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COMMISSION STAFF WORKING DOCUMENT
SUMMARY OF THE IMPACT ASSESSMENT

accompanying the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the conditions of entry and residence of third-country nationals for the purpose of
seasonal employment**

{COM(2010) 379 final}
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1. PROBLEM DEFINITION

EU economies face a structural need for seasonal workers. It is expected to be increasingly difficult to fill these gaps with EU national workers, mostly owing to the unattractiveness of seasonal work for EU national workers. The impact of the global economic crisis remains difficult to predict. However, according to the International Organisation for Migration (IOM), it is expected that in certain labour market sectors in destination countries, there is likely to be a continued stable need for migrant workers, particularly in healthcare, household/domestic employment and care work (as well as in agriculture in some countries) where the demand for such workers is structural¹.

There is significant evidence that certain third-country seasonal workers face sub-standard working conditions and exploitation, such as absence of work contracts, salaries below the legal minimum, absence of social security coverage, no access to basic sanitary services, flimsy accommodation and no access to healthcare.

Sectors of the economy that feature a strong presence of seasonal workers — notably agriculture, horticulture and tourism — are repeatedly identified as the sectors most prone to work undertaken by illegally staying third-country nationals.

From the sending countries' perspective, potential migrants are faced with diverse rules set by the different EU Member States, on which information is not always readily available. This is particularly relevant for the seasonal work sector, and improving conditions and creating a common legal framework in this sector would be of interest to countries with high unemployment and strong migration pressure, notably in North and sub-Saharan Africa and, to a lesser extent, Eastern Europe. This would help increase the contribution of the EU's legal migration policies to the development of third countries.

1.1. Size and sectors of seasonal work

Size and sectors of seasonal work vary across the European Union. For example, only in 2008 Spain admitted 24 838 non-EU seasonal workers². For the 2008 calendar year, only by 7 February 2008, Italy received 11 273 applications³ (for 2008, 2009 and 2010, the quota set by the Italian Ministry of Interior for seasonal work by non-EU nationals has been 80 000)⁴. In 2009, Germany admitted 4 248 non-EU seasonal workers, France 2 215 (the corresponding number for 2008 was 3 860) whereas Sweden 7 252⁵.

Non-EU seasonal workers have been also working in the new Member States. For example, Hungary admitted 919 and 892 third-country nationals in 2008 and 2009 respectively. The data available for Poland concerns temporary work undertaken by third-country nationals and, as a result, the numbers are considerably higher - 181 030 for 2009. However, the main sector of employment is agriculture. In Slovenia over 10 000 non-EU nationals have been admitted as seasonal workers in 2008 and 2009.

¹ IOM Policy brief: The impact of the global economic crisis on migrants and migration, March 2009, pp. 5-6.

² Ad-Hoc Query on Seasonal Workers and Intra-Corporate Transferees Requested by Commission to EMN NCP on 17 March 2010.

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http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stamp_a/notizie/immigrazione/0848_APP_domande_pervenute_STAGIONALI.html

⁴ Above, at 2.

⁵ Ibid.

Although trends are short and not comparable given the gaps in data, general increases of foreign seasonal labour were registered in recent years in Member States such as France, United Kingdom and Slovenia.

The scarcity of very recent data does not allow a proper assessment of the impact of the current economic crisis on the demand for non-EU seasonal workers. Nonetheless, the comparison of the data for 2008 and 2009 does not show any falling off in respect of the demand. Whereas there are Member States where the numbers of the admitted third-country nationals for 2009 are lower (Austria, Slovenia, Hungary) or even considerably lower in 2009 (France), there are also Member States in which an increase has been observed (Germany and Sweden)⁶.

Further, it should be emphasised that seasonal work sectors are very prone to work undertaken by illegally staying workers or otherwise unregistered workers, so that the total numbers of seasonal workers can be assumed to be much higher (well above 100 000 per year).

For certain regions in certain Member States seasonal labour recruited from third countries is crucial. Thus, regarding agriculture in Andalusia, in particular in the province of Huelva, 35 000 third-country nationals were recruited from non-EU countries in 2008. An estimated 12 000 agricultural seasonal workers from third countries are employed in southern Italy, especially in Apulia, and an estimated 5 000 Moroccan seasonal workers in the French department of Bouches-du-Rhône. Those third-country workers are thought to represent about 80-90% of total seasonal workers. In tourism, certain regions of Austria, most notably Tyrol and Salzburg, strongly rely on seasonal workers from third countries to cover seasonal peaks: the quota was set at 8 000 for the 2008/09 winter season.

