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# ***IMPACT ASSESSMENT***

***accompanying the***

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

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## 1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

### 1.1. Background

#### *1.1.1. Legal and policy context*

Since the Tampere European Council of 1999 the EU has sought to develop, on the basis of the new powers conferred to it by the Treaty of Amsterdam (Title IV EC), a comprehensive immigration policy that would address the phenomenon in all its main dimensions, i.e. legal and illegal immigration, integration and cooperation with the countries of origin of immigrants. As concerns legal immigration, and in particular economic immigration, Article 79(2)(a) and (b) of the Treaty on the Functioning of the European Union explicitly empowers the European Union to adopt measures laying down conditions of entry and residence of third-country nationals and the standards of issue by Member States of residence permits, as well as to define rights of third-country nationals residing legally in a Member State.

In 2001, the Commission adopted a proposal for a Directive dealing with 'the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities'[1]. Whilst the other European Institutions gave positive opinions[2], discussion in Council was limited to a first reading of the text and the proposal was officially withdrawn in 2006. It has to be recalled in this context that legal immigration was subject to unanimity in the Council and consultation of the European Parliament. The 2004 Hague Programme recognised the important role legal migration will play in advancing economic development in the EU and asked the Commission to present a policy plan on legal migration, 'including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market'. The Policy Plan on Legal Migration (COM(2005) 669) defines a roadmap and a set of actions and legislative initiatives for the coherent development of EU legal migration policy[3]. It suggests establishing EU rules on specific channels of legal migration (highly skilled migrants, seasonal workers, remunerated trainees, intra-corporate transferees) and a general directive on the rights of third country workers on the other. The proposals regarding highly qualified workers ('EU Blue Card') and for a general framework Directive were presented in October 2007[4]. The Council adopted the first proposal on 25 May 2009; the second one is currently under negotiation in the European Parliament and the Council. Both texts exclude seasonal workers from their scope of application.

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1 COM(2001) 386.

2 Opinions of the: European Parliament of 12.2.2003 (A5-0010/2003); Economic and Social Committee of 16.1.2002 (SOC/084, CES 28/2002); Committee of the Regions of 13.3.2002 (CdR 386/2001).

3 Adopted by the Commission on 21.12.2005 - COM(2005) 669.

4 COM(2007) 637 and 638, 23.10.2007.

Under the European Pact on Immigration and Asylum, endorsed by the October 2008 European Council, one of the five basic commitments is 'to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration'. This proposal, together with the proposals on intra-corporate transferees, presented in parallel, contributes to the completion of the legislative elements of the 2005 Policy Plan on Legal Migration and transposes the commitment made in the 2008 European Pact on Immigration and Asylum into concrete measures.

The Stockholm Programme, adopted by the European Council of 10 and 11 December 2010, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges the Union will face and the increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. It thus invites the Commission and Council to continue to implement the 2005 Policy Plan on Legal Migration.

### *1.1.2. Organisation and timing*

The chronology of this impact assessment was as follows:

– December 2007 – July 2008: data gathering and discussion with Member States in the context of the Commission's Committee on Immigration and Asylum (hereinafter "CIA");

– Throughout 2008: consultation and exchange of views with relevant stakeholders (including NGOs, social partners) in a number of meetings and conferences;

– December 2007 – October 2008: external study (hereinafter "the external study") ordered by the Commission in December 2007;

– 29 April and 16 September 2008: Meetings of the Inter-service Steering Group accompanying the Impact Assessment, at which participated representatives of the Commission's Secretariat General and Directorates-General for Employment, Social Affairs and Equal Opportunities, for Agriculture and for External Relations.

### *1.1.3. Consultation and expertise*

This report is based on consultations with Member States and other stakeholders. The data was collected from these consultations as well as from case studies and literature reviews. The data-gathering and large parts of the consultations were undertaken through an external study ordered by the Commission in December 2007. That study constitutes the main support for this report. The problem, objectives and policy options assessed were based on the final report from the contractor and on basis of a desk analysis of appropriate analytical methods and applicable legal documents.

A public consultation was carried out with the Green Paper on an EU approach to managing economic migration. The Commission received more than 130 contributions from Member States, other EU institutions, social partners, NGOs, third countries, academia, etc.[5]. A public

[5] See http://ec.europa.eu/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm.

hearing was held on 14 June 2005. Member States were consulted within the framework of the Commission's Committee on Immigration and Asylum. A majority was supportive of such an initiative and underlined the need for common flexible rules and a secure legal status for seasonal workers. Issues raised concern the question of subsidiarity, the type of permit to be issued (visa or residence permit), as well as the range of rights to be granted for such temporary workers.

Through the external study, further consultations of the main stakeholders (including Caritas Europe, the International Organisation for Migration, BUSINESSEUROPE, and also an organisation representing small and meeting enterprises (UEAPME)) were undertaken by means of questionnaires and interviews. The results of such consultations are reflected in this report where relevant, and in addition a summary is presented in Annex 5.

A specific consultation of the social partners was undertaken, namely ETUC and EFFAT (European Federation of Trade Unions in the Food, Agriculture and Tourism sectors) as well as COPA-COGECA (European Farmers – European agri-cooperatives); the employers' organisation from the sector by far most concerned with seasonal work. ETUC advocated in favour of common rules, in order to reduce unfair competition based on the exploitation of weak and under-protected seasonal workers. EFFAT specifically pointed to the need for a very precise definition of seasonal work in order to avoid regular, full-time jobs being filled by third-country national seasonal workers. Another concern relates to the fact that third country national seasonal workers may have contributed over years to the pension system without being eligible to receive any pension, either because of long waiting periods or absence of portability to home countries. Agricultural employers raised issues such as the need for simplification of procedures and the concern that return after the end of the season should be effectively ensured; that the authorisation for stay should allow workers to move freely within the EU (currently problems with the homeward journey in case of D-visas) and the question of whether intra-EU mobility should be granted to seasonal workers in order to take up subsequent jobs in different Member States.

#### ***1.1.4.*** *The Opinions of the Impact Assessment Board*

On 3 February 2009 and 12 May 2009 the Impact Assessment Board (IAB) of the European Commission delivered its opinions regarding preliminary versions of this Impact Assessment report. In these opinions, the Board requested:

(1) to put less emphasis on the functioning of the labour market, given the rather low numbers of third-country workers involved;

(2) to put more emphasis on the problem of exploitation of seasonal workers and to demonstrate that regulation would be a proportionate response and meet the subsidiarity test;

(3) to justify why Article 63 of the Treaty was chosen as legal basis (and not Article 137 on "working conditions for third-country nationals) ;

(4) to clarify the key aspects of the proposed approach, including whether EU national migrants could be treated less favourably than third-country national migrants;

(5) to analyse the impact on the number of migrants and improve the analysis of impacts on enterprises and public finances.

The present version of the Impact Assessment report has been redrafted, with a view to taking these recommendations into account. Namely,

(1) the numbers of TCN seasonal workers were rechecked and revised; an explanation on why it was necessary to include numbers of illegally staying/non-registered was added (see 2.1.1); information on certain regions of the EU that are in particular need of TCN seasonal workers was added (see 2.2.1);

(2) a further update on statistical data on seasonal workers has been made taking into consideration the query on Seasonal Workers launched through European Migration Network in March 2010[6];

(3) the proposal has been re-focused: a stronger case is made about the need to regulate migration to avoid exploitation of the third-country seasonal workers;

(4) given the still relatively low numbers and thus the limited impact on EU wide competition, the second general objective to protect labour force and enterprises from unfair competition was deleted, as well as the reference to the functioning of the EU labour market in the first general objective;

(5) the exploitation aspect was strengthened in particular in section 2.2.2 (examples of exploitative working and living conditions in certain regions and sectors added);

(6) the references to a level playing field and distortions of the migratory flows have been removed;

(7) proportionality of the proposed instrument has been explained; :

(8) a description of the linkages with the existing legislation has been added;

(9) the legal base point was clarified – the IAB delivered its opinion at a time when the Treaty establishing the European Community applied, under which Article 63(3) was the legal basis for measures on immigration policy;

(10) the issue of the possible better treatment of third-country national seasonal workers as compared to EU posted workers has been addressed.

### 1.2. State of play: existing legal instruments

The 2001 proposal on economic migration referred to above under 1.1.1 contained some specific rules on admission of seasonal workers, including a definition and rules on the length of the residence permit. In the absence of support for that proposal, the only existing EU level instrument that also addresses conditions for the admission of seasonal workers is a 1994 Council resolution 'on limitations on admission of third-country nationals on the territory of the Member States for employment'[7], adopted under Article K.1 of the Treaty. That resolution includes elements for a definition of seasonal workers (workers who undertake well-defined jobs, normally fulfilling a traditional need in a Member State). It also sets the maximum

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

7 OJ No C 274, p. 3-6.

duration of stay at six months in any 12 month period and excludes extensions of the stay for a different type of employment.

The EU law concerning the posting of workers in the context of the provision of services do not apply. In particular, there is no risk of better treatment of third-country seasonal workers as compared to EU posted workers in the framework of a provision of services because these two categories of workers are not in the same position. Namely:

– posted workers remain linked to the labour market on their country of recruitment, whereas seasonal workers, although they are temporary workers, they form a part of the national labour market where they work;

– third-country seasonal workers have a work contract with an employer established in that Member State and therefore they are subject to general labour law that does not distinguish on the basis of nationality. In other words, unlike posted workers they do not provide services on the basis of a contract concluded abroad;

– posting of workers takes place in the context of a provision of services and, pursuant to Directive 96/71/EC general law does not apply to a provision of service.

– Nevertheless, to avoid any misunderstanding third-country nationals who are carrying out activities on behalf of undertakings established in a Member State in the framework of a provision of services covered by Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of service in accordance with Directive 96/71/EC should be clearly excluded from the scope of any legislative proposal on third-country seasonal workers.

– At the same time, considering the vulnerability of this particular group of workers and the temporary nature of their task, there is a need to define clearly legal rules applicable to their working conditions. Such a definition will not only ensure legal certainty and guarantee a level playing field with other categories of workers, but it will also provide effective protection of the rights of third-country seasonal workers.

## 2. PROBLEM DEFINITION

### 2.1. Scope of the problem: Non-EU seasonal work in Member States

Seasonal workers can be defined as third-country national workers who migrate on a temporary basis to work in a sector of activity dependent on the passing of the seasons, in other words, the activity is tied to a certain time of the year by an event or pattern during which required labour levels are far above those necessary for normal ongoing operations Seasonal workers are generally engaged in non- or low-skilled sectors of the receiving country's economy such as in agriculture or tourism.

EU economies face a structural need for seasonal work for which labour from within the EU is expected to become less and less available. It is expected to be increasingly difficult to fill these gaps with EU national workers, primarily owing to the fact that these workers consider seasonal work unattractive, in addition to demographic changes the European Union will have to face in the coming years.

Further, there is significant evidence that certain third-country seasonal workers face exploitation and sub-standard working conditions which may threaten their health and safety.

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

*2.1.1. Size and sectors of seasonal work*

Some Member States admitted a considerable number of non-EU seasonal workers. For example, in 2008 alone Spain admitted 24 838 non-EU seasonal workers[8]. For the 2008 calendar year, already by 7 February 2008, Italy received 11 273 applications[9] (for 2008, 2009 and 2010, the quota set by the Italian Ministry of Interior for seasonal work by non-EU nationals was 80 000)[10]. In 2009, Germany admitted 4 248 non-EU seasonal workers, France 2 215, whereas Sweden 7 252[11].

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

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

The scarcity of recent data does not allow a proper assessment of the impact of the current economic crisis on the demand for non-EU seasonal workers. Nonetheless, the comparison of the data for 2008 and 2009 does not show any falling off in respect of the demand. Whereas there are Member States where the numbers of the admitted third-country nationals admitted for 2009 are lower (Austria, Slovenia, Hungary) or even considerably lower in 2009 (France), there are also Member States in which an increase has been observed (Germany and Sweden)[12].

In this perspective, the percentage of third country seasonal workers as compared to all foreign seasonal workers remains above 50% in most of the Member States for which data is available. In particular, Portugal and Slovenia receive nearly all their foreign seasonal labour from non-EU countries, followed by Sweden and United Kingdom. Other Member States, such as Germany, traditionally recruit their non-national seasonal labour from EU-10 Member States so that the share of third-country seasonal workers is relatively low.

