



Federal Office
for Migration
and Refugees



Attracting and Protecting Seasonal Workers from Third Countries

Study by the German National Contact Point for the
European Migration Network (EMN)

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The European Migration Network

The European Migration Network (EMN) was launched by the European Commission in 2003 due to an initiative of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC forms the permanent legal basis of the EMN and National Contact Points have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union institutions, Member States' authorities and institutions as well as the wider public by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in these areas. The National Contact Point for Germany is located at the Federal Office for Migration and Refugees in Nuremberg. Its main task is to implement the annual work programme of the EMN. This includes the drafting of the annual policy report "Migration, Integration, Asylum" and of up to four topic specific studies, as well as answering Ad-Hoc Queries launched by other National Contact Points or the European Commission. The German National Contact Point also carries out visibility activities and networking in several forums, e.g. through the organisation of conferences or the participation in conferences in Germany and abroad. Furthermore, the National Contact Points in each country set up national networks consisting of organisations, institutions and individuals working in the field of migration and asylum.

In general, the National Contact Points do not conduct primary research but collect, analyse and present existing data. Exceptions might occur when existing data and information are not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Furthermore, the EMN has produced a Glossary, which ensures the application of comparable terms and definitions in all national reports and is available on the national and international EMN websites.

Upon completion of national reports, the European Commission drafts a synthesis report with the support of a service provider. This report summarises the most significant results of the individual national reports. In addition, topic-based policy briefs, so-called EMN Informs, are produced in order to present and compare selected topics in a concise manner. The EMN Bulletin, which is published quarterly, informs about current developments in the EU and the Member States. With the work programme of 2014, the Return Expert Group (REG) was created to address issues around voluntary return, reintegration and forced return.

All EMN publications are available on the website of the European Commission Directorate-General for Migration and Home Affairs. The national studies of the German National Contact Point as well as the synthesis reports, Informs and the Glossary are also available on the national website: www.emn-germany.de

EMN
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Summary

This study represents Germany's contribution to the EMN study 'Attracting and Protecting Seasonal Workers from Third Countries in the EU'. It will be implemented in all participating EU Member States and Norway in accordance with common procedures. The results of the national study will then be incorporated into a comparative synthesis report, which will provide an overview of the recruitment and working conditions of seasonal workers within the EU.

High demand for foreign seasonal workers

Seasonal sectors of the economy – such as agriculture, tourism and the fairground industry – are often dependent on seasonal workers. Germany had in the past, and currently continues to have a high demand for foreign seasonal workers. This was made particularly clear by the entry restrictions introduced due to the outbreak of COVID-19 in early 2020. In March 2020, there was a shortage of tens of thousands of foreign seasonal workers in the agricultural sector, who could not be replaced by domestic workers. As a result, a special regulation had to be issued, which allowed a limited number of foreign seasonal workers to work as harvest helpers subject to strict conditions.

Employment of seasonal workers from EU Member States

Unlike in many other EU Member States, the demand for seasonal workers in Germany has so far been met mainly by EU nationals, in particular from Poland and Romania. However, according to the employers' associations as well as the Federal Employment Agency (Bundesagentur für Arbeit), there has been a decline in EU nationals' interest in seasonal work in Germany – especially in the agricultural sector in recent years. Therefore they anticipate that there will be an increasing demand for seasonal workers from third countries in the future.

Transposition of the EU Seasonal Workers Directive (2014/36/EU)

In Germany, third-country nationals can be employed as seasonal workers under certain terms and conditions pursuant to EU Directive 2014/36/EU¹ of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (EU Seasonal Workers Directive). It has been transposed in Section 15a of the Employment Regulation (Beschäftigungsverordnung). Bilateral agreements between the Federal Employment Agency and the relevant third countries provide the basis for the transposition of the EU Seasonal Workers Directive in Germany. The International Placement Service of the Federal Employment Agency (Zentrale Auslands- und Fachvermittlung der Bundesagentur für Arbeit) and the partner administrations of the third countries are responsible for the placement of seasonal workers.

Initial placement agreements with third countries

Placement agreements were concluded with the former EU accession candidates Poland, the Czech Republic, Slovakia and Hungary as well as Romania, Bulgaria and Croatia, but these agreements expired when these countries joined the EU. Since then, nationals of these countries have benefited from the free movement of workers. As before their EU accession, the demand for seasonal workers has been met mainly by these countries. Since the end of 2018, the Federal Employment Agency has been authorised to conclude agreements on the recruitment of seasonal workers from third countries on behalf of the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales) and the Federal Ministry of Food and Agriculture (Bundesministerium für Ernährung und Landwirtschaft). A placement agreement was then concluded with Georgia in early 2020. However, the placement of seasonal workers in agriculture, which was planned as a pilot project from May 2020, was postponed due to the outbreak of COVID-19. The

¹ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

Federal Employment Agency remains in contact with other third countries such as Bosnia-Herzegovina, Albania, Moldova and North Macedonia with a view to initiating bilateral placement agreements.

The bilateral cooperation agreement concluded between the Federal Employment Agency and the labour ministry of Georgia is based on the EU Seasonal Workers Directive, which is intended to ensure that all aspects of the placement agreement comply with the protection of the rights of seasonal workers. The workers employed in the Federal Republic of Germany in this context may not, as a matter of principle, be employed on less favourable conditions than comparable domestic employees or workers of equivalent status. This means, for instance, that the minimum wage and statutory working hours also apply to them.

Working conditions and measures to safeguard the rights of seasonal workers

Regulations have been issued to monitor the terms and conditions of employment and to protect the rights of seasonal workers. Under the provisions set forth in the Act Regulating a General Minimum Wage (Mindestlohngesetzes), for instance, employers are obliged to record the beginning, end and duration of daily working hours. The provision of adequate accommodation by the enterprise and the wording of employment contracts in the respective national language, inter alia, are monitored.

Ensuring fair and attractive wage and working conditions is a factor that will help Germany to remain competitive for seasonal workers in pan-European labour markets. Challenges arise, amongst others, in connection with the transferability of social security contributions to the countries of origin of seasonal workers.

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1 Introduction

Seasonal economic sectors such as agriculture, often have difficulty finding sufficient domestic labour at peak times and are therefore temporarily dependent on foreign seasonal workers. Whereas workers from EU Member States enjoy unrestricted freedom of movement in Germany and do not require a work permit, different rules apply to seasonal workers from third countries. In Germany, the EU Seasonal Workers Directive (2014/36/EU)², transposed in Section 15a of the Employment Regulation, allows third-country nationals to be employed as seasonal workers under certain conditions and requirements. Bilateral agreements between the Federal Employment Agency and interested third countries or the countries in question provide the basis for the transposition of the EU Seasonal Workers Directive in Germany. Since the expiry of the agreements with the former EU accession candidates, no further agreements were concluded initially. A placement agreement was concluded with Georgia in early 2020.