In many Member States seasonal workers from third countries take up low-skilled jobs in specific sectors such as agriculture (e.g. 60% of total seasonal labour force in Italy, 20% of total labour force in agriculture in Greece) and tourism (e.g. in Spain work permits for work in the hotels and catering sector reached 13% of the total work permits issued in 2003), which generally require low-skilled or manual workers and where there are significant shortages of manpower.

1.2. Principle of subsidiarity

Any measure proposed will respect the competence of Member States to determine the numbers of economic migrants seeking access to the EU, including by means of national quotas. Thus, it remains up to the respective Member State to assess whether it has an economic need for the admission of third-country seasonal workers.

Although third-country workers enter a specific Member State within the EU, a Member State's decision on the rights of third-country nationals could affect other Member States. The difference in treatment granted to third-country nationals in the different Member States consequently has a supranational dimension that lies outside the scope of national legislation.

The Schengen area without internal borders requires a common discipline, that is, common minimum rules to reduce the risk of overstaying and illegal entries that may be caused by lax and diverse rules on admission of seasonal workers.

⁶ Above, at 2.

Exploitation and sub-standard working conditions of third-country national seasonal workers need to be overcome, by granting certain socio-economic rights in a binding, and thus enforceable, EU-level instrument, in line with the call by the 1999 Tampere Council for third-country nationals to be granted fair treatment and a secure legal status, as well as the EU's general commitments to human rights and fundamental freedoms.

An EU instrument on seasonal workers is important to improve effective cooperation with third countries, both in allowing the EU to facilitate low/non-skilled legal migration and in strengthening third countries' commitment to fighting illegal immigration.

1.3. EU added value

Member States and employers of seasonal workers would benefit from a flexible admission system to cope with seasonal labour shortages.

Third-country seasonal workers would benefit from a common, transparent and accessible European framework, allowing them to move legally towards Member States in need of labour. Such legal migration opportunities may also diminish illegal immigration and illegal employment.

EU action would send a cooperation-oriented message to third countries concerning the management of labour migration. A commitment on behalf of the EU as a whole in the field of economic migration in the non-skilled and low-skilled sector is likely to facilitate cooperation with third countries, including in fighting illegal migration and fostering mutually beneficial circular migration (according to which migrant workers could come to a Member State to work temporarily, go back to their countries and come again in the EU etc.).

2. OBJECTIVES

2.1. The global objectives:

1. To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions;
2. To contribute to preventing exploitation and poor working conditions for third-country seasonal workers and illegal immigration;
3. To contribute to the development of third countries.

2.2. The specific objectives:

1. To provide for flexible rules to facilitate the temporary legal migration of seasonal workers and to promote their circular migration;
2. To provide for equal conditions for employers of third-country seasonal workers legally entering the EU labour market;
3. To ensure a secure legal status and protection against exploitation of third-country seasonal workers;
4. To enhance cooperation with third countries in the management of seasonal migration.

3. POLICY OPTIONS

Under all of the options examined, the Member States would remain free to determine the overall numbers of seasonal workers they admitted, in accordance with Article 79(5) of the Treaty on the Functioning of the European Union.

3.1. Option 1: Status quo

Current developments in Member States and at EU and international level would continue within the existing legal framework. Employers will be under certain obligations under the Directive on employer sanctions, namely as regards notifications to authorities and penalties in case of illegal employment. The effect of this option would be limited.

3.2. Option 2: Directive on entry and residence conditions of seasonal workers and rights

Common rules would be established, including the definition of seasonal work, admission criteria, maximum duration of stay as a seasonal worker and provisions on equal treatment with EU national seasonal workers with respect to certain socio-economic rights, to a differing extent (sub-option 2A: clear determination of working conditions; sub-option 2B: clear determination of working conditions and equal treatment with EU nationals with respect to certain socio-economic rights such as such as freedom of association, right to social security, etc.). This option would help establish equal conditions for EU employers and prevent exploitation. However, seasonal workers would still be faced with diverging and complex procedures for entry.

3.3. Option 3: Directive laying down common admission procedures

In addition to option 2, a single permit would be introduced for work and residence of third-country seasonal workers, to be issued in a single procedure. Provisions would be made for facilitating re-entry of a seasonal worker in subsequent seasons (sub-option 3A: introduction of a multi-seasonal permit; sub-option 3B: introduction of a facilitated procedure for re-entry). Hiring procedures would be more efficient, and a more predictable workforce would be available for EU employers. However, the playing field for EU employers would not be levelled and seasonal workers would continue to face a risk of exploitation.

