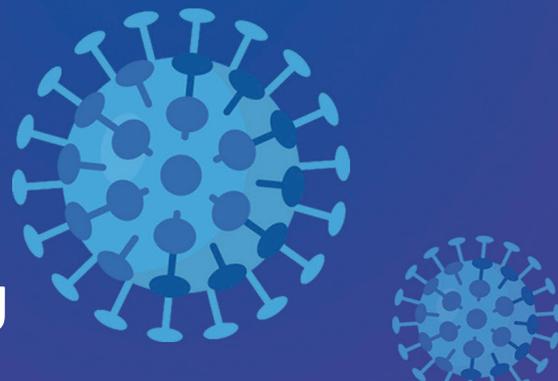




COVID-19

Guidelines of the Commission on seasonal workers in the EU



Factsheet on practical examples and best practices

September 2020
#coronavirus

Information for the attention of Member States, national authorities, institutions, social partners on the proper application and enforcement of the existing rules on seasonal work in the EU

Who are seasonal workers? Certain sectors of the European economy, in particular the agri-food and tourism sectors, depend on the support of seasonal workers, coming from other Member States or from third countries. Very often, such workers retain their main place of residence in their home country and move temporarily to a Member State to carry out an activity dependent on the passing of the seasons.

What are their rights? Cross-border seasonal workers enjoy a broad set of rights, which may differ depending on whether they are Union citizens or third-country nationals. A comprehensive overview of such framework is provided in the Guidelines of the Commission on seasonal workers in the EU in the context of the COVID-19 outbreak (“the Guidelines”), adopted on 16 July 2020.

What are the main differences in terms of rights between seasonal workers from EU and non-EU countries? Depending on whether they are EU or non-EU nationals, seasonal workers’ rights of access to the territory of the Member State or to the labour market may be different. In addition, seasonal workers can be employed through different intermediaries.

EU seasonal workers: In accordance with the fundamental freedom of movement of workers, EU citizens have the right to take up employment in another Member State, including seasonal work. Any national of an EU Member State also has the right to receive the same assistance from the national employment offices as nationals of the host Member State. Furthermore, seasonal workers affiliated in a Member State have access to the same level of social protection as other insured persons in that Member State.

The EURES portal¹ offers detailed information on the living and working conditions of all Member States.

If they are employed in one Member State and sent by their employer, who can also be a temporary work agency, to work in another Member State, they are considered to be posted workers and they benefit from protection under the Directives on posting of workers (Directive 96/71/EC, Directive 2014/67/EU and Directive (EU) 2018/957).

Non-EU seasonal workers: Non-EU seasonal workers who reside in a Member State other than the one in which they will be employed or who reside in a non-EU country usually need to apply for a visa, work permit or a residence permit to stay and work in a Member State.

1. <https://ec.europa.eu/eures/public/homepage>.

Non-EU nationals residing in a third country and coming to the EU as seasonal workers are covered by the Seasonal Workers Directive², which sets their conditions for admission and their rights once in the EU. The Immigration Portal³ provides information specifically relevant for these seasonal workers.

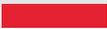
Besides these differences, EU and non-EU seasonal workers have overall the same rights and are covered by the same rules notably in terms of safety and health at work, working conditions or in case they are posted workers.

Please find below a series of practical examples to illustrate some of the aspects covered by the Guidelines, notably freedom of movement, working and living conditions, including occupational safety and health (OSH), social security coordination.

A Practical examples in cases of seasonal workers who are EU nationals or third country nationals who enjoy the same rights as EU nationals under Regulation (EU) No 1231/2010

Seasonal worker employed in one Member State

Jakub resides in Slovakia and is a Slovakian national – he is currently unemployed, and after seeing an employment advertisement for a seasonal job in Austria in the agricultural industry (fruit picking), making use of his right to free movement, he applies and is offered the job. Once a week, during his periods off work, Jakub returns to his home in Slovakia to stay with his family. In this example:

Member State of residence	
Member State of seasonal employment	
Member State where employer is situated	
Member State whose labour law and occupational safety and health laws apply	
Member State where Jakub pays contributions	
Member State which provides social benefits (with the exception of unemployment benefits) ⁴	
Member State which provides unemployment benefits	

