

MoveS Webinar

Seasonal workers

23 November 2023

Online

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MoveS

project presentation

PRESENTED BY:

SOFIA FALCONE

MOVES SEMINARS AND WEBINARS MANAGER

MoveS

EU-wide network of independent legal experts in the fields of
free movement of workers (FMW)
social security coordination (SSC)
Posting

MoveS objectives

1) To provide legal expertise in the areas of Free Movement of Workers, Social Security Coordination and Posting through:

Legal Reports
Bimonthly Monitoring Reports
Ad hoc requests
Comparative assessments

2) To disseminate expertise and increase experts' and practitioners' knowledge by means of

National seminars (8)
Webinars (3)
Training for EC staff (4)
Information tools & communication

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- **MoveS webpage (EUROPA)**

<https://ec.europa.eu/social/main.jsp?catId=1098&langId=en>

MoveS LinkedIn group:

MoveS – free movement and social security coordination

<https://www.linkedin.com/groups/4291726>

Seasonal workers

Today's agenda

Content	Timeslot	Presenter
Introduction	10:00 – 10:10	Sofia Falcone MoveS webinar manager
Seasonal Workers: the legal framework	10:10 – 10:40	Dolores Carrascosa Bermejo University Pontificia Comillas
Wrap up Questions and Answers	10:40 – 10:50	Grega Strban MoveS Coordinator
Break	10:50 – 11:00	
Seasonal Workers: challenges from a case study	11:00 – 11:30	Lydia Medland University of Bristol
Seasonal workers: challenges from a MS of origin	11:30 – 11:45	Magda Sotropa Independent legal expert
Seasonal workers: challenges from a MS of destination	11:45 – 12:00	Ferdinand Wollenschläger University of Augsburg
Questions and Answers	12:00 – 12:30	ALL

Seasonal workers in the EU: Legal framework, main problems and some solutions

PRESENTED BY:

PROF. DR. DOLORES CARRASCOSA BERMEJO
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Introduction

1. Who are they?

- a. Legal definition
- b. Types
- c. Statistical data
- d. Vulnerability

2. Legal framework: labour law and social security

- a. EU Nationals: FMW
- b. TCN: SWD directive
- c. Posting

3. Possible solutions to the lack of compliance and improving the situation

Introduction (1)



Period 2011-2017: more than 1.3 million of **national/locals farm workers left the agriculture sector** in the EU: poor working conditions (employment/income insecurity/ unskilled, cheap, dangerous, and hard work –very physically demanding-) ► **shortages of SW** ► dependency on foreign labour: **migration**

In 2020 **COVID-19** Pandemic (border closure): seasonal agricultural workers under the radar: “critical or essential workers” ► more risking exposure to the virus in overcrowded houses + workload + low prices/salaries (International Buying Groups IBGs/few retailers).

Academia/reports/news (non-compliance// lack of enforcement ► exploitation...)

FR-DE-IT ‘caporalato’ (‘gang master’) & **ES** EC reports (2021/2023) + MoveS report (2020)
DE /SE/ NL (Silicon Valley of agriculture) “Are agri-food workers only exploited in Southern Europe?”
2020 Open Society. European Policy.2020.

DE Saisonarbeit in der Landwirtschaft Bericht 2022. Initiative Faire Landarbeit. “Continuities of exploitation:seasonal migrant workers in German agriculture during the pandemic” Bogoeski 2022

FR/ES Spanish Posting-Stat Report. Carrascosa/Contreras. KULeuven. 2022

PO/ES “La Raya: explotación laboral del agribusiness en la frontera” + “Al menos 28 detenidos en una operación contra el tráfico de personas en el sur de Portugal” EuropaPress 21-11-2023

UK “They treat you like an animal’: How British farms run on exploitation” The bureau of investigative journalism 2023

Introduction (2)



Since 2020/21 EC interest in improving their employment situation + **European Pillar of Social Rights Action Plan** (2021): public authorities + social partners cooperation to protect the rights of mobile workers (including seasonal workers SW)

Challenges regarding seasonal workers (EU /TCN /non-migrant):

1. **Lack of information or knowledge of their rights** concerning their employment /social security situation and how to claim/report them.
2. **Weak ties to social security systems and protection** (short-term/migrant work // threshold to be insured). i. e. "Mini Jobs" in Germany
3. **Undeclared or undocumented** work (risk of human trafficking by criminal organizations). Poor living conditions substandard housing (ghettos). Expulsion / integration
4. **Poor employment/working conditions.**

.- Low/unpaid wages (deviations from collective agreements, not minimum wages + deductions –travel, accommodation, food, fines...-, indirect recruitment: agencies,TWA). Rise in production costs: energetic crisis / commercial practices <only few International Buying Groups IBGs/few supermarket retailers + perishable products: Impact of the **Directive (EU) 2019/633** on unfair business-to-consumer commercial practices in the agricultural and food chain?>

.- OSHA: fixed term contracts/ high workload / long working hours (no paid overtime), specific hazards/risks (heat, humidity, machinery, pesticides, heavy weights...)

Introduction (3)



Global problems regarding seasonal workers:

1. Shortage of seasonal workers (competition between states/geographical areas for seasonal migrant workers: unskilled but necessary labour to replace uninterested national/local workers).

2. Poor employment conditions. Are they inherent to seasonal agriculture work? Are they the result of an organized strategy to keep **food prices** low and stable? Are poor working conditions forcing companies to look for more precarious labour force to maintain profit margins?

- ▶ (1) Nationals with no better job options.
- ▶ (2) National migrants (internal mobility).
- ▶ (3) EU nationals workers (migrant/posted).
- ▶ (4) TCN workers (migrant /posted).
- ▶ (5) Refugees, asylum seekers/ Temporary protection Directive (Ukrainians)
- ▶ (6) Undocumented TCN workers
- ▶ (7) Children??? (*) USA similar problematic+ **legal** child labour on farms!! No ratification of ILO conventions on minimum age n° 10/1921 (in agriculture) or n° 138/1973.

3. Improvement of the working conditions: always welcomed!! Compliance with legal obligation: phylantropic initiative? A way to attract seasonal workers?

1. Who are they? a. Legal definition



Lack of a general/legal definition of **seasonal workers**

(In force EU legislation: Directive 2014/36 (only for TCN residing abroad). In previous social security Coordination (Regulation 1408/71). National law // collective agreements definitions.

→ Main **characteristics of mobile seasonal workers in the EU:**

1. Performance of temporary work (less than 12 months?)

(*) Temporary or fixed-term employment contract?

2. Seasonal nature of the work (all year productions)

- Dependent on the succession of the seasons or collective lifestyles
- Automatic recurrence/repeated every year
- Sectors: agriculture/horticulture, forestry // tourism –food services, accommodation, catering-, fairs, transport...).

