AccessIN
Social Inclusion and Access to Basic Services of Third-Country Nationals

Social Inclusion and Access to Basic Services of Third-Country Nationals (AccessIN)

Country Report for Spain

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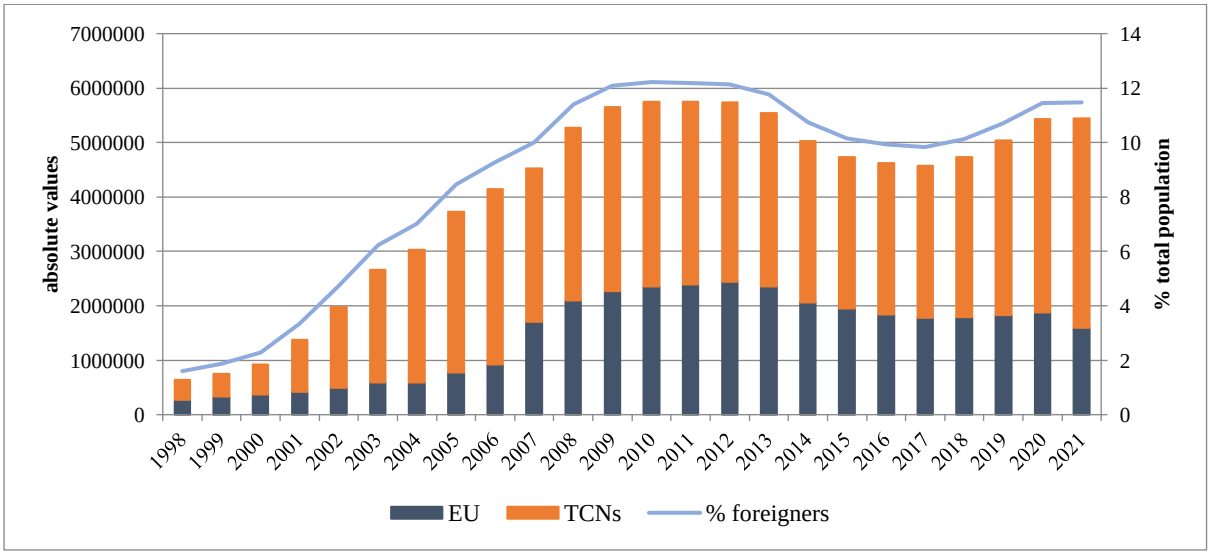
1 Introduction

Immigration is one of the social phenomena that has mostly transformed the Spanish society over the last decades. As Figure 1 indicates, foreigners represented 1.9% of the resident population in 1999, while by 2009, they constituted more than 12% of the population. This impressively rapid growth was largely driven by inflows from EU countries (both retirees and students, as well as workers, notably from new Eastern EU Member States) and third countries (Latin America and North Africa to a large extent, followed by Eastern Europe and Asia). After the outbreak of the 2008 economic crisis, however, the relative weight of the foreign population slightly, but steadily, reduced until the end of the last decade, when the share of foreign residents started to increase again – although at a lower pace when compared to the pre-2008 trends.

Over the last decade, labour-driven immigration has been coupled with increasing demands for international protection, moving from less than 2,600 applications in 2012 to almost 118,900 in 2022 (Ministerio de Interior 2021; 2023a), and originating mainly from citizens of Latin American countries, such as Venezuela and Colombia (around 38.5% and 30.3% of all applications in 2022, respectively). Moreover, since Russia's invasion of Ukraine, Spain has been welcoming more than 180,000 Ukrainians under the Temporary Protection Directive from March 2022 to June 2023 (Ministerio de Interior 2023b).

Figure 1. Foreign resident population in Spain (EU and TCNs), 1998-2022 – absolute values and percentage over the total population



Instituto Nacional de Estadística, Población extranjera por Nacionalidad. Last access: 28/09/2023.

Until the late 2000s, immigration was taking place without significant social tensions or conflicts. Such non-hostile environment towards third-country nationals (TCNs) and the absence of a radical right party in Spain were frequently referred to as the 'Iberian exceptionalism' in the EU context

(Pardos-Prado 2020). Nevertheless, this situation started to change after the 2008 economic crisis and the austerity years that followed, which had dramatic and long-lasting impact on the Spanish economy. In this new context, the arrival of new immigrants and their impact on the welfare state have begun to be questioned (Moreno Fuentes and Bruquetas-Callejo 2011), and arguments of 'abuse' or 'fraudulent use' of public services from foreigners have been increasingly used to delegitimise their access to social protection - particularly in relation to universalistic programmes (Bruquetas-Callejo and Perna 2020; Moreno Fuentes 2004).

