for the purpose of work; or have been admitted for purposes other than work and are allowed to work, and hold a residence permit in accordance with Regulation (EC) No 1030/2002	Third-country nationals who have been admitted to a Member State for the purpose of employment as seasonal workers according to the Directive	Third-country nationals who have been admitted to a Member State in the framework of an intra-corporate transfer

[200] When the EU Blue Card holder moves to a second Member State in accordance with Article 18 and a positive decision on the issuing of an EU Blue Card has not yet been taken, Member States may limit equal treatment, unless the applicant is allowed to work during this period.

		Long-term residents (2003/109/EC)	Researchers (2005/71/EC)	Blue Card holders (2009/50/EC)	Single permit holders (2011/98/EU)	Seasonal workers (2014/36/EU)	ICTs (2014/66/EU)
Social security	**Scope of equal treatment**	Social security, social assistance and social protection as defined by national law	All branches of social security as defined in Regulation 1408/71[201]	All branches of social security as defined in Regulation 1408/71	All branches of social security, as defined in Art. 3 Regulation 883/2004[202]	All branches of social security, as defined in Art. 3 Regulation 883/2004	All branches of social security defined in Art. 3 Regulation 883/2004, unless the law of the country of origin applies by virtue of bilateral agreements or the national law of the Member State where the work is carried out In case of intra-EU mobility, Regulation 1231/2010 applies accordingly
	Derogations	MS can restrict equal treatment: - to cases where			MS can restrict equal treatment, except for TC	MS can restrict equal treatment by excluding	

[201] The branches listed in Art. 4 (1) Regulation 1408/71 were: (a) sickness and maternity benefits; (b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity; (c) old-age benefits; (d) survivors' benefits; (e) benefits in respect of accidents at work and occupational diseases; (f) death grants; (g) unemployment benefits; (h) family benefits. Regulation 883/2004 has repealed and replaced Regulation 1408/71 (see next footnote).

[202] The branches listed in Art. 3 (1) Regulation 883/2004 are: (a) sickness benefits; (b) maternity and equivalent paternity benefits; (c) invalidity benefits; (d) old-age benefits;(e) survivors' benefits;(f) benefits in respect of accidents at work and occupational diseases;(g) death grants;(h) unemployment benefits;(i) pre-retirement benefits;(j) family benefits.

		Long-term residents (2003/109/EC)	Researchers (2005/71/EC)	Blue Card holders (2009/50/EC)	Single permit holders (2011/98/EU)	Seasonal workers (2014/36/EU)	ICTs (2014/66/EU)
		the registered or usual place of residence lies within the territory of the Member State concerned - to core benefits, in respect to social assistance and social protection			workers in employment or registered as unemployed after having worked at least 6 months	family and unemployment benefits	
	Impact on procedures for residence permit renewal		Residence permit can be withdrawn, or renewal refused, if holder does not have sufficient resources to meet his/her expenses and return travel costs, without having recourse to the Member State's social assistance system	EU Blue Card can be withdrawn, or renewal refused, if holder does not have sufficient resources to maintain himself and, where applicable, the members of his family, without having recourse to the social assistance system. Unemployment shall not be a reason for			

		Long-term residents (2003/109/EC)	Researchers (2005/71/EC)	Blue Card holders (2009/50/EC)	Single permit holders (2011/98/EU)	Seasonal workers (2014/36/EU)	ICTs (2014/66/EU)
				withdrawing EU Blue Card, unless unemployment exceeds three consecutive months, or occurs more than once during validity of EU Blue Card			
	Family benefits	No specific provisions/ derogations	No specific provisions/ derogations	No specific provisions/ derogations	MS can exclude family benefits for TCNs who have been authorised to work for less than 6 months, are allowed to work on the basis of a visa or have been admitted for the purpose of study	MS can exclude family benefits, without prejudice to Regulation 1231/2010	MS can exclude family benefits for ICTs who have been authorised to reside and work for less than 9 months, without prejudice to Regulation 1231/2010
	Statutory pensions	No specific provisions/ derogations	No specific provisions/ derogations	When blue-card holder moves to a 3rd country, equal treatment shall be granted as regards payment of income-related	Third-country workers moving to a 3rd country, or their survivors residing in a 3rd country, shall receive old age, invalidity and	Seasonal workers moving to a 3rd country or their survivors residing in a 3rd country shall receive statutory pensions, based	ICTs moving to a 3rd country or their survivors residing in a 3rd country shall receive old-age, invalidity and death statutory