3. Residence in another State (EU Member state or abroad) to which they **come back** after seasonal work (circular migration).

1. Who are they? b.Types

For example, in a French farm the **following workers** could be found temporarily performing seasonal work in France:

- (1) A French worker resident in France.
- (2) A Spanish worker legally resident in France.
- (3) A Moroccan worker legally resident in France.
- (4) A Spanish worker resident in Spain (seasonal or frontier worker/ migrant).
- (5) A Moroccan worker resident in Morocco who must return to Morocco after the seasonal activity (SWD **Directive 2014/36**).
- (6) A Moroccan worker legally resident in Italy (Blue Card Directive 2009/50/EC or intra-corporate transfer (ICT) Directive 2014/66).
- (7) A Moroccan and a Spanish worker, both legally residents in Spain, posted by a Spanish TWA // or a company established in Spain.
- (8) A Moroccan worker staying and working illegally in France (without the necessary permit or authorisation//undeclared work).

(*) Undeclared /undocumented work

1. Who are they? c. Statistical data. Estimations



Seasonal workers mobility is **not regularly monitored**. No reliable data about EU nationality (FMW) and MS of residence.

In **EC 2021** Report: an estimate of 650,000 to 850,000 intra-EU mobile seasonal workers in agricultural + tourism (accommodation and food services), included posted workers (50,000).

In **EC 2023** Report: FR/DE/IT/EE. Again estimations considering seasonal contracts or Social security insurance

.- **EU Nationals:** (Poland + Romania). Neighbour countries (i.e. PO/ES/FR).

.- **TCN** (ELA 2021). Also: China, Vietnam, other South americans sub-Saharan workers (Senegal...)

Ukrania	Bosnia H. , Serbia, North Macedonia	Moldova	Albania	India	Thailand	Ecuador	Morocco	Tunisia
PT	AT HR, SI, SK	CY, EE, FI, SI, EE, LT, LV, PO	DE, IT	IT, PL	SE	FR, ES	ES, FR, IT	FR

1. Who are they? d. Vulnerability



Migrant Seasonal workers **extreme vulnerability (intersectionality)**

- **Short-term circular migration**: non-integration /isolation (also in the host MS)
- **Atypical forms of employment**: part time work // fixed term contracts// contracted by TEA (Temporary agency work).
- Low affiliation to common **Trade Unions** (no ad-hoc Trade Unions)
- Risk of **Undeclared work** (European Platform by sectors): 14% (accommodation and food services) // 32% (agriculture) <only higher 52% (household services)>

Agriculture sector:

- 1.- OSHA**: dangerous /important risks + Substandard housing.
(*) Non ad-hoc EU directive on Agriculture.
(**) Accommodation standards ILO Convention n° 184 (only ratified by BE, FR, LU, PT, SK, SE) + Recommendation n° 187
- 2.- Socioeconomic factors**: low education background (illiteracy//non qualified work) + low salaries (aporophobia?? Rejection of poor people) Is relevant [Dir 2022/2041](#) on adequate minimum wages in the EU?
- 3.- Lack of knowledge of the host MS language** (not essential for the job)
- 4.- Age** ▶ 18-39 (TCN); different religion ([Dir 2000/78](#)) + Race/ethnicity ([Dir 2000/43](#)).
- 5.- Sex/Gender** ▶ more male workers (in Spain 88% Moroccan women) ([Dir 2006/54](#))

3. Legal framework: labour law and social security



Different legal situations, but precarious work was found in all. However, TCN face additional precarity and insecurity (undocumented // illegal intermediaries)

(*) Is it **inherent** to the activities (agriculture + tourism)?

1. EU Nationals and their family members: FMW + social security coordination Regulations

A Spanish worker who is resident in Spain and who works in the grape harvest in France.

2. Third Country Nationals: SWD Directive 2014/36

A Moroccan worker resident in Morocco who must return to Morocco

3. POSTING (TCN and EU nationals): PWD + coordination regulations

A Moroccan worker, legally resident in Spain and posted by a Spanish undertaking established in Spain

(*) Legal residents TCN in another MS: *A Moroccan worker legally resident in Italy* (No FMW <Blue Card Directive 2009/50/EC or intra-corporate transfer (ICT) Directive 2014/66> + social security coordination Regulations).

3. Legal framework: labour law and social security



EU Nationals and their family members: **FMW** *A Spanish worker who is resident in Spain and who works in the grape harvest in France.*

Labour Law	Equal treatment	TFEU Art. 45; Reg 492/2011; Dir 2014/54 National Bodies FMW, Solvit, ELA
Social Security	Equal treatment Applicable legislation Totalization Exportation	Reg 883/2004 Art. 4 Lex loci laboris (Reg. 883/2004 Art. 11.3 (a)) Reg 883/2004 Art. 6 Reg 883/2004 Art. 7

At the end of the seasonal work:

1. Usually s/he returns to Spain <**circular migration**: seasonal worker>.
2. S/he may prefer to stay and to seek a job in France <migrant worker>. Registration as a **jobseeker** (EURES Regulation EU/2016/589).
 - Under Regulation 492/2011 Art. 10: his/her children access to education in France.
 - Under Directive 2004/38 Art 14 and 24:
 - Cannot be expelled (active search + genuine options of employment)
 - Maintain the status of worker for at least 6 months (less than one year as a seasonal worker).
 - As a mere (not-expelled) jobseeker: possible exclusion from social assistance protection.

3. Legal framework: labour law and social security



Third Country Nationals: *A Moroccan worker resident in Morocco who must return to Morocco* . **SWD Directive 2014/36** (goals achieved? Passalacqua/Medland)

- (*) Unskilled workers + Residing abroad
- (*) One employer (labour market test obligation)
- (*) Max 5-9 months/per year
- (*) Circular migration (re-entry procedure for subsequent seasons)
- (*) Right to proper accommodation (sometimes provided by the employer)

Labour Law	Equal treatment Employment conditions /strike/ industrial action	SWD Art. 23
Social Security	Equal treatment (*) Possible exceptions: unemployment and family benefits	SWD Art. 23

At the end of the seasonal work: S/he must return to Morocco <circular migration>
(In Spain 90% Moroccan women with children in Morocco)

3. Legal framework: labour law and social security



POSTING (TCN and EU nationals) *A Moroccan worker, legally resident in Spain and posted by a Spanish undertaking established in Spain.*

(*) Company's freedom to provide temporary services abroad.