This report provides an analysis of the conditions under which TCNs can access basic services in the Spanish 'Mediterranean' social protection system, characterised by a combination of social insurance and universalistic schemes, relatively low level of social expenditure compared to other Western European countries, and a high level of decentralisation in its governance. With the exceptions of pensions and unemployment benefits, which remain in the hands of the central government, the Autonomous Communities (ACs) represent the central political actor in the development, financing and provision of education, healthcare, social services, and social housing. As a result, access to basic services for TCNs takes distinct forms across the national territory, depending on the priorities established by the regional governments and the resources they mobilise to finance such policies.

The next section delves into the entitlements and conditions for TCNs to access benefits and services in the areas of employment, education, healthcare, social assistance, and housing at the national level and in the Community of Madrid. The last section summarises the key findings of the study, providing a critical assessment of the state of policies and their potential margins for improvement.

2 Social Inclusion and Access to Basic Services of Third-Country Nationals in Spain

TCNs can access social protection in Spain through a mix of two basic entitlement criteria: social insurance and residence in the Spanish territory. Insurance-based schemes (unemployment benefits and assistance, sickness benefits) are based on a contributory logic and managed by the National Social Security Institute (*Instituto Nacional de la Seguridad Social*, INSS). Eligibility to these schemes and their scope of protection depend on previous contributions to the social security system via participation in the formal labour market. Consequently, regularly employed Spanish workers and non-EU workers with a valid work permit can access these schemes on equal grounds. Nationality does not play any role in the definition of entitlements to social insurance schemes, but the concentration of TCNs in sectors of the underground economy significantly affects access to contributory-based schemes for the most precarious categories of foreign workers.

For what concerns universalistic schemes (education, healthcare, social assistance), the Spanish Immigration Law 4/2000 entitles TCNs who are registered in the Municipal Census (the so-called

empadronamiento) to these services and benefits under the same conditions as Spanish citizens. Due to the highly decentralised governance structure of these social protection domains, however, the ACs enjoy a large room for manoeuvre for deciding on their own policy priorities and goals, leading to high territorial variation in terms of the procedures used to assess entitlement, resource allocation, and the development of 'migration-sensitive' measures and plans.

As far as the housing domain is concerned, the Spanish system is predominantly market-based, and housing policies are interpreted as measures aimed at financially supporting the sale or rent of private housing rather than the construction of public housing stocks. Although the central government has been recently implementing an active housing agenda addressing the emerging needs of vulnerable groups, the ACs hold exclusive competence in social housing, resulting in a high degree of heterogeneity - and inequality – across the national territory.

2.1 Employment

TCNs can access employment in the formal labour market provided that they hold prior administrative authorisation to reside and work in Spain. While these criteria are set by the national Immigration Law 4/2000, the definition of measures to facilitate access to employment - including labour market activation, intermediation, and vocational training – largely falls under the responsibilities of the ACs and of the municipalities.

In the Community of Madrid, the last Immigration Plan 2019-2021 (Community of Madrid 2019) defined various measures targeting TCNs in this domain, including the provision of training courses to facilitate employment, self-employment and re-employment; the promotion of the recognition of foreign professional qualifications and professional competences acquired through work experience and/or non-formal training; and the promotion of diversity management in the workplace, raising awareness about the importance of implementing non-discriminatory work structures and disseminating good practices on diversity management and integration.[1] Similarly, the municipality of Madrid counts with two 'Municipal Offices of Information, Orientation and Support for the Social Integration of the Immigrant Population', which provide labour market orientation and integration services for TCNs (e.g., job orientation, counselling and trainings, language courses, information on administrative formalities and homologation of studies).

Differently from employment policies, unemployment benefits constitute a core dimension of the insurance-based tier of the Spanish national welfare state. Financed through the contributions of employers and employees, different schemes exist to protect workers against the risks of unemployment. Their contributory nature implies that entitlement is based on affiliation to the social

[1] At the time of writing, the Community of Madrid has not adopted any new Immigration Plan.

security via participation in the formal labour market during a given period of time (specific to each scheme), and the amount and duration of unemployment benefits received are directly dependent on workers' previous contributions to INSS. Once the contributory benefits are exhausted, workers may receive means-tested unemployment subsidies for a limited period of time, such as unemployment assistance benefits or the Active Integration Income (RAI).

