

Seasonal Workers from Third Countries in Austria

Lukas Humer and Alexander Spiegelfeld

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I. SUMMARY

The European Commission estimates that more than 100,000 third-country workers enter the EU each year for the purpose of seasonal employment, with either a regular status or irregularly (European Commission, n.d.). The demand for seasonal workers is rising in the EU, and yet such workers are frequently exploited. At the same, certain sectors with a large share of seasonal workers are showing a tendency towards illegally employing third-country workers. In view of these factors, the Seasonal Workers Directive¹ was adopted on 25 February 2014.² In 2017, Austria finally implemented the requirements of the Seasonal Directive, which, however, were already largely in line with the Austrian seasonal model before its implementation.³

The Austrian model for the admission of seasonal and harvest workers⁴ from third countries is a product of national and European migration and labour market policy and has existed in its present form since 2011. The model is based on quotas issued each year for the tourism and agriculture and forestry sectors, as well as on work permits issued by the Public Employment Service. While the quotas set since 2016 have varied in size, the total number of work permits issued has risen continuously since 2017.⁵ A total of 49,467 work permits were issued between 2016 and 2019, most of them for seasonal workers and harvest workers in agriculture and forestry. It has been seen in the past that the quotas for seasonal employment were exhausted or exceeded during peak periods in summer and winter. In contrast, on average over the year, the quotas were not fully utilised (Public Employment Service, n.d.b). In response, the option of exceeding quotas by up to 20 per cent during seasonal peaks was introduced in 2019, on condition that work permits remain within the set number of annual average quotas (Ebner and Humer, 2020:14).

Both the Federal Ministry of Labour, Family and Youth and the Austrian Federal Economic Chamber see a high demand for seasonal and harvest workers in Austria.⁶ The extent to which the Austrian labour market is actually dependent on seasonal and harvest workers from third countries remains controversial. Compared to the total number of employees in tourism and agriculture and forestry, seasonal and harvest workers who were admitted under the Austrian seasonal workers model represent only a very small share. Nevertheless, on the basis of the labour market test, which is part of the procedure for issuing a work permit, it can be assumed that either no other suitable workers in Austria and the EU are available, or that those who would be available are not willing to accept the vacancies offered (Pirker, 2010:200–201). Trade unions argue that enough jobseekers

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, OJ L 94, pp. 375–390.

2 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 purposes of seasonal employment, OJ C 218, COM (2010), 379 final - 2010/0210 (presented by the Commission 13 July 2010).

3 Act Amending the Act Governing the Employment of Foreign Nationals and the General Social Insurance Act, Government Proposal – Explanatory Notes, available at www.parlament.gv.at.

4 These and other topic-specific terms are defined in chapter 2.2.

5 The size of a quota set for a specific period does not correspond to the actual number of work permits issued to seasonal and harvest workers within that year. The two figures differ, because additional work permits are allowed to be issued for seasonal and harvest workers already approved and employed under a quota, regardless of whether a permit is actually available under the current quota. Another reason is that work permits are issued apart from seasonal quotas in the case of registered seasonal workers (Stammsaisoniers).

6 Interview with Margit Kreuzhuber, Austrian Federal Economic Chamber, 15 May 2020; Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

would be available in principle, but due to the employment conditions of seasonal and harvest works too few can be found for such jobs (ORF Online, 2019).⁷

This striking tension between the need for foreign seasonal workers and harvest workers and their working conditions is also reflected in the debate taking place in the media. Although the number of work permits issued has risen continuously in recent years, the tourism and agriculture and forestry industries have claimed a massive shortage of seasonal and harvest workers and demanded an increase of the quotas (ORF Online, 2019; Die Presse, 2018). The dependency on seasonal workers became apparent during the COVID-19 crisis, in agriculture and forestry at least. Due to entry restrictions, a critical shortage of harvest workers threatened (APA-OTS, 2020). According to trade representatives, the labour shortage is not so much due to poor working conditions as to economic growth in Austria and higher wages in other EU Member States (ORF Online, 2018d, 2018a, 2018b). The issue of working conditions is nonetheless a significant factor in the discussion, due to numerous reports on the exploitation of seasonal and harvest workers in Austria. Those affected have reported illegal working hours, too little pay and substandard accommodation (Der Standard, 2017a; ORF Online, 2018c). Although since the outbreak of the COVID-19 pandemic a socio-political change can be seen with regard to the appreciation of the work done by seasonal and harvest workers, it remains to be seen whether this leads to concrete improvements in working conditions.

General legal regulations on wage and working conditions also apply in principle to those seasonal and harvest workers who are employed within the scope of the seasonal workers model. Various actors are responsible for monitoring compliance with the rights and duties and to impose sanctions for any non-compliance. While mostly public institutions are involved here, some non-governmental campaigns exist as well. There is no evidence that public institutions especially focus inspections on seasonal and harvest workers. The reason for this may be that blanket checking is difficult to implement due to the vast number of businesses in tourism and agriculture and forestry. Thus, authorities have to rely on third parties and the employees themselves to report suspicions. Yet seasonal and harvest workers are particularly dependent on their employers for both employment and residence titles. Due to this dependency, it can be assumed that workers do not claim existing rights and infringements are not reported.⁸ Moreover, seasonal and harvest workers often lack knowledge about their rights. Therefore, it is extremely important to provide workers with easily accessible information, in their first languages, on rights and obligations. In this context, the Sezonieri initiative, which advocates the rights of foreign harvest workers in Austria, can be mentioned as a good practice example (PRO-GE trade union, n.d.b).

7 Interview mit Susanne Haslinger, PRO-GE trade union, 4. April 2020; Interview mit Anna Daimler, vida trade union, 22. April 2020.

8 Interview with Johannes Peyrl, Chamber of Labour Vienna, 8 May 2020.

2. INTRODUCTION

Seasonal workers from third countries fill jobs in many sectors for which it is increasingly difficult to find workers in the European Union (EU). The agriculture, construction, food services, retail and tourism sectors across Europe are particularly affected by this challenge (Hooper and Le Coz, 2020:2). In agriculture in particular, seasonal workers play an integral role in ensuring food supplies, as the current COVID-19 crisis has shown (European Commission, 2020). In Austria as well, the arrival of COVID-19 in February 2020 in some cases had sudden impacts for the entry, stay and employment of seasonal and harvest workers.

The European Commission estimates the annual number of third-country employees entering the EU, with a regular status or irregularly, for the purpose of seasonal employment, at more than 100,000 (European Commission, n.d.). The demand for seasonal workers is rising in the EU, and yet such workers are frequently exploited. At the same, certain sectors with a large share of seasonal workers are showing a tendency towards illegally employing third-country workers. In view of these factors, the Seasonal Workers Directive⁹ was adopted on 25 February 2014.¹⁰ In 2017, Austria implemented the requirements of the Seasonal Directive, which, however, were already largely in line with the Austrian seasonal model before its implementation.¹¹

The Seasonal Workers Directive defined a common set of rules for the admission, stay and rights of third-country seasonal workers for the first time. It is at the discretion of each Member State to decide how many seasonal workers may be employed and in which sectors. Member States also determine the admission period in detail (nine months maximum) as well as the terms facilitating the re-entry of seasonal workers (Hooper and Le Coz, 2020:3). Compared with other EU directives, this Directive is distinctive in that it combines immigration law, which regulates entry and admission, with labour law, which defines the rights of workers. Only relatively few international agreements stipulate a binding limitation of national sovereignty over the terms under which foreign citizens are admitted to the country and allowed to stay (Fudge and Olsson, 2014:440). In doing so, the Directive is intended to contribute to the effective management of seasonal migration and ensure decent working and living conditions for seasonal workers (Para. 7 Seasonal Workers Directive).

Three years after the Seasonal Workers Directive came into force, and in the context of the report on the implementation of this Directive as planned for 2020, this EMN study provides an overview of Austria's experience with the admission and employment of seasonal workers from third countries since 2016. The present study is intended as an opportunity to assess the strengths and weaknesses of the Austrian seasonal workers model and identify any problems. In line with this aim, the first part of the study describes in detail the Austrian seasonal workers model and related data. The study begins with the question of the extent to which seasonal workers are needed to meet Austria's labour demands. The second part describes the rights and duties of seasonal and harvest workers, while also discussing the corresponding means of upholding and

9 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, pp. 375–390.

10 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 purposes of seasonal employment, OJ C 218, COM (2010), 379 final - 2010/0210 (presented by the Commission 13 July 2010).

11 Act Amending the Act Governing the Employment of Foreign Nationals and the General Social Insurance Act, Government Proposal – Explanatory Notes, available at www.parlament.gv.at.

implementing these in Austria. In view of the current situation, the study finally addresses the impact of the COVID-19 pandemic on the employment of seasonal workers from third countries and describes the related steps taken up to and including May 2020.

2.1 Methodology

The present study was carried out by the National Contact Point (NCP) for Austria in the EMN in the framework of the EMN Work Programme 2019–2020. The study follows a common study template with a predefined set of questions developed by the EMN, in order to facilitate comparability of the findings across all Member States.

The sources used were legal texts, national and international publications, press releases and internet sources. In addition, information was obtained from continuous media monitoring by the Country Office for Austria of the International Organization for Migration (IOM). The data used in this study was compiled and processed based on data provided by the Federal Ministry of Labour, Family and Youth and by the Public Employment Service, and on publicly available data.

To supplement the information obtained through secondary research, qualitative semi-structured interviews were conducted, and additional written information was obtained.

Personal interviews were conducted with the following experts:

- Anna Daimler, general secretary of the vida trade union;
- Susanne Haslinger, social policy department at the PRO-GE trade union;
- Margit Kreuzhuber, deputy head of the department of social policy and health at the Austrian Federal Economy Chamber;
- Johannes Peyrl, department of labour market and integration at the Vienna Chamber of Labour.

Written information was obtained from the following institutions:

- Public Employment Service;
- Federal Ministry of Labour, Family and Youth;
- Federal Ministry of the Interior;
- Men Via.

The study was compiled by Lukas Humer (Research Assistant) and Alexander Spiegelfeld (Research and Communication Associate). Legal questions arising in the study were addressed by Martin Stiller (Legal Associate).

The interviewees and governmental institutions mentioned above deserve special thanks for contributing their knowledge and experience through expert interviews and written questionnaires, as well as to Julia Lendorfer (Head of Research and Migration Law Department) for her valuable comments. The authors also wish to thank Stefan Fink, Helena Hahn, Katrin Lusk and Ramazan Yildiz (Interns, IOM Country Office for Austria) for various kinds of support in the specific stages of compiling the study.

The study was prepared in close cooperation with the Federal Ministry of the Interior.

2.2 Definitions

The study is based on the following definitions, taken from the Asylum and Migration Glossary of the European Migration Network except where another source is cited (European Migration Network, 2018a, 2018b):

Third-country nationals: Persons who are not citizens of the European Union within the meaning of Art. 20 para 1 of the Treaty on the Functioning of the European Union¹² and who do not enjoy the European Union right to free movement as defined in Art. 2 para 5 of the Schengen Borders Code (European Commission, 2019).

Harvest worker: Seasonal workers whose employment has been approved for a maximum of six weeks under the seasonal quota (Art. 5 para 5 Act Governing the Employment of Foreign Nationals).¹³

Collective agreement: An agreement between associations representing employers and employees, with the primary purpose of defining the rights and duties arising from the employment relationship between employers and employees (Austrian Federal Economic Chamber, 2020b).

Agriculture and forestry: The Act Governing the Employment of Foreign Nationals provides no definition of agriculture and forestry in the context of temporary employment of third-country nationals. According to the Austrian Federal Economic Chamber, the term includes activities related to producing and obtaining plant products, to viticulture and fruit growing, horticulture, maintaining livestock for the purposes of breeding or fattening or for obtaining animal products, as well as hunting and fishing (Austrian Federal Economic Chamber, 2019a).