Labour Law (short-term posting, - 12 months). Protect labour rights	Partial application of hard-core employment conditions (OSHA, salary, working time...) according to host MS legislation + sectorial collective agreement, if they are more beneficial . (* Equal treatment if the company is a TWA.	Posting Dir 96/71 amended by Dir 2018/957 (1) No nationality /residence requirements (2) No letterbox companies (3) Job permit in Spain (not French permit) (4) TCN residence permit (+90 days out of 180 days) Van der Elst visa C-43/93?? (* lawful and habitual work in Spain. Pending case 540/22 (Ukrainians posted from SK to NL) (5) Workers can choose to litigate in the host or home MS
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At the end of the seasonal work: posted worker returns to Spain with the Spanish company. S/he does not seek access to the French labour market

3. Legal framework: labour law and social security



POSTING (TCN and EU nationals) *A Moroccan worker, legally resident in Spain and posted by a Spanish undertaking established in Spain.*

(*) Company's freedom to provide temporary services abroad.

<p>Social Security (envisaged duration less than 24 months) Protect social security rights: no insurance career split</p>	<p>Application of Spanish SS legislation is maintained :</p> <p>(1) Art. 12 (punctual): Posting Company home MS legislation</p> <p>(2) Art. 13 (seasonal recurrent/ habitual 12 month calendar): worker's residence MS legislation</p>	<p>Reg. 883/2004 and 987/2009 + Reg 1231/2010. (PD A1 *Fraud /Art. 16 agreements)</p> <p>(1) Requirements: Labour contract, previous insurance in Spain, no letterbox companies: TWA substantial activities in Spain (assignment of workers TeamPower C-784/19), no replacement.</p> <p>(2) Requirements: worker legally residing in Spain, where perform legal and habitual activities (25% or more working time or remuneration)</p>
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At the end of the seasonal work: posted worker returns to Spain with the Spanish company. S/he does not seek access to the French labour market

3. Possible solutions to the lack of compliance and improving the situation



1. Clarification of the **obligations // rights** (different legal status of SW) ► Awareness (SW /employers. (*) National campaign+ [ELA 2021](#) "Rights for all seasons" Campaign to disseminate information (EC, EURES, Social Partners, EU Platform undeclared work)► TCN migrant workers
 2. More **legal support** assistance, social partners (Trade Unions -to avoid a race to the bottom- and employers – dumping-), NGOs ... More associational power of SW.
 3. More **control and enforcement** labour inspection capacity + ELA (national and posting companies, recruitment agencies, TWA) + social partners . **Claims/report:** Anonymous mailboxes (language). Whistleblowing Dir 2019/1937 broad national implementation?). Police /criminal offences: human trafficking.
 4. **Recurrent SW TCN:** long term residence attached to agricultural activity. Opportunities in the agricultural sector for **undocumented TCN migrants**
 5. Reorganize **Global supply chains /labelling responsible consumers**
 6. Reinforcement **social conditionality** for the **EU CAP** Common Agricultural Policy <new Strategic Plan for the [CAP 2023/27](#)>: CAP income support and rural development is linked to respect of rights of farm workers (EU social law).
 - a) **Transparent and predictable employment conditions** (Dir 2019/1152): Farm workers have to be informed of employment conditions in writing, regardless of the hours worked: (...) remuneration, and work pattern/schedule;and social security.
 - b) **OSHA Directives:** Employers must ensure the safety and protection of farm workers
- (*) is it horticulture excluded? Involving consumers and labelling??

Some sources of information



EC reports (2021/2023) <https://ec.europa.eu/social/BlobServlet?docId=27033&langId=en>

Are agri-food workers only exploited in Southern Europe? Open Society. European Policy.2020. <https://www.opensocietyfoundations.org/publications/are-agri-food-workers-only-exploited-in-southern-europe>

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Passalacqua "Has the seasonal workers dierective missed its target? Evidence from Italy during the pandemic. European Law Open 2022
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La Raya: explotación laboral del agribusiness en la frontera <https://www.youtube.com/watch?v=o1RnMbtTmdo>

"Al menos 28 detenidos en una operación contra el tráfico de personas en el sur de Portugal" EuropaPress 21-11-2023
<https://www.europapress.es/internacional/noticia-menos-28-detenidos-operacion-contra-trafico-personas-sur-portugal-20231121142801.html>

"They treat you like an animal': How British farms run on exploitation" The bureau of investigative journalism 2023
<https://www.thebureauinvestigates.com/stories/2023-03-27/they-treat-you-like-an-animal-how-british-farms-run-on-exploitation>



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Q&A TIME!



COFFEE BREAK

11.00-11.10

*Misconceiving 'seasons' in global food systems:
The case of the EU Seasonal Workers Directive*

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Presentation

1. The EU Seasonal Workers Directive

Agriculture and Seasonal work: A Clear Connection?

The Seasonal Workers Directive and Agriculture

El Ejido: A case in mind for the Directive

2. Seasonality and Circularity: The continuous demand for 'seasonal' workers

Changing labour practices

The watermelon dilemma: the seasonal peak of several days

3. Seasonal Workers

Workers already (stuck) in Spain

Circular Migration: a Questionable Policy Approach

Circular migration – and development?

Conclusions

1. The EU Seasonal Workers Directive*

- **Direct Objectives of the Directive**

- The objectives of the Directive are, specifically, 'the introduction of a special admission procedure, the adoption of conditions on entry and stay for the purpose of seasonal work by third-country nationals and the definition of their rights as seasonal workers' (European Union, 2014: Art 25.2).
- Defines both immigration and labour rights

- **Narrow in scope but has broader goals:**

- **Global objectives are:**

- '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.' (Commission, 2010)

**Directive of the European Parliament and of the Council on the conditions of entry and of stay of third-country nationals for the purpose of employment as seasonal workers (The Seasonal Workers Directive)*

Agriculture and Seasonal work: A Clear Connection?

Seasonal work in agriculture has long been associated with low-waged work.

- This has coincided with:
 - Exit of native workers
 - Reliance on migrant workers, and in southern Europe a particular reliance on undocumented migrant workers.

There are multiple **aims** being dealt with at once

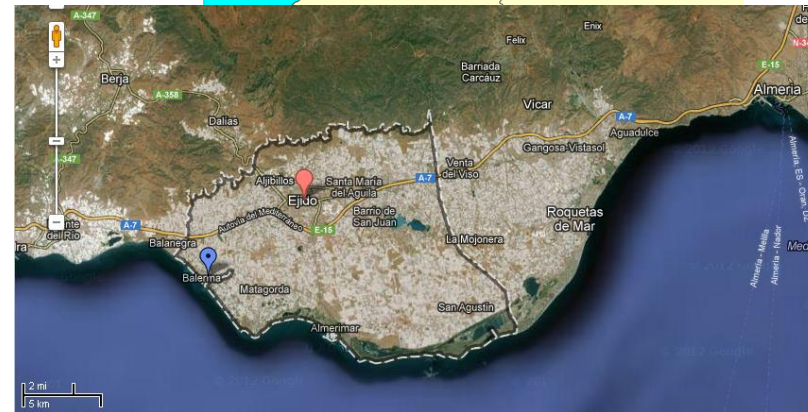
- To unify immigration controls
- Whilst ensuring that employers in Europe have access to migrant workers willing to accept low wages.
- The original aim was to set out a unified directive which gave all labour migrants entering the EU equal status regardless of the work which they came to do.
- However, the Seasonal Workers Directive gives a reduced set of rights to the category of seasonal workers, when compared with native workers, or workers on other Visas.
- The Directive appears particularly aimed at agriculture.