		Long-term residents (2003/109/EC)	Researchers (2005/71/EC)	Blue Card holders (2009/50/EC)	Single permit holders (2011/98/EU)	Seasonal workers (2014/36/EU)	ICTs (2014/66/EU)
				acquired statutory pensions in respect of old age, at the rate applied by virtue of the law of the debtor Member State(s)	death statutory pensions based on those workers' previous employment and acquired in accordance with the legislation referred to in Art 3 Regulation 883/2004, under the same conditions and at the same rates as nationals of the MS concerned when they move to a 3rd country	on the seasonal worker's previous employment and acquired in accordance with the legislation referred to in Art 3 Regulation 883/2004, under the same conditions and at the same rates as nationals of the MS concerned when they move to a 3rd country	pensions, based on the ICTs' previous employment and acquired in accordance with the legislation referred to in Art 3 Regulation 883/2004, under the same conditions as the nationals of the Member State concerned when they move to a 3rd country, without prejudice to Regulation 1231/2010 and to bilateral agreements

		Long-term residents (2003/109/EC)	**Researchers (2005/71/EC)**	**Blue Card holders (2009/50/EC)**	**Single permit holders (2011/98/EU)**	**Seasonal workers (2014/36/EU)**	**ICTs (2014/66/EU)**
Access to goods and services	**Scope of equal treatment**	Access to goods and services, the supply of goods and services made available to the public, procedures to obtain housing	Access to goods and services and the supply of goods and services made available to the public	Access to goods and services, the supply of goods and services made available to the public, including procedures to obtain housing, as well as information and counselling services afforded by employment offices	Access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing	Access to goods and services and the supply of goods and services made available to the public, except housing	Access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining housing and services afforded by public employment offices
	Derogations	MS can restrict equal treatment to cases where the registered or usual place of residence lies within the territory of the Member State concerned	No derogation provided	MS can restrict equal treatment in relation to procedures for obtaining housing	MS can: - limit equal treatment to third-country workers in employment - restrict access to housing	No derogation provided	No derogation provided

ANNEX 2 National institutional framework

A1.5 National Institutional framework

There is a great deal of variety in the way that Member States organise the administration of social security. Whereas key administrative functions are centralised in central Ministries in some Member States, in a number of Member States, a significant degree of decentralisation (either territorial or administrative) is evident.

Central (or where relevant federal) authorities are involved in the administration of social security in all 25 Member States participating in the study. The key government departments at central level tend to be the Ministry of Labour and/or Social Affairs (**Austria**, **Bulgaria**, **Cyprus, Czech Republic**, **Estonia**, **Greece**, **Ireland**, **Finland**, **France, Germany**, **Lithuania**, **Luxembourg**, **Latvia**, **Malta**, **Netherlands**, **Poland**, **Portugal**, **Slovak Republic**, **Slovenia**, **Spain**, **Sweden**, **United Kingdom**) and the Ministry of Health (**Austria, Bulgaria**, **Germany**, **Greece**, **Finland**, **Ireland**, **France, Latvia**, **Lithuania**, **Netherlands**, **Poland**, **Portugal**, **Slovenia**, **Slovak Republic**, **Spain**, **Sweden**, **United Kingdom**).

However, these Ministries often have more of a supervisory role, and important management responsibilities have been delegated to other institutions.[203] In most Member States, the administration of key social security benefits (e.g. old-age pensions, unemployment benefits, healthcare) is handled by a system of National Insurance funds or authorities, which operate autonomously (**Austria Belgium**, **Bulgaria**, **Estonia**, **Finland**, **France, Germany**, **Greece**, **Hungary**, **Italy**, **Lithuania**, **Luxembourg**, **Latvia**, **Netherlands**, **Poland, Portugal**, **Slovak Republic**, **Slovenia**, **Sweden**).

