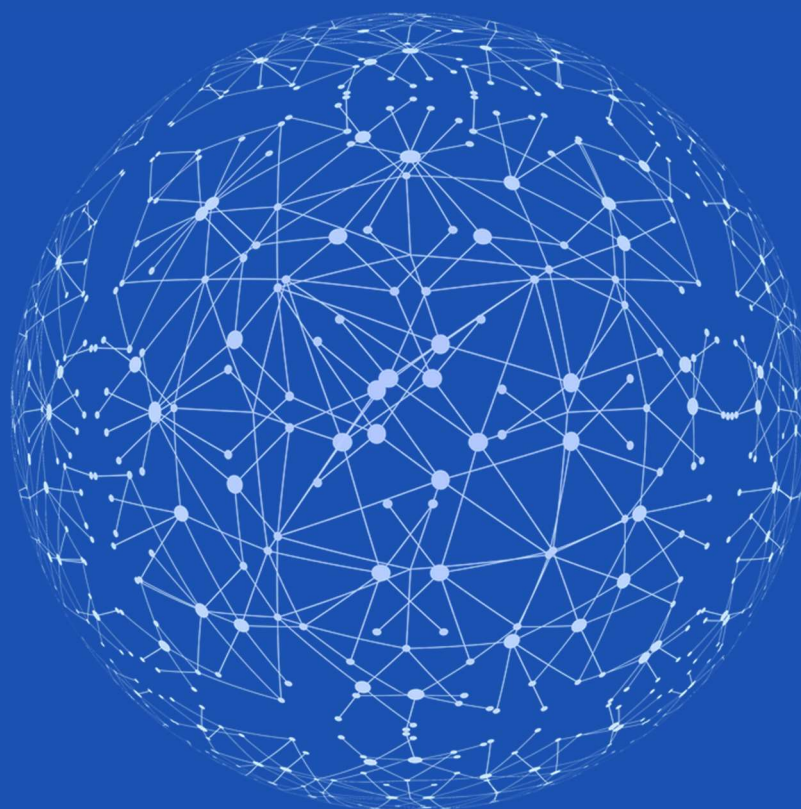


## EMN Study 2020

# Attracting and Protecting Seasonal Workers from third countries in the EU



**Estonian National report**

**Tallinn 2020**

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the EMN Focussed Study on Attracting and Protecting Seasonal Workers from third countries in the EU. The contributing EMN NCP have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.*

*This document was produced by Barbara Orloff the expert of EE EMN NCP. This report was compiled based on public and available information. Furthermore, experts of this topic were consulted.*

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# Attracting and Protecting Seasonal Workers from third countries in the EU

## Common Template for EMN Study 2020

Final version: 28 February 2020 (updated 14 April 2020)

Deadline for national contributions: 29 May 2020

### 1 STUDY AIMS

- 1) To better understand the profile of seasonal workers and the sectors they work in (country of origin, age, gender, skills level, sectors of employment, etc.);
- 2) To analyse if measures are in place to attract seasonal workers and the extent to which seasonal workers fill labour market needs of Member States;
- 3) To analyse the application of the protective aspects of the Seasonal Workers Directive (rights of seasonal workers).

The study will provide an overview of national experiences with admitting and employing seasonal workers from third countries more than three years after the Seasonal Workers Directive (2014/36/EU) started applying and will contribute to the Commission implementation report on the Directive planned for the year 2020.

#### 1.1 TARGET GROUPS / AUDIENCES

The target audience are national and EU officials/practitioners, decision makers concerned with the immigration of third-country seasonal workers, social partners (e.g. employers' organisations and trade unions) associations, social partners, and NGOs.

### 2 SCOPE OF THE STUDY

The study primarily covers the category of third-country nationals who enter and reside in an EU Member State for the purpose of seasonal work within the framework of the Seasonal Workers Directive. In a few cases, questions also concern those who may be considered seasonal workers but are not covered by the Directive, as they have a different temporary work or residence status. The Directive is not applicable in Denmark, Ireland, Norway and the United Kingdom. Hence, as far as these (Member States) are participating in this EMN study, they are asked to report on equivalent national measures.

As far as policies and legislation regarding seasonal workers is concerned, this study shall reflect the most recent situation and developments in the Member States, therefore focusing on 2019, whilst also covering, if relevant, policy and legal developments over the past five years. If reasonable, contributing EMN NCPs may also include planned legal or policy developments that have not yet come into effect at the time of writing.

As regards statistics, the study shall cover the period 2016 to 2019.

### 3 EU LEGAL AND POLICY CONTEXT

Seasonal work is a type of temporary employment linked to specific periods of the years and to specific economic sectors, such as agriculture or the tourist industry. In EU Member States, seasonal work is carried out both by EU citizens and third-country nationals. The European Commission estimates that over 100 000 non-EU seasonal workers come to the EU every year,<sup>1</sup> and given that seasonal workers are becoming increasingly important in some Member States as a means to fill labour market needs, the protection of their rights has received increased attention from EU and national policy-makers in recent years. As noted by Eurofound,<sup>2</sup> seasonal workers are often treated less favourably than permanent workers in terms of legal entitlements, benefits offered by employers and other employment conditions.

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<sup>1</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work_en)

<sup>2</sup> <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/seasonal-work>

A key development in this area is the Seasonal Workers Directive (Directive 2014/36/EU) adopted in 2014, which aims to support the effective management of migration flows for this specific category of seasonal temporary migration and to ensure decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers, while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent.” This is to be achieved through clearer and more harmonised admission rules and working conditions set out in the Directive, and thereby also help prevent exploitation and protect the health and safety of seasonal workers. The Directive also encourages the circular movement of seasonal workers between the EU and their countries of origin through the introduction of a facilitated re-entry procedure for subsequent seasons. Since the adoption of the Directive, Member States are no longer permitted to implement parallel national schemes for the admission of seasonal workers. However, Member States may regulate the volumes of admission for seasonal workers covered by the Directive as well as for those who are outside of the Directive’s scope. However, as the Directive gives Member States some flexibility to determine which sectors are seasonal, it is possible that in some Member States, not all third-country nationals who undertake a form of seasonal work, or work of a cyclical nature, are covered by the Directive, and that these are instead covered by national schemes.

#### 4 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The study follows the hypothesis that although the Directive offers higher protection standards for seasonal workers, it may have not fully reached its objective. The Directive leaves room for interpretation as regards the rights and standards to be granted to seasonal workers, possibly leading to diverging practices at national level (e.g. how have Member States interpreted the “adequate standard of living” requirement with regard to accommodation in Article 20). Moreover, in some Member States, not all those third-country nationals who undertake some form of cyclical / seasonal work appear to fall under the Directive and they may therefore be subject to different rights. Secondly, the study is expected to reveal wide differences in the extent to which Member State actively seek to attract seasonal workers from third countries to fill labour market needs. Some Member States may address any labour market needs with EU citizens’ seasonal workers, or due the nature of their labour market may not require this type of workers. On the basis of these hypotheses, the study will focus on the following primary questions:

- What is the profile of third-country national seasonal workers in the EU?
  - What is the age, country of origin, gender, skills level, etc. of seasonal workers?
  - In what sectors are they mostly employed?
- Do Member States place specific efforts on attracting seasonal workers, with a view to addressing labour market needs?
  - Do Member States rely on seasonal workers from third countries to fill labour market needs? If yes, in which sectors?
  - How do Member States facilitate the re-entry of seasonal workers?
- How does the Seasonal Workers Directive achieve its goal of protecting seasonal workers?
  - What rights do seasonal workers enjoy in the Member States?
  - What monitoring systems for seasonal workers and their employers are in place in the Member State?