3.4. Option 4: Directive on measures to ensure effective return

Measures would include limitation of the length of stay, and an explicit obligation to return at the end of the period. An explicit obligation to report to the consular authorities after return is also considered. Overstaying of seasonal workers would be prevented to some extent. Effects on the functioning of the EU internal market would be marginal. Seasonal workers would still be faced with diverging and complex entry procedures.

3.5. Option 5: Communication, coordination and cooperation among Member States

No new legislation is introduced but complementary and supporting activities are provided for with a view to approximating Member States' practices. Effects would be limited, as the measures would not be binding; potential seasonal workers would continue to face an array of different rules for admission and different rights during their residence.

4. COMPARING THE OPTIONS

Table 1: Impacts

Assessment criteria	PO 1: Status quo	PO 2		PO 3		PO 4	PO 5
		PO 2A	PO 2B	PO 3A	PO 3B		
Relevance							
• Global objective 1	0	√	√√	√√√	√√	0√	0/√
• Global objective 2	0	√√	√√	√√√	√√(√)	√√	0/√
• Global objective 3	0	√	√√	√√√√	√√√	√	0
Feasibility							
Difficulty/risks for transposition	N/A	-√	-√√	-√√√√	-√√√	-√√√	0
Simplification of administrative burden	N/A	-√	-√√	-√	0	-√√√	-√√√
Financial and administrative costs	N/A	-√√	-√√√	-√	-√	-√√√√	-√√√

Assessment criteria	PO 1: Status quo	PO 2		PO 3		PO 4	PO 5
		PO 2A	PO 2B	PO 3A	PO 3B		
Expected impacts							
Economic impacts at EU level	0	√√	√√√	√√√√	√√√	√	0
Impacts on SMEs	0	-√√	-√√√	√√√√	√√√	√	0
Social impacts at EU level	0	√√	√√√	√√√√	√√√	√√	0/√
Impacts on third countries	0	√	√√	√√√√	√√	√√	0/√
Impacts on third-country seasonal workers	0	√√	√√√	√√	√√	-√√√	0/√
Impacts on EU national seasonal workers	0	√	√√	√	√	√	0

Table 2: The preferred option

The preferred option is a combination of different aspects of policy options 2B, 3A/B and 4.

Main areas of EU action	Provisions of the preferred policy options	Policy options and sub-options considered
Admission conditions	<ul style="list-style-type: none"> • Common definition of seasonal workers; • Common admission criteria, such as the need to perform a labour market test, the need for a work contract or a binding job offer; • Definition of the maximum duration of the permit; • Single permit for work and residence on the territory of the Member State; • Admission allowed on the basis of a visa bearing the words ‘seasonal worker’ for short periods of stay (up to 3 months); • Definition of a maximum time for processing applications for the single permit. 	Policy option 2B
Re-entry in subsequent years	<ul style="list-style-type: none"> • Multi-seasonal permit, with a maximum duration defined (e.g. up to three years), or facilitated procedure for re-entry (optional for Member States); • Previous compliance of the third-country seasonal workers with all rules as a condition for re-entry. 	Sub-option 3 A/B
Rights and benefits granted to TCN SWs	<ul style="list-style-type: none"> • Comprehensive set of rights in the field of working conditions; • Equal treatment with EU nationals with respect to social security rights, such as occupational diseases, accidents at work, sickness benefits, invalidity benefits, family benefits, death grants; • Right to change employer (e.g. in the event of situation of exploitation/poor working conditions, in the case of consecutive short harvests) and within the duration of authorised stay. 	Sub-option 2 B
Provisions ensuring return of TCN SWs	<ul style="list-style-type: none"> • Explicit obligation to return after the end of each season; • Maximum duration of the authorisation to stay per season; • Possibilities for facilitated re-entry in subsequent years that are accessible only to TCN SWs who have complied with all conditions during their previous stay as a seasonal worker. 	Options 4, 3 A/B

4.1. Main benefits

The preferred option would achieve better results than any of the policy options alone, or any other combination of options. Common admission standards with simplified entry procedures would provide Member States with a flexible instrument for the admission of the seasonal labour force they need. The preferred option requires Member States to either introduce multi-seasonal permits or set up a facilitated procedure. This would have positive impacts on labour market needs, as the supply of seasonal workers should be more easily guaranteed, and would offer prospects to third-country seasonal workers for legal, circular migration.