Further, it should be emphasised that seasonal work sectors are very prone to work undertaken by illegally staying workers or otherwise unregistered workers. Accordingly, the total

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

9 See <http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/0848_APP_domande_pervenute_STAGIONALI.html>.

10 Above, at 2.

11 Ibid.

12 Above, at 2.

numbers of seasonal workers can be assumed to be much higher (well above 100 000 per year).

The main regions of origin of third-country seasonal workers are neighbouring regions such as the Balkans and Eastern Europe, followed by Central Asia, North Africa and Latin America.

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

In many Member States seasonal workers from third countries take up jobs in specific sectors such as agriculture (e.g. 60 % of total seasonal labour force in Italy, 20 % of total labour force in agriculture in Greece) and tourism (e.g. in Spain work permits for work in the hotels and catering sector reached 13 % of the total work permits issued in 2003), which generally require non- or low-skilled or manual workers and where there are significant shortages of manpower. More detailed information on size and sectors of seasonal work is given in Annex 1, p 3-6.

### *2.1.2. Legislation in Member States*

At least 20 Member States have specific, though rather divergent, admission schemes for seasonal workers from third countries, while six Member States do not have separate systems in place because of the current lack of need for seasonal labour from third countries. There are divergences in the definitions of seasonal work, criteria for and duration and contents of the work permit, as well as rights granted to seasonal workers. These differences seem to result from divergent basic assumptions on the role of third-country seasonal workers; some Member States appear to focus mostly on filling labour market gaps, while others also emphasise measures to ensure return and thus to avoid overstaying[13]. Several Member States have bilateral agreements with specific third countries on admission of seasonal workers that typically fill annual quotas. Such agreements exist, for example, between Greece and Albania on seasonal employment of labour force (1997); France and Morocco (Convention on Manual Labour, 1963); the Slovak Republic and Russia (Agreement on individual seasonal employment of citizens, 1995); Spain and Ecuador/Colombia (Agreement on migratory flows, 2001) and Germany and Croatia (1998).

The main divergences in Member States' legislation relate to the definition (from defining seasonal work as temporary work to stricter definitions such as seasonal work being linked to specific sectors of the economy in a fixed period of the calendar year); the duration of the permit (from a maximum of 4 months per calendar year to a maximum of 12 months in a 14-months period; some Member States also foresee a possibility for renewal of the permit); the

[13] A detailed description can be found in Annex 1.2.2.

procedure (from one-stop shop procedures to separate procedures for work permit and authorisation to stay) and the level of rights granted (a set of rights and/or equal treatment in the full range of socio-economic rights including unemployment benefits). Specifically, only a few Member States grant a right to free accommodation, or explicitly foresee that the accommodation has to respect certain standards.

## 2.2. What are the problems that may require action?

### *2.2.1. Shortages in Member States for seasonal labour*

EU economies already face a structural need for seasonal workers for which labour force from within the EU is expected to be less and less available. Seasonal work implies by definition temporary work that is limited to a number of months per year, as activities depend on the passing of the seasons. Thus, there is a permanent need in the EU for such temporary, seasonal work, but no need for permanent labour in the temporary (seasonal) sector of the economy.

It should also be noted that regional differences exist within the EU. For some regions seasonal labour recruited from third countries is crucial[14]. There are also significant differences between EU Member States in terms of entry and temporary residence conditions of seasonal workers and several Member States do not have any specific rules for this category. In some Member States, rules are very tight and few channels for re-entry are provided. Also, there is anecdotal evidence of competition among Member States for the most attractive conditions in terms of salary, travel arrangements, accommodation or working conditions. Such wide differences may hinder an efficient allocation of seasonal workers, as these may prefer to go where they are easily admitted or are more likely to remain both in a legal (by renewing their permit) or illegal (due to overstaying) situation, instead of where their work is most needed.

It has to be also added that the decision to migrate does not exclusively depend on the legal framework in place in a given destination country but is influenced by a variety of factors such as geographical vicinity, tradition, language preference, cultural ties etc. The relative importance of these latter factors are however difficult to measure, and they outside the remit and impact of EU legislation.

*A future needs scenario…*

As regards future skills shortages in the EU, a medium-term forecast[15] found that despite a shift towards services and knowledge-intensive jobs, traditional sectors will continue to play an important role in the EU economy and the structural need for low skilled and low qualified workforce will continue to expand.

In particular, employment in hotels and catering will experience a sustained growth (+1.7% per annum). Agriculture will experience high job losses (-2.5%); however, it will still represent 3.5% of total employment.

Regarding prospects by occupations, despite a growing demand for highly skilled workers, there will also be significant increases in job numbers for low skilled workers (+0.6%) as well

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14 See section 2.1.1 on page 7.

15 CEDEFOP: Future skill needs in Europe – Medium-term forecast, Synthesis report, 2008.

as in elementary occupations (+1.6%), and especially for sales services (+2%). Moreover, in 2015 non- or low-skilled occupations will represent the most important occupational group (that is 11.8% of total employment)[16].

*…that is unlikely to be matched by EU labour force*

It is expected to be increasingly difficult to fill these gaps with EU national workers, mostly owing to the unattractiveness of seasonal work for EU national workers, along with the mismatching between EU nationals' qualifications and the demand for low-skilled labour. The impact of the global economic crisis remains difficult to predict. However, according to the International Organization for Migration (IOM), it is expected that '(i)n certain labour market sectors in destination countries, there is likely to be a continued stable need for migrant workers, particularly in healthcare, household/domestic employment and care work (as well as in agriculture in some countries) where the demand for such workers is structural'[17].

Another advantage generally attached to temporary and seasonal migration is improved labour market flexibility. Indeed, admission of foreign workers on a temporary basis is attractive for enhancing the flexibility, availability and willingness of sufficient numbers of workers to work at prevailing wages of the labour market without involving permanent settlement by the workers. Such flexibility is of importance in sectors where the demand for labour is inherently seasonal, especially agriculture and tourism. Labour market gaps are currently often filled with seasonal workers from EU-12 MS. However, this may not be sustainable because of the changing economic and social conditions in these Member States. For example, the net income of Polish workers 1999-2006 increased by more than 50 %. In addition, workers from new Member States may decide to stay and work in other Member States on a permanent basis and seek better opportunities and more stable jobs rather than seasonal employment. Lastly, as EU-12 Member States are expected to follow similar development patterns as the EU-15, the extent of push and pull factors for economic migration from these Member States will be reduced, and shortages similar to those already experienced in the EU-15 are expected in the next years[18].

### *2.2.2. Exploitative working conditions*

There is significant evidence to suggest that certain third-country seasonal workers face exploitation and sub-standard working conditions. Examples frequently quoted include the absence of a work contract and thus no form of legal protection, bad working conditions with low salaries, limited social protection particularly for sickness at work and invalidity, sub-standard accommodation, and social segregation. This is reported in particular for agriculture with its often remote locations and demanding, sometimes dangerous work (such as through heavy use of pesticides).

Certain evidence exists about the situation in Spain, Italy and France. For instance, as regards living conditions, in interviews with some 600 seasonal workers from North and sub-Saharan Africa in Southern Italy, 90 % of the respondents said that they did not have work contract, 65 % lived in shacks, 62 % had no access to basic sanitary services, and 71 % did not have the

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16 More details are given in box 2.2. of Annex 1.

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

18 See above for the statistical data for Poland, section 2.1.1, page 7.

necessary card to access healthcare[19]. Regarding working conditions there are problems with issues such as salary levels which are often below the legal minimum, extremely long working hours, very little protection, occupational diseases, and absence of social security coverage[20].

Another phenomenon is that regular, year-round occupations are filled with third-country seasonal workers under the often precarious conditions described above. This situation is the consequence of either a gap in the rights that third-country seasonal workers enjoy in some Member States compared to EU national seasonal workers, or lax national legislation that does not precisely define seasonal work and thus allows filling posts for permanent, ongoing operations with seasonal workers. Finally, insufficient enforcement of the existing rights plays its role[21].

In respect of social alienation of third-country seasonal workers, it has to be noted that some degree of social alienation may be inherent in the very nature of the temporary stay combined with the workload, which leaves few opportunities to acquire basic knowledge of the language and day-to-day organisation of life in the host country. This situation is obviously exacerbated for third-country nationals who are illegally working as seasonal workers.

### *2.2.3. Illegal immigration and illegal work*

Two aspects are of relevance. First, there is the risk that in the absence of meaningful opportunities in the EU for legal migration in the non- and low-skilled sector pressure from illegal immigration will remain high. Second, the fact that sectors of the economy that are characterised by a strong presence of seasonal workers such as agriculture, horticulture, or tourism are repeatedly identified as the sectors most prone to work undertaken by illegally staying third-country nationals[22].

These are made up of both illegal entries and overstayers, that is, persons who entered the EU legally but stayed beyond the expiry of their authorisation to do so. In a Schengen area without internal borders, illegally staying persons could subsequently move to other Member State and work there illegally.

Illegal entry, overstaying and illegal employment of third-country nationals have adverse consequences for the EU such us discrimination and exploitation of migrant workers and threats to social and economic cohesion in the EU; reduced tax revenues for Member States and additional costs for identifying, apprehending and returning illegal migrants.

Due to the very nature of the phenomenon of illegal immigration, it is impossible to give precise figures. However, various data collections exist at EU level on aliens refused at the borders, illegally staying persons apprehended within the EU and removed aliens. These can serve as indicators for the extent of the phenomenon. Thus, 915 860 and 803 069 aliens were refused at the borders of the today's EU-27 in 2006 and 2007 respectively. There were 516 000 apprehended persons in the EU-27 in 2006 and 467 501 in 2007. 201 870 and 174 265

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19 Report by Doctors Without Borders 'Una Stagione all`inferno', 2007.

20 Report by GISTI 'Saisonniers en servage', 2008. Report by CODETRAS 'Les omis. Livre noir de l´exploitation des travailleurs etrangers dans l´agriculture des Bouches-du-Rhone', 2005.

21 For details see box 2.6 on page 16 of the Annex.

22 See section 2.3 of the Impact Assessment accompanying the Proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals (see SEC(2007) 603.

persons were returned to a third country in 2006 and 207 respectively. Although, there is no specific data on illegally staying seasonal workers, it might be assumed that many of the illegally staying third-country nationals worked as seasonal workers as this type of work is particularly prone to illegal work.

Such illegal immigration and illegal employment in seasonal work sectors may be facilitated by the diverging rules on entry and temporary residence of seasonal workers. Illegal immigration and illegal work can be also caused by lax enforcement of the existing rules, but in most of the cases it is induced by lax rules (such as vague definitions of seasonal work or the possibility to change the status for seasonal workers). It follows that lax rules may act as pull-factors for illegal immigration.

#### *2.2.4. Limited contribution of EU legal migration policies to the development of third countries*

The Global Approach to migration illustrates the ambition of the European Union to establish an inter-sectoral framework to manage migration in a coherent way through political dialogue and practical cooperation with third countries. It is based on genuine partnership with third countries and addresses all migration issues, covering legal migration and mobility, irregular immigration, and migration and development.

Sending countries are typically developing countries with high rates of unemployment and surpluses in labour supplies, which temporary migration towards the EU could somewhat relieve. From the perspective of certain third countries, there is however a lack of transparent and efficient rules for legal migration into the EU. Instead, potential migrants are faced with a range of very diverse rules set by EU Member States, on which information is not always readily available. This is particularly relevant for the seasonal work sector, as facilities in that area could be of particular interest to countries with high unemployment rates and strong migration pressure, most notably the countries of Northern and sub-Saharan Africa and, to a lesser extent, Eastern Europe.

Also, the implementation of the Global approach was somewhat affected by the difficulty at EU level of commitments on labour migration for low- and non-skilled migrants. Progress in this area would thus allow for a stronger commitment in countries of origin and transit, including cooperation to fight illegal immigration.

### 2.3. Possible evolution of the problem all things being equal (baseline scenario)

Decisions to migrate are based on push factors (unemployment or lack of productive employment along with permanently low wage levels, including lack of enforcement of internationally recognised labour and social standards; natural disasters or ecological devastation) and on pull factors (informal employment; political stability and maintenance of the rule of law; the structural need for low-skilled workers in the EU). These factors are expected to remain relatively stable, and so will be the migration pressure on the EU, especially from North and Sub Saharan Africa, Eastern Europe and the Middle East in the low- and non-skilled sector of the labour market.