#### 5 RELEVANT SOURCES AND LITERATURE

- EMN 2011 study: Temporary and Circular Migration empirical evidence, current policy practice and future options,- [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/circular-migration/0a\\_emn\\_synthesis\\_report\\_temporary\\_circular\\_migration\\_publication\\_oct\\_2011\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/0a_emn_synthesis_report_temporary_circular_migration_publication_oct_2011_en.pdf)
- Temporary and circular migration: opportunities and challenges, [http://www.epc.eu/documents/uploads/pub\\_1237\\_temporary\\_and\\_circular\\_migration\\_wp35.pdf](http://www.epc.eu/documents/uploads/pub_1237_temporary_and_circular_migration_wp35.pdf)
- Commission Staff Working Document "Fitness Check on EU legislation on legal migration", SWD(2019)1055 and SWD(2019)1056, 29.03.2019, [https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en)
- Fudge, J. & Herzfeld Olsson, P. (2014). The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights. *European Journal of Migration and Law* 16 (2014), 439, 466. Available at: [http://www.labourlawresearch.net/sites/default/files/papers/Seasonal%20Workers%20Directive%20%20EMIL\\_016\\_04\\_439-466.pdf](http://www.labourlawresearch.net/sites/default/files/papers/Seasonal%20Workers%20Directive%20%20EMIL_016_04_439-466.pdf)
- Zoetewij-Turhan, M.H. (2017). The Seasonal Workers Directive: '...but some are more equal than others'. *European Labour Law Journal* 2017, Vol. 8(1) 28-44. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/201712\\_article\\_seasonal\\_worker\\_directive\\_legal\\_migration\\_consultation\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/201712_article_seasonal_worker_directive_legal_migration_consultation_en.pdf).

## 6 AVAILABLE STATISTICS

As far as comparable statistics are concerned, Eurostat provides the following datasets in relation to seasonal workers:

- Authorisations issued for the purpose of seasonal work by economic sector, sex and citizenship [migr\_ressw2]. **Note:** Eurostat data only covers the years 2017 and 2018; data is (currently) not available for both or one of the years for AT, BG, BE, CY, CZ, DE, EL, FI, FR, IE, LU, NL, NO, PL, PT, SE, SK.
- Authorisations for the purpose of seasonal work by status, length of validity, economic sector and citizenship [migr\_ressw1\_1]. **Note:** Eurostat data only covers the years 2017 and 2018; data is (currently) not available for both or one of the years for AT, BE, BG, CY, CZ, DE, IE, EL, FI, FR, LU, NL, PL, SE.
- First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc].

The relevant Eurostat data will be extracted from the above-mentioned datasets centrally by the EMN Service Provider (ICF) for the purpose of the synthesis report. Each EMN NCP will receive the datasets extracted from Eurostat for your Member State by 13 March 2020, with the request to complete these with any missing data. Kindly note that the data provided should be based on the Eurostat definitions of the respective datasets as much as possible. Any deviances from this should be noted in a comment, as well as reasons for unavailability (if applicable).

Kindly note the following: datasets migr\_ressw2 and migr\_ressw1\_1 count the number of permits/authorisations/notifications issued for the purpose of the directives allowing double counting of same persons during the year. Therefore, the unit of measure is the number of permits/authorisations/notifications for these data collections, instead of number of persons as it is in other statistics on residence permits. Please see the respective Eurostat metadata for further details:

[https://ec.europa.eu/eurostat/cache/metadata/en/migr\\_res\\_esms.htm#meta\\_update1575469383640](https://ec.europa.eu/eurostat/cache/metadata/en/migr_res_esms.htm#meta_update1575469383640)

## 7 DEFINITIONS

According to the EMN Glossary,<sup>3</sup> a **seasonal worker** is defined as "a third-country national who retains their principal place of residence in a third country and stays legally and temporarily in the territory of an EU Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that EU Member State".

## 8 Template for national contributions

The template provided below outlines the information that should be included in the national contributions of EMN NCPs to this Study. For national contributions, the total number of pages should not exceed **35-40 pages**, including questions and excluding the Statistical Annex. A limit of **25-30 pages** will also apply to the synthesis report, in order to ensure that it remains concise and accessible.

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<sup>3</sup> EMN Glossary Version 6.0, available at [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_search/seasonal-worker\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/seasonal-worker_en)

## Common Template of EMN Study 2020

# Attracting and Protecting Seasonal Workers from third countries in the EU

### National Contribution from Estonia

*Disclaimer: The following information has been provided primarily for the purpose of contributing to a synthesis report for this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.*

### Top-line factsheet [max. 1 page]

*The top-line factsheet will serve as an overview of the **national contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policy-makers. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements.*

*Please provide a concise summary of the main findings of Sections 0-3:*

The Seasonal Workers Directive was transposed into Aliens Act with the amendments that came into force on 17.01.2017. When the Directive was transposed to Estonian legislation, relevant stakeholders were consulted and as a result the list of labour market sectors in need of seasonal workers was established. Estonia accepts seasonal workers as such only according to the legislation which has been enacted when transposing the directive.

The number of seasonal workers coming to Estonia has been on the rise with 5023 short-term employment registrations for the purposes of seasonal work in 2019 compared to 2782 registrations in 2018. The most common sectors for seasonal work are agriculture, forestry and fishing, followed by manufacturing and accommodation and food services. The most prevalent group of seasonal workers in Estonia are coming from Ukraine and the main age group being between 25 to 34 years old. The overall gender distribution of seasonal workers has been quite balanced, but in some sectors, there are more female seasonal workers and in others there are more men. In 2018 the most common authorised duration of stay for seasonal work was between 7 to 9 months.

Seasonal workers are a group under the short-term employment regulation with specific rules. In addition to the rule that seasonal work can be registered only in the sectors enacted with the Government's regulation, some other differences between short-term employment on general grounds and for seasonal work are that for the latter there is no mandatory wage criterion and seasonal work is permitted for up to 270 days within 365 consecutive days compared to up to 365 days within 455 when short term employment is registered on general grounds.

Estonia has not developed specific measures to attract seasonal workers. There is no annual quota for seasonal workers nor is the labour market test applied to the group. Relevant information for employers about hiring seasonal workers is available on the webpage of Police and Border Guard Board. Furthermore, there is a consultation service offered by the PBGB to employers and also there are information days and trainings organized in order to share relevant information to employers of third-country nationals.

Regarding the right for different benefits (family, unemployment, tax) there are some restrictions for seasonal workers as their employment is considered temporary in nature. The access to benefit in Estonia depends on the legal status of the person. The actors involved in protecting their rights are the same actors who are responsible for protecting third-country national workers' rights in general (e.g. Labour Inspectorate).

The main institution specifically tasked to identify illegal employment including if seasonal workers abide the rules and are not overstaying is the Police and Border Guard Board. Additionally, other state institutions are able to detect and identify illegally employed TCNs - namely the Estonian Tax and Customs Board and Labour Inspectorate. Different identification measures are used, including inspections, border checks, checks of premises by migration officials, digital checks based on tax and employment registry data etc. In case the employer violates seasonal workers rights, the Aliens Act foresees specific sanctions.

**Admission policies of seasonal workers from third countries in the EU and Norway**

The COVID-19 situation has affected labour migration including admission of seasonal workers as the seasonal workers were not able to enter Estonia during the emergency situation. As a result, amendments to the Aliens Act were enacted allowing foreign workers staying legally in Estonia as of 17 March 2020 and whose short-term work permit had recently expired or would expire soon to extend their short-term work permit to continue working in agriculture sector until 31 July 2020. After 31 July, foreign workers have until 31 August to arrange their outbound travel from Estonia.