Equal treatment in a broader range of areas would reduce risks of exploitative working conditions and increase remittances. Several provisions should help ensure the return of the third-country seasonal workers and thus reduce the risk of overstaying and illegal work.

Safeguards are introduced to address the problem of lax enforcement. Thus, authorities will have to carry out checks before the entry of a seasonal worker (e.g. existence of a work contract with a salary equivalent to national seasonal workers). Under the Directive on employer sanctions labour inspections in certain risk sectors for illegal employment will be undertaken that are expected to have positive spill-over effects for sectors of seasonal work.

4.2. Administrative costs

The number of third country national seasonal workers to be admitted to the EU to meet future labour needs is estimated at 230 000 per year. At least half of these, thus 115 000, are estimated to be eligible for a multi-seasonal permit/facilitated re-entry. The hourly tariffs of Member States’ personnel are estimated to be €23. The examination of an application is calculated to require 6 h; information on multi-seasonal permits 0.5 h and annual reporting 10 h.

The preferred option would lead to the following additional administrative costs (per annum) for Member State's authorities: transmission of information by regional/local foreigners’

offices to the Member State's authority handling the database of multi-seasonal permits/facilitated re-entry procedures (€57 500) and obligation to submit annual statistics to the Commission and other Member States on numbers of residence permits or visas issued to third-country seasonal workers (€5 980), thus in total €63 480. Initial costs could be expected to reduce as the Member State administrations become familiar with the scheme.

4.3. Proportionality and EU added value

Proposing binding rules on the admission and residence conditions of third-country national seasonal workers is proportionate to the problem to be tackled. The proposed Directive puts in place a common EU wide procedure while respecting the Member States' competence over immigration. Furthermore it is the only way to ensure a clear legal framework for migrant workers who, unfortunately, are a group open to exploitation. The choice of a Directive as the legal instrument used leaves flexibility to the Member States whilst ensuring a common end result. The Commission has underlined since 2001 that binding common standards are required. Their implementation and application can be effectively monitored, especially as regards approximation of the rights that legally staying migrants enjoy compared to EU nationals, in line with the call made by the 1999 Tampere European Council for action '*granting legally resident third-country nationals rights and obligations comparable to those of EU citizens*'.

The Directive leaves a great deal of flexibility for Member States in implementation. The preferred option would constitute a relatively minor change from the *status quo* in terms of both the weight of the legislation and the burden on legitimate employers. Some Member States may have increased burdens resulting from the need to set up (more) specific rules, but these are justified in relation to the objectives and in view of their expected future need for this category of third-country workers. It will remain for Member States to determine the volumes of third-country seasonal workers admitted.

This combination of policy options has the potential to generate the following EU added value:

- simplified admission procedures and residence conditions for third-country national seasonal workers contribute to offsetting labour shortages faced in specific industries/economic sectors and regions where shortages exist and are expected to increase;
- better protection against exploitation for third-country seasonal workers;
- reduced risk of overstaying and illegal employment owing to a common discipline for admission and stay of seasonal workers; and
- impetus to the further development of third countries and of the external aspects of the EU migration policy.

Third-country national seasonal workers would not be treated in a more preferential way compared to EU nationals to whom transition periods for free movement of workers apply. In particular, equal treatment in certain socio-economic areas would only be granted once the third-country national seasonal worker was admitted to a Member State to work.

5. MONITORING AND EVALUATION

In accordance with the Commission Communication ‘A Europe of results – Applying Community law’⁷, the Commission suggests setting up an expert group of representatives of the Member States and the Commission (the ‘Contact Committee’), which would meet to discuss issues concerning the transposition of the proposed directive, along the lines of the Contact Committees that meet regularly to consider the implementation of, for example, Directives 2009/50/EC and 2009/52/EC. The proposed expert group would ensure improved information flow between EU and national authorities on how the directive is implemented and would help anticipate and resolve problems more effectively.

Member States would be required to communicate to the Commission and the other Member States statistics on the volumes of third-country national seasonal workers in respect of whom a seasonal work permit has been granted, renewed or withdrawn during the previous calendar year, indicating their nationality, age and sex, length of validity of the permit and economic sector.

Monitoring and evaluation arrangements will be also carried out in the form of a Commission evaluation report three years after the transposition deadline of the Directive, on basis of Member States’ reporting.

⁷ COM(2007) 502.