Nationality does not play any role in access to unemployment benefits, as both Spanish and non-EU workers employed in the formal labour market can access them under the same conditions.[2] Likewise, both Spanish citizens and TCNs are required to reside in the country to benefit from these schemes.

Nevertheless, this principle of equal treatment is limited by the structural characteristics of the Spanish productive system and the labour incorporation patterns of migrant workers. TCNs are frequently employed in sectors characterised by a high level of informality or irregularity (e.g., agriculture, construction, service sectors), and affected by high rates of temporality of employment (51% of total contracts- National Public Employment Service 2023). These employment trajectories affect TCNs' access to unemployment schemes, preventing them from accessing contributory-based unemployment schemes or interrupting the trajectory of contributions to INSS that are required to apply for them.

2.2 Education

Article 27 of the Spanish Constitution establishes that everyone has the right to education. In line with this constitutional mandate, foreigners under the age of 16 have the right and duty to education, regardless of their legal status. This includes access to free and compulsory basic education, and to the public system of scholarships and grants under the same conditions as Spanish citizens. However, access to non-compulsory higher education is restricted to TCNs with a valid residence permit.

The ACs are responsible for the definition of admission procedures for TCN pupils. In the Community of Madrid, TCN pupils who incorporate late into the educational system are subject to a test to assess the educational stage to which they should be assigned. Those pupils with knowledge or linguistic gaps compared to the grade that corresponds to their age could be initially enrolled into liaison classrooms (*clases de enlance*) for a maximum period of nine months before incorporating into their ordinary reference class (or in maximum one lower grade than the one corresponding to their age).

[2] On September 2022, the Spanish government approved the Royal Decree-Law 16/2022 guaranteeing the right to unemployment benefits for domestic workers, putting an end to decades of discrimination against this group - made up mainly of (migrant) women. The new regulation allows TCNs employed in this sector to access unemployment benefits and unemployment assistance schemes under the same conditions as other dependent workers.

Beyond enrolment procedures, the Community of Madrid has developed, over the past years, various measures aimed at facilitating TCNs' educational inclusion (Community of Madrid 2019), including activities for the promotion of cultural diversity in educational centres, the development of trainings for teachers on diversity management, and the fight against racism and xenophobia. It also promoted informative workshops for parents of immigrant students who enrol in the educational system. The regional Department of Education has also created a mobile 'Advisory and Support Service' to train and collaborate with school staff in the development of support actions for the teaching of Spanish as second language, to foster the incorporation of the intercultural perspective in education, and to advise on the existence of reception programmes, methodologies and resources adapted to the specific educational needs of immigrant students.

Likewise, different measures have been adopted to deal with the high risk of educational vulnerability among TCN pupils. At the national level, the 'PROA+' programme or the introduction of 'Guidance and Orientation Units', both financed under the Spanish Recovery, Transformation and Resilience Plan, propose specific initiatives to tackle academic failure and early drop-out of vulnerable students, including TCN pupils. At the regional level, the Compensatory Education Programme of the Community of Madrid foresees specific measures aimed at reducing early drop-out of TCN pupils.[3]

Overall, the Spanish educational system is highly inclusive towards TCN pupils. Recent data report high enrolment rates among Spaniards and TCNs in compulsory education (around 100%), largely due to its mandatory nature (Ministerio de Inclusión, Seguridad Social y Migraciones 2022). Nevertheless, the enrolment rates significantly differ when considering both compulsory and non-compulsory educational stages (73% for Spaniards vs 49% for TCNs), pointing out to the difficulties in guaranteeing access to non-compulsory education for TCNs – particularly to university degrees. Moreover, the school performance of TCN students remains lower than that of Spaniards, implying higher repetition rates (50% for TCNs, 22% for Spaniards) and early drop-out rates (26% for TCNs, 11% for Spaniards), calling for further efforts to tackle barriers to education at all levels and grades.