## Section 0: Impact of COVID-19

a. Has the COVID-19 situation affected the seasonal workers admission policy of your Member State with regard to third-country nationals?

Yes

No

*If yes, please explain how:*

The COVID-19 situation has affected labour migration including admission of seasonal workers. As of 12th of March the Government declared an emergency situation in Estonia. From 17th of March Estonia temporarily reintroduced border controls on the whole internal border in order to contain the spread of the coronavirus. Taking into account the Government's order "Temporary restriction on crossing the state border due to the spread of the coronavirus causing the COVID-19 disease", as of 17th of March 2020 the Foreign Ministry temporarily suspended accepting Schengen visa applications and Estonian long-term visa applications in Estonian representations as well as in visa centers. During the emergency situation, previously issued and valid visas could not be used to enter Estonia. In exceptional circumstances and on humanitarian grounds it was possible to apply for a visa and to enter Estonia with an issued visa. Exceptions were also being done according to the European Commission's Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy.

As of 16 March most migration proceedings were temporarily suspended until the end of the emergency situation. Hence, applications for visas, extension of stay, residence permits, rights for stay were temporarily not processed. New applications were accepted but no decisions were taken with respect to them. In extreme cases, visa and residence permit applications could still be submitted in a service office of the PBGB and these applications were processed. PBGB continued processing applications for short-term employment for foreigners who were currently staying in Estonia.<sup>4</sup>

Foreigners who had legal basis for temporary stay in Estonia as of 12 March and whose return to their home country was restricted, had a legal basis for continuing to stay in Estonia temporarily until the end of the emergency situation. The TCNs whose legal stay had ended during the emergency situation had 10 days after the end of the emergency situation to leave the country or to legalise the stay. The emergency situation ended on the 17th of May.

Hence, due to the COVID-19 situation seasonal workers were not able to enter Estonia.

b. What measures regarding seasonal work have been taken or are planned as a result of the COVID-19 situation? *Please explain:*

Due to COVID-19 situation, Parliament passed amendments proposed by the Ministry of Interior to the Aliens Act. Among other amendments, an exception was made to foreign workers staying legally in Estonia as of 17 March 2020 and whose short-term work permit had recently expired or would expire soon were allowed to extend their short-term work permit to continue working in agriculture until 31 July 2020.

According to the Minister of Interior the decision was made to ensure the continuous functioning of agriculture which is a highly important sector for the Estonian society. The given amendment allowed foreign workers to continue working in Estonia until 31 July 2020 in case the employer working in the agricultural sector wished to hire them and registered their short-term employment at the Police and Border Guard Board. After 31 July, foreign workers had until 31<sup>st</sup> August to arrange their outbound travel from Estonia. Those foreigners working in Estonia pursuant to short-term employment rules and whose work permit would expire with no work in the agricultural sector had no right to continue working in Estonia. In such cases, foreigners had to leave Estonia at the earliest possibility.<sup>5</sup>

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<sup>4</sup> Ministry of the Interior webpage: <https://www.siseministerium.ee/en/news/foreign-employees-allowed-continue-short-term-employment-agriculture>

<sup>5</sup> Ministry of the Interior webpage: <https://www.siseministerium.ee/en/news/foreign-employees-allowed-continue-short-term-employment-agriculture>



## Section 1: Profile of seasonal workers

**Research Question 1:** What is the profile of third-country national seasonal workers in the EU?<sup>6</sup>

Please note that all questions in this section refer to seasonal workers covered by the Directive, except for questions 2b, 11, 12 and 13.

### Sub-questions:

1. Has your Member State admitted third-country seasonal workers under the Directive?

Yes

No

If no, please explain why.

N/A

2. What are the sectors covered by the Seasonal Workers Directive in your Member State?<sup>7</sup> Please explain.

According to the Government's Regulation<sup>8</sup> no 13 adopted on 13.01.2017 on the Requirements for seasonal work and the list of the activities dependant on the season the covered sectors are:

- 1) Crop and animal production, hunting and related service activities (EMTAK<sup>9</sup> A 01)
- 2) Forestry and logging (EMTAK A 02)
- 3) Fishing and aquaculture (EMTAK A 03)
- 4) Manufacturing of food products (EMTAK C10)
- 5) Manufacture of soft drinks; production of mineral waters and other bottled waters (EMTAK C 1107)
- 6) Accommodation (EMTAK I 55)
- 7) Food and beverage service activities (EMTAK I 56)

a. In which sector(s) were seasonal workers mostly employed in 2018?<sup>10</sup>

Please explain.

The main sectors where seasonal workers were employed in 2018 were agriculture, forestry and fishing (1772 authorisations), followed by manufacturing with 626 authorisations and accommodation and food services with 226 authorisations. Seasonal workers were mostly employed in the same sectors also in 2019, only the number of authorisations increased substantially with 2966 authorisations in agriculture, forestry and fishing, 1042 in manufacturing and 755 in accommodation and food services.

b. Are there sectors of seasonal work that are not covered by the Directive?

Yes

No

If yes, please explain.

<sup>6</sup> This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

<sup>7</sup> Art.2(2) of the Seasonal Workers Directives requires Member States to list those sectors of employment which include activities that are dependent on the passing of the seasons requires<sup>7</sup> To be cross-checked with Eurostat data

<sup>8</sup> <https://www.riigiteataja.ee/akt/117012017013>

<sup>9</sup> The Estonian Classification of Economic Activities (EMTAK) is the national version of the international harmonised NACE classification.

<sup>10</sup> Please cross-check with Eurostat data. If data for your Member State is not available on Eurostat, please use the same categorisation of sectors provided in Eurostat to the extent possible.

## Admission policies of seasonal workers from third countries in the EU and Norway

The Seasonal Workers directive has been transposed into Aliens Act and the amendments came into force 17.01.2017. With the amendment a list of sectors of seasonal work was enacted with the Government's regulation.<sup>11</sup> Estonia accepts seasonal workers as such only according to the legislation which has been enacted when transposing the directive.

Nevertheless, the fact that the sector has been listed as a seasonal work sector, does not necessarily mean that all third-country nationals will be employed as seasonal workers in these sectors as not all the work in these sectors depend on the season.

3. What were the top-5 countries of origin of seasonal workers in your Member State in 2018?<sup>12</sup>

*Please list the top-5 countries of origin in 2018 for the number of authorisations granted for seasonal workers in line with the Directive (this can include both visas and residence permits). If applicable, please comment on any specific observations or trends with regard to the country of origin (e.g. that seasonal workers from a specific third country are particularly prevalent in a certain sector).*

There were altogether 2782 first time authorisations granted to third-country nationals for the purpose of seasonal work in 2018. The top-4 countries were Ukraine, Moldova, Russia and India. Most of the seasonal workers were coming from Ukraine (2468 out of 2624), hence Ukrainians were prevalent in most of the sectors.

In 2019 the top-3 countries remained the same with Ukrainians being the largest group of seasonal workers with 4366 authorisations, followed by Moldova and Russia. Other countries that made it to the top-5 in 2019 were Belarus and Georgia.

4. What was the main age group of seasonal workers who received an authorisation in 2018 in your Member State?<sup>13</sup>

*Please state the main age group. If applicable, please comment on any specific observations or trends with regard to the age group.*

The average age of the seasonal workers was 30 years old. The main age group was between 25 to 34 years old.