The aim of this EMN study is to provide an overview of the recruitment policies and working conditions of seasonal workers from third countries. Since the majority of seasonal workers employed in Germany continue to come from EU countries, the figures and explanations relating to the employment of foreign seasonal workers mentioned in the study often do not refer exclusively to third-country nationals, but also partly to seasonal workers from EU Member States. The study first provides an overview of the background, legal framework and composition of seasonal workers in Germany (Chapter 2). In Chapter 3, the study goes into more detail on the recruitment of seasonal workers, the legal basis and regulations governing the placement agreements. In addition, more recent developments caused by the COVID-19 pandemic are discussed. The study also examines measures to safeguard the rights of seasonal workers and briefly examines the working conditions of seasonal workers (Chapter 4). Last but not least, Chapter 5 summarises the main findings.

The study is mainly based on an evaluation of the literature on selected aspects of the topic and on analyses of relevant legal provisions. Staff from the Federal Employment Agency were interviewed and asked to clarify specific questions.

This study represents Germany's contribution to the EMN study "Attracting and Protecting Seasonal Workers from Third Countries in the EU". It is being conducted in all participating EU Member States and Norway in accordance with common procedures. The results of the national study will then be incorporated into a comparative synthesis report, which will provide a comparative overview of measures relating to the recruitment and working conditions of seasonal workers in the EU Member States.

2 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

2 Background, legal framework and composition of seasonal workers in Germany

2.1 Definition of and background to seasonal work

There is no uniform definition of seasonal work. However, the different definitions have the same characteristics, namely seasonal fluctuations in the volume of work and, depending on this, the limited duration of the employment relationship. Seasonal workers do not usually move their place of residence to the place of employment. In the case of workers from third countries, the residence remains in a country other than the country in which the seasonal employment takes place (Späth et al. 2018; OECD 2008; López-Sala et al. 2016).

The Federal Government defines seasonal workers as “employees who are temporarily employed by an employer domiciled in Germany and carry out activities, which, due to a recurring seasonal event or a recurring sequence of seasonal events, are tied to a particular season, with the demand for labour significantly exceeding the demand for the activities normally carried out” (Deutscher Bundestag 2015: 4).

In Germany these are, in particular, employees

- in agriculture and horticulture (e.g., harvest helpers on special crop farms specializing, for instance, in fruit growing, vegetable production or viticulture).
- in tourism, especially in hotels and restaurants and in businesses or parts of businesses, which are not open all year round (e.g., beer gardens, ski huts) or which have to cover an increased demand for labour during certain limited periods (e.g., restaurants popular with day-trippers)
- in the fairground industry (e.g., accompanying personnel for rides) (Zoll n. d.).

The employment of seasonal workers is of great importance for many enterprises in the above-mentioned sectors. “Enterprises must be able to cover their seasonal labour requirements flexibly depending on circumstances such as the weather or the market situation” (BMEL 2020a). Due to the challenging working conditions and the lack of young domestic workers in the sector, however, it is often not possible to meet the demand with domestic workers, which means that the enterprises are reliant on foreign workers (Parusel/Schneider 2010: 67).

The aim of the regulations governing seasonal employment is to bridge a temporary “demand for labour at peak times” (Parusel/Schneider 2010: 21). In Germany, the immigration of seasonal workers is regarded as the immigration of persons with no qualified vocational training, which is only provided for to a limited extent in German immigration law (SVR 2018: 21). There are, however, exceptions to this rule “if supplementary provisions set forth in the Employment Regulation permit this or an intergovernmental agreement has been concluded” (SVR 2018: 21).

While workers from EU Member States do not need a work permit, the admission of foreign seasonal workers from third countries requires bilateral placement agreements to be concluded between the Federal Employment Agency and the ministry of labour or an appropriate institution in the respective country of origin (Chapter 3.1). The International Placement Service of the Federal Employment Agency (Zentrale Auslands- und Fachvermittlung der Bundesagentur für Arbeit) is responsible for the placement of seasonal workers.

Before the EU’s eastern enlargement, bilateral agreements on seasonal work were in force with Poland, Romania, Hungary, Slovakia, the Czech Republic, Croatia, Slovenia and Bulgaria (SVR 2018: 21). With the accession of these countries to the EU in 2004, 2007 and 2013, respectively, and the expiry of the transitional arrangements regarding the free move-

ment of workers from the new EU Member States (2011, 2014 and 2015), the placement agreements with these countries also expired.

Since then, no placement agreements had been concluded with third countries until 2020, partly due to the fact that, in the Federal Government's view, it was possible to meet the demand for seasonal workers with German nationals and EU nationals (Brinkmann 2017: 4). In particular the hotel and restaurant industry, the construction industry and, more recently, the agricultural sector have been complaining increasingly about shortages that could no longer be bridged by EU workers (SVR 2018: 16). Experts assume that this situation will become even more acute in the future, since, inter alia, "the supply of workers from the eastern EU Member States entitled to freedom of movement will continue to decline as the local economic situation in their countries improves" (GLFA 2019; SVR 2018: 16; Fuchs/Kubis/Schneider 2018; response of the Federal Employment Agency).

2.2 Possibilities for third-country nationals to take up temporary work in seasonal activities

2.2.1 Employment of seasonal workers under the EU Seasonal Workers Directive (Directive 2014/36/EU)

Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, which was adopted on 26 February 2014, is intended to harmonise the programmes for seasonal workers. It was created primarily to help manage and control seasonal migratory flows and to protect the rights of seasonal workers.

The Directive lays down the conditions and standards for entry and stay of third-country nationals employed as seasonal workers (SVR 2018: 18). The Directive aims to set out "fair and transparent rules for admission and stay" and also provides for "safeguards to prevent overstaying or temporary stay from becoming permanent". The Directive is also intended to "contribute [...] to ensuring decent working and living conditions for

seasonal workers" (recital 7 of the Seasonal Workers Directive (Directive 2014/115/EU)).

On some points, the Directive contains specific requirements for EU Member States (SVR 2018: 18): for instance, the length of stay of seasonal workers in the European Union is limited to between five and nine months per year, during which time their main residence remains in the third country. Beyond this, however, Member States retain a certain degree of discretion, for instance, in determining the immigration figures. It is, for instance, up to the Member States to decide which and how many migrants they will admit.

Transposition of the EU Seasonal Workers Directive (2014/36/EU) into German law

Germany has transposed the Directive into national law. The transposition took place with the 'Act on the Transposition of Residence Law Directives of the European Union on Labour Migration' (Gesetz zur Umsetzung Aufenthaltsrechtlicher Richtlinien der Europäischen Union zur Arbeitsmigration), which entered into force on 1 August 2017.³

With the transposition of the Directive, Section 15a of the Employment Regulation was added, enabling the conditions for the granting of a work permit for short-term stays of up to 90 days and the entry and employment of third-country nationals for a period of up to six months (Bundesrat 2017: 1).

3 'Act on the Transposition of Residence Law Directives of the European Union on Labour Migration' (Gesetz zur Umsetzung Aufenthaltsrechtlicher Richtlinien der Europäischen Union zur Arbeitsmigration) of 12 May 2017. Federal Law Gazette I 2017 p. 1106.