In this example, the seasonal worker has no employment other than the seasonal work. He is not employed in the Member State of residence (Slovakia), and thus is insured in the Member State of employment (Austria) in accordance with the general principle of social security coordination⁵. As regards healthcare benefits, Jakub is entitled to medical treatment in Austria as well as in Slovakia. The right to sickness benefits in kind in Slovakia is certified by the Portable document S1 (PD S1), which is issued upon request by the Austrian health insurance institution and has to be submitted to the health insurance institution in Slovakia⁶. Sickness benefits in kind are granted in line with the Slovak legislation. The cost of healthcare provided in Slovakia is then reimbursed by the Austrian healthcare institution in accordance with the rates applied in Slovakia. Jakub is also entitled to medical treatment in Austria as though he resides there⁷. In this case, the medical treatment is provided in line with the Austrian legislation and at the expense of the Austrian healthcare institution.

Jakub has the right to take up employment under the same conditions and with the same priority as nationals in Austria. Once in employment, he is subject to the laws and collective agreements of Austria and must be treated like nationals as regards working conditions including remuneration and dismissal. He has also the right to access the same social and tax advantages as nationals.

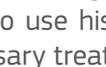
2. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.2014, p. 375
3. <https://ec.europa.eu/immigration/>.
4. Article 65 of Regulation (EC) No 883/2004 provides special unemployment rules for unemployed persons who resided in a Member State other than the competent Member State, and who return to their Member State of residence at least once a week (known as frontier workers). In this case, unemployment benefits are claimed from the Member State of residence and not of last employment.
5. Article 11(3)(a) in case of both employed/self-employed persons, Regulation (EC) No 883/2004.
6. Article 17 and Article 18, Regulation (EC) No 883/2004.
7. Article 18, Regulation (EC) No 883/2004.

Furthermore, he has the right to be assisted by the national bodies for free movement of workers; to go to court in case of discrimination by reason of nationality, to be supported by trade unions and other entities in any judicial and/or administrative procedure as well as to be protected against victimisation⁸.

Moreover, Jakub’s employer has the obligation to ensure his health and safety in all the aspects related to work. This includes the prevention of all occupational risks and the provision of information and training adapted to the work, as well as the provision of the necessary equipment. A prior assessment of all possible occupational risks should be made by the employer. In addition to the physical risks linked to fruit picking (working at height, use of ladders, use of scissors, high temperatures, etc.), this must include any relevant information for instance on the risk of infections (e.g. COVID-19). If Jakub does not speak German, the employer should ensure that he receives the safety instructions relevant for his jobs in a language known to him. The employer should also be alert to the need to adjust these measures to take account of changing circumstances and should aim to improve the existing situation.

Seasonal worker temporarily posted by his/her employer in another Member State

Antonio resides in Spain – he is currently employed with a company established in Spain providing diving instruction services, which also has a school in Portugal. For the past 5 years, during the summer Antonio is sent by his employer to carry out activities as diving instructor in Portugal. During his activity in Portugal, the Spanish employer maintains a direct relationship, continues paying his salary, and at the end of the summer, Antonio returns and continues his activity in Spain. Antonio receives a PD A1 from the Spanish institution. In this example:

Member State of residence	
Member State of normal employment	
Member State of seasonal employment	
Member State where employer is situated	
Member State whose labour law applies	
Member State whose core labour rights applies	
Member State whose occupational safety and health laws apply	
Member State where Antonio pays contributions	
Member State which provides social benefits (including unemployment benefits)	

In this example, the seasonal worker is considered as a posted person, and continues to be insured in Spain, which is the Member State where he is insured before and after the period of seasonal employment in Portugal⁹. As regards healthcare benefits, the seasonal worker staying in Portugal only temporarily is entitled to use his valid European Health Insurance Card (EHIC), issued by the Spanish healthcare institution, in case of necessary treatment. To determine whether a treatment is necessary, the nature of the benefit in kind and the length of the planned stay must be taken into account¹⁰. The necessary treatment is provided in line with the Portuguese legislation. At the same time, the principle of non-discrimination covered by Regulation (EC) No 883/2004 must be respected. This means that if nationals pay, persons seeking treatment with the EHIC will have to pay too; if nationals receive a reimbursement, persons using the EHIC can be reimbursed according to the same tariffs. The reimbursement can be claimed either in Portugal or in Spain upon his return.