Activity dependent on the passing of the seasons: An activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations.¹⁴

¹² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2012/C 326/01). Available at <https://eur-lex.europa.eu> (accessed 5 June 2020).

¹³ FLG No. 218/1975, in the version of the federal law FLG I No. 23/2020.

¹⁴ Definition in the sense of Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, pp. 375–390.

Seasonal worker: A person, who retains his or her principal place of residence in a third country, and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State.¹⁵

Registered seasonal workers (Stammsaisonier): Prior to the end of April 2012, individuals could register in Austria as regular seasonal workers (Stammsaisonier) if they had held permits under seasonal quotas to work either in agriculture and forestry or in tourism for at least four months at a time in the years 2006–2010 (Unternehmensservice Portal, n.d.).

Tourism: The Act Governing the Employment of Foreign Nationals provides no definition of tourism in the context of the temporary employment of third-country nationals. According to the Austrian Federal Economic Chamber, the tourism and leisure sector comprises the following industries: food services, hotels, leisure and sports facilities, travel agencies, cinemas, cultural and entertainment facilities and health-care facilities.

Visa C: A visa permitting a stay of 90 days in total within a 180-day period. For seasonal workers who have already worked as seasonal workers in Austria several times, it is possible to apply for a visa C for a general validity of up to 5 years (oesterreich.gv.at, 2020).

Visa D: A visa permitting a stay of more than 90 days and having an overall validity of five years maximum (Help.gv.at, 2020).

¹⁵ Definition in the sense of Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, pp. 375–390.

3. THE AUSTRIAN SEASONAL WORKERS MODEL

The seasonal workers model currently applied in Austria originated in a 2002 amendment to the Act Governing the Employment of Foreign Nationals,¹⁶ supplementing this legislation with the option of employing seasonal workers or “temporarily employed foreign nationals” in Austria. Further amendments followed, mostly prompted by the stages of EU eastern enlargement. Labour market liberalization and the introduction of the Red-White-Red Card in 2011 subsequently made it necessary to adapt the rules for admitting third-country seasonal workers. Based on a proposal by the social partners, a corresponding new system for temporary admission was put in place and has been maintained largely unaltered to this day (Kind, 2018:246–247). In the course of the Act Amending the Aliens Law 2017¹⁷ the Austrian federal government implemented the conditions of the seasonal workers directive.¹⁸ The implementation of the Directive did not require the introduction of new authorisation procedures or allowances, but only adjustments to existing rules (Kind, 2018:249).

The Austrian seasonal workers model is defined mainly by the Act Governing the Employment of Foreign Nationals.¹⁹ This legislation sets out several options for employing seasonal or harvest workers from other countries: under (a) quota provisions, (b) provisions applying to registered seasonal workers (Stammsaisonier), (c) special provisions for Croatian nationals²⁰ and (d) provisions allowing preferential treatment of certain groups (Kind, 2018:245). The quota provision empowers the Federal Minister for Labour, Social Affairs and Consumer Protection to set numeric quotas in the event of additional labour needs unable to be covered domestically, for the temporary admission of foreign seasonal workers in a certain sector of the economy, in a certain occupational group or region, or the admission of foreign harvest workers for a short period. However, the general situation and trends in the labour market, especially in the relevant employment sector, must be considered (Art. 5 para 5 Act Governing the Employment of Foreign Nationals). Accordingly, quotas are regularly issued for tourism as well as agriculture and forestry.

From 2016 to 2019 a total of 49,467 work permits were issued for seasonal and harvest workers from third countries. Compared with the total number employed in tourism and in agriculture and forestry, the quotas and the number of work permits issued are relatively small. The first part of this chapter therefore deals with the question as to what extent seasonal workers and harvest workers are needed to cover the labour demand in the respective sectors. In this context, the legal basis and statistics relating to the issued quotas are also described, as well as employment permits issued and labour market tests. Finally, this section elaborates on how seasonal and harvest workers are recruited as well as how reoccurring employment is facilitated.

16 FLG No. 218/1975, in the version of the federal law FLG I No. 23/2020.

17 FLG I No. 145/2017.

18 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, pp. 375–390.

19 FLG No. 218/1975, in the version of the federal law FLG I No. 23/2020.

20 Note: Workers from Croatia have unrestricted access to the labor market since 1 July 2020 and do not require a work permit.

3.1 Demand for seasonal and harvest workers in Austria

The Austrian labour market is characterized by high seasonal volatility, which can be seen in sectors including tourism and agriculture and forestry (Wallner, n.d.:74). Tourism in particular is one of the most important economic sectors in Austria. Considering the quotas and the numbers of work permits issued for seasonal and harvester workers, it is obvious that third-country nationals working under the Austrian seasonal workers model only represent a very small proportion of employees in tourism or in agriculture and forestry (see Chapter 3.2 and Chapter 3.3). Nevertheless, both the Federal Ministry of Labour, Family and Youth and the Austrian Federal Economic Chamber identify a high demand for seasonal and harvest workers in Austria. Such workers are needed to mitigate labour shortages, especially during seasonal peaks.²¹ This is exemplified by the shortage of labour in agriculture and forestry prevalent even before the spread of COVID-19, especially during the harvest season. The Chamber of Agriculture criticized the quotas for seasonal and harvest workers in 2019 as too low and demanded 500 to 700 additional workers from the Austrian government. The measures and exemptions passed for seasonal and harvest workers in the course of the COVID-19 crisis also highlighted the dependence of Austrian agriculture on foreign workers (see Chapter 5).

Infobox I: Characteristics of tourism

TOURISM SECTOR

Share of GDP in 2019: 5.9 per cent;

“Accommodation and food services” are the core industries in tourism;

5.8 per cent of all persons employed in Austria work in “accommodation and food services” (annual average 2018);

More than 50 per cent of those employed in “accommodation and food services” are foreign workers, mostly employed in Salzburg, Tyrol and Vienna;

503,449 people were employed in “accommodation and food services” for at least one day in 2018, 26 per cent as core staff, 20 per cent as seasonal core staff and 54 per cent as temporary staff;

18 per cent of these employees were third-country nationals.

Source: Austrian Federal Economic Chamber, 2019b:82–87; Statistik Austria, 2020.

21 Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020; Interview with Margit Kreuzhuber, Austrian Federal Economic Chamber, 15 May 2020.

Infobox 2: Characteristics of agriculture and forestry

AGRICULTURE AND FORESTRY

Share of GDP in 2019: 1.8 per cent (primary sector, which includes agriculture and forestry);

More than 75 per cent of production value results from agriculture;

3.6 per cent of all persons employed in Austria work in agriculture and forestry, with this share meanwhile declining;

80 per cent of sector employees in 2016 were family members;

3 per cent of all employees have a migration background (first and second generation);

A survey by Statistics Austria among 8,852 businesses (about 5.5 per cent of all businesses in 2016) revealed:

- 35,101 non-regular, non-family employees (seasonal and harvest workers);
- 77 per cent of these are employed at family-run farms, most of them in Lower Austria and Styria;
- Non-regular, non-family employees worked an average of 24 days.

Source: Statistik Austria, 2018a:42, 56-58; Ministry of Sustainability and Tourism, 2019:12, 66; Statistik Austria, 2019:57, 2018a.

On the basis of the labour market test, which is part of the procedure for issuing a work permit, according to Pirker (2010) it can be assumed that either no other suitable workers are available in Austria or the EU, or that those who would be available are not willing to accept the vacancies offered (see Chapter 3.4). The results of the compulsory labour market test therefore refute the preconception that foreign seasonal workers take jobs away from Austrian citizens (Pirker, 2010:200–201). Furthermore, the aim of the labour market test, according to Kratzmann (2011), is to fully utilize Austria's potential labour force before recruiting poorly skilled workers from third countries (Kratzmann, 2011:33–34). Trade unions argue that, although enough jobseekers would be available in Austria or other EU countries in principle, because of the conditions under which employees in tourism and in agriculture and forestry work, sufficient numbers cannot be found for these sectors (ORF Online, 2019).²² Other relevant actors cannot follow these arguments, citing not so much the working conditions but the strong sector growth as the reason for the labour shortage, above all in tourism (ORF Online, 2018e). According to business representatives, the shortage of labour in agriculture and forestry can be ascribed, among other things, to the migration of many harvest workers to Germany, where net wages are higher (ORF Online, 2018a, 2018b).

The actors involved in seasonal work also differ in their assessments as to whether the model is part of an overall migration policy. The Federal Ministry of Labour, Family and Youth views the Austrian seasonal workers model as a reliable system for temporarily admitting workers that are additionally required to meet labour demands.²³ The Austrian Federal Economic Chamber and the Vienna Chamber of Labour consider the seasonal workers model a main feature of Austria's migration strategy. The Vienna Chamber of Labour has nonetheless

22 Interview with Anna Daimler, vida trade union, 22 April 2020; Interview with Susanne Haslinger, PRO-GE trade union, 4 April 2020.

23 Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

expressed doubts as to whether any such strategy exists.²⁴ According to the PRO-GE trade union²⁵ the entry and stay of seasonal and harvest workers needs to be seen more as a now separated part of Austria's migration policy. Associated measures should accordingly be classified under economic or labour market policy.²⁶ The vida trade union²⁷ fails to recognize any coherent overall plan relating to seasonal workers.²⁸

According to the Federal Ministry of Labour, Family and Youth, the Austrian seasonal workers model has proven adequate for meeting temporary, recurring needs for third-country labour.²⁹ Viewed from the perspective of the type of residence permit issued, in addition to the possibility of issuing a Visa C or Visa D to allow a worker to accept seasonal employment, the Aliens Police Act 2005³⁰ also includes a visa option permitting individuals to pursue independent or dependent gainful employment merely on a temporary basis (Art. 24 para 1 subpara 1 and 2 Aliens Police Act 2005).³¹ Beyond that, migrant workers can apply for a Red-White-Red Card for skilled workers in certain shortage occupations that, according to the Public Employment Service, are commonly of a seasonal nature, such as for building helpers, plumbers, roofers or masons (Public Employment Service, n.d.c; Austrian Federal Economic Chamber, n.d.a). There is, however, no information of the extent to which individuals belonging to these migrant categories are employed at jobs similar to seasonal work.

3.2 Quotas for the admission of seasonal and harvest workers

Quotas are regularly issued for the tourism and agriculture and forestry sectors, in accordance with the requirements, mentioned above, set out in the Act Governing the Employment of Foreign Nationals, and with the framework quotas specified in the Settlement Regulation (Art. 2 para 1 and 2 Settlement Regulation 2019),³² in the latter, the Federal Government sets the maximum number of work permits for temporarily employed foreign nationals and harvest workers. The quotas are set in consultation with the Austrian social partners, specifically with the Austrian Federal Economic Chamber, the Chamber of Agriculture, the vida trade union and the Austrian Trade Union Federation.³³

While quota levels have varied in recent years, the sectors of the economy included in the quotas have remained the same. As shown in Table 1, the quotas for seasonal workers in agriculture and forestry and in tourism have been generally increased since 2016, while those for harvest workers have been reduced. At the same time, the Austrian Federal Government has striven to comply with the request by businesses for more reliable planning conditions (Kraml, 2019). For the first time, to better balance demand volatility, the 2019 regulation covered the entire demand for foreign seasonal workers anticipated by the tourism sector throughout the year, instead

24 Interview with Johannes Peyrl, Chamber of Labour Vienna, 8 May 2020; Interview with Margit Kreuzhuber, Austrian Federal Economic Chamber, 15 May 2020.

25 The trade union PRO-GE represents around a quarter of a million workers in agriculture and forestry (PRO-GE trade union n.d.a).

26 Interview with Susanne Haslinger, PRO-GE trade union, 4 April 2020.

27 Vida is the Austrian transport and services trade union and represents, amongst others, the interests of workers in tourism (vida trade union, n.d.).