Table 1: Transposition of the EU Seasonal Workers Directive into German law

New regulations on seasonal work: transposition of the EU Seasonal Workers Directive (2014/36/EU) into German law	
Section 15a of the Employment Regulation	Section 15a of the Employment Regulation defines the prerequisites for issuing work permits for short-term stays of up to 90 days within a period of 180 days and, in principle, for the entry and employment of third-country nationals for a period of up to six months.
Section 4a subsection 4 of the Residence Act	For short stays of up to 90 days within a reference period of 180 days, third-country nationals who are exempt from the visa requirement do not need a seasonal worker visa and hence a residence permit. In these cases, the Federal Employment Agency issues a work permit pursuant to Section 15a subsection 1 sentence 1 no. 1 of the Employment Regulation. The Federal Employment Agency issues approval for stays of more than 90 days per 180-day period. However, the person needs a work permit pursuant to Section 19c subsection 1 of the Residence Act in conjunction with Section 15a subsection 1 sentence 1 no. 2 a) of the Employment Regulation. This is issued by the foreigners authority. Third-country nationals requiring a visa therefore always require a residence title.
Section 41 of the Residence Act	The approval may be revoked and the seasonal work permit withdrawn if the foreigner is employed on less favourable terms than comparable German nationals or if grounds for denial under Section 40 of the Residence Act exist.
Section 39 subsection 6 sentence 3 of the Residence Act	The Federal Employment Agency may determine demand-oriented admission figures in relation to the approval of residence titles for seasonal work and seasonal work permits (Section 39 subsection 6 sentence 3 of the Residence Act). If it has determined such admission figures, there is no need to carry out a labour market test (Section 15a subsection 6 of the Employment Regulation). If the Federal Labour Office does not determine an admission figure, a labour market test is conducted in accordance with Section 39 subsections 2 and 6 of the Residence Act.

Visa requirements and work permits for seasonal workers

With the implementation of the Directive, seasonal workers from **visa-exempt** countries no longer require a residence permit for entry and employment, provided that the duration of employment does not exceed 90 days within a 180-day period (Section 4a subsection 4 of the Residence Act in conjunction with Section 15a subsection 1 sentence 1 no. 1 of the Employment Regulation). However, they may only perform seasonal work if they have a work permit issued by the Federal Employment Agency, which the employer needs to apply for pursuant to Section 39 subsection 4 of the Residence Act in conjunction with Section 15a subsection 4 of the Employment Regulation. If, in the case of an originally issued work permit, the period of stay is extended beyond the permitted visa-exempt 90 days within the 180-day period, the seasonal worker needs a residence title, which can be applied for in Germany and is issued by the foreigners authority (Section 39 no. 11 of the Residence Ordinance (Aufenthaltsverordnung)). The granting of the residence permit requires the approval of the Federal Employment Agency.

Seasonal workers from **non-visa-exempt countries** continue to need a visa (Section 15a subsection 1 sentence 1 no. 2b of the Employment Regulation). Here, as with other work visas, the Federal Employment Agency is involved in the approval procedure. For seasonal employment planned to be of a duration of more than 90 days from the outset (Section 15a sub-

section 1 sentence 1 no. 2 a) of the Employment Regulation), a national visa must be issued to third-country nationals. The Federal Employment Agency must also issue its approval in these cases.

Basic requirements for approval of the granting of a residence permit or a work permit

Section 15a subsection 2 of the Employment Regulation sets out the requirements for approval of the granting of a residence permit or a work permit. It stipulates that the following requirements must be met:

1. Proof of sufficient health insurance coverage,
2. The availability of adequate accommodation and
3. The existence of a specific job offer or a valid employment contract that sets out certain terms and conditions, including pay, working hours and the duration of paid leave.

Labour market test

When work permits are issued, there is no need to carry out a labour market test if the Federal Employment Agency has determined admission figures (Section 15a subsection 6 of the Employment Regulation). If no admission figures have been determined, a labour market test is carried out pursuant to Section 39 subsections 2 and 6 of the Residence Act. The labour market test includes “examining whether there are domestic candidates with preferential rights or equiva-

lent candidates available for the specific job” (BA 2017: 18). Preference is given to German nationals, applicants from the European Union, the European Economic Area and Switzerland as well as third-country nationals with unrestricted access to the labour market, such as recognised refugees.

Revocation of approval and withdrawal of the work permit

In order to ensure the stability and monitoring of the labour market as well as the social protection of workers from third countries, regulations have been introduced on the revocation and withdrawal of work permits or approval by the Federal Employment Agency (Huber/Göbel-Zimmermann 2016). Among other things, this is intended to protect domestic workers from wage dumping (Deutscher Bundestag 2017). Pursuant to Section 41 of the Residence Act, the approval of employment may be revoked and the seasonal work permit withdrawn if the foreigner is employed on less favourable terms than German nationals employed in an equivalent position or if grounds for denial stipulated in Section 40 of the Residence Act exist.

This means the approval of employment pursuant to Section 39 of the Residence Act is to be denied if the employment has come about on the basis of unlawful placement or recruitment, or if the foreigner intends to take up employment as a temporary worker (Section 1 subsection 1 of the Act on Temporary Employment Businesses (Arbeitnehmerüberlassungsgesetz⁴)). In addition, the approval of employment may be denied pursuant to Section 40 subsection 1 or 2 of the Residence Act if the offence of clandestine employment has been committed, or there are other important grounds relating to the individuals themselves. Reasonable facts must exist for the revocation (Huber/Göbel-Zimmermann 2016). Reasons attributable to the individual must indicate that he or she “will display ‘unreliability’ with regard to future compliance with the legal obligations applicable to him or her in connection with the employment relationship” (Hänsle 2020). This is the case, for instance, “if there is evidence of unauthorised alteration of personal data” by the individual (Hänsle 2020).

4 Section 1 subsection 1 sentence 1 of the Act on Temporary Employment Businesses (Arbeitnehmerüberlassungsgesetzes (AÜG)) describes the temporary employment relationship as follows: In the context of their economic activity, employers hire their employees (temporary workers) out to third parties (temporary work agencies) for the performance of work. Employees are hired out to perform work if they are integrated into the work organisation of the temporary work agency and are subject to its instructions (Section 1 subsection 1 sentence 2 of the Act on Temporary Employment Businesses).

Bilateral agreements between the Federal Employment Agency and the labour administration of the country of origin

However, the possibility for third-country nationals to take up seasonal employment always requires a bilateral agreement to be concluded between the Federal Employment Agency and the ministry of labour or an appropriate institution in the country of origin on the procedure and selection for seasonal employment (Section 15a subsection 1 of the Employment Regulation). Furthermore, a need-based admission figure, if determined by the Federal Employment Agency in accordance with Section 39 subsection 6 sentence 3, must not yet have been reached (BMI 2017: 48) (Chapter 3).