As described above, labour market needs in the low- and non-skilled sectors that typically employ seasonal workers are expected to increase. Member States could partly fill these needs through additional bilateral agreements with specific third countries, which would have different entry and residence conditions for seasonal workers, as is the case today. Yet, such divergences could continue to prompt seasonal workers to enter illegally or to overstay

illegally, in particular in those Member States that have less defined regimes on seasonal workers. The sending countries of third-country workers continue to benefit less from the outward migration of their workers than they could given limited possibilities for transfer of savings. Cooperation between the EU and countries of origin could not fully exploit its potentials in the absence of common EU rules, that is, a stronger cooperation-oriented message in an area of non- and low-skilled migration. Illegal stay and work of seasonal workers are likely to be somewhat reduced with more effective employer sanctions, including inspections provides for in the Directive on sanctions against employers of illegally staying third-country nationals[23]. Control of illegal employment will be based on risk assessment of sectors where such employment is concentrated. As noted above, seasonal work sectors are prone to such illegal employment so that there will be positive spill-over effects.

## 2.4. Does the EU have the right to act?

### *2.4.1. EU right to act*

The legal basis for Community action in the area is Article 79(2)(a) and (b) of the Treaty on the Functioning of the European Union (hereinafter TFEU) which states that the European Parliament and the Council shall adopt measures on 'conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits…', as well as 'the definition of rights of third-country nationals residing legally in a Member State…'.

The main purpose of Union action is to design an admission instrument for seasonal workers, thus, to define conditions of entry in the sense of Article 79(2) of the Treaty. Necessary and ancillary provisions regarding the status of seasonal workers, once admitted, would be regulated as 'conditions of residence' in the sense of Article 79. The same approach was already adopted for existing migration *acquis* and proposals, such as Directives 2003/109 (long-term residents), 2005/71 (researchers), and 2009/50 (EU Blue Card).

Article 79(2)(b) TFEU is a legal basis clearly allowing the EU to regulate the rights of third country nationals in order to ensure an efficient management of migration flows and fair treatment of third-country nationals[24]. On the basis of ex. Art 63 TEU, the same approach was already adopted for existing migration acquis such as Directives 2003/109 (long-term residents), 2005/71 (researchers) and 2009/50 (Blue Card).

In accordance with the objective stated in the Stockholm Programme adopted by the European Council in December 2009, the Commission intends to table the proposal ensuring fair treatment to third-country nationals and protecting them with rights comparable to those of EU citizens. The objective of the proposal is to give the seasonal workers, who are a particularly vulnerable group of migrants, a secure legal status in order to prevent exploitation and protect their safety and health. Provisions are therefore proposed to give seasonal workers a significant core of rights in a number of socio-economic fields, including working

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[23] Directive 2009/52/EC on the European Parliament and of the Council of 18 June 2009 providing minimum standards on sanctions and measures against employers of illegally staying third-country nationals should. The deadline for transposition by Member States is 20 July 2011.

[24] The legal basis for immigration is contained in Article 79§1 and article 79§2 (ex Article 63, points 3 and 4, TEC) which states that: 'The Union shall develop a common immigration policy aimed at ensuring, at all stages, … fair treatment of third-country nationals residing legally in Member States, .. ' and the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.

conditions, as well as health and safety requirements at the workplace. Also a procedure on accommodation standards and facilitation of complaints in case of abuse have been foreseen.

### *2.4.2. Principles of subsidiarity and proportionality*

The principle of subsidiarity applies since this is an area of shared competence. The principle requires that the Union does not take action in areas of shared competence unless 'the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'[25].

The reasons for a common EU intervention are the following:

– The need for third country seasonal workers is a common phenomenon in the majority of Member States.

– Although third-country workers enter a specific Member State within the EU, a Member State's decision on the rights of third country nationals could affect other Member States with possible impact on migratory flows[26]. The difference in treatment granted to third country nationals in the different Member States - as perceived by potential migrants - consequently has a supranational dimension that lies outside the scope of national legislation.

– The Schengen area without internal borders requires a common discipline (common minimum rules) to reduce the risk of overstaying and illegal entries that may be caused by lax and diverse rules on admission of seasonal workers. Shortcomings in one Member State can have adverse implications for other Member States as well as the European Union and, accordingly, it is in the interest of all Member States to effectively manage this segment of labour migration. Indeed, as explained above sectors of the economy that are currently characterised by a strong presence of seasonal workers – agriculture, horticulture, and tourism – are repeatedly identified as the sectors most prone to work undertaken by illegally staying third-country nationals.

– Exploitation and sub-standard working conditions of third-country national seasonal workers needs to be overcome, by granting certain socio-economic rights in a binding, and thus enforceable, EU level instrument, in line with the call of the 1999 Tampere Council to grant third-country nationals fair treatment and a secure legal status.

– With respect to the external aspects of migration policy, an EU instrument on seasonal workers is important for effective cooperation with third countries and further deepening of the Global Approach, in giving the EU the possibility to facilitate low- and non-skilled legal migration by creating credible legal migration channels and in strengthening third the commitment of third countries to fight against illegal immigration.

The principle of proportionality also applies. That principle stipulates that 'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties' (Article 5(4) of the Treaty on European Union). Accordingly:

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[25] Article 5(3) of the Treaty on European Union.

[26] See sections 2.2.1 and 2.2.3.

– The instrument chosen should give Member States a high degree of flexibility in terms of implementation. The form of action should not exceed what is necessary to achieve the aim to regulate seasonal migration flows effectively. Non-binding measures would have too limited an effect as potential third-country seasonal workers and their prospective employers would continue to face an array of different rules for entry and residence and different levels of rights would be granted during the residence.

– The content of the action should be limited to what is necessary to achieve the above aim. The proposed rules should concern admission conditions, procedure and permit, as well as rights of seasonal workers, that is, the areas that constitute elements of a common immigration policy under Article 79 of the Treaty on the Functioning of the European Union.

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

*2.4.3. EU added value*

The EU added value lies in the following aspects:

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

– Third country national seasonal workers and their employers would benefit from a common, transparent and accessible European framework, allowing them to move legally to Member States in need of work and to work under a secure legal status. Such legal migration opportunities may also diminish illegal immigration and illegal employment.

– Additional added value lies in the external dimension. An EU intervention would send a cooperation-oriented message to third countries concerning the management of labour migration. A commitment on behalf of the EU as a whole in the field of economic migration in the non- and low-skilled sector has the potential of facilitating cooperation with third countries including in fighting illegal migration and fostering mutually beneficial circular migration.

## 3. OBJECTIVES

### 3.1. Global objectives

The global objectives, that is, the overall goals expressed in terms of its ultimate impact of an EU intervention, are the following:

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 prevent exploitation and poor working conditions for third-country seasonal workers and illegal immigration;

3. To contribute to the development of third countries.

### 3.2. Specific and operational objectives

The specific objectives, that is, the immediate objectives expressed in terms of direct and short-term effects or outcomes, are the following:

1. To provide for flexible rules to facilitate the temporary legal migration of seasonal workers and to promote their circular migration;

2. To provide for equal conditions for employers of third-country seasonal workers legally entering the EU labour market;

3. To ensure a secure legal status and protection against exploitation of third-country seasonal workers;

4. To enhance cooperation with third countries in the management of seasonal migration.

At this stage, only a set of *basic operational objectives* are identified, that is, those objectives that should be considered valid irrespective of the policy option actually adopted.

1. To limit the extent of labour shortages in the EU for seasonal work by reducing the average processing time for applications for third-country seasonal workers;

2. To limit the number of overstaying and illegally working third-country seasonal workers;

3. To approximate the average salary level of third-country seasonal workers to that of EU national seasonal workers.

The objectives above are consistent with horizontal EU strategies, in particular, with the EU 2020 Strategy. In the Integrated Guidelines for growth and jobs (2008-2010), guideline 20 calls to 'Improve matching of labour market needs' through the modernisation and strengthening of labour market institutions, notably employment services; greater transparency of employment and training opportunities; better anticipation of skill needs, labour market shortages and bottlenecks and appropriate management of economic migration.

## 4. DEVELOPING POLICY OPTIONS

This section addresses policy options the impacts of which will be further analysed. Information on discarded options is given in Annex 3.8. These policy options are not mutually exclusive, but complementary, in particular as regards options 2 to 4.

### 4.1. Option 1: Status Quo

No changes are made to the current situation, that is, current developments in Member States and at EU level would continue within the existing legal framework, accordingly, current divergences would continue to exist. Employers, including those employing third-country seasonal workers, will be under certain obligations under the Directive on employer sanctions, namely as concerns notifications to authorities and penalties in case of illegal employment.

### 4.2. Option 2: Legal instrument on entry and residence conditions of seasonal workers

A basic level of harmonisation would be reached by establishing some common rules, in particular:

– Definition of seasonal workers: the definition would comprise various elements. These elements would be the obligation to retain a legal domicile in a third country; the employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons and one or more fixed-term contracts for a specific job. An alternative choice, that is one single element for a definition only – 'temporary stay' – was discarded for the reason that only a strict definition as described above will ensure that third-country seasonal workers are used for peak times only and thus for genuinely seasonal occupations rather than on a regular basis and for permanent jobs. In addition, laxer definitions and admission rules are more likely to encourage illegal immigration and overstaying.

– Admission criteria include the need for a work contract or a binding job offer and the possibility for Member States to perform a labour market test as well as to ensure preference for Union workers. In addition, the requirement of a salary equal to or above a minimum level of one granted to national seasonal workers in the respective Member State and sufficient resources to maintain him/herself was considered. The alternative choice, namely only relying on a work contract or a job offer, was discarded since it would create the risk of social dumping and recourse to Member States' social assistance systems and it could also deprive Member States of the means to exercise effective control before entry of a seasonal worker.

– Maximum duration of the work/residence permit for seasonal employment: a strict time limitation is required in order to ensure that seasonal workers stay on a temporary basis only and are indeed used for seasonal occupations only, rather than for regular jobs.

As regards the residence conditions during the temporary stay, two sub-options are identified.

– Sub-option A: clear determination of working conditions (for example, treatment in payment/wages, right to health and safety protection) of seasonal workers by providing a reference to a set of legal instruments applicable in the Member State (for example laws, regulations or administrative provisions, and/or universally applicable collective agreements).

– Sub-option B: clear determination of working conditions (for example, treatment in payment/wages, right to health and safety protection) of seasonal workers by a reference to a set of legal instruments applicable in that Member State (for example, laws, regulations or administrative provisions, and/or universally applicable collective agreements) and equal treatment with EU nationals in respect to certain rights pertaining to working conditions (such as right to association and affiliation of workers organisations) and social security rights, such as occupational diseases, accidents at work, sickness benefits, invalidity benefits, family benefits, death grants, as well as the right to change employer (under certain circumstances and conditions). It should be noted that third-country national seasonal workers would not be treated in a more preferential way compared to EU nationals to whom transition periods for free movement of workers apply. In particular, a set of rights and/or equal treatment in certain socio-economic areas would only be granted

once the third-country national seasonal worker has been admitted to a Member State to work. There is no right to admission since it is up to Member States to determine the numbers of third-country nationals admitted to their territory for employment. Member States are also free to apply a labour market test.

### 4.3. Option 3: Directive laying down common admission procedures

In addition to the elements considered under Option 2 the following rules would be laid down:

– Introduction of a single permit for work and residence: a single document allowing third-country seasonal workers to work and reside in the territory of the Member State would be issued. All these single permits are technically identical as they are based on Regulation 1030/2002 and include specific security features. What differs obviously is the remark put in the permit that specifies the type of employment authorised, such as 'seasonal work' in this case. For short periods of stay (not exceeding 90 days), admission could take place on the basis of a visa.

– Deadlines for processing applications for the single permit to grant applicants and employers with a quick and facilitated procedure.

– This option would focus on the introduction of a single permit. At the same time, the ability for both employers to meet their needs for seasonal labour and third-country nationals to have a work perspective in the EU in upcoming seasons could be facilitated. Two sub-options were identified:

– Sub-option A: single permit, including re-entry in subsequent years: This sub-option considers the introduction of a multi-seasonal permit, that is, a single work and residence permit allowing a third-country seasonal worker to re-entry in the same Member State for successive seasons, with a maximum duration defined (for example, up to three years). The previous compliance of the third-country seasonal workers with all rules would be also considered as a condition for re-entry.

– Sub-option B: single permit, including a facilitated procedure for subsequent entries. Seasonal workers who in the past complied with the permit conditions including return after the end of the duration of the permit would have access to a facilitated procedure to re-enter that Member State as a seasonal worker (as a minimum: preference over first applicants).

### 4.4. Option 4: Directive on measures to ensure effective return

This option would establish a common definition of seasonal workers among EU Member States (see Option 2) as a first condition for establishing a minimum level playing field across the European Union.