28 Interview with Anna Daimler, vida trade union, 22 April 2020.

29 Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

30 FLG I No. 100/2005, in the version of the federal law FLG I No. 27/2020.

31 For the definition of a merely temporary self-employment or employed activity, see Art. 2 para. 4 subpara. 16 and subpara. 17 Aliens Police Act.

32 FLG II No. 29/2019.

33 Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

of setting separate quotas for the winter and summer seasons.³⁴ In addition, an option was introduced allowing quotas to be exceeded by as much as 20 per cent during seasonal peaks, on condition that work permits remained within the set number of annual average quotas (Ebner and Humer, 2020:14).

Table 1: Quotas for temporary admission (2016–2020)

	2016	2017	2018	2019	2020
Winter tourism	1 190 ^a	1 100	1 100	1 263 ^a	1 263
Summer tourism	750	731	720		
Agriculture and forestry	2 640	2 150	2 510	2 727 ^a	3 046
Harvest workers	395	375	375	288 ^a	119

Source: Public Employment Service, n.d.b; own representation.

a: Quotas vary in some cases due to additional quota regulations in the same year.

The more flexible model was introduced with the intent of better accommodating high volatility in the demand for seasonal and harvest workers (APA-OTS, 2019). While the measure was warmly greeted by the majority of businesses, some criticism was levelled at it as well. Claiming that Austria had enough jobseekers to fill the vacancies, the Social Democratic Party of Austria and the trade unions said the measure favoured wage dumping (Der Standard, 2019).

Employment of seasonal and harvest workers is short term in nature. This is demonstrated by the fact that seasonal employment quotas are utilized to the full or even exceeded during seasonal peaks in summer and winter. An example is seen in the period between May and September 2019, when the quota in agriculture and forestry was utilized at an average rate of 111 per cent, while the quotas in June and July were even exceeded at levels of 122 and 121 per cent respectively. Yet on average in 2019, the quotas were not completely used up, with an average utilization rate of 69 per cent. The quota for harvest workers was not fully utilized during any year either (see Table 2). The Federal Ministry of Labour, Family and Youth attributes low utilization in this case to the fact that many harvest workers are employed under the quota for agriculture and forestry.³⁵ While a maximum period of employment of 6 weeks is specified for permits under the quota for harvest workers, seasonal workers under the other quotas can be employed for a maximum total of 9 months within any 12-month period (Art. 5 para 3 and para 5 Act Governing the Employment of Foreign Nationals).

34 Regulation of the Federal Minister for Social Affairs, Health, Care and Consumer Protection for the temporary employment of foreigners in tourism and in agriculture and forestry in 2019 - Explanatory Notes, available at www.ris.bka.gv.at (accessed 1 July 2020).

35 Written input by the Public Employment Service and the Federal Ministry for Labour, Family and Youth (statistic inquiry), 24 August 2020.

Table 2: Average levels of quota utilization (as percentages, 2016–2019)

	2016	2017	2018	2019
Winter tourism	60%	58%	59%	71% ^a
Summer tourism	67%	66%	75%	
Agriculture and forestry	52%	56%	67%	69%
Harvest workers	24%	31%	21%	16% ^b

Source: Public Employment Service, n.d.b; own representation.

a: Total quotas for tourism from 20 April 2019;

b: The average for harvest workers calculated for the period of March to November each year.

3.3 Work permits

Unless otherwise specified in the Act Governing the Employment of Foreign Nationals, employers are only permitted to employ foreign nationals for whom work permits have been issued (Art. 3 para 1 Act Governing the Employment of Foreign Nationals). Similarly, foreign nationals may only take up and pursue employment if a work permit has been issued, unless otherwise specified in the Act Governing the Employment of Foreign Nationals (Art. 3 para 2). As shown in Figure 1, a total of 49,467 work permits were issued for seasonal and harvest workers during 2016 to 2019. The total number of work permits comprises permits issued for the first time and renewed in tourism, agriculture and forestry, harvesting as well as permits for Stammsaisoniers. Since 2016 the number of work permits issued has increased by 40 per cent, with 69 per cent being granted to seasonal and harvest workers in agriculture and forestry (Public Employment Service, n.d.b). Based on the number of work permits issued, an average of more than 3,000 seasonal workers from third countries temporarily migrated to Austria each year between 2016 and 2018 (Statistik Austria, 2019, 2018b, 2017).

As already mentioned, quotas limit the annual number of work permits potentially issued to employers for the employment of seasonal and harvest workers. However, the size of a quota set for a specific period does not correspond to the actual number of work permits issued within that year. The two figures differ, among other things because additional work permits are allowed to be issued for seasonal and harvest workers already approved and employed under a quota, regardless of whether a permit is actually available under the current quota (Art. 5 para 6 Act Governing the Employment of Foreign Nationals). Another reason is that work permits are issued apart from seasonal quotas in the case of Stammsaisoniers (Migration.gv.at, n.d.).

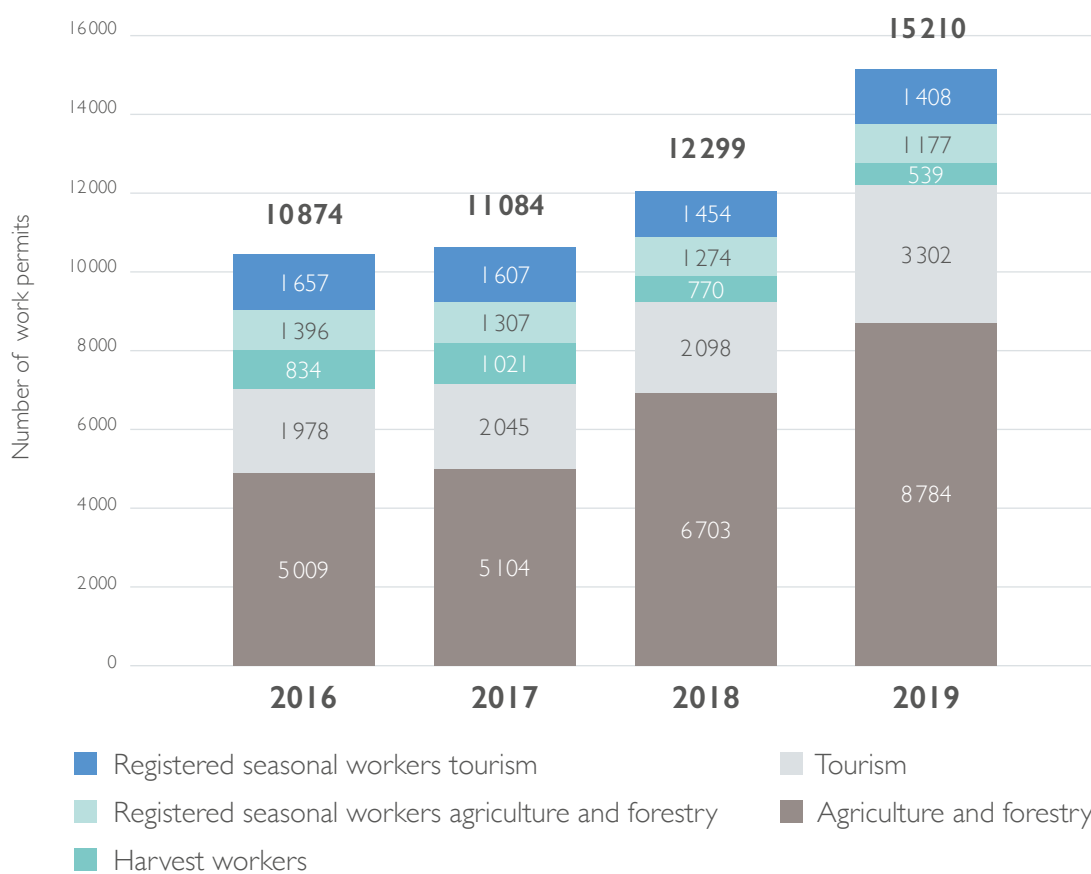
The following categories of foreign nationals to be given preference when issuing a work permit: (a) those subject to the transitional provisions applying to the free movement of workers in the EU (Croatian Workers),³⁶ those (b) admitted to the asylum procedures for at least three months, or (c) those

36 Note: Workers from Croatia have unrestricted access to the labor market since 1 July 2020 and do not require a work permit.

employed under a quota at least once within the previous five years (Art. 5 of the Regulation on the temporary employment of foreign nationals in tourism and in agriculture and forestry for the year 2020).³⁷

The decision to employ more asylum seekers as harvest workers was taken in order to promote their integration into Austrian society and to alleviate some of the financial burden on the state (ORF Online, 2016; Der Standard, 2017b). The preferential treatment of Croatian workers as well as of previously admitted seasonal and harvest workers is due to considerations including EU requirements set out in the Seasonal Workers Directive.

Figure 1: Issued work permits by sector (2016–2019)



Source: Public Employment Service, n.d.b; own representation.

Employers must apply for a work permit at the competent regional office of the Public Employment Service, which processes the application (Public Employment Service, 2020b). The maximum validity of work permits must not exceed six months (six weeks for harvest workers). Within a period of 12 months, work permits may be issued or renewed for a total of no more than 9 months (Art. 5 para 3 Act Governing the Employment of Foreign Nationals). Exemptions from this provision include foreign nationals who have been granted asylum or

³⁷ FLG II No. 407/2019.

subsidiary protection, or foreign nationals who enjoy freedom of movement for workers based on a legal act of the European Union (Art. 1 para 2a and 2l Act Governing the Employment of Foreign Nationals).

Within three days of when the seasonal or harvest worker begins and terminates work, the employer is obliged to report the fact to the competent regional office of the Public Employment Service (Art. 26 para 5 Act Governing the Employment of Foreign Nationals). The work permit becomes invalid upon termination of employment or if the worker does not begin work within six weeks of the initial validity date of the permit (Art. 7 para 6 subpara 1 and 2 Act Governing the Employment of Foreign Nationals). After terminating employment, seasonal and harvest workers are not entitled to remain in Austria to accept dependent employment and work at such a job (Art. 7 para 6 Unemployment Insurance Act 1977).³⁸

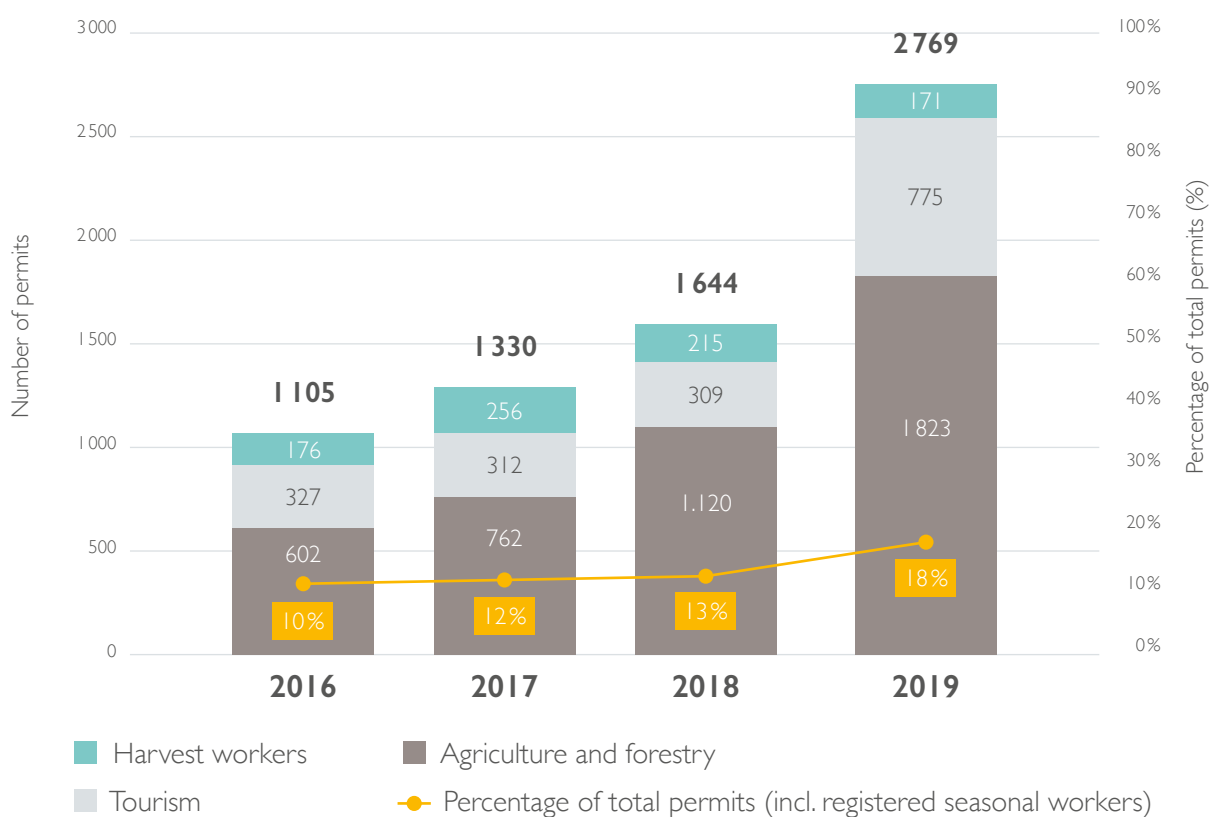
Giving incorrect information or withholding certain facts when applying for a work permit is one of the circumstances requiring the permit to subsequently be revoked (Art. 9 para 1 Act Governing the Employment of Foreign Nationals). Additional work permits are prohibited from being issued to an employer who within the previous 12 months before submitting an application has repeatedly (specifically at least twice) employed a foreign national in violation of the provisions of the Act Governing the Employment of Foreign Nationals (Art. 4 para 1 subpara 5 Act Governing the Employment of Foreign Nationals).