2.2.2 Alternative possibilities of seasonal work for third-country nationals

In Germany, there are no alternative regulations that allow third-country nationals, even those who have no qualifications, to take up temporary employment as is possible with seasonal work. The initial financial and professional requirements as well as language barriers, for instance are low and easy to meet in seasonal work (SVR 2018: 42).

Holiday employment for foreign students represents an exception to this rule (Section 14 subsection 2 of the Employment Regulation). This section states that students of foreign universities and technical colleges can take on a holiday job in Germany for a period of up to 90 days within a 12-month period during their semester breaks. They must have been placed by the Federal Employment Agency.

2.3 Composition of seasonal workers

Currently, no seasonal workers from third countries are employed in Germany in accordance with the EU Seasonal Workers Directive. The majority of seasonal work is performed by workers from EU Member States; yet, no precise data is available. It is estimated that foreign workers employed in the agricultural sector continue to come from Poland and Romania (GLFA 2019).

However, due to the lack of data and scientific studies available, it is not possible to provide precise information on the composition, countries of origin and working conditions of seasonal workers (GLFA 2019; Späth et al. 2018; Wagner/Hassel 2015: 35).

Differentiated by sector, seasonal work is considered to be of great importance, above all in agriculture (Späth et al. 2018). A non-representative study of seasonal work in agriculture conducted by Garming (2016) shows, for instance, that about every second farm employs seasonal workers (Garming 2016: 15).

The most recent official data currently available on the total number of seasonal workers in agriculture is based on the agricultural structure surveys conducted by Federal Statistical Office in 2016, according to which 286,300 seasonal workers were employed in agricultural enterprises that year (Deutscher Bundestag 2019: 54). In 2016, 124,929 people were employed in vegetable production companies, over 90 percent of whom were seasonal workers, i.e., 113,072. Like vegetable production, fruit production is also characterised by the employment of seasonal workers who accounted for 73 percent of the total number of employees in fruit production (33,086 seasonal workers) (Deutscher Bundestag 2020: 81 f.).

According to the general employers' associations for forestry and agriculture a decline in interest among seasonal workers from EU Member States has been observed above all in the agricultural sector (GLFA 2019). This is mainly attributed to the improvement of wage and working conditions offered by competing employers. In particular, the overall positive economic developments in Poland and Romania as well as the increasing competition for workers in the EU in agriculture and other economic sectors (including the construction industry and tourism) play a role here.

3 Recruitment of seasonal workers

3.1 Placement agreements with third countries

Germany had placement agreements with the former third countries Poland, Romania, Hungary, Slovakia, the Czech Republic, Croatia, Slovenia and Bulgaria for occupations in the hotel and restaurant industry and, from 24 April 2008 onwards, in the areas of agriculture and forestry, fruit and vegetable processing and in sawmills. However, these bilateral placement agreements expired when these countries joined the EU. As it was still possible to meet the bulk of the demand of seasonal workers in Germany from these countries, no placement agreements with third countries were concluded initially. Since the end of 2018, the Federal Employment Agency has been authorised to conclude agreements on the recruitment of seasonal workers from third countries on behalf of the Federal Ministry of Labour and Social Affairs and the Federal Ministry of Food and Agriculture. A placement agreement was then concluded with Georgia in early 2020. However, the placement of seasonal workers in agriculture, which was planned as a pilot project from May 2020, was postponed due to the outbreak of COVID-19 and the entry restrictions associated with the pandemic. The Federal Employment Agency is still seeking to initiate bilateral placement agreements with other third countries such as Bosnia-Herzegovina, Albania, Moldova and North Macedonia (Offer/Mävers/Mävers 2016; response of the Federal Employment Agency). According to the Federal Employment Agency, bilateral talks with third countries are difficult due to the current circumstances surrounding COVID-19 and the current entry restrictions, but the discussions will continue (response of the Federal Employment Agency).

Statutory bases and regulations governing placement agreements

The placement agreements are based on the EU Seasonal Workers Directive in combination with Section 15a subsection 1 sentence 1 no. 1 of the Employment Regulation. Furthermore, all relevant German laws and regulations apply to the performance of work. The placement agreements are bilateral agreements that are negotiated and concluded individually between the Federal Republic of Germany and the potential third country. They include, inter alia, rules on general prin-

ciples such as the prohibition of discrimination, rules on sectoral restrictions on employment, maximum duration of employment, procedural processes involved in placement and employment conditions. The contracting parties to the agreement are the Federal Employment Agency on behalf of the Federal Ministry of Labour and Social Affairs and the Ministry of Labour or appropriate institutions in the third country authorised to conclude such state agreements.

General principles

First of all, the general principle of equality applies (Article 3 paragraph 1 of the Basic Law (Grundgesetz)): what is the same must not be treated substantially unequally, what is unequal must not be treated substantially equally. Furthermore, men and women have equal rights (Article 3 paragraph 2 of the Basic Law) and no person shall be favoured or disfavoured because of sex, parentage, race⁵, language, homeland and origin, faith or religious or political opinions and no person shall be disfavoured because of disability (Article 3 paragraph 3 of the Basic Law). In addition, the General Equal Treatment Act (Allgemeine Gleichbehandlungsgesetz), which aims to prevent or eliminate discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual identity, is taken into account.

According to the general principle of equality and the General Equal Treatment Act, it is inadmissible that the workers employed in the Federal Republic of Germany are employed under less favourable conditions than comparable domestic or equivalent employees (response of the Federal Employment Agency). Therefore, all relevant German laws and regulations apply.

⁵ The German Institute for Human Rights, among others, has published two papers on the problem associated with. In these, they argue against the use of the term 'race' in legal texts. They argue that the term 'race' is historically fraught and that its use promotes "racist thinking [...]", since it suggests that there are different human 'races' (Cremer 2009). For criticism of the term and the alternative proposal to replace the term with 'racist', see also the Federal Anti-Discrimination Agency (2015).

Process of placement

The International Placement Service of the Federal Employment Agency and the partner administrations, which are public authorities, are responsible for the process of placement. In Georgia, the labour ministry is responsible for recruitment and selection of seasonal workers (response of the Federal Employment Agency). In the placement agreements the number of seasonal workers is limited to a certain number based on common agreements on the supply and demand of seasonal workers. Neither the Georgian labour ministry nor the Federal Employment Agency is permitted to charge fees for their services with regard to the selection and placement (response of the Federal Employment Agency). It is also determined in which cases a change of employer is possible: for example, it was agreed with Georgia in which exceptional circumstances a change of employer is possible (response of the Federal Employment Agency).

3.1.1 Sectoral and temporal employment restrictions

Sectoral employment restrictions

The recruitment of seasonal workers from third countries is limited to certain sectors. According to the current legal regulations, approval may be granted for seasonal employment in agriculture and forestry, horticulture, hotels and restaurants, fruit and vegetable processing and sawmills (Section 15a subsection 1 of the Employment Regulation). The placement agreement with Georgia is limited to the agricultural sector. The decision to restrict the recruitment of harvest workers is based on the needs of the Federal Republic of Germany on the one hand, but also on the needs and situation in the country of origin on the other (response of the Federal Employment Agency). The regulations are intended to take into account the interests of German employers and at the same time prevent a long-term brain drain for the “partner countries” (SVR 2018: 30).