5. What was the gender distribution of seasonal workers who received an authorisation in 2018 in your Member State?

*Please explain. If applicable, please comment on any specific observations or trends with regard to gender distribution (e.g. that mostly men are employed in the agricultural sector?)*

The gender distribution for the seasonal workers who received an authorisation in 2018 was balanced with 1317 women and 1463 men. There were more women working in the accommodation, food and beverage service activities and manufacturing of food products. However, there were more men working in the crops and animal production, hunting and related services as well as in forestry and logging.

6. Does your Member State have a minimum salary set in law?

Yes

No

*If yes, please state the amount (in euros):*

The minimum salary in 2018 was 500 euros and in 2019 540 euros. The minimum salary is not specific to seasonal workers and connected to the overall monthly minimum wage established by law.

7. What was the average/minimum salary of seasonal workers in 2018?

<sup>11</sup> List of fields of activities dependant on the season: [https://www.riigiteataja.ee/aktilisa/1170/1201/7013/VV\\_13m\\_lisa.pdf#](https://www.riigiteataja.ee/aktilisa/1170/1201/7013/VV_13m_lisa.pdf#)

<sup>12</sup> Please cross-check with Eurostat data. If data for your Member State is not available on Eurostat, please use the same categorisation of sectors provided in Eurostat to the extent possible.

<sup>13</sup> Please refer to the following age groups in your answer: 15-19; 20-24; 25-29; 30-34; 35-39; 40-44 etc.

## Admission policies of seasonal workers from third countries in the EU and Norway

N/A

*Please describe. If applicable, please comment on any specific observations or trends with regard to the average/minimum salary.*

8. What was the average duration of stay of third-country nationals who were granted authorisation for seasonal work in 2018 in your Member State?

*Please describe. If applicable, please comment on any specific observations or trends with regard to the duration of stay.*

There is no information on average duration of stay of third-country nationals who were granted authorisations for seasonal work in 2018. Nevertheless in 2018 there were 435 authorisations granted for a stay from 1-90 days, 757 authorisations granted for a stay 91 days to 6 months and 1432 authorisations for a stay 7 to 9 months. Hence, 7 to 9 months was the most common authorised duration of stay.

9. Is there a specific period of the year where there is more need for seasonal workers?

Yes

No

*If yes, which period is this (e.g. spring, summer, autumn, winter)?:*

The biggest number of short-term registrations for seasonal work are being done in March to June making summer the period where more seasonal workers are needed.

10. Does your Member State collect information about the skills level of seasonal workers (for example information on education or qualification level, language level or level of experience of the seasonal workers)?

Yes

No

*If yes, what was the average skills level in 2018 (e.g. low-, medium-, or highly-skilled)? If applicable, please comment on any specific observations or trends with regard to the skills level.*

11. Are there any alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive? *Please only consider those categories of seasonal workers which show the same characteristics, or very similar ones, as those covered by the Directive (duration of stay in Member State, cyclical nature of their work, main residence outside the Member State, etc.)?*

Yes

No

*If yes, what percentage (roughly) of seasonal workers in your Member State are covered through these alternative categories?*

In Estonia there is an annual quota for residence permits, which is 0.1 per cent of the permanent population of Estonia annually. The quota fulfils quickly. Hence, it is also possible to apply for short-term employment on general grounds and to apply for a short-term or long-term visa thereof. Seasonal work is also registered as a short-term employment. In 2019 there were altogether 32 245 short-term employment registrations out of which 5023 were for seasonal work. In 2018 the numbers were 19783 and 2782 respectively.<sup>14</sup>

12. If applicable, what are the main differences between those migrant workers covered by the Seasonal Workers Directive and those not covered by the Directive in terms of their background information (age, gender, country of origin)?

Please explain:

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<sup>14</sup> PBGB data extracted on 11.03.2020 (permissions granted and renewed).

**Admission policies of seasonal workers from third countries in the EU and Norway**

Short-term employment on general grounds in Estonia is permitted for up to 365 days within 455 consecutive days unless otherwise provided for in Aliens Act. Short-term employment in Estonia as a seasonal worker is permitted for up to 270 days within 365 consecutive days.

An employer is obliged to pay a TCN whose short-term employment in Estonia has been registered a remuneration in the amount equal to at least the annual average gross monthly salary (except of teachers, researchers, artists, etc.) last published by Statistics Estonia. The obligation does not apply to short-term employment of seasonal workers.

Short-term employment of a TCN as a seasonal worker may be registered if the TCN commences work in the area of activity dependent upon season listed in the regulation established by the Government. Short-term employment on general grounds is not dependant on specific sectors.

Short-term employment as a seasonal worker may be registered if the accommodation of a TCN during the stay in Estonia is ensured in a dwelling or accommodation establishment which complies with the requirements established in the legislation.

Additionally, short-term employment of a TCN as a seasonal worker may be registered if an employer has entered into a short-term employment contract with a TCN before the submission of an application for registration of short-term employment or has made a job offer by which the employer expresses his or her will to be legally bound with the employment contract to be concluded and undertakes to employ the TCN under the conditions determined in the concluded contract entered into or the job offer made.

13. In your Member State, are seasonal work activities known to be performed by irregular migrants?

Yes

No

*If yes, is there data/information available on the magnitude and the characteristics of the seasonal work activities performed by irregular migrants? Please explain.*

According to the annual risk assessment, high risk sectors for illegal employment of TCN-s are construction and seasonal work in agriculture sector. It is not so much that seasonal works are known to be performed by irregular migrants rather than short-term employment in certain sectors.

## Section 2: Attraction of seasonal workers to address labour market needs

**Research Question 2:** To what extent do Member States place specific efforts on attracting seasonal workers to address labour market needs?<sup>15</sup>

*Please note that all questions in this section refer to seasonal workers covered by the Directive, except for question 19.*

### Sub-questions:

14. Is the entry and stay of seasonal workers from third countries part of your overall migration policy?

Yes

No

*Please explain.*

The seasonal workers Directive has been transposed to Estonian legislation making it part of our overall migration policy. When the Directive was transposed the relevant stakeholders were consulted and as a result the list of sectors in need of seasonal workers was established.

In January 2017, amendments to the Aliens Act entered into force with the aim of facilitating and simplifying the labor migration. As a result of the amendments, employees in the ICT sector and foreigners working in start-ups were excluded from the annual quota. Procedures for applying for a visa, registering for short-term employment and applying for a residence permit for work or business were also simplified.

In terms of short-term employment, the employment of seasonal workers was simplified by abolishing the mandatory wage criterion for seasonal workers (remuneration of at least the average wage instead of the earlier requirement to pay 1,24 times the average wage). Additionally, the period of short-term employment was extended from 6 months a year to 9 months. All foreigners legally staying in Estonia were allowed to apply for a long-term visa or residence permit while already in Estonia. The procedure for registering short-term employment and applying for a residence permit was also simplified by reducing the number of documents to be submitted upon application.

15. Did your Member State develop measures to attract seasonal workers?

Yes

No

*If yes, how is this done? Please briefly explain.*

16. Does your Member State rely on seasonal workers from third countries to fill labour market needs?

Yes

No

*Please explain.*

It is not the state that counts on seasonal workers from third countries to fill labour market needs, but the entrepreneurs who are counting on the seasonal workers to fulfil the vacant posts.

a. If yes, for which sectors and what are these labour market needs? *Please explain.*

When the list of seasonal work sectors was adopted, the relevant stakeholders were consulted. As a result of these consultations the sectors where extra workforce might be needed due to the seasonal fluctuations were mapped. These sectors are:

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<sup>15</sup> This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

## Admission policies of seasonal workers from third countries in the EU and Norway

- Crop and animal production, hunting and related service activities (EMTAK A 01)
- Forestry and logging (EMTAK A 02)
- Fishing and aquaculture (EMTAK A 03)
- Manufacturing of food products (EMTAK C10)
- Manufacture of soft drinks; production of mineral waters and other bottled waters (EMTAK C 1107)
- Accommodation (EMTAK I 55)
- Food and beverage service activities (EMTAK I 56)

b. Did the migration of seasonal workers who came to your Member State between 2016-2019 help to address the labour market needs of your Member State?