38 FLG I No. 101/2000, in the version of FLG I No. 28/2020.

Work permits issued for the first time or renewed

Between 2016 and 2019, 6,848 first-time work permits were issued to seasonal workers in tourism or in agriculture and forestry. As seen in Figure 2, the number of first-time permits has more than doubled since 2016.³⁹ The percentage of employment permits issued for the first time relative to the total number issued rose from 10 to 18 per cent during 2016–2019.

Figure 2: First-time work permits issued, by sector and as a percentage of the total number of employment permits issued (2016–2019)

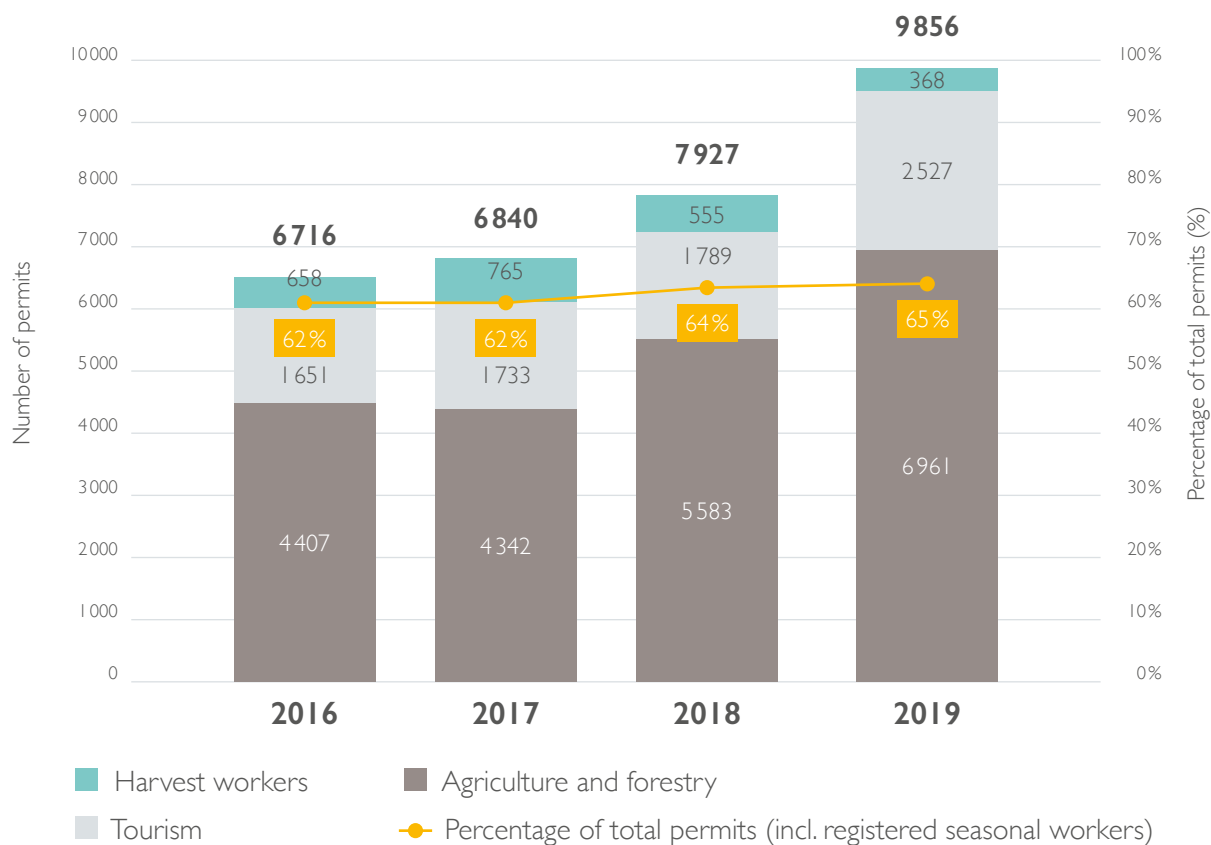


Source: Written input by Public Employment Service and Federal Ministry of Labour, Family and Youth (statistics inquiry), 9 September 2020; own representation.

The number of renewed work permits also increased continuously over the period examined. Since 2016 a total of 31,339 employment permits have been renewed, most of them for the agriculture and forestry sector (see Figure 3).

³⁹ Written input by the Public Employment Service and the Federal Ministry for Labour, Family and Youth (statistic inquiry), 9 September 2020.

Figure 3: Work permits renewed, by sector and as a percentage of the total number of employment permits issued (2016–2019)



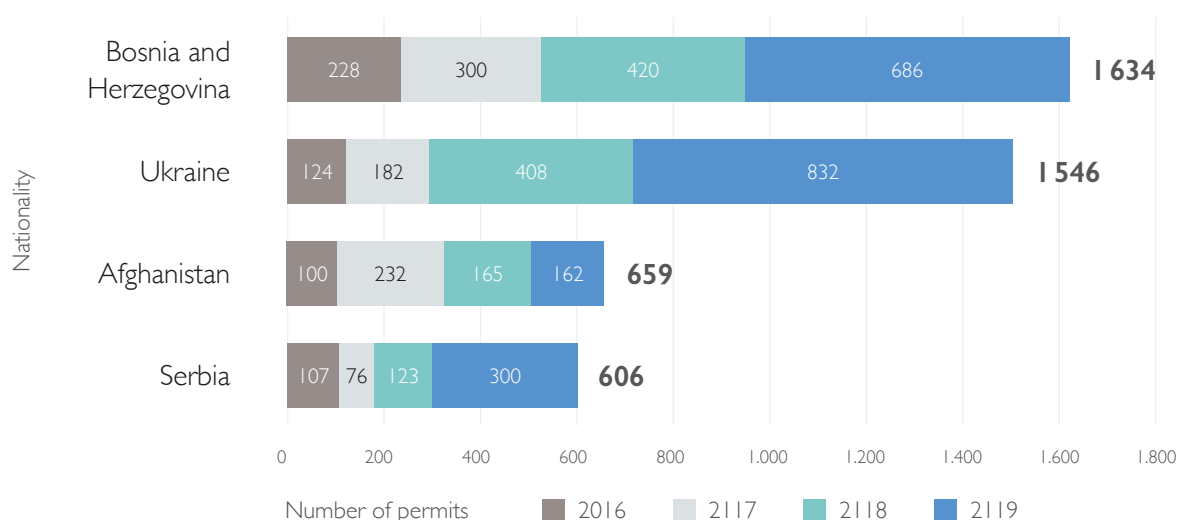
Source: Written input by Public Employment Service and Federal Ministry of Labour, Family and Youth (statistics inquiry), 9 September 2020; own representation.

Most first-time permits issued under a quota⁴⁰ for third-country nationals applied to citizens of Bosnia and Herzegovina (1,634 permits), with nationals of Ukraine (1,546), Afghanistan (659) and Serbia (606) following (see Figure 4). In 2019 a total of 2,313 first-time permits were issued for tourism or agriculture and forestry. Of these, 2,213 employment permits (85% of the total) applied to an individual from one of the following five countries: Ukraine (832 permits), Bosnia and Herzegovina (686 permits), Serbia (300 permits), Kosovo⁴¹ (233 permits) or Afghanistan (162 permits).

40 Work permits in the framework of seasonal quotas.

41 References to Kosovo shall be understood to be in the context of United Nations Security Council resolution 1244 (1999).

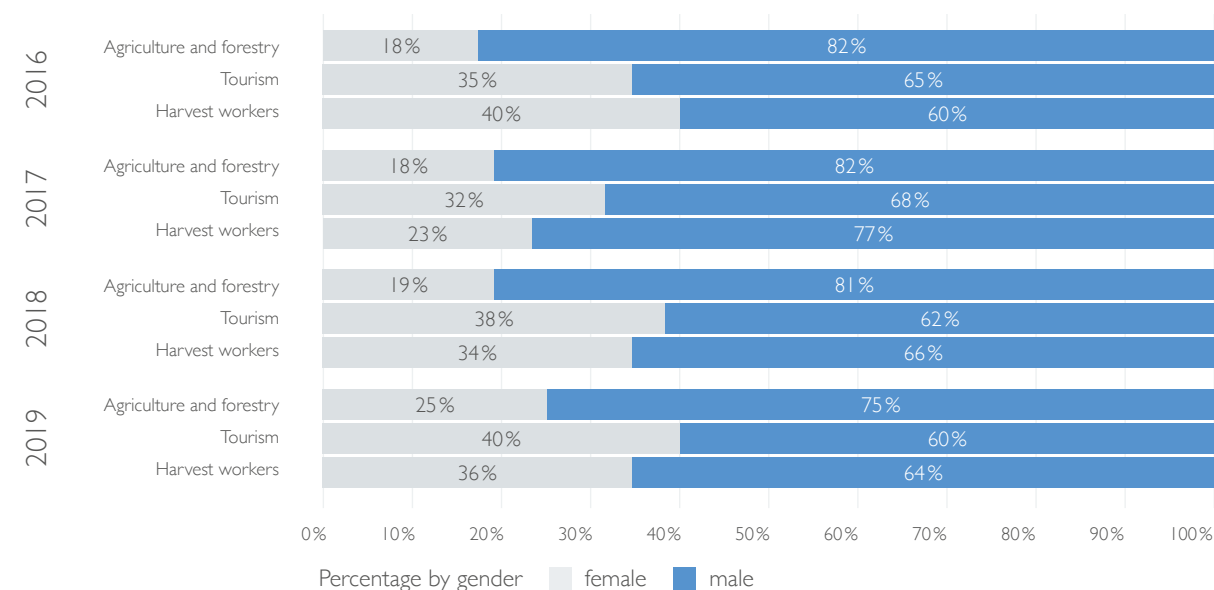
Figure 4: First-time work permits issued, by nationality (2016–2019)



Source: Written input by Public Employment Service and Federal Ministry of Labour, Family and Youth (statistics inquiry), 24. August 2020; own representation.