Time restriction

The employment of seasonal workers in the above-mentioned sectors is, in many respects, subject to time restrictions. On the one hand, the seasonal employment of a foreigner may not exceed six months within a 12-month period. It is not permitted to combine different temporary jobs as a low-skilled worker in order to achieve a continuous stay in Germany. However, it is

not ruled out that a seasonal worker may perform the same type of work during several periods of a calendar year, as long as only the maximum time limits of the regulation are complied with.

Furthermore, the period of employment of seasonal workers for one farm is limited to eight months within a 12-month period (Section 15a subsection 1 sentence 6 of the Employment Regulation). It is therefore possible, for instance, to employ seasonal workers as harvest workers for a period of four months in spring initially and then for a further period of up to four months in autumn. This time restriction is intended to prevent permanent jobs from being converted into temporary jobs by employing several seasonal workers from third countries to the detriment of national job applicants. The time restriction does not apply to fruit, vegetable, wine, hop and tobacco growing enterprises. (Section 15a subsection 1 sentence 7 of the Employment Regulation).

Moreover, foreign nationals who have been employed in the federal territory as seasonal workers at least once in the last five years are to be given preferential consideration within the scope of the number of work permits and approvals issued by the Federal Employment Agency (Section 15a subsection 1 sentence 5 of the Employment Regulation).

On the other hand, it is stipulated that seasonal workers must be employed for a regular working week of at least 30 hours (Section 15a subsection 1 sentence 1 of the Employment Regulation).⁶ In addition, the working hours are limited in accordance with the Working Hours Act (Arbeitszeitgesetz): it states that workers must not work more than 10 hours a day and that breaks and a rest period of 11 hours must be observed (Sections 3f. of the Working Hours Act).

3.1.2 Working conditions

If the seasonal workers are employed in Germany, all relevant German laws and regulations apply to the performance of the work. The seasonal workers employed in the Federal Republic of Germany may not be employed under less favourable conditions than comparable domestic workers or equivalent employees (response of the Federal Employment Agency). For instance, there are no special regulations for seasonal workers from third countries with regard to German social insurance law.

⁶ In addition, the Working Hours Act (Arbeitszeitgesetz) applies.

Regulations on the obligation to pay social security contributions

Seasonal workers from third countries who are employed in Germany are generally subject to compulsory social insurance. The social insurance consists of health insurance, nursing care insurance, accident insurance, pension insurance and unemployment insurance. With the exception of accident insurance, however, there is no obligation to pay social insurance if the employment is short-term. This is the case when the activity is limited to a maximum of three months or 70 working days within a year, depending on the nature of the work, or is contractually limited in advance (Section 8 subsection 1 no. 2 of the Social Code Book IV (Sozialgesetzbuch IV)). If the salary exceeds € 450 per month, for short-term employment, it still applies that this employment does not constitute regular employment, but rather employment as a student, for example (Section 8 subsection 1 no. 2 of the Social Code Book IV). Marginal employment within the meaning of Section 8 of the Social Code Book IV is exempt from statutory health, nursing care and unemployment insurance (Section 7 of the Social Code Book V; Section 27 subsection 2 of the Social Code Book III). Persons in short-term employment, but not in low-paid employment, are exempt from statutory pension insurance within the meaning of Section 8 subsection 1 no. 2 of the Social Code Book IV ("temporary employment"). One exception applies to the statutory accident insurance: according to this, seasonal workers employed for a short period are also insured against accidents by law, whereby the employer pays the accident insurance contribution.

Entitlements under pension and unemployment insurance

However, some restrictions apply. There are some social security benefits, which seasonal workers cannot claim as they are not permitted to work for more than six months in a calendar year, for instance, because they cannot accumulate sufficient entitlements. In some cases, for instance, German social security law requires the completion of a certain waiting period, i.e., a certain minimum insurance period for an entitlement to benefits. For instance, the waiting period for entitlement to an old-age pension is at least five years (Section 50 subsection 1 sentence 1 of the Social Code Book VI). Employees who have not completed this qualifying period in the pension insurance scheme, including through repeated seasonal work, can request that their employee contributions to the pension insurance scheme be reimbursed by the pension insurance fund after a period of 24 calendar months has

elapsed, provided that they do not have the right to voluntary insurance and that any applicable intergovernmental social security contributions do not preclude any such reimbursement. Entitlement to unemployment benefit also requires a certain minimum period of insurance in the unemployment insurance scheme. This qualifying period is 12 months within a framework period of 24 calendar months (Section 142 of the Social Code Book III).

In principle, social security contributions cannot be transferred to the country of origin unless social security agreements have been concluded between Germany and the country of origin. Such agreements only exist with few third countries such as Albania, Bosnia-Herzegovina and China. According to the Federal Employment Agency, no such agreements exist with Georgia.

Requirement to furnish proof of adequate health insurance cover

For seasonal workers from EU Member States there is no obligation on the employer to cover the costs of sufficient health insurance cover in Germany if they are employed on a short-term basis. In these cases, the profession recommends that employers take out a private group insurance policy, which, according to the Federal Employment Agency, they usually do (response of the Federal Employment Agency). For seasonal workers from third countries, however, proof of adequate health insurance cover is mandatory. According to the Federal Employment Agency, the employer must cover the costs of sufficient health insurance coverage in Germany.

If employees are prevented from performing their work through no fault of their own as a result of incapacity to work due to illness, they are entitled to continued payment of their wages and salaries by their employer in the event of illness for the duration of the incapacity to work, up to a maximum of six weeks (Section 3 of the Continued Remuneration Act (Entgeltfortzahlungsgesetz)). However, the entitlement is only acquired if the employment relationship has existed continuously for more than four weeks.

Adequate accommodation

The employer is obliged to offer suitable accommodation to the employees placed and employed in the Federal Republic of Germany or to ensure they have accommodation for the duration of their employment (response of the Federal Employment Agency). Under German law, the accommodation must meet the rel-

evant requirements of the Workplace Ordinance (Arbeitsstättenverordnung) and the published Technical Rules for Health and Safety at Work. Among other things, these regulations specify the minimum size of accommodation (BAUA 2010). Land regulations such as “the Building regulations of the Länder for the prevention of threats to public safety and order and for the prevention of abuses” are not affected (ASR 2010: 2).

In any case, according to the Federal Employment Agency, full transparency must be ensured with regard to the associated costs and their assumption (response of the Federal Employment Agency). The costs of accommodation must be reasonable, seasonal workers must be advised of the costs in advance and they must be “reasonable in terms of type, nature and price” (BA 2011: 1). Thus, the seasonal workers must know in advance whether they have to bear the accommodation costs themselves or whether the employer has to cover them.