To ensure the temporary nature of the stay, a maximum duration of stay per year would be introduced, as well as the explicit obligation to return after that period, that is, there would be no possibility for changes in status. In addition, obligations on third-country seasonal workers could be introduced to ensure effective return after the expiry of the authorisation to stay such as reporting to the consulate of the Member State of employment in the country of origin. Last, both non-compliant employers and seasonal workers could be excluded from multi-seasonal permits and/or access to the facilitated procedure considered under sub-options 3A

and 3B. Third-country seasonal workers would have the right to challenge decisions rejecting an application for admission.

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

No new legislation is introduced so that the non-binding 1994 Council Resolution would remain the yardstick. The focus would be on complementary and supporting activities. The aim would be to achieve an approximation of the legislative practices of Member States, through the gathering and exchange of knowledge and information including best practices, performing comparative analyses, giving advice, evaluating experiences, promoting innovative approaches and organising information campaigns. The activities would be particularly focused on disseminating information on EU legislative framework, exchanging information and best practices on measures against illegal immigration and illegal movements, and measures ensuring return and avoiding exploitation of third-country seasonal workers. Social partners and other relevant actors could be involved in the elaboration of the content of such activities.

## 5. ASSESSMENT OF POLICY OPTIONS

A multi-criteria analysis was used to assess and compare impacts. The assessment criteria are aggregated with respect to their relevance, feasibility and expected impacts. In view of the limits of the data available and of the fact that Member States will retain competence for the numbers of third-country seasonal workers admitted to their territory, no attempt has been made to quantify the impact of each option.

For each policy option, the anticipated impact has been assessed on an 'intuitive' scale of positive impact from one to four. Negative impact is highlighted by -√ and positive impact by √, whilst 0 means that there would be no effect. A brief explanation of rating and various aspects of the policy options necessary to achieve the desired impacts are provided in the grids.

| Policy Option 1: Status quo | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Relevance** | | |
| **To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions** | **0** | **Labour shortages in low skill sectors** will persist and increase in the future, in parallel with a growing difficulty for EU employers to rely on EU national workforces only.<br>MS could take unilateral measures to allow further entries of **third-country Seasonal Workers (TCN SW)** to address labour shortages.<br>Wide differentiations of MS legislation concerning seasonal migration may cause distortions in the inflow and allocation of TCN SW. |
| **To contribute to preventing exploitation and poor working conditions for third-country seasonal workers and illegal immigration,** | **0** | **Illegal immigration** and overstaying of TCN SW remain important problems for the EU. The **possible setting up of an entry/exit system** at the external borders of the EU would contribute to identifying overstayers, including TCN SW. It is however currently not foreseen to use such a system for the management of legal migration, including seasonal work.<br>The Directive on sanctions for EU employers of illegally staying third-country nationals, once agreed and applied, will have a positive impact on reducing illegal immigration, as it should reduce one of the pull-factors (the possibility of finding employment without legal status). There could be a certain spill-over effect from that Directive also as regards detecting the most serious forms of exploitative working conditions. |
| **To contribute to the development of third countries** | **0** | Numerous **cooperation and development programmes between EU and third countries** are supported in a range of sectors, including migration and development, the prevention of illegal immigration and trafficking in human beings. However, these programmes **do not have a specific focus on seasonal migration** and, more generally, **EU action in this field remains quite fragmented**. The "**Thematic Programme**" enhances a horizontal approach and could contribute to the development of EU external migration policy. However, projects only have a **limited size**. Moreover, this Programme is **not specifically addressed** at **seasonal migration**. |
| **Feasibility** | | |
| **Difficulty/risks for transposition, incl. proportionality** | | N/A |
| **Simplification/ administrative burden** | | N/A |
| **Financial impacts** | | N/A |
| **Expected Impacts** | | |
| **Economic Impacts at EU level** | **0** | The **current and expected labour shortages** in low skill sectors in numerous MS, along with the **development patterns followed by the EU-12**, will lead to difficulties in relying on national labour forces and on the current bilateral seasonal worker schemes which still do not tap seasonal labour shortages.<br>**Illegal migration and overstaying** of TCN SW would persist, with implied risks of illegal employment and exploitation.<br>The policies on seasonal migration at MS level could improve the current macroeconomic framework, by contributing to offset labour shortages (the focus of national legislations in MS of Group B[27]) .<br>However, without a common instrument, the ability of EU MS to provide for an even allocation of seasonal workers is limited. |
| **Impacts on SMEs** | **0** | **SMEs in sectors such as agriculture, tourism and construction** will continue to suffer from labour shortages. |
| **Social Impacts at EU level** | **0** | **Labour and skill shortages inlow skill sectors** are currently faced in many EU MS, especially in **tourism, construction and agriculture**. These shortages are expected to |

[27] See Annex (Survey of MS legislations) for an explanation of MS groups mentioned in the assessments.

| Policy Option 1: Status quo | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| | | increase in the future.<br><br>At the same time, TCN SW (**illegally entering or overstayers**) are one of the main pools **of illegal employment** in several EU MS. As mentioned, the application of the Directive on sanctions for EU employers could contribute to tackling these issues. |
| **Impacts on third countries** | **0** | The positive impacts of migration on the countries of origin (in terms of **remittance inflows, circular migration, reduced brain drain**) will continue to depend on various factors, such as **protection from exploitation and the illegal employment** of seasonal workers (which could reduce **the size of remittances**), their **overstaying in the EU** (thus excluding **circular migration**), the **over-qualification of these workers** (risk of brain drain).<br><br>**Cooperation and development programmes with third countries** can help address these issues; however **EU action remains fragmented** and does **not specifically focus on seasonal migration**. |
| **Impacts on third-country seasonal workers (including impacts on social inclusion and fundamental rights)** | **0** | The position and socio-economic integration of TCN SW would depend on how far national rules grant **rights and benefits to TCN SW**.<br><br>However, the exposure **to risks of exploitation of TCN** linked to situations of **illegal migration, overstaying and related risks of illegal employment**, will continue to impact on TCN SW. Without a secure legal status and future employment perspectives, TCN SW would continue to face **social exclusion**.. |
| **Impacts on EU national seasonal workers** | **0** | **EU labour forces** (EU national and non-EU national workers) would continue to be affected by third-country seasonal workers employed at lower wage levels and in poor working conditions. |
| **Stakeholders and experts' view** | | Stakeholders support an EU intervention to address aspects such as coherence of EU immigration policy, efficiency of the EU economy, illegal/irregular migration and fair treatment of TCN SW. However, also positive aspects of the status quo are highlighted, such as: labour market policies could be best adapted to national labour market needs if no action at the EU level is taken (Caritas Europa) some national systems are considered well established (i.e. UEAPME on the AT system).<br><br>In status quo admission procedures would continue to be rigid and slow for employers, would not diminish the level of illegal immigration, would harm the overall efficiency of the EU labour market and would continue to have negative impacts on TCN SW so that countries of origin could not benefit from additional remittances (Business Europe). Moreover, this option is not considered desirable since it maintains unfair competition based on the exploitation of weak and under-protected SW (ETUC). |

| Policy Option 2 –Entry conditions and rights | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Relevance** | | |
| To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions | /√ **(2A)**/ √√ **(2B)** | Common EU conditions of entry and temporary residence of TCN SW would ensure that needs for third-country seasonal workers could be satisfied more easily, and harmonized entry conditions **could offset an uneven distribution of TCN SW among MS.** However, compared to the status quo (most MS already have rules for TCN SW), this option does not greatly improve the ability of the EU employers to fill labour market gaps.<br><br>Granting a set of rights in the field of working conditions (2A) would generate a more level playing field across the EU, leading to a **better allocation of TCN SW**.<br><br>This effect would be further strengthened under 2B, as a consequence of a higher level of harmonization. Moreover, the **right to change employer** would improve the availability of seasonal workforces, the ability of EU employers in matching labour shortages and the flexibility of EU labour market. |

| Policy Option 2 –Entry conditions and rights | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| To contribute to preventing **exploitation and poor working conditions** for third-country seasonal workers; and illegal immigration. | √√ **(2A)**/ √√ **(2B)** | Granting a set or rights (2A, and even stronger 2B) would enhance the level of **protection for TCN SW and would reduce the risks** that this category of workers usually face in terms of poor working conditions and exploitation. Moreover, the provision of a **secure legal status** for TCN SW entering the EU labour markets could further encourage seasonal workers to **legally enter and stay** in the EU. On the other hand, increased rights could mean additional costs for employers which could resort to illegal channels. However, as the scope of rights granted is limited, such negative effects are negligible.<br><br>This option would have only an indirect and marginal effect on illegal migration, by offering **specific and common rules at EU level for TCN SW wishing to legally enter** the labour market of one of the MS. |
| To contribute to the **development of third countries** | √ **(2A)**/ √√ **(2B)** | Possibilities for temporary migration could relieve surpluses of labour supply in sending countries. Granting a set of rights in respect of working conditions (2A and B), especially in terms of wages granted, could allow third country seasonal workers to save enough earnings to send/take back **remittances** to their countries of origin. Further, EU commitment as evidenced by 2B would strengthen the credibility of the external migration policy as a whole |
| **Feasibility** | | |
| **Difficulty/risks for transposition, incl. proportionality** | **-**√ **(2A)**/ **-**√√ **(2B)** | The establishment of **common rules** would entail legal adjustments at MS level. However, this option would not seem to present major transposition difficulties.<br><br>Specifically, many of the rights in the area of working conditions are already granted in EU MS (2A). Some more adjustments would be needed in order for MS to comply with provisions on social security (2B). Issues could arise in (non) compliance with new provisions.<br><br>Binding regulation of these areas appears proportionate, as it would entail a change in only some Member States , and would have the benefits of ensuring fairer competition and higher protection both for non-EU and EU workers. |
| **Simplification/ administrative burden** | **-**√ **(2A)**/ **-** √√ **(2B)** | The degree of simplification would not be considerable. The **imposition of a common definition** would, on the contrary, **add administrative burden to those MS which currently do not have** such a definition and would have to admit TCN SW according to this definition. This burden would however be minimal. The rights of sub-option 2A appear to be generally respected throughout the EU; rights under 2B would partly and for some MS have to be included in national legislations and respect ensured. |

| Policy Option 2 –Entry conditions and rights | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Financial impact** | - √√ **(2A)/** - √√√ **(2B)** | **Financial costs** would arise for **employers** due to additional costs to provide a set of rights to TCN SW relating to wages and possible investments in improved working conditions (2A), and additional costs for employers' contributions to social security, such as sickness and health care, disability and old-age pensions in those MS that do not currently grant full equal treatment in that area (2B) (see below under 6.2.3. for a more detailed assessment of these costs). As a result of increased costs for employers under option 2A and even more 2B, it is not expected that the demand for third-country seasonal workers could significantly fall (given that, for example for agricultural employers it will not be an option to simply let the products be unpicked and rotten), but rather that prices would somewhat increase to reflect the actual costs. Given reinforced future inspections under the employer sanctions Directive especially in risk sectors such as the seasonal work sector, it is also not expected that employers would more often turn to illegal employment.<br><br>Positive impacts on **public finance** as a consequence of increased wages paid to TCN SW, thus increased **revenues from the payment of taxes**. Additional costs for public finance owing to granting a set of rights in areas and in MS where these rights are not already granted (disability (MT,LU,IT), old age pensions (IT,LU,MT), sickness insurance (BG); see in more detail below p. 37 for an analysis of net implementation costs). Given that TCN SW and their employers pay contributions to security schemes and that only a minority of seasonal workers will meet the eligibility criteria especially for drawing an old-age pension, it is assumed that these costs are outweighed by the increased revenues from taxes and social insurance.<br><br>Limited costs due to: One-off **financial/implementation costs** on **MS** in order to adapt their legislation, and recurring costs for verification procedures (e.g. verification that admission criteria are met, labour market test if assigned to MS authorities). In addition, **costs** would arise for possible monitoring in order to verify the respect of proposed provisions in terms of granting a set of rights and equal treatment (2 A and B). |
| **Expected Impacts** | | |
| **Economic Impacts at EU level** | √√ **(2A)/** √√√ **(2B)** | **Positive impacts** in terms of: offsetting the possible **distortions in the allocation** of TCN SW, owing to the differences between MS in terms of admission and residence conditions; fostering **legal inflows of TCN SW**, facilitated by specific and common rules across the EU, and consequently reducing **illegal immigration and overstay** as an effect of transparent channels for entry.<br><br>**Employers, especially SMEs**, would benefit from better allocation of TCN SW but could incur additional costs (e.g. if required to do a labour market test). The impact on legal flows, illegal migration and overstay of could be only indirect. Also, most MS already have specific rules on TCN SW. Thus, **the overall economic impacts appear limited**.<br><br>Under 2A, additional **positive impacts** on the **competition in the internal and EU labour market**, due to reduced risks of exploitation of TCN SW and related **unfair competition between EU employers** (Similar impact as results from the Directive 96/71/EC on the posting of workers that lays down terms and conditions of employment for posted workers, thus for temporary employment, often in sectors subject to seasonal work). **Negative impacts** may arise as a consequence of possible **increases** in the labour costs for EU employers (due to higher wages) and the related prices of goods. This risk **could worsen the competitive positioning of EU firms (especially SMEs) especially** for **agricultural goods**, which are more exposed to a high international competition. SMEs could turn to illegal employment to reduce costs.<br><br>Under 2B, positive impacts on EU employers could be stronger: wider **availability of legal labour forces** (stronger incentives for TCN SW to legally enter the EU and the possibility to change employer); **right to change employer** strengthens the protection of TCN SW against exploitation. Higher **risks** for increased prices that could fall back on **consumers**, thus risks of a negative impact on EU competitiveness<br><br>By including a **reference to the passing of seasons and to fixed term contracts in the common definition**, the main option should ensure **TCN SW are not used to cover year-round positions**, which could entail unfair competition for EU and non-EU permanent labour force as well as for law-abiding enterprises/employers. The requirement of a salary level that is equivalent to the one of an EU national SW as an entry condition contributes to avoiding social dumping. |