In 2019 the share of first-time issued work permits for male seasonal workers in tourism or agriculture and forestry was 70 per cent. By sector, 75 per cent of first-time employees in agriculture and 60 per cent of first-time employees in tourism in that year were male seasonal workers. Among the harvest workers, the proportion of male workers was 64 per cent. Since 2016 the proportion of female employees among first-time employment permits issued in tourism and in agriculture and forestry has risen, while the proportion among harvest workers has fallen (see Figure 5).⁴²

Figure 5: First-time work permits issued, by gender and sector (2016–2019)



Source: Written input by Public Employment Service and Federal Ministry of Labour, Family and Youth (statistics inquiry), 9 September 2020; own representation

42 Written input by the Public Employment Service and the Federal Ministry for Labour, Family and Youth (statistic inquiry), 9 September 2020.

In regard to the validity period of first-time quota permits, the majority (58%) of permits in 2019 are seen to have been issued for periods between three and six months (see Table 3).⁴³ No detailed data covering the period of stay of seasonal and harvest workers are collected either by the Federal Ministry of Labour, Family and Youth, nor the Federal Ministry of the Interior, or the Public Employment Service.⁴⁴

Table 3: Validity period of first-time work permits issued (2016–2019)

	2016	2017	2018	2019
1–90 days	499	637	707	1 155
91 days–6 months	606	693	941	1 614

Source: Written input by Public Employment Service and Federal Ministry of Labour, Family and Youth (statistics inquiry), 9 September 2020.

3.4 Labour market test

A work permit may only be issued if the situation and trends in the labour market allow employment of the particular worker. A labour market test – also referred to as an *Ersatzkräfteverfahren* (substitute workers procedure) – is used to determine whether the job vacancy could be filled either with an Austrian citizen or a foreign citizen available in the labour market. Among available foreign nationals, the groups to be preferred are: individuals entitled to unemployment insurance, EEA citizens, Swiss citizens, Turkish workers covered by the Association Agreement and other foreign citizens enjoying unrestricted labour market access (Art. 4b para 1 Act Governing the Employment of Foreign Nationals).

The competent regional office of the Public Employment Service decides whether to carry out a labour market test, that is, whether a suitable substitute worker is available (Public Employment Service, 2020a; Pirker, 2010:194). A total of 2,612 first-time permits were issued for seasonal and harvest workers in 2019. In 990 of those cases, no labour market test took place. Of the 990 cases, 136 fell under the tourism sector, with most involving cooks or chefs.⁴⁵

The labour market test is based on a profile of requirements to be met by the worker, as specified in the application for the work permit. The shorter the planned employment term and the more specific and exacting the requirements, the less likely it is to identify a suitable substitute worker (Pirker, 2010:194). Employers can also reject the recruitment of substitute workers by stating their reasons in the application form (Public Employment Service, 2017:2).

43 Written input by the Public Employment Service and the Federal Ministry for Labour, Family and Youth (statistic inquiry), 12 May 2020.

44 Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020; Written input by the Federal Ministry of the Interior, 4 June 2020.

45 Written input by the Public Employment Service and the Federal Ministry for Labour, Family and Youth (statistic inquiry), 22 May 2020.

Skills levels of seasonal and harvest workers

Demand exists for both workers with lower qualifications as well as skilled workers.⁴⁶ When applying for a work permit, employers are required to state any specialized knowledge or training needed for performing job activities and whether evidence is available demonstrating the worker's qualifications for the particular job. Certificates from the seasonal worker attesting to comparable vocational training and practical experience are to accompany the application (Public Employment Service, 2017). The Public Employment Service also requires evidence of qualification where seasonal workers are to be employed as skilled workers.⁴⁷ Skilled workers are individuals who have completed several years of training. No general data are collected on the skills levels of seasonal and harvest workers.

3.5 Time and expense of admission procedures

Regional offices of the Public Employment Service are required to decide work permit applications within six weeks (Art. 20a Act Governing the Employment of Foreign Nationals). The procedure can be accelerated if the Public Employment Service chooses not to carry out a labour market test (Pirker, 2010:194). A seasonal worker or harvest worker can only begin work after being issued a visa. A Visa C generally costs EUR 60 and a Visa D EUR 150, unless a legal exception applies (Migration.gv.at, n.d.; Federal Ministry of the Interior, n.d.). The fee is due when applying for and being issued a permit authorizing employment of a third-country national are defined by law and are paid by the employer once the application has been processed. The following fees apply (Help.gv.at, 2020):

- 1) Application fee: EUR 14.30
- 2) Issue of a work permit: EUR 6.50
- 3) Supplement fee (only due if the application is accompanied by supplementary documents):
EUR 3.90 per page

The average time for processing applications is 10 days, according to the Public Employment Service; this period does not include processing time for visas, which are applied for separately. The average cost of applying for a work permit is EUR 24.70.⁴⁸

3.6 Recruitment of seasonal and harvest workers

Seasonal and harvest workers are not actively recruited through public bodies, and no cooperation arrangements exists for recruiting workers in third countries. Since the Austrian labour market is attractive, it has not been difficult up to now to recruit the required seasonal and harvest workers, the Vienna Chamber of Labour

⁴⁶ Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

⁴⁷ Ibid.

⁴⁸ Written input by the Public Employment Service, 22 May 2020.

reports.⁴⁹ At the same time, most employers already have regular personnel that they have employed for some time and rehire repeatedly according to the Federal Ministry of Labour, Family and Youth.⁵⁰

According to the PRO-GE trade union, at the level of individual businesses, three pillars can be identified as forming the basis for recruiting seasonal and harvest workers for the agriculture and forestry sector in particular: Firstly, a form of word-of-mouth propagation is rather common, where seasonal workers are requested by their employers to recommend others from among the workers' acquaintances. Secondly, intermediary agencies exist in seasonal and harvest workers' countries of origin. Such agencies, which collect placement fees from workers, are less common in agriculture and forestry than in other sectors. Finally, farmers, as the third pillar, directly advertise in workers' countries of origins. This recruiting method has become increasingly common in recent years.⁵¹

Facilitation of Entry

Art. 21 para 1 of the Settlement and Residence Act⁵² generally requires foreign nationals to submit an initial application for settlement and residence in Austria to the local representation authority responsible in another country, and then to wait for the decision in that country. Moreover, seasonal and harvest workers are not among the groups enumerated in para 2 of that article, who are entitled to submit applications in Austria. No provision exists that would allow seasonal and harvest workers already staying in Austria to apply for a change of residence status.⁵³

Nevertheless, individuals previously employed as seasonal or harvest workers on more than one occasion, are eligible to apply for a Visa C with an overall validity of five years maximum; several short seasons then fall under one visa. The maximum 90-day period of stay within any 180-day period and the requirement to present a work permit every season nonetheless apply in such cases (Migration.gv.at, n.d.). Certain conditions are also specified for previous holders of visas in the D category who reapply; these are set out in Art. 11 para 1 of the Aliens Police Act 2005 and Art. 14 para 6 of the Visa Code⁵⁴ (Kind, 2018:256).

49 Interview with Johannes Peyrl, Chamber of Labour Vienna, 8 May 2020.

50 Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

51 Interview with Susanne Haslinger, PRO-GE trade union, 4 April 2020.

52 FLG I No. 100/2005, in the version of the federal law FLG I No. 27/2020.

53 Written input by the Federal Ministry of the Interior, 4 June 2020.

54 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, pp. 1–5.

4. RIGHTS AND DUTIES OF SEASONAL AND HARVEST WORKERS IN AUSTRIA

The Seasonal Workers Directive⁵⁵ places great emphasis on ensuring decent working and living conditions for seasonal workers⁵⁶ from third countries (recital 7 Seasonal Workers Directive). In Austria, various legal provisions and measures aim at preventing abuse while providing for measures actions against violations. A work permit is for example granted under the provision that the conditions under, which the seasonal or harvest worker is to be employed, are not inferior to those applying to Austrian nationals employed in comparable work at that business (Art. 8 para 1 Act Governing the Employment of Foreign Nationals).⁵⁷ In addition, various interest groups are called upon to safeguard the rights of seasonal and harvest workers in Austria. The actors interviewed in the context of this study nevertheless report on irregular conditions relating to working conditions and wages. These irregularities are also widely documented by the media.

The following chapter discusses the status of seasonal and harvester workers' rights, including instances where a right to equal treatment with EU-workers exists and where there are differences. The chapter also addresses the issues of abuse, exploitation and human trafficking in the context of employment of seasonal and harvest workers. Finally, the roles and responsibilities of the main interest groups and of monitoring and complaint bodies are outlined.

4.1 Wages

In Austria, minimum wages are stipulated in collective agreements concluded by the employers' and employees' associations qualified to negotiate such agreements (Austrian Federal Economic Chamber, 2020b). Collective agreements are concluded at regional level, for specific sectors or for individual businesses (Austrian Trade Union Federation, 2019a). The same labour law provisions apply to both Austrian workers and workers falling within the scope of the Act Governing the Employment of Foreign Nationals. In consequence, seasonal and harvest workers are entitled to the minimum wage under the applicable collective agreement (Chamber of Agriculture Austria, 2019).

The gross entry-level monthly minimum wage for employees in food services and accommodation, which are sub-sectors of the tourism industry, who have no specialized vocational training or are unskilled is set at EUR 1,540 in all Austrian provinces. This group includes unskilled service and kitchen workers and staff employed as dishwashers or in housekeeping (Austrian Federal Economic Chamber, 2020c). The wages applying in agriculture and forestry vary depending on the province. The gross monthly wage specified in the collective agreement for harvest workers employed for a maximum of three months is EUR 1,270 in Upper Austria while it is set at EUR 1,400 in Lower Austria (Chamber of Agriculture Upper Austria, 2019). This contrasts with Tyrol, where seasonal and harvest workers employed by fruit and vegetable growers are paid based on a minimum

55 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, pp. 375–390.

56 These and other topic-specific terms are defined in chapter 2.2.

57 FLG No. 218/1975, in the version of the federal law FLG I No. 23/2020.

gross hourly wage, currently EUR 8.10 (Austrian Trade Union Federation, 2019b). Here it should be mentioned, however, that it is possible in principle for individual companies to negotiate other minimum wage levels.

4.2 Adequate accommodation

The Seasonal Workers Directive gives high priority to ensuring adequate accommodation for seasonal workers. Article 20 of the Directive requires evidence of an adequate standard of living according to national law and/or practice for the duration of a worker's stay (Art. 20 para 1 Seasonal Workers Directive). Where the employer provides accommodation, the rent must not be excessive compared with the quality of the accommodation, and must not be automatically deducted from the worker's wage (Art. 20 para 2 lit. a Seasonal Workers Directive).

These requirements have been incorporated in Austrian law. Specifically, the employer is obliged to confirm that accommodation meeting local standards is available for the planned duration of employment. As provided in the Directive, rent may not be automatically deducted from wages if the accommodation is provided by or through the employer (Art. 4 para 1 subpara 11 Act Governing the Employment of Foreign Nationals). The employer confirms these conditions in the application for a work permit (Public Employment Service, 2017:3).

Once the work permit is issued, the authorities are charged with revoking it, should it become apparent that the accommodation made available by the employer does not meet local standards. The employer does have the option of remedying the deficiencies, however (Art. 9 para 1 Act Governing the Employment of Foreign Nationals). If an employer repeatedly – meaning at least twice – provides a seasonal or harvest worker with accommodation not meeting local standards within one 12-month period, no work permit is issued (Art. 4 para 1 subpara 10 Act Governing the Employment of Foreign Nationals).

Up until 31 December 2019⁵⁸ housing conditions for seasonal and harvest workers in tourism, and agriculture and forestry were specified uniformly for all of Austria in the Agricultural Labour Act 1984.⁵⁹ Any living quarters and accommodation constituting a portion of wages in kind were required to comply with health and moral standards and with building authority regulations (Art. 18 para 1, 2 and 3 Agricultural Labour Act 1984). The Agricultural Labour Act also required accommodation to be furnished in accordance with its purpose and to meet hygiene standards (including drinking water, sanitary facilities for washing with clean water, and similarly appropriate toilets). Facilities also had to be available for preparing and heating food and for drying wet clothing (Art. 88g subpara 1 and 2 Agricultural Labour Act 1984).