Yes

No

To some extent

*Please explain.*

In 2018 and 2019 there have been short-term employment registrations for seasonal work in all of the above-mentioned sectors. The biggest share of seasonal workers in 2018 and 2019 have been registered to work in the crop and animal production, hunting and related service activities and manufacturing of food products. The number of seasonal workers has increased considerably with 2782 registrations in 2018 and 5023 registrations in 2019.

17. Does your Member State implement an annual quota for seasonal workers?

Yes

No

a. If yes, is this a general quota or is it applied to specific sectors or to certain third countries?

*Please explain.*

b. If yes, was this quota fulfilled between 2016-2019?

Yes

No

18. What was the average processing time and costs (in euros) for applications from third-country nationals for the purpose of carrying out seasonal work in 2018?

*Please explain.*

On regular basis the short-term employment is registered or refused to register within 15 working days as of the day following the date of acceptance of the application for proceeding or as of the date when the deficiencies of the application are eliminated.<sup>16</sup> In 2019 the average processing time for short-term employment registrations was 6 working days.<sup>17</sup>

Additionally, short-term employment shall be registered on the same calendar day of the submission of the application for employment for participation in seasonal work if the TCN has been employed as a seasonal worker in Estonia during the last five years and his or her registration of short-term employment has not been revoked.

The state fee for short-term employment registration is 55 euros at the service office and 48 euros at the self-service portal.<sup>18</sup>

<sup>16</sup> PBGB webpage: <https://www2.politsei.ee/en/teenused/working-in-estonia/registration-of-short-term-employment/>

<sup>17</sup> PBGB 14.05.2020 response to query

<sup>18</sup> PBGB webpage: <https://www.politsei.ee/en/instructions/state-fee-amounts/registration-of-short-term-employment>

## Admission policies of seasonal workers from third countries in the EU and Norway

19. If your Member State has alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive (see question 11):

a. Does your Member State have one or more specific national schemes to cover these categories?

Yes

No

*Please briefly explain.*

It is possible to register short-term employment in Estonia. Under the short-term employment registration scheme there are specific rules for different categories of migrants. Also, seasonal workers are on group under the short-term employment regulation with specific rules.

b. What is the reason for the existence of such specific national schemes? I.e. Why are employers more likely to use these national schemes instead of the one established in the Directive?

*Please briefly explain.*

The reason behind the short-term employment registration scheme is that not all the TCN does not need to stay in Estonia longer or they have to perform their work in temporary and therefore application for residence permit for e.g one month, etc., is not reasonable. Additionally, in Estonia there is an annual migration quota for residence permits, which tends to fulfil quickly. Hence, it is not possible to apply for a residence permit for employment when the quota is fulfilled. Instead it is possible to register the short-term employment of the TCN.<sup>19</sup>

The employers prefer to register short-term employment as seasonal work as there is no salary criteria for seasonal workers. However short-term employment under general grounds is favoured in case there is need to employ the TCN for longer as short-term employment on general grounds is permitted for up to 365 days within 455 consecutive days, but employment in Estonia as a seasonal worker is permitted for up to 270 days within 365 consecutive days.<sup>20</sup>

Additionally, not all the work in the sectors listed as seasonal work is considered seasonal. In addition to the employment in the specific sector, the work has to be connected to the seasonality. It is up to the Police and Border Guard Board to assess the fulfilment of the conditions. If the PBGB assessed that the specific work in the listed sector is not depending on the season, the short-term employment has to be registered under the general grounds.

20. Does your Member State apply a labour market test to seasonal workers?

Yes

No

*Please briefly explain.*

21. Does your Member State facilitate the re-entry of seasonal workers?<sup>21</sup>

Yes

No

<sup>19</sup> Interview with an expert from PBGB on 11.05

<sup>20</sup> Interview with an expert from PBGB on 11.05

<sup>21</sup> This question refers to measures included within Art. 16 of the Directive and any other measures. Art. 16 of the Seasonal Workers Directive provides that Member States shall facilitate re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays. The facilitate may include measures such as: the grant of an exemption from the requirement to submit one or more of the documents necessary for admission; the issuing of several seasonal worker permits in a single administrative act; an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa; priority in examining applications for admission as a seasonal worker.

## Admission policies of seasonal workers from third countries in the EU and Norway

*If yes, how is this done? Please briefly explain.*

According to the legislation<sup>22</sup> the TCN may take up the employment as a seasonal worker in Estonia from the same calendar day when the employer has registered the short-term employment in Estonia of a TCN if the TCN has been employed as a seasonal worker in Estonia during the last five years and his or her registration of short-term employment has not been revoked.

22. Does your Member State cooperate with third countries to attract seasonal workers (e.g. bilateral or multilateral agreements)?

Yes

No

*Please briefly explain.*

23. Who are the relevant actors in attracting seasonal workers (e.g. recruitment agencies)?

*Please briefly explain.*

Different representative organisations, e.g. The Estonian Chamber of Agriculture and Commerce do the lobbying.

24. How are employers informed about the procedure for hiring seasonal workers?

*Please briefly explain. If applicable, please also mention any support provided to employers to hire seasonal workers.*

There is relevant information available on the webpage of Police and Border Guard Board.<sup>23</sup> Furthermore there is a consultation service offered by the PBGB with the aim to support foreigners in settling in Estonia and serve as a partner to employers, the business community and education institutions and other parties who invite foreign nationals to Estonia. Advice is provided in Estonian, English and Russian. Counselling is provided over the phone, by email, Skype and face to face.

Additionally, information days and trainings are organized in order to share relevant information to employers of third-country nationals. The seminars are organized by the Police and Border Guard Board and they focus on the legal aspects of employment of third country nationals.

25. Can seasonal workers apply for a change of status while they are in your Member State for the purpose of seasonal work (i.e. if they find another job, a permanent contract, etc)?

Yes

No

*If yes, please explain.*

If a TCN is in Estonia for the purpose of seasonal work and finds another work in Estonia, it is possible to register the short-term employment on general grounds and stay altogether for up to 1 year or apply a residence permit directly from the PBGB.

Additionally, as of 1st of June 2020 in co-operation with the Ministry of Social Affairs and the Unemployment Insurance Fund, job mediation will be offered to those short-term foreign workers who have lost their jobs in order to more flexibly match the labour supply and the need for seasonal labor. Under normal circumstances, the short-term foreign worker has the right to register as a jobseeker and receive job mediation only during employment if he or she wishes to change jobs. As an exception from 1<sup>st</sup> of June, short-term employees who lost their jobs and stayed in Estonia as of 17 March 2020 or who continue to

<sup>22</sup> Aliens Act Article 107 1 1(2)

<sup>23</sup> PBGB webpage: <https://www2.politsei.ee/en/teenused/working-in-estonia/registration-of-short-term-employment/>



## Admission policies of seasonal workers from third countries in the EU and Norway

have a valid right to work here for a short period of time can also register as jobseekers and use the job mediation service.<sup>24</sup>

26. Has your Member State carried out an evaluation of the implementation of the Seasonal workers Directive at national level? If so, did it conclude anything as to whether the introduced measures were sufficient in attracting seasonal workers?