As a posted worker, while Antonio is still employed by the Spanish sending company and subject to the law of Spain, he is entitled to a set of core labour rights according to laws or applicable collective agreements in Portugal. Particularly, Antonio has the right to receive the same remuneration¹¹ (including all mandatory constituent elements) he would receive if he had been directly employed by the user undertaking in Portugal. He also has the right to the same minimum rest times, maximum working time rules and minimum paid annual holidays and all the Portuguese health, safety and hygiene at work provisions apply to him.

8. Directive 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.
 9. Article 12(1) in case of an employed person, or Article 12(2) in case of a self-employed person, Regulation (EC) No 883/2004.
 10. Article 19, Regulation (EC) No 883/2004.
 11. The Commission recalls that according to the revised Posting of Workers Directive 2018/957/EU, these measures are applicable as of 30 July 2020).

Moreover, Antonio’s employer has the obligation to ensure his health and safety in all the aspects related to work. This includes the prevention of all occupational risks and the provision of information and training adapted to the work, as well as the provision of the necessary equipment. A prior assessment of all possible occupational risks should be made by the employer. In addition to the physical risks linked to diving (e.g. decompression sickness), this must include any relevant information such as the risk of infections (e.g. COVID-19) or risks linked to equipment failure. Such information must be provided in a language known to Antonio. The employer should also be alert to the need to adjust these measures to take account of changing circumstances and should aim to improve the existing situation.

Seasonal worker employed in two Member States

Elise resides in France – she is currently employed as an assistant in a French school. During the summer, she has 3 months of holidays, and for the past 3 years, she has been going to the Netherlands to work in an organic farm harvesting vegetables. Her activity in the Netherlands is independent of the activity at the school in France, and the activities are carried out in alternation i.e. 9 months per year in France and 3 months per year in the Netherlands. In this example:

Member State of residence		
Member State of employment	75%	
Member State whose labour law and occupational safety and health laws apply	winter	
Member State whose rights as mobile worker apply		
Member State where employer is situated		
Member State where Elise pays contributions		
Member State which provides social benefits (including unemployment benefits)		

In this example, the seasonal worker is considered as a worker who pursues an activity in two or more Member States, and is insured in France also during the seasonal summer activity because the activity in the Member State of residence is considered substantial (at least 25% of total working time)¹². As regards healthcare benefits, Elise is entitled to receive healthcare treatment that becomes necessary during her stay in the Netherlands based on the EHIC issued by the French health insurance institution¹³. To determine whether a treatment is necessary, the nature of the benefit in kind and the length of the planned stay must be taken into account. As in the previous example, the necessary treatment is provided in line with the Dutch legislation and the principle of equal treatment of persons covered by the Regulation must be respected. This means that if nationals pay, Elise will have to pay too; if they receive a reimbursement, she can be reimbursed too. The reimbursement can be claimed either in the Netherlands or in France upon her return. As regards any other (non-urgent) healthcare treatment, Elise has to wait until her return to France.

Elise has the right to take up employment under the same conditions and with the same priority as nationals in the Netherlands. Once in employment, she is subject to the laws and collective agreements of Netherlands and must be treated like nationals as regards working conditions including remuneration and dismissal.

As in previous examples, all possible risks linked to the work in the organic farm have to be carefully assessed by the employer. For instance, beyond the physical risks when harvesting vegetables (e.g. exposure to high temperatures or accidents), other possible risks can also be present, such as exposure to pesticides. Further to the risks assessment, specific preventive and protective measures have to be implemented, and the employer must provide Elise with the relevant and understandable information in this respect.

12. Article 13(1)(a) in case of an employed person, or Article 13(2)(a) in case of a self-employed person, Regulation (EC) No 883/2004.