Finally, the Spanish educational system has a tendency towards segregation, which largely derives from the criteria regulating admission to schools. The unequal distribution of TCN pupils between public and private structures (for the academic year 2021-2022, 78% of TCNs vs. 66% of Spaniards enrolled in public centres), and the greater probability of TCN students to enrol in schools with a higher proportion of students with lower socio-economic status can end up harming their educational outcomes – rather than fostering their full educational integration.

[3] The programme is oriented towards TCN students enrolled in compulsory education who present a significant school gap (two or more years of difference between their educational competence and the grade in which they are actually enrolled), as well as difficulties of educational insertion and specific support needs arising from late incorporation into the educational system or irregular schooling.

2.3 Healthcare

Since the approval of the General Health Law 14/1986, healthcare in Spain has been characterised by a structural decoupling, differentiating between in kind healthcare services and cash sickness benefits. While the former are provided by the National Healthcare System (*Sistema Nacional de Salud*, SNS) on a universalistic basis, sickness benefits fall under the umbrella of the national social security system, and they are thus dependent on affiliation with the INSS and linked to participation in the formal labour market.

For what concerns in kind healthcare, TCNs registered in the Municipal Census (*empadronamiento*) are entitled to public healthcare on equal grounds with Spanish nationals, regardless of their legal status or residence permit type[4]. They are also guaranteed free-of-charge access to any treatment included into the SNS's 'common package'.

Beyond these nationwide basic criteria, however, the definition of plans and measures to promote healthcare accessibility falls under the regional competences. As a result of this, some ACs have long been known for paying specific attention to TCNs' health and healthcare access (e.g., Andalusia, Catalonia), while others have not put specific efforts in achieving TCNs' full health integration and health equity (as it is the case for the Community of Madrid). Likewise, the discretion granted to the ACs for defining the procedures to assess healthcare has resulted in a heterogeneous policy transposition of the national framework (Yo Sí Sanidad Universal 2022), leaving ample room for the reproduction of significant inequalities in access to healthcare across regions.

For what concerns sickness benefits in case of illness or common accidents, as well as in case of work-related accidents or occupational diseases, access to these schemes is linked to affiliation to the social security system. This means that entitlement depends on formal participation in the labour market. In cases of accidents or occupational diseases, there is no minimum period of contribution required, and the benefit is paid from the day that the person leaves work. In cases of common illnesses, workers are eligible for the benefit if they have contributed to the social security system for at least 180 days during the five previous years, and the benefit is paid from the fourth day of leave.

Both Spanish and TCN workers with a valid work permit are eligible to receive sickness benefits, and coverage is provided for up to 365 days (extendable for another 180 days when it is presumed that,

[4] The current framework is the result of a decade of reforms and counter-reforms concerning the basic philosophy of the SNS. Established as a universalistic system in 1986, the process of universalisation of the SNS was interrupted by the Royal Decree-Law 16/2012, adopted by the then conservative government of People's Party (*Partido Popular*). Justified by the need for austerity measures in times of economic crisis, the decree re-introduced the logic of social insurance, suddenly excluding from full public coverage undocumented migrants, economically inactive EU citizens, Spanish residents with resources but not contributing to the social security system, and unemployed people without benefits and older than 26 years old. After widespread opposition, the following social-democratic government of the Socialist Party (*PSOE)* brought back the universalistic logic of the SNS with the adoption of the Royal Decree-Law 7/2018 (Bruquetas-Callejo and Perna 2020).

during this period, the worker can recover from the illness/accident). As for unemployment benefits, however, access to sickness benefits is limited by the labour incorporation patterns of migrant workers, whose frequent overrepresentation in occupational sectors characterised by informality, irregularity and temporariness affects their actual possibility to benefit from such schemes.

2.4 Social Assistance

In Spain, no nation-wide minimum income schemes existed until 2020 when, in the context of the COVID-19 pandemic, the Royal Decree-Law 20/2020 introduced the *ingreso mínimo vital* (IMV), a non-contributory, means-tested cash benefit managed by INSS for people in situation of need. Regardless of nationality or residence permit type, beneficiaries in situation of economic vulnerability are required to legally reside and have habitual residence in Spain on a continuous and uninterrupted basis for at least one year.[5] The right to IMV begins on the first day of the month following the date of presentation of the application to the INSS; and it is maintained as long as the requirements provided for in the law are met. Throughout this period, the beneficiary (and all members of the cohabitation unit, when applicable) must participate in social inclusion strategies articulated by the Ministry of Inclusion, Social Security and Migration, the ACs and the municipalities, in collaboration with civil society organisations.