Yes

No

*Please explain.*

27. Is your Member State aware of any misuse (e.g. employers hiring third-country seasonal workers for non-seasonal work) in the application of the Directive?

Yes

No

*Please briefly explain.*

There have been cases detected with follow-up checks where it has become evident that the registered seasonal work is not seasonal work, but short-term employment with a permanent nature.<sup>25</sup>

28. Are there any good practice examples in relation to the attraction of seasonal workers in your Member State?

Yes

No

*Please briefly explain.*

### Section 3: Protection and rights of seasonal workers

**Research Question 3:** How does the Seasonal Workers Directive achieve its goal of protecting seasonal workers and their rights?<sup>26</sup>

*Please note that all questions in this section refer to seasonal workers covered by the Directive, except question 39 and 40.*

#### Sub-questions:

29. Does your Member State apply restrictions to the equal treatment between seasonal workers from third countries and nationals of your Member State who carry out comparable employment activities, particularly with regard to:

a. Family benefits;<sup>27</sup>

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24 Ministry of Social Affairs webpage: <https://www.sm.ee/en/news/provision-job-mediation-helps-reduce-seasonal-labour-shortages>

25 Interview with an expert from PBGB on 11.05

26 Ministry of Social affairs webpage: This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

27 Art. 23(2)(i) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (d) of the first subparagraph of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Regulation € No1231/2010.

## Admission policies of seasonal workers from third countries in the EU and Norway

Yes No *If yes, please briefly explain.*

According to the legislation<sup>28</sup> the right to family benefits is foreseen to Estonian citizens residing in Estonia, TCNs residing in Estonia on the basis of a long-term residence permit or permanent right of residence or TCNs residing in Estonia on the basis of a temporary residence permit or temporary right of residence. Seasonal workers stay in Estonia is temporary and with a limited period of time without a residence permit and therefore they are not covered during their temporary stay.

## b. Unemployment benefits;

Yes No *If yes, please briefly explain.*

According to the legislation<sup>29</sup> the right to unemployment benefits is foreseen to permanent residents of Estonia; TCNs residing in Estonia on the basis of temporary residence permits or temporary right of residence; citizens of the European Union, European Economic Area and the Swiss Confederation staying in Estonia; persons enjoying international protection staying in Estonia or applicants for international protection staying in Estonia.

However, if a seasonal worker later stays in Estonia on the grounds listed above, the contributions made during seasonal work are taken into count while assessing the right to receive unemployment benefits.

c. Educational and vocational training not linked to the specific employment activity;<sup>30</sup>Yes No *If yes, please briefly explain.*

According to the legislation<sup>31</sup>, the right to apply for a study allowance is foreseen to Estonian citizens or TCNs staying in Estonia on the basis of a long-term or temporary residence permit or on the basis of a permanent or temporary right of residence. Similarly, the right to obtain study loan is limited with Estonian citizens or persons staying in the Republic of Estonia on the basis of a long-term residence permit or permanent right of residence.

d. Tax benefits in cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, does not lie in the territory of the Member State concerned.<sup>32</sup>Yes No *If yes, please briefly explain.*

In general, seasonal workers from third countries are non-residents and therefore they are not able to submit residents' declaration income and claim family related tax benefits.<sup>33</sup>

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28 General Part of the Social Code Act: <https://www.riigiteataja.ee/en/eli/521032019012/consolide>

29 Labour Market Services and Benefits Act: <https://www.riigiteataja.ee/en/eli/523052020001/consolide>

30 Art. 23(2)(ii) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (g) of the first subparagraph of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans.

31 Study Allowances and Study Loans Act: <https://www.riigiteataja.ee/en/eli/521032019018/consolide>

32 Art. 23(2)(iii) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (i) of the first subparagraph of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

33 Response from the Ministry of Social Affairs

## Admission policies of seasonal workers from third countries in the EU and Norway

e. Are there any practical difficulties to ensuring equal treatment in the areas defined in the Directive?

Yes

No

*If yes, please briefly explain.*

30. Who are the most important actors in your Member State regarding the protection of seasonal workers' rights and what is their role? *Please explain. Please distinguish between public and private actors in your answer (e.g. Trade Unions, Chambers of Commerce, etc.).*

There is no specific actor dealing with the protection of seasonal workers' rights. The actors involved in protecting their rights are the same actors who are responsible for protecting TCN workers' rights in general.

The Labour Inspectorate performs state supervision over compliance with requirements of legislation regulating health and safety at work, but also provides advice in those questions. The Labour Inspectorate is also responsible for resolving labour disputes. Advice can be requested over the helpline of the Labour Inspectorate. The helpline is manned by lawyers of the Labour Inspectorate who give advice on employment contracts, working and rest time, holidays, wages, and other topics. Questions may also be e-mailed.

There is also Human Trafficking Prevention and Victim Help Hotline under Social Insurance Board offering advice for foreign workers in Estonia on issues such as consequences of illegal work etc.

Alongside with the amendments in the Aliens Act in 2017, Police and Border Guard Board and the Ministry of the Interior developed a migration counseling service with the aim of advising foreigners planning to settle in Estonia or already living in Estonia with questions regarding legal grounds to stay, related necessary documents and citizenship. The counselling service started 1st of March 2017. In terms of state supervision, Police and Border Guard Board continues using a practice where the employer is held liable in the event of the foreigner being caught from illegal or not registered employment. The foreigner cannot apply for short-term employment him/herself, thus it is the task of the employer. In terms of sanctioning, fines for foreigners for illegal employment have decreased significantly.

31. Is there a framework in place enabling the transfer of pension contributions to origin countries?

Yes

No

*if yes, please explain.*<sup>34</sup>

Pension contributions are not transferred directly, but seasonal workers can accumulate their contribution periods. For seasonal workers from countries with whom Estonia has bilateral agreements with (Ukraine, Moldova, Belarus, Russia, Canada, Australia) and whose contribution period exceeds one year, pension earned is transferred to the country of origin or paid out in case the person resides in Estonia when he or she starts receiving pension.<sup>35</sup>

32. If your Member State has alternative categories of migrant workers performing temporary work not covered by the Directive, do these categories enjoy the same rights as those granted by the Directive?

Yes

No

*If yes, please briefly explain.*

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<sup>34</sup> Art.23(1) provides that seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country

<sup>35</sup> Response from the Ministry of Social Affairs

## Admission policies of seasonal workers from third countries in the EU and Norway

Seasonal workers are a specific group under the short-term employment registration scheme. As all short-term employment is temporary in nature, the benefits do not apply to any of the short-term employees.

33. What does your Member State consider an "adequate standard of living" in relation to accommodation? How does your Member State ensure that seasonal workers benefit from an "accommodation that ensures an adequate standard of living" for the duration of his or her stay?<sup>36</sup> *Please briefly explain.*

a. Are there any good practices in relation to ensuring adequate accommodation, considering the temporary nature of stay of seasonal workers?

Yes

No

*If yes, please briefly explain*

According to the Aliens Act one condition for registering short-term employment as seasonal work is if the accommodation of the TCN during the stay in Estonia is ensured in a dwelling or accommodation establishment which complies with the requirements established in the legislation.

If the accommodation of a seasonal worker is organised by or through the employer, the cost of accommodation cannot be excessive or disproportionate compared to the one month's remuneration of the TCN and the cost of accommodation cannot be deducted from the remuneration of the TCN.<sup>37</sup> A TCN is accommodated in an accommodation establishment pursuant to the requirements of the Tourism Act.<sup>38</sup>

Hence, while registering the short-term employment as seasonal work the employer has to prove that the TCN will be accommodated in a dwelling or accommodation establishment, which excludes the possibility of accommodation in construction heaters or other places without decent living conditions. The housing requirements are set in a Regulation number 85<sup>39</sup> which among other things stipulates that the dwelling has to ensure a safe and healthy environment with a possibility to stay around the clock.