| Policy Option 2 –Entry conditions and rights | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Impacts on SMEs** | **-** √√ **(2A)/-** √√√ **(2B)** | **Especially SMEs in the agricultural sector** could be affected by increased labour costs. **SMEs** could turn to illegal employment in order to reduce their prices and maintain competitiveness. This is particularly true for the group of southern EU Member States with a relatively high share of seasonal agricultural work.<br>. |
| **Social Impacts at EU level** | √√ **(2A)/** √√√ **(2B)** | **Better allocation** of TCN SW between MS could **offset possible distortions and shortages at regional level**. Possible increased **inflows of TCN SW** could help to **fill current labour shortages**. However, as previously pointed out, impacts on inflows of TCN SW are not likely to be significant.<br>Under 2A, the ability of EU employers in **filling seasonal labour shortages** would be improved by facilitated legal inflows of TCN SW and **better allocation of seasonal workers**. The legal status of TCN SW would be secure with positive impacts on their social inclusion. However, **employers may turn to illegal employment**. In this case, the proper functioning of the EU labour market would be negatively affected. The functioning of the EU labour market could be still improved under 2B through a **right to change employer**. Limiting the possibility for mobility only to specific circumstances would reduce the risks related to difficulties of temporary migration control, illegality and overstay. |
| **Impacts on third countries** | √ **(2A)/** √√ **(2B)** | **Positive impacts** in terms of **remittances' size** (higher still under sub option 2B), as granting a set of right to TCN SW could grant better working conditions and payments/wages. Given that SW usually implies low/non-skilled work, but seasonal workers from TC are not necessarily low/ non-skilled (more often, the younger, more educated persons tend to migrate), risk of (temporary) brain drain. |
| **Impacts on third-country seasonal workers (including impacts on social inclusion and fundamental rights)** | √√ **(2A)/** √√√ **(2B)** | More secure legal status for TCN SW under the main option. This would have limited positive impacts on **social inclusion** of TCN SW.<br>Under 2A, benefits on fundamental rights of TCN SW, especially **non discrimination** (**art. 21** of **the EU Charter of Fundamental Rights**, the Charter), **and right to fair and just working conditions** (**art 31 Charter**). Indeed, working conditions would be explicitly protected by the clear determination of the applicable law. The possibility to have access to other benefits (such as social security, health care, etc) would be left to the decision of single MS. However, the improved working conditions and possible additional benefits would foster the **social inclusion** of TCN SW. As compared to 2A, under 2B, **positive impacts** in terms of **protection from exploitation** and benefits granted would be reinforced. |
| **Impacts on EU national seasonal workers** | √ **(2A)/** √√ **(2B)** | The risks of **job displacement** of EU national workers would be reduced by admission criteria providing for a **labour market test and the existence of a concrete job offer/ work contract**. Moreover, a specific definition would ensure that **third country seasonal workers are not employed to cover year-round positions**, avoiding risks of unfair competition.<br>Providing a set of rights in the field of working conditions, 2A, (with particular reference to treatment in payment/wages) reduces risks of **unfair competition between EU national seasonal workers and TCN SW**. The risks of **job displacement** of EU national workers would be notably reduced, and even further under 2B. |

| Policy Option 2 –Entry conditions and rights | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Stakeholders' view** | | Most stakeholders agree with the various aspects included in the definition, affirming that common definition and criteria would increase the transparency of the EU legal framework (Business Europe). TCN SW would be more attracted to the EU, alleviating labour shortages, and would avoid discrimination between EU citizens and TCN (ETUC). Some state that the definition must be very strict so that SW may be used only when strictly justified, for a limited period of time and in specific sectors (ETUC). Caritas Europa suggests denying **admission for overqualified TCN for seasonal employment** to avoid brain drain. ETUC states that political consensus could be built on protection of SW and the effectiveness of the internal market through more fair competition.<br><br>All stakeholders support the provision of the rights under option 2A. Some stakeholders (ETUC) do not consider the level of rights granted by this option as sufficient to protect SW and would include other rights (i.e. occupational diseases, accidents at work, sickness benefits, etc.), as in 2B. One stakeholder (Business Europe) underlines that equal treatment is already a reality in the large majority of MS and that extra costs could arise for employers for investing in working conditions in the other MS.<br><br>A general consensus exists on granting the **possibility to change job/employer (2B)**, except one stakeholder (Business Europe) that considers that the permit for seasonal work is limited to a specific enterprise's needs and that employers who first hired SW should be protected against sudden loss in manpower. Another stakeholder (UEAPME) stresses the need to have a strict control over the circumstances for change of employer: if too easy, such might contribute to the informal economy. |

**6.**

| Policy Option 3: Single permit and facilitations for re-entry | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Relevance** | | |
| **To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions** | √√√ **(3A)**/√√ **(3B)** | More efficient **recruitment procedure** for EU employers. Common definition and admission criteria would allow a more **even allocation of TCN SW between EU MS**.<br><br>Multi-seasonal permits (3A) would ensure a **steady and fairly predictable availability of seasonal workforces to EU employers/enterprises**; labour shortages would be efficiently addressed. Delays for recruiting third country seasonal workers would be reduced. A facilitated procedure for re-entry (3B) would foster a **more continuous supply of legal channels to TCN SW** which would provide a slightly more certain and available labour force to labour shortages, albeit less predictable as 3A. |
| **To contribute to preventing exploitation and poor working conditions for third-country seasonal workers and illegal immigration.** | √√√ **(3A)**/ √√(√) **(3B** | Simplified admission procedure and **fewer obstacles for legal immigration** of TCN SW, in turn possible reduction in illegal immigration and illegal work.<br><br>A multi-seasonal permit (3A) would offer, under certain conditions, **concrete perspectives of re-entry**. Requiring the **previous compliance with all rules as a condition for re-entry** would create an additional incentive for return in the home country at the end of the term. Thus, positive impacts in terms of reduced **illegal immigration and overstay**. Phenomena of **exploitation, sub-standard working conditions** linked to situation of illegal migration and illegal stay would be reduced.<br><br>3B would foster the **legal inflows** of TCN SW through **simplified procedures for re-entry** in subsequent years. As access to facilitate procedure only for those TCN SW complaint with all rules during previous stays, incentives for return as perspective for re-entry. Thus reduction of **overstay**. As working legally, TCN SW would be more protected against exploitation and poor working conditions. Incentives appear **weaker as in 3 B**, which give a more concrete perspective for re-entry through a multi-seasonal permit |

| Policy Option 3: Single permit and facilitations for re-entry | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **To contribute to the development of third countries** | √√√√ **(3A)/** √√√ **(3B)** | Providing TCN SW with channels for admission could foster legal inflows of TCN SW, thereby relieving certain labour supply surpluses in sending countries, and **reduce recourse to illegal routes.**<br><br>3A fosters **circular migration**, as it encourages TCN SW to return at the end of each season, benefiting from eventual skills and knowledge acquired in the EU. Households of seasonal workers would benefit from a **steady income**.<br><br>Mechanism would foster **cooperation of third countries in coordinating migration policies to combat illegal immigration** and other migration related issues.<br><br>To a lesser extent as 3A, 3B could enhance **circular migration** by encouraging TCN SW to return to their countries of origin. Moreover, would provide a **more stable seasonal income** for households in the countries of origin though remittances. May foster **cooperation with the EU migration policy** in terms of migration-related issues |
| **Feasibility** | | |
| **Difficulty/risks for transposition, incl. proportionality** | **-√√√√ (3A)/**<br>**-√√√(3B)** | Regarding 3A, all MS (except IT and FR) would have to introduce multi-seasonal permits, including **procedures to ensure the correct functioning of the multi-seasonal work/residence permit** (i.e. verifying the previous compliance with all rules, etc.). All MS (except for FR and IT which have comparable procedures to the one proposed) would have to **adapt their procedures** to the facilitated re-entry procedure. This would require **verification of compliance with rules in the previous year** and a simplification of the procedure the year after (most likely including a database).<br><br>Such adaptation appears proportionate, given the expected gains both in terms of labour supply and likelihood of return after the season that such facilitated re-entry possibilities will allow. |
| **Simplification/administrative burden** | **-√(3A)/ 0 (3B)** | **Streamlining of procedure**s: **National authorities** as main beneficiaries, followed by third country seasonal workers.<br><br>A multi-seasonal permit (3A) would **simplify and lighten the administrative burden,** however at the same time require the set up of mechanisms to have an overview of multi-seasonal permit holders. A facilitated re-entry procedure (3B) would require additional checks upon application in the second year of whether the TCNSW has complied with all conditions in a previous year as well as require mechanism to have an overview of seasonal workers in a previous year, which however is useful to have for migration management. |
| **Financial impact** | **-√ (3A)/**<br>**- √ (3B)** | For **MS**, **financial costs** in the short term would occur as a consequence of the introduction of a single permit. However, given that under the future framework Directive, MS would introduce that permit anyway for other categories of workers, additional adaptation costs are not expected to be high **Financial costs:** multi-seasonal permit (3A) would entail costs for adapting procedures at **MS level, as well as getting acquainted with new legislation.** However, **considerable savings for MS** would be achieved in the medium term as a consequence of reduced admission procedures. Under 3B,, **financial costs** on **MS** for introducing the new procedure would be more limited. **Savings for MS** would occur but to a more limited extent<br><br>Additional administrative costs for EU **employers and TCN SW** to familiarise with the multi-seasonal permit, but once the system is set up and running, costs could be reduced for the recruitment of TCN SW. |
| **Expected Impacts** | | |
| **Economic Impacts at EU level** | √√√√ **(3A)/** √√√ **(3B)** | Positive economic impact (**faster and simplified procedures** increase **availability of legal seasonal labour)**. **Multi-seasonal permit (3A)** would have strong positive impacts on **legal inflows** of TCN SW and **reducing illegal immigration and overstay**. **Steady and predictable availability of legal seasonal workforces** would allow a **quick response to labour market needs**. Enhanced fair **competition between employers through incentives for legal employment**.<br><br>Several economic benefits: higher **availability of legal seasonal labour forces**, which would strengthen the **position of EU firms reduction of distortions** due to illegal migration, overstay.<br><br>This is valid also for 3B, however, to a lesser extent**, as less concrete and predictable perspectives for re-entry** would exist. |