According to the PRO-GE trade union, standards have apparently improved considerably as a result of targeted campaigns by authorities and other responsible public bodies to take joint action against illegal worker

58 The Agricultural Labour Act 1984 was amended on 31 December 2019 to the effect that, among other things, provisions on housing and accommodation are to be regulated in the provincial laws of the individual federal states.

59 FLG No. 287/1984, in the version of the federal law FLG I No. 93/2019.

accommodation. In general, there is no alternative to monitoring as a means of ensuring compliance with legal provisions.⁶⁰

4.3 Transfer of pension entitlements

Employees who are employed by one or more employers are fully covered under health, accident and pension insurance schemes (Art. 4 para 1 subpara 1 General Social Security Act).⁶¹ In principle, seasonal and harvest workers also fall under this provision. Austria has signed bilateral agreements with several of the States from which the majority of seasonal and harvest workers originate,⁶² with these agreements also covering pension insurance (Federal Ministry for Digital and Economic Affairs, n.d.). The agreements generally provide for pension insurance periods to be added together and counted towards pension entitlement. No option exists, however, for having contributions refunded.⁶³

4.4 Limitations of the right to equal treatment

Article 23 of the Seasonal Workers Directive defines areas in which seasonal workers are entitled to equal treatment with nationals of their host Member States (Art. 23 para 1 Seasonal Workers Directive). The Directive nonetheless allows Member States to restrict, to a certain extent, equal treatment of seasonal workers with nationals of the particular hosting Member State (Art. 23 para 2). This concerns in particular (a) social security benefits, (b) education and vocational training, and (c) tax benefits.

Family benefits

In Austria, family allowances are disbursed to compensate for the additional financial burden on parents. The amount of the family allowance depends on the age and number of children (Federal Ministry for Digital and Economic Affairs, 2020). Seasonal and harvest workers are generally not entitled to family allowance in Austria. An exception is the group of third-country seasonal and harvest workers who lawfully reside in Austria under Art. 54 of the Asylum Act 2005,⁶⁴ meaning individuals holding a residence permit for particularly exceptional circumstances (Art. 3 para 1 Family Allowance Act 1967).⁶⁵ In this context, however, it should be noted that there is no entitlement to family allowance for children who are permanently abroad (as above, Art. 5 para 3). Excluded from this regulation are children who are permanently residing in a state of the European Economic Area (as above, Art. 53 para 1). In this case, however, the family allowance contributions are adjusted to the

60 Interview with Susanne Haslinger, PRO-GE trade union, 4 April 2020.

61 FLG No. 189/1955, in the version of the federal law FLG I No. 31/2020.

62 Among others Bosnia and Herzegovina and Serbia (Federal Ministry for Digital and Economic Affairs, n.d.).

63 Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

64 FLG I No. 100/2005, in the version of the federal law FLG I No. 29/2020.

65 FLG No. 376/1967, in the version of the federal law FLG I No. 28/2020.

cost of living in the respective country of residence of the children (Art. 1 Family Allowance - Child Deduction Amount - EU Adjustment Regulation).⁶⁶

Unemployment benefits

Seasonal and harvest workers are entitled in principle to unemployment insurance benefits as referred to in Art. 1 para 1a of the Unemployment Insurance Act 1977⁶⁷ (provided they are not marginally employed). Yet such workers are not likely to claim insurance benefits, for the reasons explained below. To claim benefits, the entitled individual must be available for job placement (as above, Art. 7 para 1 subpara 1); this is only the case, however, with individuals who are able and entitled to accept employment (Art. 7 para 2). Seasonal and harvest workers who, based on Art. 5 of the Act Governing the Employment of Foreign Nationals, are temporarily employed, are not entitled to remain in Austria to accept dependent employment and work at such a job after their employment has terminated; this is stated categorically in Art. 7 para 6 of the Unemployment Insurance Act 1977.

Educational and vocational training

We are not aware of any restrictions relating to education or training. Yet, in view of the provisions governing seasonal and harvest workers' stay and their working conditions, it is doubtful whether education or training are actually accessible for this group.⁶⁸

Tax benefits

A benefit referred to as the Family Bonus Plus was introduced as of 1 January 2019 to replace the tax deductibility of childcare expenses and the tax allowance for children. The Family Bonus Plus reduces the annual tax burden on parents by as much as EUR 1,500 per child (Republic of Austria, n.d.). Families with children in third countries are not eligible for the Family Bonus Plus. The same applies to other tax allowances, specifically the allowances for single earners and for individuals obliged to pay maintenance (Federal Ministry of Finance, 2020).

4.5 Abuse, exploitation and human trafficking

Accounts of illegal working hours, underpayment and substandard accommodation are hardly infrequent (Der Standard, 2017a; ORF Online, 2018d, 2018c). In addition, individual cases of unequal treatment compared with Austrian employees are documented.⁶⁹ No official statistics exist on seasonal and harvest workers who become victims of exploitation and/or human trafficking in Austria. However, reports of various situations involving coercion would suggest that trafficking in human beings exists (Bolyos et al., 2016:6). Furthermore, the MEN VIA

⁶⁶ FLG II No. 318/2018, in the version of the federal law FLG II No. 366/2020.

⁶⁷ FLG I No. 101/2000, in the version of FLG I No. 28/2020.

⁶⁸ Interview with Johannes Peyrl, Chamber of Labour Vienna, 8 May 2020.

⁶⁹ Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

organization⁷⁰ confirms having aided from 2017 to 2018 a harvest worker from Cameroon who had become a victim of human trafficking in Austria.⁷¹

No surveys relating to migrants without regular residence status who work seasonally in Austria exist either. However, a report by UNDOK, the Association for Trade Union Support of Undocumented Workers, does mention in general that there are individuals working in Austria who either do not have any residence status or, because of the type of residence status they possess, have no or only limited labour market access or entitlement to social rights (UNDOK, 2019:8).

In general, even before the implementation of the Seasonal Workers Directive, the Austrian legal provisions on seasonal work were viewed as an important instrument for controlling the employment of third-country nationals without a valid work permit (Biffi, 2011:43). Upon implementation of the Seasonal Workers Directive, the Austrian Federal Government referred to the need to ensure more efficient monitoring of non-registered employment of foreign nationals in the future.⁷²

The European Union Agency for Fundamental Rights published a study on severe labour exploitation in 2015.⁷³ Although the study does not refer directly to seasonal and harvest workers, it does reveal exploitation of foreign labour as the most common type of exploitation in Austria. Individuals in an irregular employment situation are seen as especially vulnerable to exploitation. The report also notes that existing mechanisms in Austria, namely requiring employers to provide compensation and back pay, are not used by victims or not known to them. Although measures have been taken to counteract this problem, the Austrian experts interviewed spoke of inadequate assistance for victims of exploitation. It was also criticized that the penalties imposed on employers who exploit foreign workers are too lenient.

4.6 Reimbursement for costs and compensation for damages

Under the Act Governing the Employment of Foreign Nationals, seasonal and harvest workers are entitled to varying levels of reimbursement of costs and compensation for damages. A seasonal or harvest worker employed without a work permit is entitled to the same amount for the period of employment as under a valid employment contract, in addition to reimbursement of the expense of transferring the worker's remuneration to another country (Art. 29 para 1 Act Governing the Employment of Foreign Nationals). Whether the seasonal or harvest worker was informed of the lack of a work permit is immaterial in this case (Pirker, 2010:235). If the employer is responsible for the lack of a work permit, the seasonal or harvest worker must be treated as if that person had been employed under a valid employment contract in relation to entitlements arising from termination of employment. If the seasonal or harvest worker's employment relationship is terminated due to the lack of a work permit, the individual is also entitled to compensation for damages, as if the worker had

70 MEN VIA advises and supports male victims of trafficking in human beings (Institut für Frauen- und Männergesundheit, 2020).

71 Written input by MEN VIA, 6 July 2020.

72 Act Amending the Act Governing the Employment of Foreign Nationals and the General Social Insurance Act, Government Proposal – Explanatory Notes, available from www.parlament.gv.at.

73 European Union Agency for Fundamental Rights (2015:10) defines "serious labour exploitation" as work situations that differ significantly from the working conditions defined in legislation and other binding legal provisions. This concerns in particular salary, working hours, holiday entitlements, health and safety standards and fair treatment.

prematurely terminated the employment contract on reasonable grounds (Art. 29 para 2 and 3 Act Governing the Employment of Foreign Nationals).

4.7 Interest groups, supervisory authorities and complaint bodies

Various actors in Austria are responsible for monitoring compliance with the provisions of labour and residence law that pertain to employing seasonal and harvest workers. These actors are also appointed for the protection of the interests of seasonal and harvest workers. Under specific circumstances, these actors are authorised to enter business premises and workplaces, request information and inspect documents (Art. 26 para 1 and para 2 Act Governing the Employment of Foreign Nationals). In addition, as set out in Art. 25 of the Seasonal Workers Directive, EU Member States are to ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties. Austria has several contact points for this purpose, with legislation specifically designating the Chambers of Labour and the Chambers of Agricultural Labour in this role. Other institutions, such as trade unions and the Public Employment Service, also offer avenues for lodging complaints.

No statistics are available that would allow inferences relating to activities by the above-mentioned actors in monitoring the employment of seasonal and harvest workers. According to the *vida* trade union, one problem, at least in tourism, is that there has been no blanket inspections due to the vast number of businesses. The authorities thus have to rely on third parties and the employees involved for leads.⁷⁴ Complaints by seasonal and harvest workers themselves are unlikely, however, given their special dependency on their employers in terms of employment and residence permits. Due to this dependency, it can be assumed that existing rights are not always claimed and some infringements remain unreported.⁷⁵ The PRO-GE and *vida* trade unions both identify challenges to asserting legal claims held by seasonal or harvest workers, even though Pro-Ge considers the legal framework in Austria to be adequate in principle.⁷⁶ The challenges to asserting legal claims stem on the one hand from language barriers as well as from the fact that individuals in this group are often difficult to reach, having to leave Austria after the end of employment.⁷⁷ What is more, seasonal workers, at least in tourism, often lack a regulating social influence, such as family obligations,⁷⁸ which limit working hours at the social instead of the legal level.

Targeted federal information campaigns for seasonal and harvest workers and their employers do not exist in Austria. Employers can in principle obtain information from the Economic Chambers or the Chambers of Agriculture. The PRO-GE trade union nonetheless identifies a challenge in the fact that many employers lack the necessary detailed knowledge of the legal conditions for employing seasonal and harvest workers.⁷⁹ The Public Employment Service and the Chambers of Labour are available as sources of information where seasonal

74 Interview with Anna Daimler; *vida* trade union, 22 April 2020.

75 Interview with Johannes Peyrl, Chamber of Labour Vienna, 8 May 2020.

76 This refers to those legal frameworks in which employees' material legal entitlements, such as minimum wages, are regulated - primarily the agricultural labor acts and the respective collective agreements - but not the legal basis for asserting legal claims. In addition, the PRO-GE trade union has for many years been calling for the ratification of the Convention on Occupational Safety and Health in Agriculture of the International Labour Organization (ILO) in Austria, which according to the PRO-GE trade union would, among other things, create an improved basis for control in agriculture and forestry.

77 Interview with Susanne Haslinger; PRO-GE trade union, 4 April 2020.

78 Interview with Anna Daimler; *vida* trade union, 22 April 2020.

79 Interview with Susanne Haslinger; PRO-GE trade union, 4 April 2020.

and harvest workers have any questions.⁸⁰ Nevertheless, seasonal and harvest workers themselves have little awareness of their rights, a situation that some businesses take advantage of (Arbeit&Wirtschaft, 2017). Here thought could be given to making information about rights and duties available in each case, to seasonal and harvest workers (in their first languages) when issuing visas, and to employers as part of the procedure for issuing a work permit. The Vienna Chamber of Labour would welcome such a measure.⁸¹

Selected key actors

The following section describes the main actors and their roles.