The employer can either provide a rental agreement himself or offer accommodation through a third party. If the employer provides the accommodation, the employer and the seasonal worker conclude a rental agreement (response of the Federal Employment Agency). Accommodation costs must be specified in the rental agreement and may not be deducted from the wages (Section 15a subsection 2 sentence 2 and sentence 3 of the Employment Regulation).

The employer must also notify the Federal Employment Agency immediately of any change in accommodation for seasonal workers (Section 15a subsection 2 sentence 4 of the Employment Regulation).

Pay based on the minimum wage

The minimum wage for seasonal workers is € 9.35 gross per hour (BMAS n.d.; as at: June 2020). It is, however, possible to include meals and accommodation as part of the minimum wage if they are provided by the employer (Brinkmann 2017: 6), which may result in seasonal workers being paid less than the minimum wage. According to Section 107 subsection 2 of the German Trade Regulation Act (Gewerbeordnung), an agreement must be concluded between the employer and the employee, which must be recorded in the employment contract (Zoll n.d.).

- The deduction must be in line with the interests of the employee or the nature of the employment relationship.

- In all cases, the deduction of benefits-in-kind may not exceed the amount of the attachable portion of wages (Section 107 subsection 2 sentence 5 of the German Trade Regulation Act in conjunction with Section 394 of the German Civil Code (Bürgerliches Gesetzbuch), attachment exemption limit).
- Any benefits-in-kind granted by the employer must be of “medium nature and quality”, i.e. board and lodging must be of good quality. The Guidelines for the Accommodation of Foreign Employees in the Federal Republic of Germany of 29 March 1971 (Richtlinien für die Unterkünfte ausländischer Arbeitnehmerinnen bzw. -nehmer in der Bundesrepublik Deutschland) can be used as a benchmark for the assessment.

Holiday entitlement

Seasonal workers from third countries also have holiday entitlements under the Federal Paid Leave Act (Bundesurlaubsgesetz). However, workers are only entitled to full leave after six months of employment (Section 4 of the Federal Leave Act). This entitlement is therefore not acquired, for example, if the seasonal worker is employed on a short-term basis. However, this does not mean that seasonal workers are not entitled to any paid leave in these cases. Section 5 of the Federal Paid Leave Act applies, according to which employees are entitled to one-twelfth of the annual leave for each full month that the employment relationship exists, if they leave the employment relationship before the waiting period has been fulfilled (Section 5 subsection 1c of the Federal Paid Leave Act). As the statutory holiday entitlement for a five-day week is around 20 days and workers are entitled to one-twelfth of the annual leave for each month in which the employment relationship exists, this means that seasonal workers are entitled to two days’ paid leave for each month of seasonal work completed.

Restriction for third country nationals with regard to free movement of family members and child benefit

Seasonal workers from third countries may not come with their family members to Germany. Since the ruling handed down by the European Court of Justice (ECJ) on 12 June 2012, seasonal workers from EU Member States are entitled to child benefit in Germany, even if their children continue to live in their country of origin. However, the situation is different for seasonal workers from third countries who are not entitled to child benefit because their employment contract is limited in time. The reason why they are

not entitled to child benefit is the fact that they are staying in Germany temporarily (Kindergeld.org n. d.).

Income tax

The wages of foreign seasonal workers paid for work performed in Germany is generally subject to taxation and must be taxed in Germany, unless it is below the basic tax-free allowance of € 9,408 per year (as of 2020). Taxation is regularly carried out by deducting tax from an individual's wages according to the employee's personal taxation status.

Seasonal workers in agriculture and forestry are eligible for a favourable flat-rate income tax of five percent (Section 40a subsection 3 of the Income Tax Act (Einkommenssteuergesetz)). However, the flat-rate tax is only permissible where the temporary worker

- is employed on an agricultural and forestry holding, is engaged exclusively in typical agricultural and forestry work, and
- does not work more than 180 days per calendar year for the employer,
- is not a skilled agricultural or forestry worker,
- only performs work that does not occur all year round, and
- is paid an hourly rate that does not exceed € 15 (up to 2019: € 12).

Under certain conditions, temporary and part-time employees outside of agriculture and forestry may be subject to flat-rate income tax at 25 percent, 20 percent or two percent. The flat-rate tax is regularly borne by the employer, though it can be passed on to the employees.

3.2 Recent developments associated with COVID-19

Due to the rapid spread of COVID-19, entry restrictions for foreign seasonal workers were introduced on 25 March 2020 (Deutscher Bundestag 2020: 46). Against this backdrop and by joint agreement, the placement of seasonal workers from Georgia and other bilateral talks with third countries were also postponed.

Alternative measures to ease restrictions under labour law were introduced to attract additional domestic workers particularly in view of the expected decline in the number of seasonal workers from EU countries

available in the agricultural sector. For instance, the Federal Government's social protection package of 27 March 2020 significantly extended the time limits for short-term employment (BMAS 2020b): short-term employment is defined as employment that is limited to a maximum of three months or 70 working days within a 12-month period and is not performed professionally. These time limits have been raised to five months or 115 working days until 31 October 2020.

Furthermore, the maximum working hours have been extended and the minimum rest periods reduced until 31 June 2020 (COVID-19 Working Hours Ordinance (COVID-19-Arbeitszeitverordnung)): workers are now permitted to work up to 60 hours per week and up to 12 hours per day without special approval. The rest periods have been reduced to nine hours a day. In exceptional cases, workers are allowed to work 12 hours per day, six days per week.

In addition, the headquarters of the Federal Employment Agency issued global approval on 2 April 2020 in order to counteract the short-term labour shortage in the agricultural sector, especially in the fruit and vegetable production sector: it has issued general approval for seasonal work for certain groups staying in Germany if they are employed as agricultural labourers in the period between 1 April 2020 and 31 October 2020 at the latest.

These are:

- Asylum seekers at a reception centre where the asylum procedure has not been incontestably concluded within nine months,
- Asylum seekers residing lawfully in the Federal Republic for the past three months,
- Persons with a tolerated status,
- Third country nationals whose residence title does not permit this employment.

In addition, third-country nationals who are pursuing or have pursued an occupation in agriculture which is deemed to be non-employment under Section 30 of the Employment Regulation and who are still visa-free in Germany at the time may continue this employment beyond the 90-day period or take up employment with another employer. The rule also applies to another group, namely persons from third countries who are currently unemployed owing to the closure of hotels and restaurants. These individuals are permitted to take up employment in the agricultural sector without having to apply to the Federal Employment Agency for approval until the end of October 2020 (BMEL 2020b).

Despite the fact that additional domestic workers had been recruited and that approx. 20,000 seasonal workers had entered the country before the entry ban was imposed, it was foreseeable that they would not be able to meet the demand for an estimated 100,000 additional workers in the agricultural sector in the months of April and May 2020 (BMI/BMEL 2020). Against this backdrop, the Federal Ministry of the Interior and the Federal Ministry of Food and Agriculture finally agreed on an exemption clause, which allows the restricted entry of seasonal workers from third countries subject to strict conditions, above all to mitigate the risk of infection (BMI 2020). The concept paper presented by the Federal Ministry of the Interior and the Federal Ministry of Food and Agriculture entitled 'Health and Safety of Seasonal Workers [Coronavirus (SARS-CoV-2)]' (Saisonarbeiter im Hinblick auf den Gesundheitsschutz [Coronavirus (SARS-CoV-2)]), defines measures on entering and leaving the country, aimed at ensuring health and safety at work and in the accommodation provided in order to safeguard the harvest on the one hand and to minimise the risk of infection on the other, taking the recommendations issued by Robert Koch Institut into account (BMI/BMEL 2020).