Local authorities are involved in the administration of social security in at least fourteen Member States (**Austria**, **Estonia**, **Finland**, **Germany**, **Greece**, **Hungary**, **Italy**, **Latvia**, **Luxembourg**, **Lithuania**, **Netherlands**, **Poland**, **Slovak Republic**, **Sweden**). This indicates that in more than half of Member States (a part of) social security is decentralised. However, the extent of decentralisation differs greatly across Member States.

In certain Member States (**Austria**, **Germany**, **Hungary**, **Italy**, **Poland**, Spain **Sweden**), other levels of governance – regional, provincial, district-level – are also involved in the administration of guaranteed minimum resources (**Austria**, **Hungary**, **Poland, Spain**), healthcare (**Hungary**, **Italy**, **Poland, Spain**, **Sweden**), sickness and maternity (**Poland**), invalidity benefits (**Poland**), survivor benefits (**Poland**), child benefits (**Austria**), long-term care benefits (**Austria, Poland, Slovak Republic**), accidents at work and occupational diseases (**Poland**). In **Sweden**, the regional healthcare system is financed through regional taxes and, to some extent, state subsidies and client fees.

In some Member States, municipalities are responsible for the organisation and delivery of health care (**Finland, Poland**), guaranteed minimum resources (**Austria**, **Estonia, Finland**, **Hungary**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Poland, Sweden**, **Slovak Republic**[204]), or other social services such as disability assistance, and/or home care (**Finland**, **Greece**, **Latvia, Lithuania, Poland, Slovak Republic**) or specific benefits, such as child birth allowance (**Lithuania, Poland**), unemployment

[203] In Ireland the Department of Social Protection retains management responsibility and administrates the social security system through its local offices, which are dispersed throughout the country.

[204] However, the scope of involvement of municipalities in the organisation and delivery of guaranteed minimum resources in the Slovak Republic is negligible.

benefits (**Poland**), family allowance (**Italy, Lithuania, Poland**), and social aid and social housing benefits (**Luxembourg**).

Member States differ in terms of the competences that municipalities have to raise resources for the delivery of social security, including healthcare. In most Member States, municipalities depend on the state budget for resources). In **Finland**, funding is through municipal tax revenue and client fees, while the state additionally pays subsidies to municipalities to cover the costs. In **Sweden**, municipalities collect their own taxes for this purpose.

Other entities involved in social security are fiscal authorities and/or the treasury (**Austria**, **Bulgaria**, **Estonia**, **Finland**, **France, Hungary**, **Latvia**, **Netherlands**, **Sweden**, **Slovak Republic**, **United Kingdom**), private insurance companies (**Austria**, **Belgium**, **Bulgaria**, **Estonia**, **Finland**, **Greece**, **Latvia**, **Netherlands**, **Poland, Slovak Republic**), the employment office (**Austria**, **Bulgaria**, **Finland**, **Germany**, **Greece**, **Lithuania**, **Luxembourg**, **Hungary**, **Latvia**, **Slovak Republic**, **Slovenia, Spain**), employers' mutual insurance associations (**Belgium**, **Germany, Luxembourg, Spain**), the Ministry of Economy (**Austria**, **Hungary**), national centres or institutes for social security (**Finland**[205], **France, Italy**, **Luxembourg, Poland, Spain**), which have responsibility to manage specific branches of social security, trade unions (**Belgium**) and labour inspection (**Bulgaria**).

Other Ministries involved in individual Member States are the departments of Human Resources (**Hungary**) and Family and Youth (**Austria**).

[205] The Social Insurance Institution of Finland (Kela) administers the residence-based general social security system. Kela is an independent institution under public law that is administratively under the direct supervision of the Finnish Parliament.