The link between the Directive and agriculture reinforces the structural status of seasonal work as one in which workers can access fewer protections and low-pay is likely to be left unchallenged.

How is this justified?

El Ejido: A case in mind for the Directive

- A case study.
- Microcosm of the GPE of food, described by scholars as, “an agri-food production enclave” (de Castro et al., 2014)
- Estimated 30,000 hectares of greenhouses
- 20,000 small-scale farmers
- 40,000 migrant workers
- Working conditions drawn concern from trade unions, NGOs, and the International Labour Organisation.



2. Understandings of Seasonality

'Activity dependent on the passing of seasons' means an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations' (European Union, 2014, Art 3 (c)).

- It is taken as self-evident that agricultural work is seasonal.
- In intensive global food production agricultural seasons no longer correspond with ecological seasons and can last for the majority of the year.
- The meaning of 'season' can therefore come to mean something quite different, related more to the market for the production than any self-evident period of time.
- *Is a year-round labour market best met with temporary workers?*

The continuous demand for SW: Changing Practices

- Farmers have in the past employed undocumented migrants and then worked with them to gain papers.
- This route to working within the law with migrants is now being discouraged as farmers are encouraged to hire workers from 'third countries' through instruments such as the SW Directive.
- The increasing pressure for farmers not to hire undocumented workers also comes in the form of fines and inspections for working with those without 'papers'.
- The SW Directive is another factor which, by giving farmers other options to hire workers in 'third countries' they can theoretically choose to not engage with undocumented workers in the area.
- However, many farmers still choose to hire undocumented workers already resident in El Ejido, due to complex factors, including:
 - The illegal/legal distinction made by the EU is not as clear for farmers and workers in the context of El Ejido who have seen how workers can pass from one status to the other.
 - Farmers' seasonal labour needs can be for year-round workers or workers for short peak moments, in both cases hiring workers from third countries, does not meet the seasonal needs of farmers.

The watermelon dilemma: the seasonal peak of several days

- Farmers interviewed in El Ejido had concerns about seasonal labour shortages, but these are not ones dealt with by the Directive, but rather very short term demands for workers.
- This was where, in particular, it was widely acknowledged that farmers would employ workers without contracts or social security for a few days. This is often where undocumented workers would find work.
- This = continued demand for undocumented workers. However, by neither dealing with this seasonal labour challenge, and by isolating undocumented workers, the Directive could make the situation worse for undocumented workers.



Workers already (stuck) in Spain

- Undocumented workers in El Ejido are in a particularly vulnerable situation.
- As demonstrated above, the agri-food business continues to rely on them both generally as they form part of the year-round labour force, and as a pool of workers drawn on by local farmers at specific points in production cycles.
- Unlike previous generations of workers, those in El Ejido now have found it particularly hard to gain 'papers'.
- The Seasonal Workers Directive, could have given such workers an opportunity to regularise their situation by allowing them to apply as seasonal workers under the Directive. This was considered but did not go through.
- As a measure to 'discourage' more migrant from arriving in the region, this is disproportionate as fewer have been arriving since the economic crisis in any case.
- The Directive therefore does nothing for the most vulnerable seasonal workers in the region.

Circular Migration: Questionable Policy Approach

- Does the Directive protect new migrant workers who arrive under its scope?
- The policy approach is to encourage circular migration.
- Yet there is no solid evidence that circular migration is a policy likely to protect workers or promote development.

"In practice, it is often not possible to turn migration on and off like water from a tap. Policies based on the assumption that migrant workers can be brought in when needed and then sent home when no longer needed have failed in every region where they have been tried."(ILO, 2010, p.144)

While the Directive does have some clauses to protect workers there are also still many short-fallings in worker protection.

Circular migration – and development?

- The wage differential between Spain and Morocco is unlikely to lead to remittances of any great degree.
- The specific policies are also very ethically concerning.
- Is it possible to offer temporary migration policies with no options to long term residency?
- It is clear that the directive is aimed more at providing a labour pool for the EU than to offering workers anything much. Particularly when including workers in the region.

Conclusions

- The Directive reinforces horticulture as a sector for low waged work
- Seasonality and circularity are not the same
- A demand for on-the-ground recruitment remains
- Development justifications are questionable.
- El Ejido is an example, each context or 'enclave' is different.

Thank you for your attention!

Q&A TIME!



Seasonal workers: challenges from a MS of origin

PRESENTED BY:

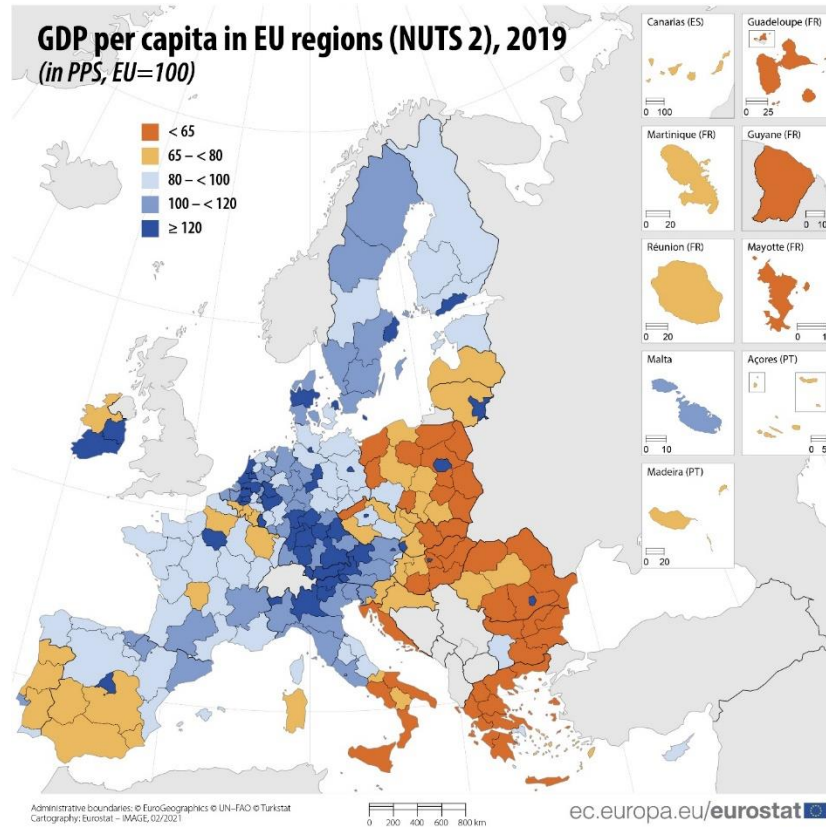
MAGDA SOTROPA
Independent legal expert, Romania