13. Article 19, Regulation (EC) No 883/2004.

Seasonal worker employed in two Member States, one of which part-time

Elena is a Polish national and resides in Poland – she is currently employed as a part-time waitress, working 6 days per month in Poland, amounting to approximately 20% of the working time during the whole year. During the holiday seasons, she has a seasonal job in a hotel in Germany. At the end of the holiday season, she returns back to her part-time job in Poland. In this example:

Member State of residence	
Member States of employment	20%   80%
Member State where employer is situated	 
Member State where Elena pays contributions	
Member State which provides social benefits (with the exception of unemployment benefits)	
Member State whose occupational safety and health laws apply	
Member State which provides unemployment benefits (depending on where she decides to look for employment) ¹⁴	 

In this example, the seasonal worker is considered as a worker who pursues an activity in two or more Member States, and is insured in Germany because the activity in Poland is not considered substantial (at least 25% of total working time)¹⁵. As regards healthcare benefits, Elena is entitled to healthcare treatment in Germany based on her health insurance there. Upon her return to Poland, she can register the PD S1 issued by the German healthcare institution in Poland, and thus benefit from healthcare treatment as though she was insured in Poland. In this case, sickness benefits in kind are granted in line with the Polish legislation. The cost of healthcare provided in Poland is reimbursed by the German healthcare institution in accordance with the rates applied in Poland.

Elena has the right to take up employment under the same conditions and with the same priority as nationals in Germany. Once in employment, she is subject to the laws and collective agreements of Germany and must be treated like nationals as regards working conditions including remuneration and dismissal.

As in previous examples, all possible risks linked to her work have to be carefully assessed by the employer. For instance, in her job as a waitress, Elena is exposed to a variety of risks of different nature e.g. slips and trips, burns or exposure hazardous substances. Psychosocial risks, such as stress or other risks related to the interaction with some clients may also arise in the hospitality sector. Employers can perform the compulsory risk assessment themselves, using online tools such as OiRA¹⁶, or can ask an external prevention service to take care of it. Further to the risks assessment, specific preventive and protective measures have to be implemented, and the employer must provide Elena with the relevant understandable information in this respect.

14. Article 65 of Regulation (EC) No 883/2004 provides special unemployment rules for unemployed persons who resided in a Member State other than the competent Member State, and who return to their Member State of residence less frequently than once a week. In this case, unemployment benefits may be claimed from the Member State of last employment if the person does not return to his/her Member State of residence.

15. Article 13(1)(b) in case of an employed person or Article 13(2)(b) in case of a self-employed person, Regulation (EC) No 883/2004.

16. For more information please consult: <https://oiraproject.eu/en> as well as https://oiraproject.eu/en/oiraproject-tools?text=&field_sector_category%5B1193%5D=1193&sort=date. More information on this is also provided in the good practices below. OiRA is an Online platform developed by the European Agency for Safety and Health at Work (EU-OSHA) to facilitate risk assessment, especially in small companies. It provides free and sector-specific solutions to guide employers through the mandatory risk assessment.

B Practical examples in cases of seasonal workers who are third country nationals covered by Directive 2014/36/EU

Non-EU seasonal worker residing in a third country employed in one Member State

Leila resides in Morocco and is a Moroccan national – she finds a seasonal job in France in the agricultural industry (fruit picking) for 6 months. She applies for and is granted a seasonal worker permit under the Seasonal Workers Directive by France. In this example:

Country of residence	
Member State of seasonal employment	
Member State where employer is situated	
Member State whose labour law and occupational safety and health laws apply	
Member State where Leila pays contributions	
Member State which provides social benefits	

In this example, the third-country national resides in a third country and moves temporarily to a Member State (France) for the purpose of employment as a seasonal worker under the Seasonal Workers Directive.

In line with the equal treatment provisions of the Directive (Article 23), Leila is subject to the laws and collective agreements of France and must be treated like nationals as regards working conditions including remuneration and dismissal. She has also the right to access benefits offered by French legislation on sickness benefits, invalidity benefits and accidents at work as well as tax benefits offered to nationals; however, Member States may apply limited restrictions to equal treatment, e.g. by excluding family benefits and unemployment benefits¹⁷.