ANNEX 3 Glossary

The following terms used in the study are defined as follows:

- ***'Benefits in respect of accidents at work and occupational diseases'*** refer to benefits that are provided to persons, or their survivors, who have conducted an economic activity which by its nature is likely to cause the said disease. (Source: European system of integrated social protection statistics (ESSPROS) Manual, 2008 Edition, Eurostat).
- ***'Core benefits'*** are those which Member States cannot derogate from the general rule of equal treatment, according to the Directive on Long-Term Residents (2003/109/EC). In Recital 13 of the Directive, core benefits are described as "minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care". However, in the Kamberaj case, the CJEU established that this list was not exhaustive and that the right to social and housing assistance recognised by Article 34 of the Charter of Fundamental Rights of the EU shall inform the interpretation of the derogation of the general rule of equal treatment. As a result, public authorities cannot rely on such a derogation to limit the scope of "core benefits" unless an explicit mention has been made in the national instruments implementing Directive 2003/109/EC. (Source: Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others, C-571/10).
- ***'Cross-border worker'*** is someone who is employed in one (Member) State but resides in another, where he/she returns at least once a week. (Source: Eurofound).
- ***'Deciding officer'*** is the government official in charge of scrutinising and adjudicating benefit claims.
- ***'Discretionary conditions'*** in this study refers to eligibility rules for particular social security benefits which cannot be easily defined. Eligibility rules that have a discretionary element require the deciding officer in charge of scrutinizing individual applications to make a judgement – usually by means of an interview – about whether the applicant has met the conditions, taking into account the applicant's particular circumstances. An example of a discretionary condition is the 'habitual residence test'.
- ***'EU SILC'*** refers to the European Union Statistics on Income and Living Conditions. It is an instrument aimed at collecting timely and comparable cross-sectional and longitudinal multidimensional microdata on income, poverty, social exclusion and living conditions.
- ***'Employed persons'*** are persons aged 15 year and over (16 and over in ES, IT, UK and SE (1995-2001); 15-74 years in DK, EE, HU, LV, FI and SE (from 2001 onwards); 16-74 in IS and NO), who during the reference week performed work, even for just one hour a week, for pay, profit or family gain, or, who were not at work but had a job or business from which they were temporarily absent because of, e.g., illness, holidays, industrial dispute or education and training.(Source: Eurostat)
- ***'Family benefits'*** refer to benefits that provide financial support to households for bringing up children; provide financial assistance to people who support relatives other than children; and provide social services specifically designed to assist and protect the family, particularly children (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Family member'*** generally means persons married to a migrant, or having a relationship

legally recognised as equivalent to marriage, as well as their dependent children and other dependants who are recognised as members of the family by applicable legislation. (Source: EMN Glossary 2.0).

- ***'Frontier worker'*** *refers* to someone who is employed in the frontier zone of a Member State but who returns each day or at least once a week to the frontier zone of a neighbouring (third-country) in which they reside and of which they are nationals. (Source: EMN Glossary 2.0)
- ***'Guaranteed minimum resources'*** refers to benefits provided to people with insufficient resources. It includes support for destitute and vulnerable persons to help alleviate poverty or assist in difficult situations. (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Habitual residence test',*** in the context of social security claims, implies a close association between an individual applicant and the country from which a social security payment is claimed. The criteria for 'habitual residence' is deliberately not defined in EU nor national regulations, as it is understood that the precise definition should depend on each individual claimant's particular circumstance. However, the European Court of Justice has developed case-law that should be taken into account by deciding officers when applying a 'habitual residence test'.
- ***'Healthcare'*** refers to medical care provided in the framework of social protection to maintain, restore or improve the health of the people protected. (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Inactive persons'*** are those who are not in the labour force so are neither classified as employed nor as unemployed. This category therefore does not include job-seekers. (Source: Eurostat)
- ***'Invalidity benefits'*** refer to benefits that provide an income to persons below standard retirement age as established in the reference scheme whose ability to work and earn is impaired beyond a minimum level laid down by legislation by a physical or mental disability; provide rehabilitation services specifically required by disabilities; provide goods and services other than medical care to disabled people. (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Long-term care benefits'*** are cash allowances, which enable the standard of living of persons in the need of care to be improved as a whole, so as to compensate for the additional expense brought about by their condition. They cover additional costs for people who frequently need the help of another person due to their old-age or disability. (Source: European system of integrated social protection statistics (ESSPROS) Manual, 2008 Edition, Eurostat).
- ***'Long-term resident'*** is any third-country national who has long-term resident status as provided for under Articles 4 to 7 of Council Directive 2003/109/EC or as provided for under national legislation. The study specifications distinguish between these two categories and EMN NCPs are asked to do the same in their national reports.
- ***'Maternity and paternity benefits'*** refers to the compensation rates paid to female or male workers who take leave from work on the birth or adoption of a child.
- ***'Migrant worker'*** refers to foreigners admitted by the receiving State for the specific purpose of exercising an economic activity remunerated from within the receiving country. Their length of stay is usually restricted as is the type of employment they can hold. (Source: OECD Glossary of Statistical Terms)
- ***'MISSOC'*** refers to the European Commission's Mutual Information System on Social Protection (MISSOC). It provides detailed, comparable and regularly updated information about national social