TOPICS

- Data on the Romanian seasonal workers
- Results of the 2021 Population and Houses Census
- Data on the Romanian seasonal workers abroad
- Information campaigns
- Good practices projects
- Conclusions

Drivers of the Romanian seasonal workers to seek work abroad

Lack of employment and low wages are the main causes behind migration (WB)



Romanian legislation on seasonal workers

Law no. 52 of April 15, 2011 regarding the exercise of occasional activities carried out by daily labourers

- Max 180 days/year in the fields of agriculture, forestry, botanical gardens, research institutes cannot exceed 180 cumulative days;
- Max 90 days/year in other fields;
- Pay income tax;
- Are insured in the pension system, but not in health, unemployment, accidents at work and occupational diseases systems (since 2019)

Number of daily labourers registered in the Labour Inspection database

- between **2011 - 2021: 1,232 million (different persons)**,
- between **2011-2022: 1,302 million (different persons)**.

Romanian daily labourers

Economic activities	Number of daily labourers 2018	Number of daily labourers 2019	Number of daily labourers 2020 Before 23/09/2020
Total	270,342	211,482	139,072
Crop and animal production, hunting and related service activities	96613	85046	67028
...			
Silviculture, except forestry exploitation	45336	39923	26784
Advertising	44268	29784	17253
...			
Performing arts, support activities to performing arts, operation of arts facilities	11661	4928	805
Event catering activities	15987	11901	3161
Restaurants	17676	22325	12293

Source: Romanian Labour Inspection

2021 Population and Houses Census

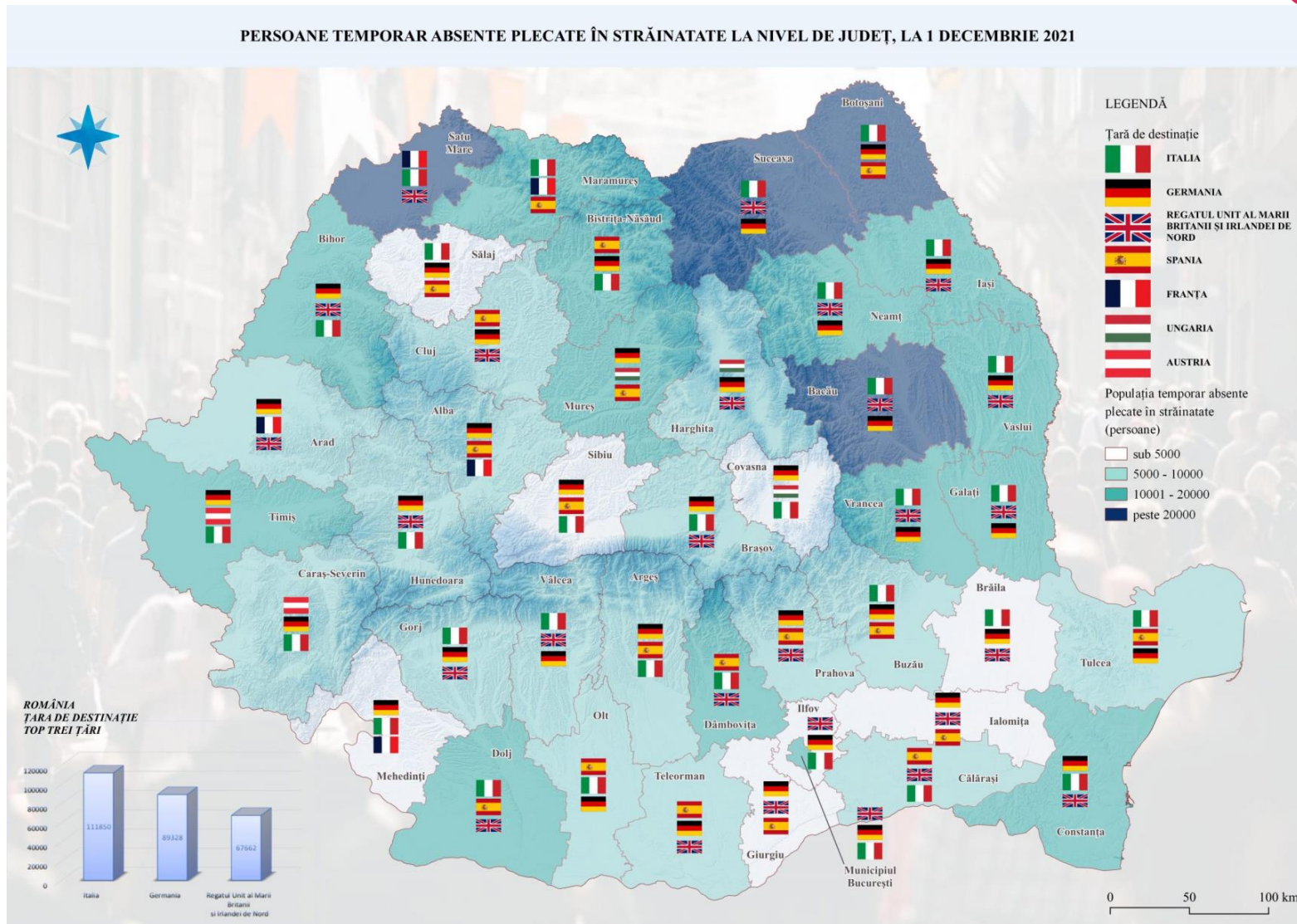


**Persons working or looking for a job abroad on 1 December 2021,
according to the duration of work:≈ 400.000 persons**

	TOTAL		URBAN		RURAL	
	Working abroad	Looking for a job abroad	Working abroad	Looking for a job abroad	Working abroad	Looking for a job abroad
No of persons	280625	99545	86646	26818	193979	72727
Duration						
1-2 months	13678	3935	5510	1493	8168	2442
3-4 months	47595	18197	13264	3877	34331	14320
6-8 months	82452	28805	22796	6289	59656	22516
9-11 months	136900	48608	45076	15159	91824	33449

Source: INS, 2021 Population and Houses Census <https://www.recensamantromania.ro/rezultate-rpl-2021/rezultate-definitive/>

First 3 destination countries in each county



How are Romanian seasonal workers employed abroad ?