In addition to the recently adopted national IMV, different minimum income schemes exist within the framework of the ACs' exclusive powers on social assistance. All 17 ACs have implemented their own schemes, resulting in a highly heterogeneous social assistance puzzle concerning the definition of eligibility requirements and procedures for accessing them, the level of benefits, and the socio-economic inclusion programs that beneficiaries must participate in. Although having the Spanish nationality is not a condition for accessing regional minimum income schemes, a certain period of residence in the specific AC is demanded in all programmes (Ministerio de Derechos Sociales 2022). This period varies from a minimum of 6 months (Extremadura and Galicia) to a maximum of 5 years (Murcia region and the Autonomous City of Melilla). In the Community of Madrid, Spanish citizens and TCNs with a valid residence permit are entitled to a *renta mínima de inserción* provided that they reside in the region and are registered in one of its municipalities, proving an effective and continuous residence during the year immediately prior to the application.

In addition to minimum income schemes, the ACs are responsible for the design, financing, and provision of basic and specialised social services within their territory. In the Community of Madrid, both Spanish citizens and TCNs must reside in its territory to benefit from such services. However, requirements of legal residence and/or length of habitual residence may exist (specific to each benefit/service). Within the cluster of services for 'Inclusion and attention to basic needs', specific

[5] In case of cohabitation units, all members must comply with this requirement.

measures target TCNs, such as the Centres for the Participation and Integration of Immigrants (*Centros de Participación e Integración de Inmigrantes*, CEPI), which provide information, counselling, training and other cultural and social inclusion activities for TCNs.

Although the Spanish system of social services appears highly accessible to TCNs, a gap 'in practice' exists. The last available data (Ministerio de Derechos Sociales 2020) indicate that TCNs accounted for approximately 18.9% of social service users in 2020 (34.7% in the Community of Madrid). However, looking at the number of actual interventions by groups, TCNs significantly reduced their presence down to 5.6% of all social service actions (8.3% in the Community of Madrid). Considering that TCNs represent an important proportion of the population at risk of poverty and social exclusion in the country (53.4% among foreigners, compared to 22% among Spanish citizens- Eurostat 2020, online: ilc_peps06n), the range of actual social assistance coverage for the immigrant population appears considerably below what would correspond proportionately to this group.

As research indicates, obstacles to actual access of TCNs to benefits are frequently linked to the actual administration of programmes and services, which are designed as inclusive, but tends towards a logic of social control and are poorly financed (Moreno Fuentes 2020).[6] These structural conditions leave wide margins for bureaucratic discretion and the enactment of morally-loaded practices of control on the front line of the system (Bruquetas-Callejo 2013; Vrăbiescu and Kalir 2018).

2.5 Housing

The Spanish housing system is predominantly market-based. Building on Franco's policy of 'each worker an owner' (*cada operario un propietario*), housing policies mainly aim at financially supporting the sale or rent of private housing rather than the construction of public housing stocks (Paleo Mosquera and Quintiá Pastrana 2022). According to a recent report of ProVivienda (Gómez Almagro et al. 2022), there is currently a meagre stock of 290,000 social housing units representing 1.6% of Spain's households - a percentage that is far from the EU average (9%). Such scant social housing availability follows the extremely limited public expenditure on housing in the country (0.5% of the GDP in 2021, after reaching a minimum of 0.15% in 2016, following austerity cuts after the 2008 crisis- Defensor del Pueblo 2018).

Recognising these challenges, the central government has recently implemented an active housing agenda (Royal Decree 42/2022 and Law 12/2023), which provides different measures to support housing affordability and access to private housing at the national level.[7] For instance, the Ministry of

[6] Government expenditure on social exclusion is extremely low in Spain. In 2021, it amounted to 0.6% of government expenditure on social protection, well below the EU average (3.7%) (Eurostat 2021, online: gov_10a_exp).
[7] Such as the 'Housing Rental Assistance Programme', to support the renting of a dwelling for people with limited income; or the 'Young Rental Voucher', to support the renting of a dwelling for people between 18 and 35 years old and with limited financial resources.