protection systems in the 28 EU Member States plus Iceland, Liechtenstein, Norway and Switzerland.

- ***'Mobile third-country national'*** refers to third-country nationals who move from one (Member) State to another (Member) State normally to stay for more than 3 months in the other (Member) State and principally for the purpose of work. (Source: EMN Intra-EU mobility study Advisory Group)
- ***'Old-age pensions and benefits'*** cover benefits that provide a replacement income when the aged person retires from the labour market; and guarantee a certain income when a person has reached a prescribed age (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Researcher'*** refers to a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required. (Source: EMN Glossary 2.0)
- ***'Seasonal worker'*** is a (third-country national) worker who is resident in a third country but is employed in an activity dependent on the rhythm of the seasons in the territory of a Member State on the basis of a contract for a specific period and for specific employment. (Source: EMN Glossary 2.0).
- ***'Self-employed persons'*** are persons who are the sole or joint owner of an unincorporated enterprise (one that has not been incorporated i.e. formed into a legal corporation) in which he/she works, unless they are also in paid employment which is their main activity (in that case, they are considered to be employees). Self-employed people also include unpaid family workers; outworkers (who work outside the usual workplace, such as at home); and workers engaged in production done entirely for their own final use or own capital formation, either individually or collectively. (Source: Eurostat)
- ***'Sickness cash benefits'*** refer to cash benefits that replace in whole or in part loss of earnings during temporary inability to work due to sickness or injury. (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Social assistance'*** refers to all assistance introduced by the public authorities, whether at national, regional or local level, that can be claimed by an individual who does not have resources sufficient to meet his own basic needs and the needs of his family and who, by reason of that fact, may become a burden on the public finances of the host Member State during his period of residence which could have consequences for the overall level of assistance which may be granted by that State (*Brey*, C-140/12 and other CJEU case-law).
- ***'Social security'*** refers (in the case-law of the CJEU) to any benefit that is granted to the recipients without any individual and discretionary assessment of personal needs, on the basis of a legally defined position and relates to one of the risks expressly listed in Article 4(1) of Regulation 1408/71 (*Lachheb*, C-177/12 and other CJEU case-law). However, in the context of this study, a broader definition of social security is used, encompassing all of the branches listed in the guide produced on each Member Sate for the European Commission's Mutual information System on Social Protection (MISSOC). These branches include guaranteed minimum resources (social assistance).
- ***'Social protection'*** refers to all forms of support aimed at preventing, managing, and overcoming situations that adversely affect people's well-being. As such, social protection systems encompass both social security benefits and social assistance.
- ***'Student'*** refers to a third-country national accepted by an establishment of higher education

and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation. (Source: EMN Glossary 2.0)