According to this, 40,000 seasonal workers per month were to be allowed to enter the country in April and May 2020, selected on the basis of feedback from the profession and demonstrating adherence to strict hygiene standards. As this figure had not been reached by the end of May 2020, the regulations were initially extended until 15 June 2020 (BMEL 2020c).

In order to avoid lengthy travel, seasonal workers were initially only allowed to enter and leave the country in groups by air and had to be picked up by their employer from certain airports. In addition, the employer had to ensure they underwent health checks carried out by medical staff according to a standardised procedure. The following measures, among others, had to be considered with regard to employment and accommodation: seasonal workers were initially to be kept in quarantine for two weeks, accommodated and employed separately from other employees, while they were also not allowed to leave the company premises. After quarantine, the work was also to be performed in the same groups of workers which were to be kept as small as possible. Furthermore, they were required to keep a minimum distance or wear face masks, for instance. Strict hygiene regulations were also to be applied to the accommodation and the rooms were to be occupied at a maximum of half capacity (with the exception of families). If an infection with the coronavirus was suspected, the worker and the whole team

needed to be isolated and undergo testing for the virus.

With the removal of entry restrictions and taking into account the development of the pandemic, a new approach was put forward, which will apply from 16 June 2020 until the end of 2020 (BMEL 2020d), maintaining the quota of a total of 80,000 seasonal workers from third countries. 38,967 seasonal workers had entered the country by 3 June 2020 (BMEL 2020d: 1). Since 16 June 2020, they have again been able to enter the country both by land and by air.

For the implementation and further development of the occupational health and safety standards in relation to COVID-19, the Federal Ministry of Labour and Social Affairs set up a 'Coronavirus Occupational Health and Safety Taskforce' (BMAS 2020d). Employers are required to "safeguard occupational health and safety in the enterprises and provide accommodation in accordance with the occupational health and safety regulations specified by the Social Insurance for Agriculture, Forestry and Horticulture (Sozialversicherung Landwirtschaft, Forsten und Gartenbau) under the SARS-CoV-2 occupational health and safety standard" (BMEL 2020d: 2).

On-site monitoring of compliance with the rules and working conditions is to be carried out by the responsible health and safety authorities (BMI/BMEL 2020). The responsibility for monitoring health and safety at work and the accommodation and hygiene situation is incumbent upon the Länder.

Due to the coronavirus pandemic, the difficult working conditions of seasonal workers in agriculture have moved into the public and political spotlight, not just in terms of protection against infection, but also in terms of generally poor working conditions. It has been reported, for instance, that some enterprises are not complying with infection control measures (Chapter 5.2).

4 Working conditions and measures to safeguard the rights of seasonal workers

4.1 Monitoring of employment conditions and protection of the rights of seasonal workers

Regulations have been issued to monitor the terms and conditions of employment and to protect the rights of seasonal workers (response of the Federal Employment Agency). Under the provisions of the Act Regulating a General Minimum Wage, for instance, employers are obliged to record the beginning, end and duration of daily working hours. The provision of adequate accommodation by the enterprise and the wording of employment contracts in the respective national language, inter alia, are monitored.

Monitoring of compliance with conditions of employment by the authorities

Monitoring of compliance with the terms and conditions of employment is carried out by various institutions. The central authority is Customs and, within Customs, the Financial Investigation Office for Clandestine Employment (Finanzkontrolle Schwarzarbeit), which is responsible for combating illegal employment in Germany. Among other things, it checks compliance with the minimum employment standards laid down in the Posted Workers Act (Arbeitnehmerentsendegesetz) and the Act Regulating a General Minimum Wage. The Financial Investigation Office for Clandestine Employment checks whether a case of illegal employment of foreigners exists (Tangermann/Grote 2017). This may “involve third-country nationals residing unlawfully or exist if third-country nationals residing in a regular manner disregard the requirements they are obliged to meet. Furthermore, employment of lawfully residing third-country nationals may be illegal if the employment is not reported in a bid to avoid paying tax or social security contributions” (Tangermann/Grote 2017: 56).

In order to check the terms and conditions of employment and to detect potential violations by the employer or employee, the Financial Investigation Office for Clandestine Employment carries out random checks in enterprises and acts as a point of contact for affected parties. In doing so, it has extensive powers ranging from the right to inspect the employer’s or client’s premises and to check business documents through to questioning employees. In some cases, inspections are carried out jointly with other authorities, for instance inspections can be carried out with the tax authorities as part of tax investigations. Audits by the Financial Investigation Office for Clandestine Employment can also be carried out together with the competent foreigners authority if there is reason to believe that violations of the Residence Act are likely to occur (Tangermann/Grote 2017: 36).

In addition to the Financial Investigation Office for Clandestine Employment, pension insurance institutions also check compliance with the minimum wage for seasonal workers as part of company audits. According to the Act Regulating a General Minimum Wage, employers are obliged to include records of work performance in their pay records. If no such documentation is available, the pension insurance institution will demand the unpaid contributions.

Sanctioning of employers and employees in the event of an infringement

Both employers and employees who are employed without a relevant residence permit or without authorisation to work can be prosecuted under criminal and administrative law. The sanctions for employers who, for instance, employ third-country nationals illegally range from fines, exclusion from public contracts and subsidies to imprisonment. In the case of unpaid social security contributions, the social security institutions demand the unpaid contributions. The consequences for the seasonal workers can include fines, prison sentences, a reduction in the length of stay or even expulsion and removal (Tangermann/Grote 2017: 56).

Reports from associations, trade unions and NGOs

In addition to state controls, civil society is taking measures to protect seasonal workers' rights. One of these is the 'Initiative Faire Landarbeit', an association of trade unions and NGOs that deals with seasonal work in the agricultural sector, which includes the advice centres of the German Trade Union Confederation (Deutscher Gewerkschaftsbund), the European Migrant Workers Union (Europäischer Verein für Wanderarbeiterfragen e.V.) and the Industrial Union for Building, Agriculture and the Environment. During regular field visits, the initiative informs and advises seasonal workers in the agricultural sector of their rights and provides support in the event of labour law difficulties (Initiative Faire Landarbeit 2020: 2). In annual reports, the initiative points out grievances and formulates recommendations for action.

Possibilities of legal action by the employees concerned

Possible disputes between employers and employees are settled by the existing competent structures and in accordance with the applicable German legislation (response of the Federal Employment Agency). In principle, there is the right to take action to the Labour Court, for instance, for pay not received for work already performed. Trade union contact and advice centres in several cities in Germany offer representation of interests and legal advice. "Often, an out-of-court settlement with the employer is sought in order to avoid lengthy court proceedings" (Tangermann/Grote 2017: 56).