As in previous examples, Leila's employer has the obligation to ensure her health and safety in all the aspects related to work. This includes the prevention of all occupational risks and the provision of information and training adapted to the work, as well as provision of the necessary equipment.

Furthermore, she has notably the following rights: access to mechanisms to lodge complaints against her employer directly or through a third party, protection against dismissal as a reaction to her complaint in the same way as national workers¹⁸, receiving information in writing about her rights and obligations¹⁹, equal treatment with national workers in terms of access to advice services on seasonal work afforded by employment offices²⁰.

17. France did not transpose the possible restrictions to equal treatment provided for in Article 23(2) of the Directive.

18. Article 25 of Directive 2014/36/EU

19. Article 11 of Directive 2014/36/EU

20. Article 23 of Directive 2014/36/EU

Non-EU worker moving from a Member State to be employed in another Member State for a limited time in the tourism sector

Maria resides in Poland and is a Ukrainian national – she has worked in a hotel in Warsaw for 4 years but has an opportunity in Croatia to work in a hotel for 9 months with better conditions. So she decides to apply for it and gets the job. She applies for and is granted a work and residence permit (single permit) in Croatia. In this example:

Member State of residence
Member State of seasonal employment
Member State where employer is situated
Member State whose labour law and occupational safety and health laws apply
Member State where Leila pays contributions
Member State which provides social benefits (including unemployment benefits)



In this example, the third-country national moves from a Member State (Poland) to another Member State (Croatia) to take up a seasonal job. She is granted a single permit under the Single Permit Directive²¹.

In line with the equal treatment provisions of the Directive (Article 12), Maria is subject to the laws and collective agreements of Croatia and must be treated like nationals as regards working conditions including remuneration and dismissal.

As in previous examples, Maria's employer has the obligation to ensure her health and safety in all the aspects related to work. This includes the prevention of all occupational risks and the provision of information and training adapted to the work. If Maria does not speak Croatian, the employer should ensure that she receives the safety instructions relevant for her job in a language known to her.

She also has the same rights as national workers for example with regard to advice services afforded by employment offices and access to vocational training. Given that during the employment Maria paid social security contributions in Croatia, she will be entitled to social benefits and healthcare from Croatia. This includes unemployment benefits, since during her employment she did not maintain her residence in Poland²².

Are there examples of good practices observed in some Member States and at EU level?

Examples of good practices can be found in several Member States in regards to all the policy areas discussed in the Guidelines. They address crucial matters such as the provision of information (in multiple languages), awareness raising, workers' representation, support to the employers, as well as cooperation between different Member States and stakeholders.

These are important aspects as, due to the nature of their work, seasonal workers are often more vulnerable than other workers to situations such as precarious working and living conditions, infringement of labour law, inadequate social security coverage, as well as undeclared work. Practices that ensure that employers and workers are provided with correct information and assistance can prevent or address these issues.

21. Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p. 1.
22. If she maintained her residence in Poland and returned there on a weekly basis, she would be entitled for unemployment benefits from Poland (see example of Jakub). If she maintained her residence in Poland and did not return there on a weekly basis, she would be entitled for unemployment benefits from either Croatia or Poland (depending on where she decides to look for employment) (see example of Elena).

Recently, several initiatives in the area of occupational safety and health have been taken for different sectors in the context of the COVID-19 pandemic. In **Spain**, the **National Institute for Safety and Health at Work** has made available a fiche compiling the main measures to be taken to prevent exposure to Coronavirus SARS-CoV-2 for agriculture/horticulture/forestry seasonal workers. This includes an overview of the main risks of COVID-19 infection for workers, the key preventive measures and rules to be respected (e.g. physical distance, general hygienic principles, use of protective masks, frequent hand washing/disinfection, regular ventilation of spaces), what to do in case of having suspect symptoms, as well as general rules on waste management. Similarly, **Germany** has published a **guidance note on seasonal workers**³² containing a detailed description of the main practical preventive aspects to be considered and implemented to protect seasonal workers' health and safety. In May 2020, the **social partners in agriculture European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT) and Employers' Group of Professional Agricultural Organisations in the European Union (GEOPA-COPA)**, representing the interests of workers and employers in the sector, **signed a joint declaration** providing clear action points for ensuring seasonal workers coming from EU Member States can experience decent working and employment conditions and access their workplace in full safety during the current pandemic.