- ***'Survivors' benefits'*** refer to benefits that provide a temporary or permanent income to people who have suffered from the loss of the spouse or a next-of-kin, usually when the latter represented the main breadwinner for the beneficiary (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Third-country national'*** refers to any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union, and who is not a person enjoying the Union right to freedom of movement as defined in Article 2(5) of the Schengen Borders Code. (Source: EMN Glossary 2.0)
- ***'Unemployment benefits'*** refer to benefits that replace in whole or in part income lost by a worker due to the loss of gainful employment; provide a subsistence (or better) income to persons entering or re-entering the labour market; compensate for the loss of earnings due to partial unemployment;- replace in whole or in part income lost by an older worker who retires from gainful employment before the legal retirement age because of job reductions for economic reasons; and contribute to the cost of training or re-training people looking for employment (Source: ESSPROS Manual, 2008 Edition, Eurostat).
- ***'Unemployed persons'*** are persons aged 15-74 (in ES, IT, SE (1995-2000), UK, IS and NO: 16-74), who were without work during the reference week, but currently available for work, or who were either actively seeking work in the past four weeks or who had already found a job to start within the next three months. (Source: Eurostat)

ANNEX 4 Discretionary conditions applied in member states

Table A1: Overview of discretionary power applied in Member States per categories of benefits

	I. Healthcare	II. Sickness cash benefits	III. Maternity and paternity benefits	V. Old age pensions and benefits	VIII. Family benefits	IX. Unemployment benefits	X. Guaranteed minimum resources
Austria	-	-	-	-	-	-	-
Belgium	-	-	-	-	✓(mt*)	✓(mt*)	✓(mt*)
Bulgaria	-	-	-	-	✓(mt*)	-	✓(mt*)
Cyprus	-	-	-	-	-	-	✓ (hrt**)
Czech Republic	-	-	-	-	✓	-	✓
Estonia	-	-	-	-	✓(mt*)	✓(mt*)	✓(mt*)
Finland[206]	✓	✓	✓	✓	✓	✓	✓
France	-	-	-	-	-	-	-
Germany	-	-	-	-	-	-	✓
Greece	No info	No info	No info	No info	No info	No info	No info
Hungary	-	-	-	-	✓	-	✓
Ireland	✓(ort***)	-	-	✓(hrt**)	✓(hrt**)	✓(hrt**)	✓(hrt**)
Italy	-	-	-	-	-	-	-
Latvia	-	-	-	-	-	-	-
Lithuania	-	-	-	-	-	-	-
Luxembourg	-	-	-	-	-	-	-
Malta	-	-	✓	-	✓	-	✓
Netherlands	✓ (hrt**)	✓(hrt**)	✓(hrt**)	✓(hrt**)	✓(hrt**)	✓(hrt**)	✓(hrt**)
Poland	-	-	-	-	✓	-	✓(hrt**, mt*)
Portugal	-	-	-	-	✓	-	-
Slovak Republic	-	-	-	-	-	-	✓(mt*)

[206] A significant proportion of Finnish social security is residence-based, meaning that a person is entitled to social security benefits and services if he or she is considered to be resident in Finland. Discretion applies in determining whether residence in Finland is considered as permanent or temporary. The decisions related to residence are reflected in the applicant's entitlement to several benefits. Social assistance under guaranteed minimum resources is means-tested and as such contains discretion.

	I. Healthcare	II. Sickness cash benefits	III. Maternity and paternity benefits	V. Old age pensions and benefits	VIII. Family benefits	IX. Unemployment benefits	X. Guaranteed minimum resources
Slovenia	✓	-	-	-	✓	-	✓
Spain	-	-	-	-	-	-	-
Sweden	✓ (hrt**)	-	✓ (hrt**)	✓	✓ (hrt**)	✓	✓(mt*)
United Kingdom	✓	-	-	✓(hrt**)	✓(hrt**)	✓(hrt**)	✓(hrt**)

- *mt=discretion is applied during a **means-tested assessment** of all population claiming these benefits regardless of nationality; **hrt= Habitual Residence Test; ***ort =Ordinary Residence Test
- Note that the discretionary powers indicated in this table may not apply to all of the benefits that fall under the identified branches of social security. In many cases, discretion is only applied to the non-contributory benefits (but not the contributory ones).