- EURES: 2431 persons in 2021, 1743 persons in 2022
- Employment agencies: ?
- Posting through temporary work agencies: 3000-5000 persons/year (Italy, France, Germany)
- Informal networks:?

Legal framework on employment abroad

Law on the protection of Romanian citizens abroad no 156/2000 – regulate the activities of private employment agencies recruiting and placing workers abroad



Amended by Law no. 227 of November 2, 2020, providing that labour contracts of the seasonal workers shall include provisions regarding accommodation, transport and daily allowance

Providing information

Network of Labour and Social Attaché working at Romanian Embassies

- Austria
- Germany
- Spain
- Italy
- France
- Hungary
- Sweden
- Netherlands
- Greece
- Finland
- UK


Information for seasonal workers on websites





Lucrător sezonier

mmuncii.ro/j33/index.php/ro/2014-domenii/afaceri-europene-și-relații-internaționale/6217-2021-lucrator-sezonier

Prima Pagină/Home page Minister Informații de interes public Transparență Domenii Legislație Proiecte Comunicare Contact

 **MINISTERUL MUNCII ȘI PROTECȚIEI SOCIALE**

EȘTI LUCRĂTOR SEZONIER ÎN STRĂINĂTATE?
Informează-te, lucrează legal și cunoaște-ți drepturile pentru a fi protejat!

-  GERMANIA
-  FRANȚA
-  ITALIA
-  SPANIA
-  BELGIA
-  GRECIA
-  AUSTRIA
-  UK
-  ALTE STATE MEMBRE UE

CONTRACTUL DE MUNCĂ
AGENȚIILE DE RECRUTARE
CONDIȚIILE DE MUNCĂ
LOCUINȚA
ABUZURILE

INFORMAȚII DESPRE INTERMEDIEREA ȘI PLASAREA FORȚEI DE MUNCĂ ÎN STRĂINĂTATE

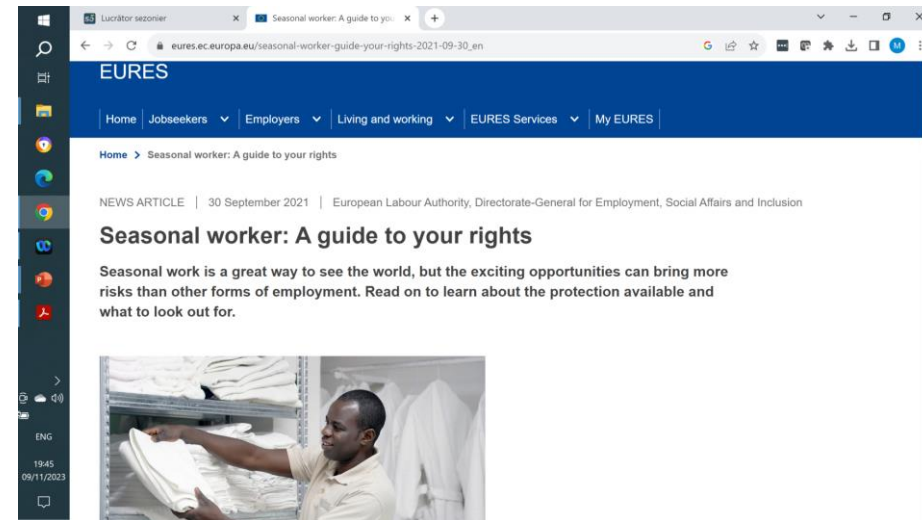
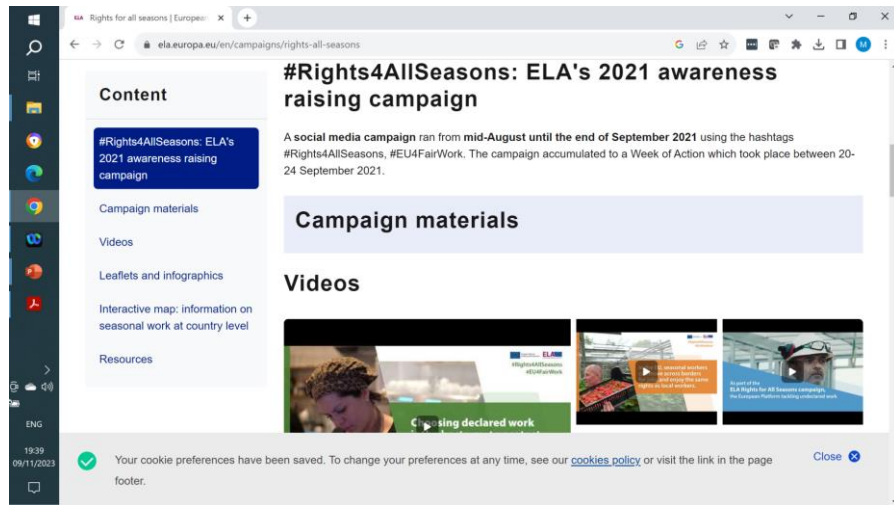
Information campaigns:



Romanian Ministry of Labour and Social Solidarity - 2021

Leaflets with basic information for seasonal workers (working conditions, employment contract, role of placement agencies, contact details of the consular missions of Romania in each state, etc.), were distributed with the support of the Ministry of Transport in the departure points of the workers (**train and busses stations, airports**), at the headquarters of the **Interior Ministry units/subunits**, respectively at the **territorial labor inspectorates** and the **county employment agencies**.

A video spot was broadcasted by the public television.



Funded by the



Good Practice: Faire Mobilitat Project



Aim

To support mobile workers from Central and Eastern EU Member States in enforcing their rights to fair wages and working conditions on the German labour market.

Means

Advisory services and support for mobile employees in their native languages. Production and distribution of informational, educational and training materials. Development and implementation of educational events.

Project partners

DGB Executive Board (overall responsibility), bfw – Unternehmen für Bildung, European Migrant Workers Union, Project Consult GmbH (PCG), DGB Bildungswerk BUND and Gewerkschaft Nahrung-Genuss-Gaststätten NGG (Food, Beverages and Catering Union), German Metalworkers' Union IG Metall Ingolstadt

Cooperative

Arbeit und Leben (Berlin, Kiel, North Rhine-Westphalia, Schleswig Holstein), Arbeiterwohlfahrt München (Workers' Welfare Association Munich), Betriebsseelsorge Stuttgart-Rottenburg (company pastoral care Stuttgart-Rottenburg), Kirchlicher Dienst in der Arbeitswelt Mannheim (Pastoral service in the working environment Mannheim, DGB district and regional organisations, individual member unions of the DGB

partners

Sites

Coordination in Berlin, advisory centres in Berlin, Dortmund, Erfurt, Frankfurt am Main, Dortmund, Kiel, Mannheim, Munich, Nuremberg, Oldenburg, Rheda-Wiedenbrück and Stuttgart.