On 19 May 2020, the German Minister for Employment and his Romanian counterpart signed a Joint Declaration of Intent³³. The main fields of cooperation are OSH and social protection, with a particular focus on all groups of mobile workers and access of mobile workers to counselling services on their rights in the field of social and labour law. These cooperation is aimed at exchanging of information, experience and best practices; creating working groups to accommodate social protection policies in the two countries; enhancing cooperation in the field of social security exchange of information on national and international events in the respective countries dealing with issues under the responsibility of the two sides; promoting of the bilateral social dialogue between the social partners in both countries.

Social security coordination: The **German Liaison Office of the Health Insurance Abroad and the Federal Agency of Employment** provide **information for seasonal workers** (e.g. leaflets) also in a language that the seasonal workers can understand. The employers are informed about the issues involved by different professional organisations and the Agency of Employment is informing interested workers. Similarly, in order to inform seasonal workers moving from Spain to France for the grape harvest, the **Spanish Ministry of Employment and Social Security** publishes a newsletter that gives advice to the seasonal workers in labour and social security matters.

Specific legislation has been adopted for the **application of Article 13 of Regulation (EC) No 883/2004** to seasonal workers in the sectors of forestry and agriculture in **Slovenia and Hungary**, namely a special permit for seasonal work has to be issued and conditions for it fulfilled.

With reference to the **bilateral/multilateral agreements** with other countries **in relation to the application of Article 13** to seasonal workers, **Spain and France signed an agreement in 1974**, by which it is envisaged that Spanish seasonal workers employed in France in agriculture (and their accompanying family members) have some social security coverage. **Germany concluded a bilateral understanding with Romania** in 2005 on the mediation of Romanian workers for the purpose of performing a fixed-term activity in Germany, by which the Romanian workers have the obligation to insure themselves in the German social insurance system (sickness, care, pension, accident and unemployment insurance).

As regards the **representatives of seasonal workers** who can be vocal about the difficulties that seasonal workers and their employers encounter due to the rules in Regulation (EC) No 883/2004, in the **Austrian Chamber for Workers in the Agricultural Sector** a specific representative body has been established by law who is in charge of seasonal workers. Furthermore, the **Austrian Federation of Trade Unions** sets activities in the interest of (foreign) seasonal workers. In France, NGOs at national level (such as "GISTI") try to defend seasonal foreign workers' interests, focusing their attention on non-EU workers.

32. <https://msgiv.brandenburg.de/msgiv/de/themen/arbeitschutz/arbeitschutz-corona-information/arbeitschutz-corona-saisonarbeit/>.

33. https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/2020/joint-declaration.pdf?__blob=publicationFile&v=2 (in English).

Information: The EURES Job Mobility Portal³⁴ offers detailed **practical, legal and administrative information on the living and working conditions** in all Member States.

The **Living and Working Conditions database** contains details on a number of important issues such as finding accommodation, finding a school, taxes, cost of living, health, social legislation, comparability of qualifications, etc. Another valuable information tool is the **Labour Market Information section**, containing information on current trends on the European labour market by country, region and sector of activity.

Each year Member States updates the information to best cover new legislation or practices introduced at national level.

A number of Member States already included information on seasonal work in their living and working information. Nevertheless, to ensure **a comprehensive perspective on seasonal work in the EU, in the coming months the EURES portal will include relevant information on seasonal workers covering all Member States.**

EURES national websites provide useful information on working and living conditions applicable to seasonal workers. For instance, on the **Austrian website**³⁵ workers may find information about labour law provisions that apply to seasonal workers, such as protection against dismissal before the end of the limited employment. Similarly, on the **Dutch website**³⁶ information on living and working conditions is available in seven languages.

34. <https://ec.europa.eu/eures/public/homepage>.

35. https://jobroom.ams.or.at/jobroom/index_as.jsp.

36. www.werk.nl/eures.