Inclusion, Social Security and Migration has recently participated in the creation of an online intermediation platform entitled 'Techo', together with the Santander Bank Foundation and the IT company Accenture. Through the platform, individuals and juridical entities can cede or rent their homes to Ukrainians with temporary protection status and beneficiaries of international protection who are concluding their 'reception and integration itinerary', while the Ministry provides financial assistance to beneficiaries for the payment of rent and, if necessary, for rent insurance and/or agency management. The matching process is mediated by NGOs participating in the programme, which assist the owners and the beneficiaries throughout the signing of the rent agreement, and periodically verify that the economic subsidies received by the beneficiaries are dedicated to the payment of the rent.

Likewise, the ACs may adopt financial measures to support access to the private housing market. For instance, the Community of Madrid provides measures to facilitate housing ownership (e.g., the programme '*Mi primera vivienda*') and a series of services for landlords and tenants with the aim of encouraging the rental of available housing (the so-called '*Plan Alquila*'). TCNs are entitled to apply for these national and regional measures as long as they hold a valid residence permit.

TCNs also have the right to access social housing under the terms established by the ACs (Immigration Law 4/2000, art. 13). For what specifically concerns the Community of Madrid, social housing is assigned following a mechanism of 'allocation for special need'.[8] Although no limitations exist concerning nationality or residence permit type, applicants must prove a minimum period of ten years of residence/work in the region, the last three of which must be immediately prior to the date of submission of the application.[9] No other AC foresees such a long residence condition to access social housing. In other ACs, requirements vary from a minimum of '*empadronamiento*' only (Aragón, Cantabria, Castilla-La Mancha, Catalonia, the Autonomous City of Ceuta, Galicia, La Rioja, Navarra, and the Basque Country) to three years in the Region of Murcia, with an exceptional case of seven years in the Canary Islands.

Although the ten-year criterion set by the Community of Madrid applies equally to Spanish nationals and TCNs, it represents a clear barrier against the foreign population. As a report of ProVivienda (Gómez Almagro et al. 2022) indicates, incompliance with the ten-year residence requirement

[8] This definition includes situations of need resulting from – among others – gender-based violence and other proved situations of violence (including for reasons of race), residence in a house with poor conditions of habitability, substandard housing or temporary constructions, or situations of judicial eviction against a family unit holding the legal occupancy title of the dwelling. Two additional allocation mechanisms exist: 'for social emergency', initiated ex officio by the administration for individuals with extremely serious housing difficulties (5% of the regional social housing stock); and 'allocation by draw', based on ad-hoc calls adopted by the administration (since 2017, no calls have been opened under this modality).

[9] This requirement does not apply for refugees and beneficiaries of subsidiary protection, and for victims of gender-based violence.

explained 53% of rejections of social housing applications in the Community of Madrid. Among this share, more than 79% of rejected applicants were TCNs.

3 Conclusions

The Spanish social protection system is quite inclusive towards TCNs. Spanish and foreign workers with a valid residence permit are equally entitled to unemployment and sickness schemes on the grounds of their contributions to the social security system. Likewise, the reliance on '*empadronamiento*' as entitlement criterion to access compulsory education, in kind healthcare and basic social services unquestionably facilitates access to universalistic services, regardless of individuals' legal status or residence permit type.

However, this inclusiveness 'on the book' is often hindered in practice. From this perspective, it would be important to critically reflect on the sound 'mainstreaming' approach adopted by the national government and several ACs, including the one of Madrid. This approach highly contributes to the normalisation and 'de-migranticisation' of TCNs' access to social protection, recognising them as a structural part of the society and limiting spaces for its politicisation. At the same time, however, the lack of attention to the specific residential and socio-economic integration trajectories of TCNs might affect the effectiveness of existing social protection schemes for the most vulnerable migrant groups (such as in education, unemployment, and sickness benefits), perpetuating – rather than reducing – existing social inequalities.

Institutional and financial deficits represent an additional element weakening TCNs' *de jure* entitlements to social protection. In the areas of social services, social housing and primary healthcare, the scarcity of budgetary resources leads to restrictive requirements and practices in granting services. Moreover, differences in programmes and requirements between municipalities and between ACs – which ultimately depend on the priorities established by sub-national governments and the resources allocated to such policies – produce significant disparities depending on individuals' place of residence. To partially minimise territorial inequalities, existing national strategies in the different social protection domains could set specific goals and lines of action regarding TCNs, to partially orient priorities and resource allocation decisions of the ACs and of municipalities without infringing on the institutional distribution of power across different levels of government.

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