Financing

German Federal Ministry of Labour and Social Affairs (BMAS), Executive Board of the DGB

www.faire-mobilitaet.de



Deloitte.



Funded by the



Facebook live Talks



Facebook-Live-Talk
Discuție live
Eveniment de informare
în limba română

Duminică | 12 Martie 2023
Ora 10 (ora Germaniei)
Ora 11 (ora României)

fair DGB
Arbeitnehmerfreizügigkeit
sozial, gerecht und aktiv

Ce drepturi am eu, ca lucrător sezonier?
Informații despre dreptul muncii în agricultură în Germania

Parteneri de discuție:
Mirela Cărăvan | Coordonatoarea Centrului de consiliere pentru românii care lucrează în străinătate, în cadrul Blocului Național Sindical (BNS)
Elena Strato | consilier la organizația Arbeit und Leben NRW e.V.
Helga Zichner | consilier la Faire Mobilität Dortmund

Organizatori: BNS, Faire Mobilität, Arbeit und Leben NRW e.V.
<https://www.facebook.com/DGBFaireMobilitaet/>

Facebook-Live-Talk
Discuție live
Eveniment de informare
în limba română

Miercuri | 26 Iulie 2023
Ora 18 (ora Germaniei)
Ora 19 (ora României)

fair DGB

Plata în munca sezonieră

Parteneri de discuție:
Mirela Cărăvan | Coordonatoarea Centrului de consiliere pentru românii care lucrează în străinătate, în cadrul Blocului Național Sindical (BNS)
Catalina Guia | consilier la organizația Arbeit und Leben NRW e.V.
Attila Szasz | consilier la Faire Mobilität Dortmund

Organizatori: BNS, Faire Mobilität, Arbeit und Leben NRW e.V.
<https://www.facebook.com/fairemobilitaet/>

Facebook-Live-Talk
Discuție live
Eveniment de informare
în limba română

Miercuri | 17 Mai 2023
Ora 19 (ora Germaniei)
Ora 20 (ora României)

fair DGB
Arbeitnehmerfreizügigkeit
sozial, gerecht und aktiv

Actualitatea în munca sezonieră din Germania
Care sunt drepturile și obligațiile mele?

Parteneri de discuție:
Mirela Cărăvan | Coordonatoarea Centrului de consiliere pentru românii care lucrează în străinătate, în cadrul Blocului Național Sindical (BNS)
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<https://www.facebook.com/fairemobilitaet/>



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Conclusions of the report Intra-EU Mobility of Seasonal Workers, 2021



1. Difficulties in accessing information – an unclear employment situation makes it more difficult for seasonal workers to understand and claim their rights;
2. Social security protection coverage – this arises from being employed on fixed-term contracts with interruptions which may limit entitlement to social benefits; furthermore, challenges of coordination between different social security systems and transferability of rights emerge;
3. In some countries, seasonal work is performed largely outside official employment relationships (i.e. as undeclared work). In these cases workers have no or largely insufficient social protection coverage;
4. The short-term stay in the country of work means that seasonal workers often rely on accommodation provided by the employer or an intermediary. The quality of the accommodation is frequently poor.
5. Payment of seasonal workers has been reported to undercut the applicable minimum wage; means to do so are the (excessive) deduction of costs for transport or accommodation from the salary, unpaid over-hours or performance related based pay schemes;
6. The agricultural and the accommodation and food services sectors are per se characterised by challenging working conditions; agriculture in some countries seems to see a higher level of breaches of working conditions and OSH rules than other sectors. Seasonal workers – due to their sometimes vulnerable status including the difficulties in enforcing their rights – may be more willing or forced to accept such conditions in comparison to other workers.



Deloitte.



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Possible ways for improvement



- Legislation at EU level?
- Digitalisation?
- Better control of the working, traveling and accomodation conditions, payment;
- Better control of the recruitment agencies, temporary agencies of work, companies providing services;
- ELA, national authorities to work actively with EU administrations, but also national social partners, NGOs to effectively address the problems faced by seasonal workers;
- Better targeted information campaigns on their rights and risks of illegal employment;
- Research projects to study on site the situation of seasonal workers;
- Transnational projects to be implemented in common by administrations, social partners, NGO- funding?

Sources of information

- INS, 2021 Population and Houses Census
<https://www.recensamantromania.ro/rezultate-rpl-2021/rezultate-definitive/>
- WB, Romania Systematic Country Diagnostic, Background Note Migration June 2018
<https://documents1.worldbank.org/curated/en/210481530907970911/pdf/128064-SCD-PUBLIC-P160439-RomaniaSCDBackgroundNoteMigration.pdf>
- Labour Inspection <https://www.inspectiamuncii.ro/raport-anual-al-activitatii-inspectiei-muncii>
- National Employment Agency
<https://www.anofm.ro/index.html?agentie=&categ=1&subcateg=7>
- Ministry of Labour and Social Solidarity
<https://mmuncii.ro/j33/index.php/ro/2014-domenii/afaceri-europene-%C8%99i-rela%C8%9Bii-interna%C8%9Bionale/6217-2021-lucrator-sezonier>
- <https://mmuncii.ro/j33/index.php/ro/2014-domenii/munca/56-afaceri-europene/4541-date-de-contact-atributii-atasati-pe-probleme-de-munca-si-sociale>
- www.faire-mobilitaet.de

Thank you for your attention!

Q&A TIME!



EU-
PATIENTEN
DE

Seasonal workers: Germany as a receiving State

PRESENTED BY:

PROF. DR. FERDINAND WOLLENSCHLÄGER
University of Augsburg, Germany

Outline

I. Background

II. Access to work

III. Legal framework of employment

IV. Practical aspects

Background



Areas

(see <https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Minimum-conditions-of-employment/Minimum-pay-pursuant-Minimum-Wage-Act/Calculation-and-payment-of-the-minimum-wage/Accommodation-and-catering-for-seasonal-workers/accommodation-and-catering-for-seasonal-workers.html>)

- in **tourism**, in particular in restaurants and hotels [...], and in operations or parts of operations which, by their nature, are not open throughout the year [...], or which experience workload peaks during specific periods, and must cover an increased demand for workers (e.g. restaurants for day trippers)

Background

- in **fun-fairs and circuses** [...], where they are involved in activities usually associated with traditional fairs, festivals, and other events that by their nature are not held throughout the year
- in **agriculture**, forestry and horticulture (e.g. seasonal harvesters in special crop-growing operations such as fruit, vegetable and wine growing).