| Policy Option 3: Single permit and facilitations for re-entry | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Impact on SMEs** | √√√√ **(3A)/** √√√ **(3B)** | Given that labour demands could be more easily and quickly satisfied, the **competitive position of SMEs**, which represent more than 35% of the total EU firms in the relevant sectors for seasonal employment, would be strengthened. |
| **Social Impacts at EU level** | √√√√ **(3A)/** √√√ **(3B)** | Better **ability of EU employers to match labour shortages**. Both EU employers and TCN SW would have more incentives (as **reduced costs**, **simpler and faster procedures**) for opting for legal migration and employment channels. **Positive impact on illegal migration and the related risks of employment**.<br><br>Under 3B, strong positive impacts**,** as enterprises could rely on a pool of legal seasonal workers, with **agriculture** and **tourism** being particularly positively affected. Incentives for legal migration, against illegal entry and overstay in the EU labour market, could further reduce the size and likelihood of **illegal employment linked to illegal inflows and overstay of TCN SW**.<br><br>The same is valid to some extent for 3B, however, the **availability of seasonal workforces could be less predictable** for employers and the ability to fill the gaps and improve the flexibility of the EU labour market would be more limited. Illegal inflows would probably persist with consequences, *inter alia*, on the social inclusion of TCN SW. |
| **Impacts on third countries** | √√√√ **(3A)/** √√ **(3B)** | Positive impact on **remittances** to third countries, as legal employment of SW is favoured. However, the impact is indirect and quite limited.<br><br>3A would contribute to effectively enforce the temporary nature of seasonal migration and could imply notable benefits for countries of origin, including to reduce the risk of (permanent) brain drain. In particular, **circular migration** between EU and home countries would be fostered, including **transfer of skills and support to investments**. S**table and predictable sources of income** within the duration of the multi-seasonal permit-stability and continuity of **inflows of remittances** in countries of origin.<br><br>3B would encourage the return in the countries of origin after the period of employment which reduces the risk of (permanent)brain drain. Nevertheless, the impacts in terms of **circular migration, skill transfer and investments** would be indirect and lower as in 3A, due to the less concrete perspective for re-entry offered to TCN SW. The same is true for the impacts on **remittances**. Indeed, the **continuity and predictability of these inflows** would be **reduced compared to 3 B**. |
| **Impacts on third-country seasonal workers (including impacts on social inclusion and fundamental rights)** | √√ **(3A)/** √√ **(3B)** | Possible reductions of illegal immigration and overstay could prevent situations of illegal employment and of social exclusion; **more secure legal status** for TCN SW. Exploitative and sub-standard working conditions (**art. 31 of the Charter**) linked to illegality could be reduced. Effects on **protection against exploitation of third-country seasonal workers** could be lower under 3B, as more limited effectiveness of this sub-option with respect to illegal migration and overstay. As a consequence, the expected level of social inclusion and the granting of fair and just working conditions (**art. 31 of the Charter**) are likely to be lower. |
| **Impacts on EU national seasonal workers** | √ **(3A)/** √ **(3B)** | The provision for labour **market test and the job offer/work contract** would reduce risks of **job displacement of EU seasonal workers.** The possible **reduction of illegal migration** would limit risks of unfair competition for EU national SW.<br><br>The positive impact in terms of protection of TCN SW from exploitation linked to **illegal migration and overstay** would be stronger, with related positive effects on risks of unfair competition for EU national workers. Such effects are expected to be slightly lower under 3B. |

| Policy Option 3: Single permit and facilitations for re-entry | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Stakeholders' view** | | Stakeholders support **a single permit** to avoid lengthy and complex procedures (Business Europe, Coordeurop, IOM, UEAPME), reducing costs (IOM), improve the labour market functioning (IOM, UEAPME) and ensure better management of seasonal migration (Caritas Europa, IOM, Social Platform-Youth Forum).<br><br>Stakeholders support multi-seasonal permits. IOM highlights however that if there are no sufficient or suitable seasonal jobs available, irregular migration could be prompted. Caritas Europa and ETUC suggest a temporary multi-seasonal permit of max. 5 years. In addition, ETUC suggests to allow re-entry in different seasons of the same year and to use this option for the first MS of entry while using sub-option 3B (i.e. facilitated re-entry procedure) to improve geographical mobility (guaranteeing continuous and sufficient income for SW). IOM underlines that a multi-seasonal permit could be issued and managed with the involvement of EU MS consular services in countries of origin.<br><br>Regarding 3B, **limits and negative impacts** are highlighted. In particular, IOM points out that if there are no longer sufficient/ suitable seasonal jobs available, irregular migration could be prompted. Further difficulties are identified in the potential lack of political consensus due to the larger impact on national legislations (ETUC). |

| Policy Option 4 : Measures ensuring return | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Relevance** | | |
| **To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions** | **0**√ | **Marginal impacts only**, as no enhancement of legal inflows of TCN SW to fill labour market gaps and no improved allocation within the EU.<br><br>In case of reporting obligations on TCN SW, reduced risks for overstaying and illegal employment, thus fairer competition. |
| **To contribute to preventing exploitation and poor working conditions for third-country seasonal workers and illegal immigration.** | √√ | An explicit obligation to return could contribute to reducing overstaying, as no false expectations on TCN SW side are created.<br><br>Reporting obligations on TCN SW would reduce risks for overstaying and illegal employment and exploitative working conditions. . |
| | | |
| **To contribute to the development of third countries,** | √ | Reporting obligations on TCN SW should foster return which is potentially **beneficial to third countries** (circular migration) for skills enhancement/ to avoid brain drain. |
| **Feasibility** | | |
| **Difficulty/risks for transposition, incl. proportionality** | **-** √√√ | **Limits in feasibility, acceptability** and proportionality for reporting obligation on TCN SW, as there is no obligation to return to the country of origin, difficulties in practical application. |
| **Simplification/administrative burden** | **-** √√√ | No reduction of administrative burden, but additional one for MS who do not have a definition currently. Marginal **costs** for MS to introduce definition of TCN SW.<br><br>Reporting obligations on TCN SW would create additional burden for already overburdened consular posts (need to register return, check against database etc) |
| **Financial impact** | **-** √√√√ | Reporting obligations on TCN SW would add costs for TCN SW and consulates, as need to check files and report in case of non-return. |
| **Expected Impacts** | | |
| **Economic Impacts at EU level** | √ | Marginal impacts on EU competitiveness mainly due to fewer distortions in the **allocation of seasonal workers between EU MS**.<br><br>A common definition and maximum stay duration would help avoiding the use of TCN SW for all year-round jobs, thereby posing unfair competition to EU labour or permanent non-EU labour. |
| **Impact on SMEs** | √ | Especially **SMEs** would benefit from a slightly more efficient allocation of seasonal workers to where the strongest economic need is. |

| Policy Option 4 : Measures ensuring return | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Social Impacts at EU level** | √√ | The establishment of a **common definition** across EU could be a first condition for achieving a more **efficient allocation of seasonal workers** and contributing to offset labour shortages at the regional level.<br>Sucha **specific definition for seasonal workers** could contribute to better and specifically **address seasonal needs** in the EU labour markets, helping MS filling job vacancies in sectors characterised by cyclical labour needs (agriculture and tourism in particular). |
| **Impacts on third countries** | √√ | Reporting obligation on TCN SW may enhance return and thus (through compliance with that obligation) open ways for entry as seasonal worker in a following year, thus foster **circular migration** with the benefits that brings to TC. |
| **Impacts on third-country seasonal workers (including impacts on social inclusion and fundamental rights)** | **-**√√√ | The establishment of a common system at EU level (i.e. a common definition, common admission criteria) would grant a somewhat more secure legal status for TCN SW with (limited) positive repercussions in terms of **social inclusion**.<br>Reporting obligations on TCN SW are likely to have **negative effects**, as may be difficult in practice (logistical problems such as remote locations) and the travel to the consulate costly for the TCN SW, so some of the development effect would likely be lost. This would raise concerns about proportionality, as TCN SW will not necessarily have to return to their country of origin, plus consular offices may be difficult to reach in particular in big countries. |
| **Impacts on EU national seasonal workers** | √ | Reduced overstaying and better **protection against exploitation and poor working conditions for TCN SW would also protect EU and non-EU labour forces** from unfair competition. |
| **Stakeholders' view** | | Overstaying reduced through a common definition since temporary nature of seasonal migration reinforced and SW would invest upon return through financial means and experience acquired in the EU (Business Europe).<br>This option could be "too attractive for MS, given the current political climate toward migrant workers" (Caritas Europa). In addition, costs would rise not so much for EU public authorities but for employers (Business Europe).<br>"Ensuring return" *per se* is not generally considered a valid option, whereas supporting the mobility between EU MS and third-countries is considered as a useful means for reducing illegal migration and ensuring the functioning of the EU labour market and promoting the development of countries of origin.<br>TCN SW would be faced with limited administrative costs that could be compensated by prospect of future work in the EU (Business Europe).<br>However, there would be difficulties for TCN SW to report in the consular office of the MS of employment abroad (UEAPME) and experience shows how consular/diplomatic offices abroad are not effective in monitoring and recording re-entry with the risk of bureaucratic bottlenecks if competent authorities in the hosting countries are not involved (ETUC). |

| Option 5 | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **Relevance** | | |
| **To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions** | **0**/√ | The option would aim at **approximation of legislative practices** on TCN SW throughout the EU. This could **reduce the differentiation** between MS (in terms of definitions, admission criteria, temporary residence and work permits) and favour a **better allocation of TCN SW within the EU**. Moreover, by spreading knowledge and information (especially best practices), MS legislations may be improved and adapted in order to better respond to fluctuations in some economic sectors and specifically offset labour and skills shortages. However, impacts are likely to be **very limited**, as such measures would not be mandatory for MS. |
| **To contribute to preventing exploitation and poor working conditions for third-country seasonal workers and illegal immigration.** | **0**/√ | Exchanging information on the consequences of illegal migration and best practices on **measures against illegal immigration, illegal employment and exploitation of TCN SW** could help preventing these phenomena in the EU.. However, impacts are likely to be **very limited**, as such measures would not be mandatory for MS. |

| Option 5 | | |
|---|---|---|
| **Assessment Criteria** | **Rating** | **Explanation of the rating and aspects of the policy option necessary to achieve the impact** |
| **To contribute to the development of third countries** | **0/** √ | The diffusion of knowledge and best practices within the EU on seasonal migration could include some relevant issues in this field: measures ensuring the return of TCN SW to their countries of origin where they could contribute to the development of their local economies through the acquired skills; the protection of TCN SW from exploitation and poor working conditions, which could increase the size of remittances. At the same time, MS could be encouraged (e.g. through advising and information campaigns) to promote **cooperation with third countries** in the area of seasonal migration. |
| **Feasibility** | | |
| **Difficulty/risks for transposition, incl. proportionality** | **0** | No difficulties or risks of transposition would be envisaged by this policy option since it would not impose any additional legislative interventions and MS would have complete discretion in whether to adapt to the content of the information and best practices delivered through this policy option. |
| **Simplification/administrative burden** | **-**√√√ | No simplification or reduction of the administrative burden would be attained through this policy option. Possible additional administrative burdens (compared to status quo) could occur to carry out OMC activities (e.g. sharing best practices) to collect and share information. Only if MS were to spread the use of certain practices (i.e. single work/residence permit, facilitated re-entry procedure, etc.) would there be a certain degree of simplification within those MS that adopt such legislative provisions. |
| **Financial impact** | **-**√√√ | At EU and MS level, fair additional recurrent **financial costs** for organizing OMC activities such as creating networks of expertise, data collection and dissemination. **Administrative costs** for OMC activities such as drafting national action plans, sharing good and best practices and setting up awareness campaigns |
| **Expected Impacts** | | |
| **Economic Impacts at EU level** | **0** | Performing analysis, exchanging information and best practices could improve the ability of MS to provide better and faster responses to the needs for seasonal labour through the recruitment of TCN SW. Nevertheless, these **impacts appear be very limited**. |
| **Impact on SMEs** | **0** | The **competitiveness of SMEs could be -marginally- improved.** |
| **Social Impacts at EU level** | **0** /√ | Positive impacts on functioning of EU labour market could arise from: the possible harmonization among MS and the resulting effect on allocation of TCN SW across EU; the offsetting of illegal immigration of TCN SW. Nevertheless, **these impacts are expected to be very limited and not significant**. |
| **Impacts on third countries** | **0**/√ | Improving the measures ensuring the return of TCN SW and the protection from exploitation and poor working conditions could benefit third countries. Nevertheless, **these impacts are expected to be very limited**. |
| **Impacts on third-country seasonal workers (including impacts on social inclusion and fundamental rights)** | **0/** √ | **Protection against exploitation** could be strengthened by the **exchange of information and best practices** between MS on measures and approaches in force in single MS. However, the effective impact on working conditions of TCN SW (**art. 31 of the Charter**) as well as on non-discrimination (**art. 21 of the Charter**) **will continue to depend on the national policies**. Moreover, situation of **illegal migration**, if not in parallel and properly addressed, will continue to pose serious risks of exploitation of third country seasonal workers and jeopardize the **social inclusion** of these migrants. Nevertheless, **these impacts are expected to be very limited**. |
| **Impacts on EU national seasonal workers** | **0/** √ | The possible strengthening of protection of TCN SW from exploitation and sub-standard working conditions would contribute to protect EU national seasonal workers from risks of **job displacement.s.** Nevertheless; **these impacts are expected to be very limited**. |
| **Stakeholders' view** | | This option would help to spread best practices (business-friendly) and would have a positive impact in terms of managing SW migration policies and attracting limited additional SW, with limited extra costs and no problems in terms of political acceptability (Business Europe). Moreover, it would anticipate labour demand and allow a more effective planning of migration flows (ETUC). Coordination and cooperation would be "necessary, but insufficient" to ensure granting a set of rights to TCN SW and an efficient functioning of the EU labour market (Caritas Europa). |

## 6.1. Implementation costs of the policy options

A qualitative assessment of costs of the policy options is given. Policy option 1 would not require additional resources.