(a) Labour inspectorate

The labour inspectorate is an authority with the remit of safeguarding the legal protection of workers, and of advising in the implementation of occupational health and safety measures (Art. 3 para 1 Labour Inspectorate Act 1993).⁸² The inspectorate is for example responsible for monitoring the adherence to legislation and administrative regulations, including those relating to working hours, breaks as well as rest periods, time off work and records of leave (Art. 3 para 1 Labour Inspectorate Act 1993). The labour inspectorate's scope of responsibility covers all types of business premises and workplaces, with the exception of those falling under the supervisory remit of the Agriculture and Forestry Inspectorates (Art. 1 para 1 and 2 subpara 1 Labour Inspectorate Act).

(b) Public Employment Service

The Public Employment Service and its regional offices play a central role in the administrative procedures related to work permits for seasonal and harvest workers. Beyond the tasks already described with regard to the granting of work permits, the offices of the Public Employment Service are required to report any work permits granted for seasonal and harvest workers to the authorities responsible for fulfilling duties under the Settlement and Residence Act⁸³ and the Aliens Police Act 2005.⁸⁴ The Public Employment Service must also forward reports of terminated employment to the authorities responsible, as well as report any cases where work permits are revoked with final effect to the provincial police administration concerned (Art. 27 para 4 Act Governing the Employment of Foreign Nationals). The competent regional office of the Public Employment Service also has the duty, prior to a decision being made, of informing the provincial police administration concerned whenever a work permit application is filed for a foreign national holding a Visa C with a validity period exceeding one year (Art. 5 para 9 Act Governing the Employment of Foreign Nationals). Similarly, all authorities and public offices have a duty to assist the Public Employment Service offices and the Federal Administrative Court in fulfilling the duties set out in the Act Governing the Employment of Foreign Nationals (Art. 27 para 1 Act Governing the Employment of Foreign Nationals). The duty to inform the competent provincial police administration

80 Written input by the Public Employment Service, 12 May 2020.

81 Interview with Johannes Peyrl, Arbeiterkammer Wien, 8 May 2020.

82 FLG No. 27/1993, in the version of the federal law FLG I No. 100/2018.

83 FLG I No. 100/2005, in the version of the federal law FLG I No. 24/2020.

84 FLG I No. 100/2005, in the version of the federal law FLG I No. 27/2020.

was introduced as part of transposing the Seasonal Workers Directive into national law, with the specific aim of improving verification of compliance when seasonal and harvest workers employed without a permit are ordered to leave the country.⁸⁵

(c) Works council

Within businesses, the works councils deserve mention here as an important actor representing employee interests. At businesses with at least five employees (regardless of nationality), the staff is entitled to set up a works council. The works council is authorized in matters including monitoring and verifying compliance with the collective agreement, works agreements, and occupational health and safety regulations. The works council is also entitled to information relating to establishing and terminating employment relationships (Austrian Federal Economic Chamber, 2020a).

(d) Aliens and finance police

In regard to the stay of seasonal and harvest workers, the public security body responsible for ensuring compliance with aliens law (also known as aliens police) plays an important role. Their duties include preventing aliens from entering Austria unlawfully, and monitoring the stay of foreign nationals in the country (Art. 2 para 2 subpara 1 and 2 Aliens Police Act 2005).⁸⁶

Officials of the fiscal authorities (finance police), in their capacity of combating the illegal employment of foreign nationals, should also be mentioned here. The finance police are tasked with verifying whether workers hold permits granting residence or settlement status (Federal Ministry of Finance, n.d.). As part of monitoring and verification, fiscal authority officials are empowered to establish individuals' identities (Art. 12 para 2 Fiscal Administration Act 2010).⁸⁷ Based on a control strategy, the financial police carries out targeted actions in specific sectors. Many inspections are conducted on the basis of information provided through anonymous tips or reports from other authorities (Jandl, 2009:57).

Under certain conditions, the finance police are authorized to arrest foreign nationals on behalf of the aliens police. Specifically, the individual concerned must be reasonably assumed to be pursuing or intending to pursue gainful employment in Austria without a corresponding permit and without a legal residence status. Moreover, based on Art. 26 para 4 of the Act Governing the Employment of Foreign Nationals, there must be an imminent risk of the foreign national escaping arrest before the arrival of public security service officials Art. 26 para 4 Act Governing the Employment of Foreign Nationals (Financial Police, 2019:19).

⁸⁵ Written input by the Federal Ministry for Labour, Family and Youth, 12 May 2020.

⁸⁶ FLG I No. 100/2005, in the version of the federal law FLG I No. 27/2020.

⁸⁷ FLG I No. 9/2010, in the version of FLG I No. 23/2020.

(e) Chambers of Labour

The most important public bodies representing the interests of seasonal and harvest workers are the Chambers of Labour. The Chambers of Labour have the remit of representing and promoting the economic, professional and cultural interests of employees (Art. 1 Chamber of Labour Act).⁸⁸ This institution has a legal mandate to represent the group's interests, and membership is compulsory for all employees in Austria (Chamber of Labour Austria, 2020). The remit of the Chambers of Labour includes advising members on issues of labour and social law, as well as providing them with legal protection within certain defined bounds through representation in court cases related to these matters (Art. 7 para 1 Chamber of Labour Act). The Chambers of Labour also have a special role in monitoring working conditions. They can for example apply to the competent authorities for authorization to inspect workplaces (Art. 5 para 1 subpara 1 Chamber of Labour Act). The Chambers of Agricultural Labour, which have seats in seven of Austria's provinces,⁸⁹ are in particular responsible for seasonal and harvest workers employed in agriculture and forestry (Chamber of Agricultural Workers Austria, 2020).

(f) Austrian Trade Union Federation

The Austrian Trade Union Federation is the body representing the interests of individuals pursuing dependent gainful employment, with roughly 1.2 million members in Austria. The Austrian Trade Union Federation consists of seven trade unions, of which two, the vida trade union for transport and services and the PRO-GE union for production, are responsible for seasonal and harvest workers. Among the services provided by the trade unions are labour law counselling as well as representation in court and before authorities and public administration (Austrian Trade Union Federation, n.d.).

It is common practice for PRO-GE and vida trade union representatives to approach workers, and especially seasonal and harvest workers, directly at their places of work, in order to meet them and provide them with information about their rights. Where irregular conditions are identified, the trade unions immediately contact the works management, and the works council if applicable.⁹⁰ The PRO-GE trade union reports very good success with an easily accessible information programme for seasonal and harvest workers in agriculture and forestry. It involves activists approaching workers directly at their local places of work to inform them of their rights. Conventional methods used by trade unions are generally ineffective for reaching out to this group. Involving activists with a migration background is cited as an important aspect, preferably going through individuals who speak seasonal and harvest workers' first languages. Offering services in first languages is seen as critical for reaching seasonal and harvest workers.⁹¹ Another positive example from practice worth mentioning here is the Sezonieri initiative.

88 FLG No. 626/1991, in the version of the federal law FLG I No. 28/2020.

89 In the federal states of Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol and Vorarlberg.

90 Interview with Anna Daimler; vida trade union, 22 April 2020; Interview with Susanne Haslinger; PRO-GE trade union, 4 April 2020.

91 Interview with Susanne Haslinger; PRO-GE trade union, 4 April 2020.

(g) Other bodies representing interests

Within the non-State sector, relevant actors have founded a common initiative, referred to as Sezonieri.⁹² This education campaign has been advocating the rights of harvest workers in Austria since 2014. The campaign is aimed at informing harvest workers about their rights and at ensuring compliance with labour laws. Activities include making information materials available in multiple languages as well as providing legal counselling and assistance. Information is delivered via billboards in fringe regions as well as by approaching workers directly in fields, for example. The initiative also carries out public relations through events and press releases, and by publishing a variety of materials including multilingual video spots (PRO-GE trade union, n.d.b).

Another important actor is UNDOK. The organization informs undocumented workers about their rights. UNDOK also provides counselling and assistance to help workers assert claims under labour and social laws. UNDOK is a joint initiative encompassing several specialist trade unions, the Vienna Chamber of Labour, the Austrian National Union of Students Federal Body of Representatives, various non-governmental organizations and activists (UNDOK, 2020).

⁹² PRO-GE trade union, Nyéléni – Forum für Ernährungssouveränität, UNDOK – Verband zur gewerkschaftlichen Unterstützung undokumentiert Arbeitender, MEN-VIA – Unterstützung für männliche Betroffene von Menschenhandel, LEFÖ – Beratung, Bildung und Begleitung für Migrantinnen, Südwind Oberösterreich, ÖGB-Kompetenzforum Migration, Migrare, "weltumspannend arbeiten", the development policy association in the ÖGB and independent activists.

5. IMPACT OF THE COVID-19 PANDEMIC ON SEASONAL AND HARVEST WORKERS IN AUSTRIA

The arrival of COVID-19 had sudden impact on the Austrian labour market in some cases and similarly on the employment of seasonal and harvest workers as well.⁹³ Foreign workers were far more likely to experience negative economic effects than Austrian nationals. In April 2020, the employment rate for foreign nationals in Austria dropped by 10.5 per cent, whereas the rate for Austria nationals decreased by 3.4 per cent. This is among other things due to the high proportion of foreign employees in the industries most affected by COVID-19 (WIFO, 2020:5). Especially in the accommodation and food service industries, many employees lost their jobs or were put on shorter working hours. In May 2020, fewer than 1 in 10 employees was still working in this sector (Agenda Austria, 2020). In Austria's agriculture and forestry sector, in contrast, there was an acute shortage of labour, as many employees residing abroad could no longer reach their workplaces due to entry restrictions (APA-OTS, 2020). The long-term effects of the COVID-19 pandemic on the employment of seasonal and harvest workers, and on migrants in general, are difficult to predict. The on-going crisis has, however, clearly shown that foreign workers play an integral role in fundamental and vital functions within European society. Low-skilled migrants in particular are over-represented in many key sectors such as food processing and nursing (Fasani and Mazza, 2020:8–10).

This chapter describes how the COVID-19 pandemic has impacted entry and residence conditions for seasonal and harvest workers in Austria. Specific discussion is given to the measures taken to address the impending shortage of labour in the agricultural and forestry sectors. Finally, the chapter examines whether the COVID-19 pandemic has led to more appreciation of the contributions made by seasonal and harvest workers.

5.1 Entry restrictions

To contain the spread of COVID-19, Austria imposed checks at all border crossings with neighbouring countries, lasting from March until June of 2020. Third-country nationals were generally prohibited from entering the country at airports. Exempted from this ban were individuals possessing a Visa D issued by Austria and seasonal workers in the agricultural and forestry sector. Upon entering Austria, such individuals were required to immediately observe a self-imposed 14-day quarantine. Quarantine could be terminated earlier, though, if a molecular biological COVID-19 test proved negative (Federal Ministry of the Interior, 2020). As part of these measures, Austria began negotiations with Ukraine to directly fly in harvest workers, thereby alleviating the existing shortage (Wiener Zeitung, 2020). The first group of 213 Ukrainian harvest workers arrived at Linz Airport on 8 May. Yet on arrival, one of the individuals tested positive for COVID-19, and a 14-day quarantine was imposed on 19 others in the group as well (Salzburger Nachrichten, 2020). An additional 390 harvest workers from Ukraine arrived in Linz on 18 May 2020 (ORF Online, 2020). For the tourism industry and other seasonal sectors, it remains to be seen whether measures affecting inbound travel will be implemented. Any such

⁹³ These and other topic-specific terms are defined in chapter 2.2.

measures will probably depend on whether Austria can cover its labour needs through potential employees available within the country or the EU.