Background

Forms

- Temporary employment (labour leasing)
- posting of workers (via agencies)
- direct employment as self-employed persons or employees;

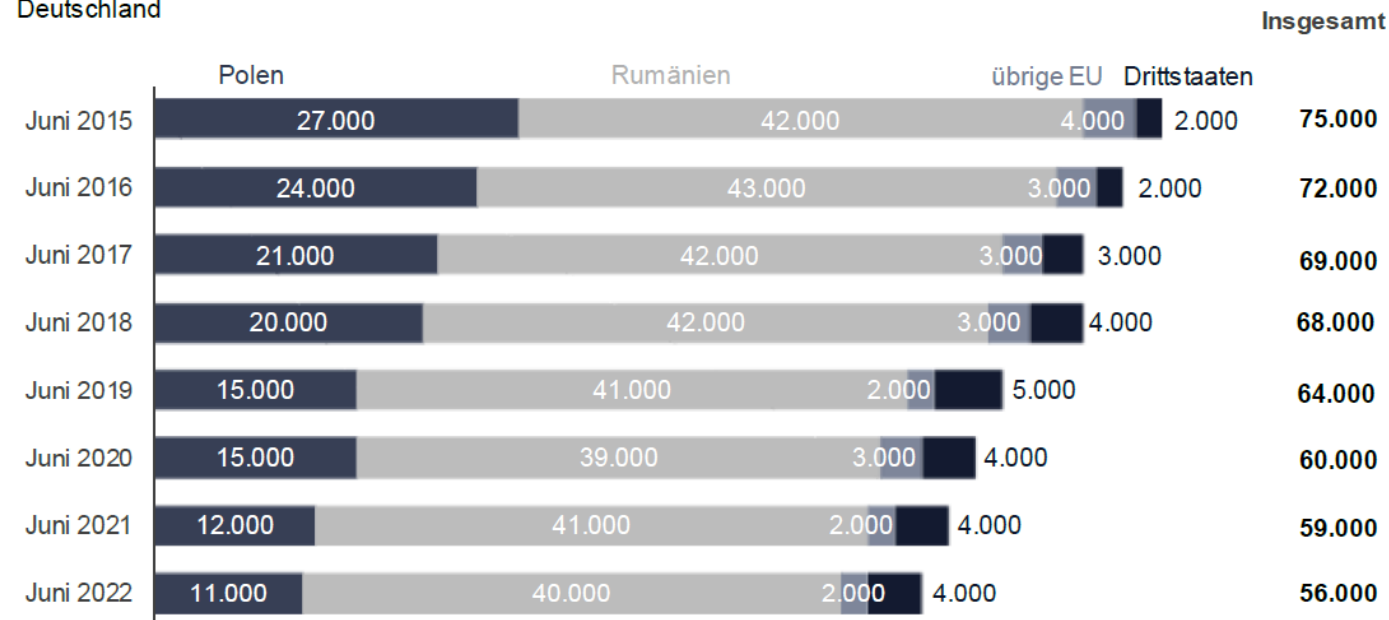
Background

(Source: agency for employment; https://statistik.arbeitsagentur.de/DE/Statischer-Content/Statistiken/Themen-im-Fokus/Wirtschaftszweige/generische-Publikationen/Kurzinfo-Saisonale-Beschaeftigung-in-der-Landwirtschaft.pdf?__blob=publicationFile&v=1)

Kurzfristig Beschäftigte Ausländer in der Landwirtschaft¹ - ausgewählte Staatsangehörigkeiten

Juni 2015 bis Juni 2022

Deutschland



Datenquelle: Statistik der Bundesagentur für Arbeit

1) Wirtschaftsabteilung 01: Landwirtschaft, Jagd und damit verbundene Tätigkeiten ([WZ 2008](#))

Rundungsbedingt kann die Summe der Kategorien von der Gesamtsumme abweichen

Access to work

- EU nationals: according to EU free movement law including social security coordination (home MS or host MS)
- TCN: foreigners entitled to work or on the basis of a placement agreement by federal employment agency (with Georgia and Republic of Moldova)

Legal framework of employment

- General rules governing the specific relationship (e.g. for self employed persons or employees) apply
- Yet: **specific provisions of particular relevance** (also) for seasonal workers, but linked to other concepts such as marginal employment or a limited duration of employment.

Legal framework of employment

- **Exceptions from compulsory membership in social security schemes for marginal employment** (§ 8 Social Code IV),

see e.g. § 7 Social Code V (statutory health insurance), § 6 (1b) Social Code VI (statutory pension insurance) or § 27 (2) Social Code III (statutory unemployment insurance).

Legal framework of employment

- Marginal employment =

inter alia employment of not more than three months or 70 working days within one calendar year unless the employment is exercised as one's profession (»berufsmäßig«) and the remuneration exceeds 520 Euro per month (§ 8 (1) Nr. 2 Social Code IV).

Legal framework of employment

- **Sick pay**: minimum period of employment of four weeks (§ 3 (3) Entgeltfortzahlungsgesetz).
- Applicability of the specific law on **protection of employees against unjustified dismissals** requires a minimum period of employment of six months (§ 1 (1) Kündigungsschutzgesetz).

Legal framework of employment

- Substantive and procedural rules on **employment for a limited period of time** are stipulated by the Gesetz über Teil-zeitarbeit und befristete Arbeitsverträge (Teilzeit- und Befristungsgesetz – TzBfG).
- In contrast, the statutes on **paid leave** and **minimum wages** apply irrespective of such a threshold.

Legal framework of employment

- According to administrative practice, »it is permitted to include the cost of Accommodation and catering determined pursuant to Section 107(2) of the German Industrial Code (Gewerbeordnung – GewO) when ascertaining the statutory minimum wage.« (not in case of posting)
[req.: mutual agreement/interest of worker/maximum amounts/quality]

Practical aspects

- See report of the „Initiative Faire Landarbeit“

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjsvIXJtZWCAxUFUaQEHVuNAf4QFnoFCIgBEAE&url=https%3A%2F%2Ffigbau.de%2Fbinaries%2FBinary18586%2FInitiativeFaireLandarbeit-Saisonbericht2022-A4-web.pdf&usg=AOvVaw2XWN_AlgT8vYM5qHPqcFbg&opi=89978449

Thank you for your attention!

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Q&A TIME!



CLOSING REMARKS

- THE RECORDING WILL BE SENT TO YOU VIA EMAIL
- THE POWER POINT PRESENTATIONS WILL BE SENT TO YOU VIA EMAIL
- KEEP FOLLOWING OUR ACTIVITIES ON **LINKEDIN!**