Option 2 brings about additional costs for the five Member States (EE, IE, LV, LT, MT. DK is not calculated given its opt-out) which currently do not have specific legislation on seasonal workers and would be required to introduce such and monitor its application. A 2 months full time equivalent per Member State is calculated for transposing legislation, and a 4 months per 2 years for monitoring. EU staff resources (3 months full time equivalent) would be required to prepare and channel that legislation.

Option 2B entails limited additional costs for Member States and employers for equal treatment in social security, including enforcement, where the proposed range of rights is not currently granted. EU staff resources would be required to prepare and channel that legislation (see in more detail below under 6.2.3).

For option 3, additional cost regarding the introduction of a single permit for Member States that currently do not have such a system are not expected to be very high; under the future framework Directive[28]. EU staff resources (3 months full time equivalent) would be required to prepare and channel that legislation.

Under options 3A/B some additional costs for the introduction of multi-seasonal permits/a facilitated procedure are foreseen for Member States´ authorities, most notably costs associated with keeping an overview-database of multi-seasonal permit holders and seasonal workers in view of their re-entry, and with operating a system to apply preferential re-entry). At the same time, cost savings can be expected for Member States' authorities (in particular fewer working hours for processing applications- document checks- of third-country seasonal workers already admitted previously) and employers (re-activation of an application made in a previous year instead of need for new application)[29].

One element of option 4 – reporting at consular offices – would entail considerable costs for consular offices (following the reporting procedure, issuing the receipt to third-country seasonal workers and submitting reports to immigration authorities: an estimated cost of € 22.8 million), immigration authorities (establishing a reporting form and procedure; examining, processing and filing the reports: an estimate cost of € 19 million) and third-country seasonal workers (costs of time and money to reach, report and return from the consular office: an estimate cost of € 1.5 million). These costs are estimated at a total of more than € 43 million (see annex 4.1 for an EU cost model).

Option 5 would require EU staff resources (1 month full time equivalent annually) for support activities, and Member State government resources in terms of cost of time of participants in these activities (0.5 months full time equivalent per Member State), as well as costs to convey information on their respective legislative framework and admission conditions. This option would not imply additional costs for employers and third countries.

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[28] See point 6.2.3.

[29] See point 6.2.3.

## 7. IDENTIFICATION ANDASSESSMENT OF THE PREFERRED POLICY OPTION

### 7.1. Comparison of policy options

Table 6.1 compares the "ratings" of the five policy options set out in section 5.

| Assessment criteria | PO 1: Status Quo | PO 2 | | PO 3 | | PO 4 | PO 5 |
|---|---|---|---|---|---|---|---|
| | | PO 2A | PO 2B | PO 3A | PO 3B | | |
| **Relevance** | | | | | | | |
| • Global Objective 1: To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions | 0 | √ | √√ | √√√ | √√ | 0√ | 0/√ |
| • Global Objective 2 prevention of exploitation and illegal immigration. | 0 | √√ | √√ | √√√ | √√(√) | √√ | 0/√ |
| • Global Objective 3: To contribute to the development of third countries | 0 | √ | √√ | √√√√ | √√√ | √ | 0 |

| Assessment criteria | PO 1: Status Quo | PO 2 | | PO 3 | | PO 4 | PO 5 |
|---|---|---|---|---|---|---|---|
| | | PO 2A | PO 2B | PO 3A | PO 3B | | |
| **Feasibility** | | | | | | | |
| Difficulty/risks for transposition | N/A | -√ | -√√ | -√√√√ | -√√√ | -√√√ | 0 |
| Simplification of administrative burden | N/A | -√ | -√√ | -√ | 0 | -√√√ | -√√√ |
| Financial and administrative costs | N/A | -√√ | -√√√ | -√ | -√ | -√√√√ | -√√√ |
| **Expected impacts** | | | | | | | |
| Economic impacts at EU level | 0 | √√ | √√√ | √√√√ | √√√ | √ | 0 |
| Impacts on SMEs | 0 | -√√ | -√√√ | √√√√ | √√√ | √ | 0 |
| Social impacts at EU level | 0 | √√ | √√√ | √√√√ | √√√ | √√ | 0/√ |
| Impacts on third countries | 0 | √ | √√ | √√√√ | √√ | √√ | 0/√ |
| Impacts on third country seasonal workers | 0 | √√ | √√√ | √√ | √√ | -√√√ | 0/√ |
| Impacts on EU national seasonal workers | 0 | √ | √√ | √ | √ | √ | 0 |

## 7.2. Identification of the preferred policy option

On the basis of comparison of the options and their impacts on reaching the policy objectives, the preferred option set out below is a combination of different aspects of policy options 2B, 3A, 3B and 4.

| Main fields of the EU intervention | Provisions of the preferred Policy options | Policy Options and sub-options considered |
|---|---|---|
| **Admission conditions** | • **Common definition of seasonal workers**;<br>• **Common admission criteria**, such as the need to perform a labour market test; the need for a work contract/job offer;<br>• **Definition of the maximum duration of the permit**;<br>• **Single permit for work and residence** on the territory of the MS;<br>• **Admission allowed on the basis of a visa** bearing the mention "seasonal workers" for short periods of stay (up to 3 months);<br>• . | Policy Option 2B |
| **Re-entry in subsequent years** | • **Multi-seasonal permit**, with a defined maximum duration (e.g. up to three years); **or facilitated procedure for re-entry (optional for MS)**<br>• **Previous compliance** of the third-country seasonal workers with all rules as a condition for re-entry;<br>• | Sub-option 3 A/B |
| **Rights and benefits granted to TCN SW** | • **A set of defined rights** in the field of **working conditions** ;<br>• **Equal treatment with EU nationals** with respect to:<br>• **Social security rights**, as defined in Council Regulation 1408/71, such as occupational diseases, accidents at work, sickness benefits, invalidity benefits, family benefits, death grants.<br>• **Right to change employer under specific circumstances** (e.g. in the event of situation of exploitation/poor working conditions, in the case of consecutive short harvests) and within the duration of authorized stay. | Sub-option 2 B |
| **Provisions ensuring return of TCN SW** | • Explicit **obligation to return** after the end of each season<br>• **Maximum duration** of the authorisation to stay per season<br>• Possibilities for **facilitated re-entry** in subsequent years that are **accessible only to TCN SW who have complied** with all conditions during their previous stay as seasonal worker | Option 4, 3 A/B |

Given that the preferred option is a combination of various options, this table re-assesses the preferred option against the policy objectives.

| • **Assessment criteria**<br>• **Relevance** | **Rating** | **Provisions contributing to the rating** |
|---|---|---|
| **To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions** | √√√√√ | A high impact in this field could be achieved due to the streamlining of entry conditions and the establishment of specific provisions for re-entry:<br>**- single permit** for work and residence ( **visa in exceptional cases**);<br>- definition of a maximum **time for processing applications**;<br>**- multi-seasonal permit** or **facilitated re-entry**<br>Moreover, a **common definition and admission criteria** would grant a more efficient allocation of TCN SW across EU MS. Regarding the number of TCN SW, the instrument would not have an immediate effect, as it falls upon MS to determine the volumes of admission to their territories. However, a more attractive scheme coupled with increased labour market needs is likely to lead to higher numbers of TCN SW being admitted to the EU.<br>Given that, for competence reasons, it will remain for MS to determine the volumes of TCN SW admitted, the impact on the numbers of TCN SW coming to the EU is impossible to estimate. However, it is assumed that a flexible system that includes guarantees for return after each season, combined with labour market needs in that sector, will lead to a rise in numbers. |
| **To contribute to preventing exploitation and poor working conditions for third-country seasonal workers and illegal immigration.** | √√√√ | **- single permit** for work and residence and one-stop shop procedure for obtaining the permit and **multi-seasonal permit**, as a means for granting TCN SW with better channels for entry and re-entry;<br>- right to **change employer** under specific circumstances (i.e. in the event of exploitation);<br>**- equal treatment** with respect to working conditions and social security. |
| **To contribute to the development of third countries** | √√√ | The positive impact would be due to:<br>**- multi-seasonal permit** or **facilitated re-entry** in subsequent years, as specific means to foster circular migration;<br>**- a set of rights in respect** of working conditions and **equal treatment** with EU nationals in the field social security , which would positively affect remittances' size. |
| **Feasibility** | | |
| **Difficulty/risks for transposition** | -√√√ | - Possible **considerable transposition difficulties** related to **multi-seasonal permit** (especially for MS particularly concerned with a strict control over seasonal migration from third countries, i.e. MS of Group A);<br>**- more limited difficulties** with respect to **single permit**, **collective applications, the rights granted in respect of working conditions, equal treatment.**<br>- **risks of compliance of EU employers** with the obligation foreseen in terms of equal treatment; |
| **Simplification of administrative burden** | √√√√ | High simplification of administrative burdens and establishment of more efficient admission and recruitment procedures, through the introduction of the **single permit**, the **multi-seasonal permit/facilitated re-entry**. |
| **Financial and administrative costs** | - √√√ | - **Financial costs** for MS Authorities, EU employers and TCN SW for familiarising with the new procedures (**single permit; multi –seasonal permit, facilitated re-entry**). However, given that under the future framework Directive, MS would introduce a single permit anyway for other categories of workers, additional costs are not expected to be high.<br>Moreover, positive impacts on **public finance** as a consequence of increased wages paid to TCN SW and higher numbers of seasonal workers legally employed, thus increased **revenues from the payment of taxes**. Certain increase in employment costs linked to the provisions granting a set or rights in respect of working conditions, in particular for employers who currently pay salaries below such threshold (in contradiction to the respective national legislation). |

| • **Assessment criteria**<br>• **Relevance** | **Rating** | **Provisions contributing to the rating** |
|---|---|---|
| **Expected impacts** | | |
| **Economic and social impacts at EU level** | √√√√ | Particularly high positive impacts would be achieved through the establishment of a simpler and more efficient admission procedure:<br>**Single permit** for work and residence;<br>definition of a **maximum time for processing applications**; ;<br>**multi-seasonal permit/facilitated re-entry**.<br>Further positive effects on the proper functioning of the internal market and the EU labour market would be achieved through the establishment of **common definition and common admission** criteria across the EU;<br>the provision granting **a set of rights relating to working conditions** and **equal treatment in respect of other socio-economical rights**, which would support the fair competition between EU employers and between EU national and TCN SW. |
| **Impacts on SMEs** | √√√ | Very positive impacts especially for SME through simpler and more flexible admission procedures including possibility to rely on a more stable and trained workforce as a result of provisions for facilitated re-entry.<br>Support to fair competition in the internal market, including vis-à-vis bigger enterprises.<br>Some negative impact as a result of granting a set of rights with to salary and equal treatment with respect to certain social security rights, as costs are partly to be borne by employers, with SME being particularly affected. However, such additional costs would be mostly borne by employers who even currently do not abide by the rules set in national legislation in respect of issues such as wage level and social (security) rights. |
| **Impacts on third countries** | √√ | The impacts on third countries would be mainly related to the provisions supporting circular migration, granting a secure legal status, ensuring return of TCN SW, i.e. respectively:<br>**Multi-seasonal permit/facilitated re-entry**;<br>**A set of rights** in the field of working conditions (in particular with respect of wages) and **equal treatment** with EU nationals in the field of social security, which could positively affect remittances' inflows (in terms of increased size and possibility for TCN SW to send them); |
| **Impacts on third country seasonal workers (including impacts on social inclusion and fundamental rights)** | √√√√ | **A set of rights** relating to working conditions and related field and **right to change employer** under specific circumstances (i.e. in the event of exploitation);<br>**Common definition and admission criteria across the EU, single permit and multi-seasonal permit**, as provisions granting more efficient and more transparent opportunity for admission. |
| **Impacts on EU national seasonal workers** | √√√ | **Admission criteria** including labour market test;<br>**Re-entry subject to the existence of a work contract/job offer**;<br>**A set of rights** relating to working conditions and **equal treatment** with respect to social security<br>. |

### 7.2.1. *Main benefits and effects*

The preferred option would achieve better results than any of the policy options alone, or any other combination of options. Common admission standards with simplified entry procedures would have positive impacts by providing Member States with the required seasonal labour force from third countries through a flexible admission system. With respect to facilitated re-entry in subsequent years and in view of expected transposition difficulties in Member States in particular in respect of the multi-seasonal permit, the preferred option is to require Member States either to introduce multi-seasonal permits or to set up a facilitated procedure. This would have positive impacts on the ability to meet labour market needs as a seasonal workforce would be more easily available. Additionally, this system would offer to third-country seasonal workers the prospect of return to the Member State, in other words, it would

support circular migration and by offering the possibility to return, it would dissuade third-country seasonal workers from overstaying and working illegally. This aspect could be reinforced through an obligation of third-country seasonal workers to register at a Member State consulate after their return. However, in view of the negative financial impacts and doubts about feasibility of such solution, this element was discarded. Third-country seasonal workers who enjoy a secure legal status would be better protected from exploitation and dangerous work. Further, countries of origin could benefit from increased remittances.