5.2 Impact

A vast number of seasonal workers in the tourist industry abruptly lost their jobs. Many of those affected were in fact assured of re-employment once the situation had normalized. Still, it might be questioned whether this is realistic, considering the economic impact of the COVID-19 pandemic.⁹⁴ Agriculture and forestry presented another picture. As the harvest season approached in March and travel became increasingly restricted, there was a threat of drastic labour shortages due to a lack of harvest workers. In March the association of fruit and vegetable growers estimated a shortage of about 5,000 workers by April (APA-OTS, 2020). Effective as of 4 April 2020, the maximum employment period was accordingly increased in the case of previously approved seasonal workers already staying in Austria who were needed to meet urgent labour demands. Specifically, the new provision allows work permits to be issued or renewed for one and the same seasonal worker in agriculture and forestry for a total of more than 9 months within a 12-month period (Art. 32c para 1 Act Governing the Employment of Foreign Nationals).⁹⁵ Although the measure is set to expire as of 30 June 2020, the Federal Minister of Labour, Family and Youth is empowered to extend it until 31 December 2020 at the latest (Art. 34 para 50 Act Governing the Employment of Foreign Nationals). This step was taken to ensure the supply of domestic foodstuffs for the Austrian population. According to the Austrian Federal Government, being limited to a brief term and in view of the current crisis, the measure is compatible with the Seasonal Workers Directive,⁹⁶ which in general provides for a maximum stay of 9 months within a 12-month period (Republic of Austria, 2020).

To help contain the spread of COVID-19, the original requirement to submit applications for renewal and change of purpose of stay in person was lifted through an amendment to the Settlement and Residence Act⁹⁷ adopted on 4 April 2020. Applications are now to be submitted to authorities either by mail or electronic means (Art. 19 para 1a Settlement and Residence Act). The Aliens Police Act 2005⁹⁸ was also amended to permit seasonal workers in agriculture and forestry to be employed for a period longer than nine months. Specifically, paragraph 7 was added to Article 20 of the Aliens Police Act 2005 to accommodate the new provision, cited above, in Art. 32c para 1 of the Act Governing the Employment of Foreign Nationals. If the legal residence can be legitimized on the basis of a newly issued or extended employment permit over the period of validity of an already issued Visa D, no new visa will be issued in this case (Republic of Austria, 2020b). In addition, the possibility has now been created to issue a Visa D for particularly exceptional circumstances within Austria to persons who have already lawfully resided in Austria (Art. 22a Aliens Police Act 2005). Thus, a dependent gainful employment (mainly concerns seasonal workers) can be carried out, provided that a required permit

94 Interview with Anna Daimler; vida trade union, 22 April 2020.

95 FLG No. 218/1975, in the version of the federal law FLG I No. 23/2020.

96 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, pp. 375–390.

97 FLG I No. 100/2005, in the version of the federal law FLG I No. 24/2020.

98 FLG I No. 100/2005, in the version of the federal law FLG I No. 27/2020.

or other authorisation have been issued according to the Act Governing the Employment of Foreign Nationals (§ 20 para. 2 Aliens Police Act 2005).

The challenge in the coming months will be to steer the narrow strait separating optimum conditions to facilitate business and public health policies to most effectively contain COVID-19, as the Austrian Federal Economic Chamber observes. Molecular biological tests for COVID-19 will play an especially important role here. The labour market will undergo change through the current situation, yet, according to the Federal Economic Chamber, at the time of the writing of this study it is still too early to predict the economic impact on specific sectors. There is nonetheless no question of the sustained future need for seasonal and harvest workers.⁹⁹

Research has reliably verified that foreign workers in the low-wage sector are an important factor in the production of goods and provision of services. Past public debates have nonetheless tended to focus on the negative effects of migration. This may have changed since the outbreak of COVID-19 (Fernández-Reino et al., 2020). At social policy level, a stronger appreciation of the labour contributed by seasonal and harvest workers can be observed. The COVID-19 crisis brought a growing awareness of the key role played by harvest workers and other groups, especially in ensuring Austria's food supply, according to the Austrian Federal Economic Chamber.¹⁰⁰ The Vienna Chamber of Labour, while sharing this view, nonetheless anticipates future obstacles, both to seasonal and harvest workers entering the country and to recruiting such workers. To respond to these challenges, Austria would need foremost to improve the conditions under which seasonal and harvest workers are employed. Even so, the Vienna Chamber of Labour is sceptical as to whether the recent appreciation shown to harvest workers will last for any period of time.¹⁰¹ In line with the demand for improved employment conditions, the Sezonieri initiative¹⁰² calls for compliance with collective agreements, including monthly gross wages above the at-risk-of-poverty threshold of EUR 1,500. As a result, it would be easier to recruit harvest workers to fill shortages (PRO-GE trade union, 2020).

99 Interview with Margit Kreuzhuber, Wirtschaftskammer Österreich, 15 May 2020.

100 Ibid.

101 Interview with Johannes Peyrl, Arbeiterkammer Wien, 8 May 2020.

102 The initiative Sezonieri is an educational campaign that has been advocating the rights of seasonal and harvest workers in Austria since 2014 (see chapter 4.5).

6. CONCLUSIONS

Seasonal and harvest workers who immigrate through the Austrian seasonal workers model account for a very small share of the workforce, in relation to the overall size of the tourism and agriculture and forestry sectors and the total number of people employed in these sectors. Yet the number of work permits issued has risen sharply in recent years. Between 2016 and 2019 an increase of 40 per cent was recorded. In agriculture and forestry alone, around 45 per cent more employment permits were issued to seasonal workers, harvest workers and Stammsaisoniers (registered seasonal workers) in 2019 than in 2016 (Public Employment Service, n.d.b). All in all, these figures suggest that the demand for short-term seasonal workers has increased in recent years and that these workers have played an important role in the provision of services in tourism and in agriculture and forestry.

It remains to be seen to what extent the spread of COVID-19 and the expected economic crisis will affect this demand. In principle, work permits for seasonal and harvest workers may only be granted where labour market tests show the current situation and trends to be compatible with employment of those workers (Art. 4 para 1 Act Governing the Employment of Foreign Nationals).¹⁰³ At least in the tourism industry, which has been particularly affected by high unemployment levels since the spread of COVID-19, it can therefore be assumed that existing vacancies will be filled with Austrian nationals and foreign nationals who are already part of the domestic labour market. It is difficult to predict whether this will also be the case in agriculture and forestry. On the one hand, the spread of COVID-19 in February highlighted Austria's dependence on foreign workers in this sector: a critical shortage of harvest workers resulted after the borders were shut down, with harvest losses subsequently expected (APA-OTS, 2020). Here too one can wonder whether rising unemployment will lead to increased recourse to workers from the EU. In general, it remains to be seen whether and to what extent the Austrian government will modify the work permit quotas for seasonal and harvest workers in 2021.

The emergence of COVID-19 not only had an impact on conditions for entry, stay and employment of seasonal and harvest workers but also on the appreciation and recognition of the work performed by foreign workers. Policymakers and the media have stressed the positive contributions made by migrants in key sectors of the economy (Fernández-Reino et al., 2020). Whether this new appreciation will also lead to actual improvements in the conditions under which seasonal and harvester workers are employed remains to be seen. Illegal working hours, underpayment and substandard accommodation are frequently reported in Austria.

Although the PRO-GE trade union considers the general legal framework regulating pay and working conditions to be adequate,¹⁰⁴ seasonal and harvest workers often work under precarious circumstances for a variety of reasons. Due to language barriers, poor accessibility of workers and their special dependency on employers, workers often do not claim the rights to which they are entitled. To alleviate at least the lack of information in Austria, easily accessible information campaigns, directly at workplaces and in workers' first languages, have

¹⁰³ FLG No. 218/1975, in the version of the federal law FLG I No. 23/2020.

¹⁰⁴ Interview with Susanne Haslinger, PRO-GE trade union, 4 April 2020. This refers to those legal frameworks in which employees' material legal entitlements, such as minimum wages, are regulated - primarily the agricultural labor acts and the respective collective agreements - but not the legal basis for asserting legal claims (see also footnote 76).

proven to be effective tools to educate seasonal and harvest workers about their rights. Targeted checks by inspection bodies have also brought on improvements, at the very least in accommodation conditions. Since blanket monitoring is hardly feasible, inspection bodies are dependent on third parties or the employees themselves to provide leads, which are nonetheless rather unlikely considering the dependency relationship described above.

7. ANNEX

A.1 List of translations and abbreviations

German Term	German abbrev.	English Term	English abbrev.
Allgemeines Sozialversicherungsgesetz	ASVG	–	–
Arbeiterkammer	AK	Chamber of Labour	–
Arbeiterkammergesetz	AKG	Chamber of Labour Act	–
Arbeitsinspektionsgesetz 1993	ArbIG	Labour Inspectorate Act 1993	–
Arbeitslosenversicherungsgesetz 1977	AIVG	Unemployment Insurance Act 1977	–
Arbeitsmarktservice	AMS	Public Employment Service	–
Asylgesetz	AsylG	Asylum Act	–
Ausländerbeschäftigungsgesetz	AuslBG	Act Governing the Employment of Foreign Nationals	–
Bundesgesetzblatt	BGBI.	Federal Law Gazette	FLG
Bundesministerium für Arbeit, Familie und Jugend	BMAFJ	Federal Ministry for Labour, Family and Youth	–
Gewerkschaft PRO-GE	–	PRO-GE trade union	–
Gewerkschaft vida	–	vida Trade Union	–
Europäische Union	EU	European Union	EU
Europäisches Migrationsnetzwerk	EMN	European Migration Network	EMN
Fremdenpolizeigesetz 2005	FPG	Aliens Police Act 2005	–
Fremdenrechtsänderungsgesetz 2017	FrÄG 2017	Act Amending the Aliens Law	–

German Term	German abbrev.	English Term	English abbrev.
Institut für Höhere Studien	IHS	Institute for Advanced Studies	–
Internationale Organisation für Migration	IOM	International Organization for Migration	IOM
Niederlassungs- und Aufenthaltsgesetz	NAG	Settlement and Residence Act	–
Österreichischer Gewerkschaftsbund	ÖGB	Austrian Trade Union Federation	–
Richtlinie 2014/36/EU	Saisonier-Richtlinie	Directive (2014/36/EU)	Seasonal Workers Directive
UNDOK, Anlaufstelle zur gewerkschaftlichen Unterstützung undokumentiert Arbeitender	UNDOK	UNDOK, Contact point for trade union support for undocumented workers	–
Wirtschaftskammer Österreich	WKÖ	Austrian Federal Economic Chamber	–

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EUROPEAN MIGRATION NETWORK

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

The EMN's role is to provide up-to-date, objective, reliable and comparable information on migration and asylum to European Union (EU) institutions and Member States' authorities and institutions with a view to supporting policymaking in the EU in these areas. The EMN is also tasked with providing such information to the general public.

The NCP Austria – based on an agreement with the Federal Ministry of the Interior – is located in the Research and Migration Law Department of the country office for Austria of the International Organization for Migration (IOM). The IOM office was established in 1952 when Austria became one of the first Member States of the Organization. The main responsibility of the IOM country office is to analyse national migration issues and emerging trends and to develop and implement corresponding national projects and programmes.

The main tasks of the NCPs in implementing the work programme of the EMN include drafting the annual policy reports and studies covering specific topics, responding to Ad-Hoc Queries launched by other NCPs or the European Commission, carrying out activities to increase the EMN visibility, and networking within several fora. In addition, the NCPs in each country also set up national networks of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data and information, which are supplemented where necessary through additional information collected directly. EMN studies are prepared in accordance with common study templates in order to achieve comparable results within the EU and Norway. Since comparing results frequently proves challenging, the EMN has produced a Glossary, which ensures that similar definitions and terminology are used in all national reports.

On completion of national reports, the European Commission with the support of a service provider drafts a synthesis report, which summarizes the most significant results from the individual national reports. In addition, topic-based policy briefs, referred to as EMN Informs, are prepared as succinct summaries and comparisons of national findings on key selected topics. All national studies, synthesis reports, Informs and the Glossary are available on the website of the European Commission Directorate-General for Migration and Home Affairs.



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