34. Does your Member States have procedures/mechanisms in place to ensure that seasonal workers and their employers are informed of their rights and duties?

Yes

No

*If yes, please briefly explain*

The PBGB offers consultation service with the aim to support foreigners in settling in Estonia and serve as a partner to employers, the business community and education institutions and other parties who invite foreign nationals to Estonia. Advice is provided in Estonian, English and Russian. Counselling is provided over the phone, by email, Skype and face to face. Additionally, the PBGB conducts information days and seminars together with the Labour Inspectorate and the Tax and Customs Board.

There is also an information leaflet shared while conducting information days and performing inspections. The leaflet consists of information and contacts on where to acquire additional information on settling, work and recruitment in Estonia (PBGB), how to register foreign labour in Estonia (Tax and Customs Board) and who to contact for further questions (Labour Inspectorate).

Additionally, information about rules and regulation on working life in Estonia as well as relevant contacts for info and advice is also provided in English and Russian at web-portal [toelu.ee](http://toelu.ee).

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36 Art. 20(1) provides that Member States shall require evidence that the seasonal workers will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.

37 Aliens Act Article 106 (12)

38 Aliens Act Article 288

39 Housing requirements: <https://www.riigiteataja.ee/akt/103072015034?leiaKehtiv>

## Admission policies of seasonal workers from third countries in the EU and Norway

35. Does your Member State have any specific procedures/mechanisms in place to monitor, assess and carry out inspections on whether:<sup>40</sup>

a. Seasonal workers can exercise their equal treatment rights and other rights granted in practice? How does that work and who are the actors involved?

Yes

No

*If yes, please briefly explain*

Monitoring by Labour Inspectorate is primarily focused on the establishment of working conditions of the workers of companies registered in Estonia as well as foreign companies whose workers are temporarily posted to Estonia in terms of posted workers directive or if the work extends to the contractual relationship under Estonian law (accordingly to the principles of international private law). Labour inspector-lawyers of the labour relations department of Estonian Labour Inspectorate are dealing with undeclared labour relations and are supervising the implementation of conditions stipulated in the Employment Contracts Act<sup>40</sup>. They carry out monitoring and control whether the employee is aware of their employment related issues. If the legal requirements are not met, the demand for their fulfilment will be made to the employer. The Labour Inspectorate lawyers also have a legal counselling service, where TCNs can acquire information in English and Russian.

In case the TCN does not receive the salary he or she is entitled to, they can file a petition with a labour dispute committee either personally or through a representative.

b. Seasonal workers abide by the rules (e.g. no overstaying)? How does that work and who are the actors involved?

Yes

No

*If yes, please briefly explain*

The main institution specifically tasked to identify illegal employment including if seasonal workers abide the rules and are not overstaying is the Police and Border Guard Board. Additionally, other state institutions are able to detect and identify illegally employed TCNs - namely the Estonian Tax and Customs Board and Labour Inspectorate.

Different identification measures are used, including inspections, border checks, checks of premises by migration officials, digital checks based on tax and employment registry data etc.

Big part of the targeted inspections are carried out based on risk assessment. Police and Border Guard Board has an annual work plan which also highlights different goals in important fields of work including identification of illegal employment of TCN. Every Prefecture plans its targeted inspections based on the annual risk assessment. Urgent inspections are carried out on an ad-hoc basis.<sup>41</sup>

For the creation of risk assessment and carrying out the following targeted inspections three different state institutions (Police and Border Guard Board, Tax and Customs Board and Labour Inspectorate) have a cooperation agreement. The three different institutions share information for risk analysis purposes and plan joint targeted actions in order to use the resources effectively and cover all different areas (illegal employment of TCN, human trafficking related offences, tax frauds, labour inspection). Cooperation with other institutions is carried out on an ad-hoc basis.

<sup>40</sup> Art. 24 provides that Member States shall measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice (Directive 2014/36/EU).

<sup>41</sup> Illegal employment of Third-Country Nationals in the Eu, Estonian national report: <https://www.emn.ee/wp-content/uploads/2019/02/emn-illegal-employmentstudy-common-template-final-version-ee-1.pdf>

## Admission policies of seasonal workers from third countries in the EU and Norway

All the above-mentioned authorities are independent in organizing their work. The inspections based on risk assessment are usually shared among the three mentioned institutions and the inspections are carried out in cooperation where possible and necessary.<sup>42</sup>

c. Employers abide by the rules (e.g. no exploitation)? How does that work and who are the actors involved? Is there a focus on any specific economic sectors?

Yes

No

*If yes, please briefly explain*

The background of the employer is checked when registering the short-term employment as seasonal work. Inspections are carried to check if there are any infringements by the employer as described in previous answer. Annually an action plan is prepared by PBGB and Labour Inspectorate. Inspections are carried out based on risk assessment as well as on an ad-hoc basis.

36. Does your Member State collect statistics on the procedures/mechanisms described in question 35?

Yes

No

*If yes, please provide the statistical information for the year 2018.*

Statistics are collected on the inspection visits stating the number of carried out visits by sector, officials participating, partners participating, people and employers checked, misdemeanour proceedings commenced.

37. How can seasonal workers lodge complaints against their employers?<sup>43</sup> Did your Member State set up some specific procedures to protect seasonal workers who lodge complaints?

Yes

No

*If yes, please briefly explain*

The system of filing a complaint against employer is the same for all TCNs. It is possible to file a petition with a labour dispute committee either personally or through a representative.

38. Are there specific sanctions in place in your Member State against employers who have not fulfilled their duties under the Seasonal Workers Directive?

Yes

No

*If yes, please briefly explain*

The Aliens Act<sup>44</sup> stipulates that if the registration of the short-term employment in Estonia of a TCN being employed in Estonia for a short term on the basis of seasonal work is revoked for the reason resulting from the employer or user undertaking on the basis of clauses 108 (11) 1)-4) of Aliens Act, the employer

42 Illegal employment of Third-Country Nationals in the Eu, Estonian national report: <https://www.emn.ee/wp-content/uploads/2019/02/emn-illegal-employmentstudy-common-template-final-version-ee-1.pdf>

43 Art.25 provides that Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or through a competent authority of the Member State when provided for by national law.

44 Aliens Act Article 286 (2).

### Admission policies of seasonal workers from third countries in the EU and Norway

undertakes to pay compensation to the TCN to the extent which is in correspondence with the remuneration which the TCN would have had the right to receive until the expiry of the term of the contract.

If the registration of the short-term employment in Estonia of a TCN being employed in Estonia for a short term on the basis of seasonal work is revoked for the reason resulting from the user undertaking on the basis of clauses 108 (11) 1)-4) of Aliens Act, the user undertaking may be required to pay jointly and solidarily with the employer compensation to the TCN to the extent which is in correspondence with the remuneration which the TCN would have had the right to receive until the expiry of the term of the contract.

On the basis of Aliens Act the seasonal worker shall not be paid compensation to the extent which he or she has the right to receive on the basis of the Employment Contracts Act or the Unemployment Insurance Act, except for the compensation provided for in subsections 100 (4) and (5) and subsection 100 (1) of the Employment Contracts Act.