The decision on the numbers of admitted third-country nationals remains the competence of Member States so that the impact of the instrument on numbers of admitted third-country seasonal workers is difficult to measure. However, looking at economic needs forecasts for the mid-term, combined with the introduction of a more flexible admission procedure, a rise in numbers of seasonal workers can be expected. This is so even in the context of the current economic crisis[30]. On the other hand, increased levels of protection granted to third-country seasonal workers could lead to a certain decrease in demand by employers. An increase in the number of illegally staying seasonal workers is not expected, given the future labour inspections in certain designated risk sectors under the employer sanctions Directive.

Some impact of the preferred option on the current problem of lax enforcement is expected due to the fact that a number of safeguards are foreseen, in particular, the authorities will have to undertake controls before the arrival of a third-country seasonal worker (such as existence of a work contract or a binding job offer that stipulates a salary). This should contribute to ensuring higher standards from the outset. In addition, under the employer sanctions Directive labour inspections in certain risk sectors for illegal employment shall be undertaken that are expected to have positive spill-over effects on sectors of seasonal work.

#### 7.2.2. *Proportionality and EU added value*

Proposing binding rules on the admission and residence conditions of third-country seasonal workers is in accordance with the principle of proportionality since the content of the action is limited to what is necessary to achieve the above aim. The proposed option consists of admission conditions, procedure and permit, as well as rights of seasonal workers, that is, the areas that constitute elements of a common immigration policy under Article 79 of the Treaty on the Functioning of the European Union.

Further, the proposed option constitutes a relatively small change from the *status quo* in terms of both the legislative action required and the burden on prospective employers. Whereas some Member States may have increased burdens resulting from the need to set up (more) specific rules, these are considered to be justified in view of the objectives of the present proposal and the structural demand for this category of third-country workers. Further, as stated above, it will remain for Member States to determine the volumes of third-country seasonal workers admitted.

– The instrument chosen is a Directive, which gives Member States a high degree of flexibility in terms of implementation. The form of action does not exceed what is necessary to achieve the aim to regulate seasonal migration flows effectively as non-binding measures would have too limited an effect; potential third-country seasonal

[30] See section 2.1.1.

workers and their prospective employers would continue to face an array of different rules for entry and residence and different levels of rights would be granted during the residence.

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

– Thanks to simplified admission procedures and residence conditions, seasonal workers will be available more quickly, when EU economies need them;

– Rules governing working conditions will help prevent exploitation and protect the health and safety of non-EU seasonal workers;

– Clear, simpler admission rules should result in fewer people working illegally in seasonal jobs and/or staying on longer than they are entitled to;

– Impetus to the further development of third countries and of the external aspects of the EU migration policy.

*7.2.3. Assessment of costs*

- **Administrative costs**

- The following assumptions and estimates were made:

– The number of third-country seasonal workers to be admitted to the EU is estimated at roughly 230 000 per year, thus on average 9000 per Member State (based on available data for 10 Member States, and projected onto EU-26). At least half of these, thus 115 000, are estimated to be eligible for a multi-seasonal permit or facilitated re-entry because they are expected to be interested in regular employment opportunities in the EU and they previously complied with all obligations, including return.

– The hourly tariffs of Member States' personnel are estimated to be €23, based on EU average hourly labour costs in public administration (NACE L), extracted from Eurostat. The examination of an application is calculated to require six hours; information on multi-seasonal permits half an hour and annual reporting at 10 hours.

The preferred option would generate the following additional administrative costs for Member States authorities:

– Information by regional/local foreigners' offices to the Member State authority handling the database of multi-seasonal permits and facilitated re-entry procedures.

– Obligation to submit annual statistics to the Commission and other Member States on numbers of residence permits or visa issued to third-country seasonal workers.

Costs for Member States' authorities for the examination of the submitted applications are not added here, given that these costs already occur at present, where such applications are checked either as part of specific legislation on admission of seasonal workers, or as part of the general immigration laws. Accordingly, the preferred option does not create additional costs for employers and seasonal workers.

| Proposal on conditions of entry and residence of third-country seasonal workers | | | | | | Tariff (€ per hour) | | Time (hour) | | Price (per action or equip) | Freq (per year) | Nbr of entities | Total nbr of actions | Total cost | Regulatory origin (%) | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| No. | | | Type of obligation | Description of required action(s) | Target group | i | e | I | e | | | | | | Int | EU | Nat | Reg |
| | | | | | | | | | | | | | | | | | | |
| 2 | | | Application for individual authorisation or exemption | Producing new data | MS – Immigration Services at regional/local level (information on multi-seasonal permits) | 23 | | 0.5 | | 11.5 | 1 | 26 | 115.000 | 57.500 | | | 100 % | |
| 3 | | | Application for individual authorisation or exemption | Retrieving relevant information from existing data | MS – (Annual reporting to COM and other MS) | 23 | | 10 | | 230 | 1 | 26 | 26 | 5980 | | | 100 % | |
| | | | | | | | | | | | **Total administrative costs (€)** | | | **63.480** | | | | |

**Net implementation costs**

The below quantitative conclusions should be used with extreme caution, given the absence of reliable data and numbers, as well as the various underlying assumptions.

**Introduction of a single permit**

Net implementation costs for the introduction of a single permit are not expected to be considerable, given that:

– Under the framework Directive (currently under negotiation in Council and Parliament) the 12 Member States that currently do not have a single permit system would be required to introduce such. Given certain specificities that a seasonal workers regime requires, seasonal workers have been excluded from the scope of that proposal for a Directive.

– Under the preferred option, a single permit would have to be issued only for stays of more than 3 months, as shorter stays are covered by the Schengen visa regime. There are no specific data on the average length of stay of seasonal workers. From indicative data in Member States, it appears however that approximately a third of seasonal workers stay for a period shorter than 3 months.

Costs savings could occur in the 12 MS (BE, BG, CZ, ES, IE, HU, LV, MT, PL, PT, RO, SL) that currently do not have a single permit, notably with respect to assumptions of reduced labour input (up to one working day less) in a single application procedure that leads to a single permit. Assuming an average of 9000 seasonal workers per MS, half of which would be issued with a single permit, this would entail savings of up to € 8.64 Euro.

**Multi-seasonal permit/facilitated procedure**

This kind of permit/procedure would require Member States to run tools (most likely in the form of databases) to have an overview of seasonal workers who are beneficiaries of a multi-seasonal permit or the facilitated procedure. It is estimated that at least half of the Member States already have tools that could be used for this new obligation.

Costs for the set up and operation of such a database are estimated at between 10 000 and 20 000 Euro for the other 13 Member States, thus at a range of between 130.000 and 260.000 together. At the same time, in subsequent years, savings up to 1.85 million Euros can be expected due to reduced labour input (up to one working day less) for the evaluation of the renewed applications, as less checking of, for example, documentary evidence will be required.

**A set of defined rights and/or equal treatment in a range of areas: impact on public finances**

Member States already grant seasonal workers equal treatment in working conditions. With respect to social security rights, the majority of Member States also grant the full range of rights to seasonal workers. Gaps in rights that the proposal would close are relevant in four Member States that appear to have either waiting periods of between one and 10 years before access is granted to rights, or not to grant certain rights to third-country nationals. These are sickness and health care (BG), disability (MT, LU, IT), and old age pensions (IT, LU, MT). Seasonal workers would thus be excluded from access, unless a specific regime covered them.

In recent years, Malta has not admitted third-country seasonal workers and is not expected to do so in the near future, so no additional costs are expected. There are no data on numbers of seasonal workers admitted to LU. Thus, additional costs are calculated for IT and BG only, on basis of Eurostat data on per capita expenditure on social security benefits. For IT, these are € 215.8 million for old age pensions (providing that the quota of 80.000 third-country seasonal workers will be filled, it is assumed that roughly 10 % will have worked over several decades and are therefore, in the long run, eligible for such pensions; the per capita expenditure in IT amounts to € 3.084. It should be noted however that this calculation does not include contributions and tax paid by third-country seasonal workers and their employers.) and € 25.8 million for disability benefits (the expenditure being € 369 per capita.). For BG, the numbers of third-country seasonal workers admitted are 'negligible' (statement of Ministry in reply to COM questionnaire), thus assumed at 100 persons/year. There are no data on expenditure for sickness insurance in BG so that the PL expenditure of € 204 is used as a proxy. That way, additional costs of € 20 400 are expected.

**Costs for employers**

Additional costs for employers arise as a consequence of higher wages to be paid. Given that all Member States already now grant equal treatment in working conditions, including salaries, these additional costs would be borne by employers who currently do not abide by the respective national legislation. Data or estimates for such payment of sub-standard salaries for either legally or illegally staying seasonal workers are not available so that an estimate of these additional costs is impossible to make. As indicated above, the employers sanctions Directive is expected to have certain spill-over effects in terms of enforcement of rights of third-country seasonal workers. In addition, binding EU rules would allow controlling the application of these rules in the Member States.

## 8. MONITORING AND EVALUATION

The table below includes suggestions for indicators that could be developed to assess the progress and effectiveness of the preferred option in achieving the main policy objectives.

| Main Objectives | Indicators | Sources of Information |
|---|---|---|
| **I)** To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions | - Estimated extent of the labour shortage (job vacancies rate in seasonal occupations according to employers' requests);<br>- Average time taken to process an application;<br>- Number of requests for a multi-seasonal permit/facilitated procedure;<br>- Number of TCN SW admitted through a multi-seasonal permit on total number of TCN SW admitted in the EU. | - EUROSTAT;<br>- Member States authorities involved in the administration of the migration policy at national level;<br>- Labour force Survey (LFS);<br>- Surveys at EU and national level. |
| **II)** To contribute to preventing illegal immigration, exploitation and poor working conditions for third-country seasonal workers | - Number of alerts on TCN SW overstayers on total number of alerts on overstayers;<br>- Estimated number of TCN SW without the right to work employed on total number of TCN illegally employed in the EU territory;<br>- Conditions of work of legally-employed TCN SW (such as average salary level of TCN SW; compared | - Data collected through the future entry/exit system;<br>- MS authorities involved in employers inspections;<br>- MS Monitoring reports; |

| Main Objectives | Indicators | Sources of Information |
|---|---|---|
| | to average salary level of EU national SW). | - Surveys at MS level. |
| **III)** To contribute to the development of third countries | -Number of agreements signed with TCN SW concerning seasonal migration;<br>- Estimated size of remittances sent by TCN SW. | - EUROSTAT<br>- Member States authorities involved in the administration of cooperation programmes at national level;<br>- Surveys at EU and national level. |

In accordance with the Commission Communication 'A Europe of results – Applying Community law'[31], the Commission suggests setting up an expert group of representatives of the Member States and the Commission (the 'Contact Committee'), which would meet to discuss issues concerning the transposition of the proposed directive, along the lines of the Contact Committees that meet regularly to consider the implementation of for example Directives 2009/50/EC and 2009/52/EC. The proposed expert group would ensure improved information flow between EU and national authorities on how the directive is implemented and would help to anticipate and resolve problems more effectively.

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

Lastly, monitoring and evaluation arrangements will be also carried out in the form of a Commission evaluation report three years after the transposition deadline of the Directive, on the basis of Member States reporting. Following this report, the Commission will decide whether a proposal for amendment of the Directive should be put forward.

[31] COM(2007) 502.