4.2 Working conditions for seasonal workers

Seasonal work in Germany represents a regular source of income for many foreign seasonal workers and can therefore contribute to improving their individual social situation. In addition, seasonal work can tap development potential, since remittances are usually sent back to the country of origin (Schneider/Parusel 2011: 27 f., 45). On the other hand, experts point out that temporary migration, as is the case with seasonal work, tends to restrict "opportunities for professional, family and personal development" (SVR 2018: 42).

The agricultural sector in particular is dependent on the employment of foreign seasonal workers. Many

companies make use of their right to re-employ workers they had already employed the previous year (Schneider/Parusel 2011: 31). This gives seasonal workers a certain degree of planning security and enables farmers to recruit experienced workers for the farm. However, in order to keep up with the increasing competition for workers, the wage and working conditions they offer are sometimes crucial. Adherence to the minimum wage and, at the same time, potential deductions for accommodation provided pose a particular challenge. In addition, the obligation to have social insurance, unless it involves short-term employment, poses a challenge, as there are usually no corresponding regulations or opportunities for seasonal workers to take the German contributions with them to the third countries (response of the Federal Employment Agency). If no social security agreements have been concluded with the country of origin for instance, any contributions made to unemployment benefit are forfeited and the employee is unable to benefit from the insurance (Chapter 3.2.3).

It is not possible to make any generalisations about the working conditions of previous seasonal workers on the basis of existing studies and reports. Nevertheless, there is evidence to suggest that seasonal workers face precarious working conditions in spite of the existing regulations, controls and complaint options (Burger/Martens/Steppat 2020). The German Institute for Human Rights (Deutsches Institut für Menschenrechte) for instance reported cases involving the exploitation of foreign workers, inter alia in the agricultural sector (Rabe/Brandt 2015). In its 2019 annual report, the 'Initiative Faire Landarbeit' pointed out that, according to its own research, "wage scams, non-transparent, incorrect or a complete lack of payslips and working time records as well as piecework records, a lack of protective clothing and sun protection, dubious deductions for work materials, increased deductions for board and lodging, poor food and accommodation, excessive working hours and a lack of rest days" have been detected time and again (Edelhoff/Ghassim/Hurst 2020).

Furthermore, the 'Initiative Faire Landarbeit' criticises the employment of trainees who are being used as regular workers: according to its own research, it says that since the visa requirement was abolished for Ukrainian nationals in 2017, an increasing number of Ukrainian students have been employed as trainees in the agricultural sector.⁷ According to the organisations in the enterprises where spot checks have been carried

⁷ Results of the information campaigns for seasonal workers from third countries in the fields in Brandenburg.

out, it has been observed that the employment often does not involve traineeships related to students' specific field of study, as required under Section 15 no. 6 of the Employment Regulation, but that in practice the work tasks are often no different from those of other harvest workers who have regular employment contracts (Initiative Faire Landarbeit 2020: 18). Moreover, the students were unaware of the possibilities for complaints and legal action.

The situation of seasonal workers in general came increasingly into the public spotlight when COVID-19 began to spread and work regulations were amended accordingly. It was reported on several occasions that some enterprises were not complying with the infection protection measures imposed by the Federal Ministry of the Interior and the Federal Ministry of Food and Agriculture. For instance, cases became known in which enterprises were not observing hygiene regulations or minimum distances during transport to the field and seasonal workers were being accommodated in multi-bed rooms which were full to capacity (Edelhoff/Ghassim/Hurst 2020). The limited space and lack of hygiene also indicate that these enterprises were willing to accept the risk of infection (Initiative Faire Landarbeit 2020). The 'Initiative Faire Landarbeit' also warned that easing labour law restrictions such as extending the time limits for short-term employment (Chapter 3.3) could lead to a "leveraging of labour rights in agriculture" and that health insurance cover was not available for all harvest workers (Initiative Faire Landarbeit 2020: 3). At the Conference of Agriculture Ministers, the Federal Minister of Food and Agriculture, Julia Klöckner appealed to the Länder to comply with the requirements for the entry of foreign seasonal workers (BMEL 2020d).

5 Conclusion

Germany has transposed the EU Seasonal Workers Directive. Yet, currently, no seasonal workers from third countries are employed in Germany in accordance with the Directive. This is due to the fact that in the past, it was possible to meet the demand for seasonal workers with persons from the EU Member States. Against this backdrop, no placement agreements have been concluded with third countries since agreements with the former EU accession candidates expired. In 2020, bilateral placement agreements were concluded with Georgia - limited to the agricultural sector. The launch of the pilot project planned for May 2020 had to be postponed due to the outbreak of COVID-19, which explains why no seasonal workers from Georgia are currently being placed.

The bilateral cooperation agreement between the Federal Employment Agency and the labour administration of third countries is based on the EU Seasonal Workers Directive, which is intended to ensure that all aspects of the placement agreement comply with the protection of the rights of seasonal workers. The workers employed in the Federal Republic of Germany may not, as a matter of principle, be employed under less favourable conditions than comparable German workers or equivalent employees. This means, for instance, that the minimum wage and statutory working hours also apply to them.

Although the demand for seasonal workers has so far been met mainly by EU nationals, the employers' associations as well as the Federal Employment Agency (Bundesagentur für Arbeit) reported a decline in the interest of EU nationals in seasonal work in Germany in recent years - especially in the agricultural sector. Therefore, an increasing demand for more seasonal workers from third countries in the future is assumed. Furthermore, a fundamental improvement in working conditions in the seasonal sector is conducive to ensuring Germany remains competitive for seasonal workers in pan-European labour markets. Challenges in connection with the creditability or portability of social security contributions to the countries of origin of seasonal workers also need to be addressed.

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List of Abbreviations

ECJ	European Court of Justice
EMN	European Migration Network
et al.	et alia (and more)
EU	European Union
f.	and the following page
ff.	and the following pages
NGO	Non-Governmental-Organization
n.d.	no date
no.	number
p.	page
REG	Return Expert Group
subs.	subsection

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- PB** Migration, Integration, Asylum. Political Developments in Germany 2018. Annual Policy Report by the German National Contact Point for the European Migration Network (EMN) (2019)

Series of Reports on Migration & Integration

- WM** Migration Monitoring: Educational and Labour Migration to Germany. Annual Report 2019. Author: Johannes Graf
- FM** Freedom of Movement Monitoring: Migration of EU Nationals to Germany. Annual Report 2019. Author: Johannes Graf

SoKo Potential of Asylum Applicants: Analysis of “Social Component” Data relating to Applicants’ Social Structure. Annual Report 2019. Author: Barbara Heß

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JB Migrations- und Integrationsforschung – Jahresbericht 2018 des Forschungszentrums Migration, Integration und Asyl im Bundesamt für Migration und Flüchtlinge (2019)

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