A TCN who is employed in Estonia for a short-term on the basis of seasonal work, whose registration of the short-term employment in Estonia is revoked for a reason arising from the employer or user undertaking on the basis of clauses 108 (11) 1)-4) of this Act, may claim compensation pursuant to the procedure provided in the Code of Civil Procedure.

In addition to the aforementioned, the Aliens Act sets a list of sanctions regarding enabling the employment to foreigner who is staying in Estonia without legal basis in general i.e. not making the distinction between seasonal workers.

Aliens Act stipulates that enabling employment to a TCN who is staying in Estonia without legal basis if the employer has failed to perform obligations provided for in Article 285 or subsection (1) or (4) of Aliens Act (§300 (1)) and who has enabled violation of conditions of employment in Estonia of a TCN, including employment of an alien that is not in compliance with the conditions determined on the legal basis (§301 (1)), it is punishable by a fine of up to 300 fine units. The same acts, if committed by a legal person, are punishable by a fine of up to 32,000 euros (§300 (2) and §301 (2)).

According to Article 302 of the Aliens Act, the payment of the remuneration that is lower than the wage rate provided for in this Act for employment of an alien in Estonia by an employer or a failure to pay remuneration is punishable by a fine of up to 300 fine units (§302 (1)). The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros (§302 (2)).

39. Do migration authorities and labour authorities cooperate in relation to the monitoring of seasonal workers and their employers?

Yes

No

*If yes, please briefly explain the nature of cooperation and the objective, i.e. the protection of seasonal workers, fulfilment of their rights, detection of irregularly-staying seasonal workers or overstayers, etc.*

Migration authorities and labour authorities cooperate in relation to monitoring employers and workers in general, not specifically seasonal workers. Police and Border Guard Board, Tax and Customs Board and Labour Inspectorate have a cooperation agreement under which joint inspections are being performed. The three different institutions share information for risk analysis purposes and plan joint targeted actions in order to use the resources effectively and cover all different areas (illegal employment of TCN, human trafficking related offences, labour exploitation, tax frauds, but also the protection of their rights). Additionally, joint information days are being organised. On regional level there is a daily operational cooperation in place.

40. Has your Member State detected seasonal workers who are victims of exploitation or human trafficking?

Yes

No

*If yes, please briefly explain.*

There have not been any cases of official detection of seasonal workers who are victims of exploitation or human trafficking. Nevertheless, there have been cases detected where short-term employment has been

### Admission policies of seasonal workers from third countries in the EU and Norway

registered as seasonal work in order to avoid paying an average salary to the TCN. Additionally, the Social Insurance Board has detected that in cases the foreign worker has had problems with the employer (e.g. the salary is not being paid or there are delays) and there are signs of labour exploitation, then the complaint is not submitted as the foreigner has to return to his or her home country.<sup>45</sup>

41. Are there any good practice examples or research/evaluation findings of how the rights of seasonal workers have been ensured in your Member State?

Yes

No

*If yes, please briefly explain.*

N/A

## Section 3: Conclusions and lessons learned

*Please comment on the findings of your national report by drawing conclusions, and identifying any key challenges and lessons learned. Please make reference to the three research questions of the study in your reply.*

The Seasonal Workers Directive was transposed into Aliens Act with the amendments that came into force on 17.01.2017. When the Directive was transposed to Estonian legislation, relevant stakeholders were consulted and as a result the list of labour market sectors in need of seasonal workers was established. Estonia accepts seasonal workers as such only according to the legislation which has been enacted when transposing the directive.

According to the Government's Regulation the list of the activities dependant on the season are:

- 1) Crop and animal production, hunting and related service activities (EMTAK<sup>46</sup> A 01)
- 2) Forestry and logging (EMTAK A 02)
- 3) Fishing and aquaculture (EMTAK A 03)
- 4) Manufacturing of food products (EMTAK C10)
- 5) Manufacture of soft drinks; production of mineral waters and other bottled waters (EMTAK C 1107)
- 6) Accommodation (EMTAK I 55)
- 7) Food and beverage service activities (EMTAK I 56)

The number of seasonal workers coming to Estonia has been on the rise with 5023 short-term employment registrations for the purposes of seasonal work in 2019 compared to 2782 registrations in 2018. The most common sectors for seasonal work are agriculture, forestry and fishing, followed by manufacturing and accommodation and food services. The most prevalent group of seasonal workers in Estonia are coming from Ukraine and the main age group being between 25 to 34 years old. The overall gender distribution of seasonal workers has been quite balanced, but in some sectors there are more female seasonal workers and in others there are more men. In 2018 the most common authorised duration of stay for seasonal work was between 7 to 9 months.

There are no special measures in place to attract seasonal workers. At the same time seasonal workers are exempt for the annual migration quota, no mandatory wage criterion applies to seasonal workers and they are not subject to the labour market test. Re-entry of TCN seasonal workers is facilitated by allowing to take up the employment as a seasonal worker in Estonia from the same calendar day when the employer has registered the short-term employment in Estonia of a TCN if the TCN has been employed as a seasonal worker in Estonia during the last five years and his or her registration of short-term employment has not been revoked.

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<sup>45</sup> Social Insurance Board response to EMN query

<sup>46</sup> The Estonian Classification of Economic Activities (EMTAK) is the national version of the international harmonised NACE classification.



### Admission policies of seasonal workers from third countries in the EU and Norway

There are restrictions in place for seasonal workers regarding family benefits, unemployment benefits and tax benefits as in general seasonal workers stay in Estonia is temporary in nature and with a limited period of time. Pension contributions of seasonal workers are dependent on the bilateral agreements with third countries. The accommodation of the seasonal workers has to comply with the requirements established in the legislation. At the same time if TCN is in Estonia for the purpose of seasonal work and finds another work in Estonia, it is possible to change his or her status provided that the relevant conditions are met.

The most important actor in Estonia regarding the protection of seasonal workers' rights is the Labour Inspectorate. Additionally, Human Trafficking Prevention and Victim Help Hotline offers advice for foreign workers in Estonia on issues like human trafficking, consequences of illegal work etc. Also, the PBGB offers migration counselling services to TCNs with the aim to support foreigners in settling in Estonia.

The main institution specifically tasked to identify illegal employment including if seasonal workers and their employers abide the rules is the Police and Border Guard Board. Additionally, other state institutions are able to detect and identify illegally employed TCNs - namely the Estonian Tax and Customs Board and Labour Inspectorate. In case the TCN does not receive the salary he or she is entitled to, they can file a petition with a labour dispute committee either personally or through a representative. Also, there are sanctions in place against employers who have not fulfilled their duties regarding seasonal workers' rights (e.g. obligation to pay remuneration which the TCN would have had the right to receive until the expiry of the term of the contract).

### Annex: national statistics related to seasonal workers

42. Statistics related to seasonal workers are available within the general statistics for first permits for remunerated activities (migr\_resocc) and the specific datasets for authorisations for the purpose of seasonal work (migr\_ressw1\_1 and migr\_ressw2). In light of this, if your Member States reports statistics to Eurostat for dataset migr\_resocc but not for datasets migr\_ressw1\_1 and migr\_ressw2, do these general statistics indicate those covered by the Directive or not (or do they represent the alternative categories)? Can those be used in the absence of the specific statistics?

*Please explain.*

Estonia reports the data for seasonal workers only in migr\_ressw1\_1 and migr\_ressw2 databases. Under the remunerated activities (migr\_resocc) there is data for residence permits for employment. The seasonal workers can only come to Estonia under short-term employment and residence permits are not issued for seasonal work.

43. Please fill out/complete the statistical annex (shared with EMN NCPs on 13 March 2020).



statistical\_annex\_seasonal\_workers\_EE.x