



AD HOC QUERY ON 2021.78 Article 14 of the Directive 2014/36/EU – 12-month reference period taken into account to determine the maximum period of stay for seasonal workers

Requested by EMN NCP France on 27 December 2021

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovakia, Slovenia, Spain, Sweden (22 in Total)

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1. Background information

The General Directorate for Foreign Nationals in France within the ministry of the Interior would like to know how the Member States implements one of the aspects of Article 14 paragraph 1 of the 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.

Article 14 on the duration of stay specifies that: "1. Member States shall determine a maximum period of stay for seasonal workers which shall be not less than five months and not more than nine months in any 12-month period. After the expiry of that period, the third-country

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national shall leave the territory of the Member State unless the Member State concerned has issued a residence permit under national or Union law for purposes other than seasonal work [...]”.

French authorities are regularly contacted by various partners regarding the reference period to take into account in calculating the number of months spent in France and these partners ask France to change its position, especially in the current situation where some third countries have closed their borders because of the Covid-19 pandemic, leaving consequently on the French territory seasonal workers holding a residence permit about to expire.

French authorities would thus like to know if the Member States verify the maximum duration of stay by taking into account the 12-month period between the start and end dates of the employment contract(s) or if they have a different approach (for example the 12-month cumulative period is calculated as a rolling one-year, i.e. the 12-month period starts when the seasonal worker first enters the MS territory, or other approach?)?

We would be grateful if you could upload your response as soon as possible and if possible, before 17 January since France may need to give an official answer before the end of January if decisions related to the closure of borders are extended.

2. Questions

1. Article 14 paragraph 1 of the 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 determines the maximum period of stay of a seasonal worker in any 12-month period. Does your Member State verify the maximum duration of stay by taking into account the 12-month period between the start and end dates of the employment contract(s) or does your Member State have a different approach (If so, can you please clarify)?

We would very much appreciate your responses by **26 January 2022**.



3. Responses

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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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		Wider Dissemination ²	
	EMN NCP Austria	Yes	<p>1. Permits are granted in a manner that the maximum duration of stay is never exceeded in any 12-month period, meaning, no matter when the starting point is set, the maximum duration of stay is never exceeded in the 12-month period.</p> <p>---</p> <p>Source: Ministry of Labour</p>
	EMN NCP Belgium	Yes	<p>1. Belgium adopts a different approach: the Immigration Act stipulates that the period during which the third-country national may stay as a seasonal worker is limited to one hundred and fifty days per period of three hundred and sixty-five days, taking into account for each day of stay the three hundred and sixty-five preceding days. The date of entry is considered as the first day of stay on the territory and the date of exit is considered as the last day of stay on the territory. For the purpose of calculating the length of stay, the total of the authorised periods of stay as a seasonal worker, including the period(s) of stay in the context of a short stay, are taken into account.</p>

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."




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			<p>Sources: Art. 61/29-2 Immigration Act (http://www.ejustice.just.fgov.be/eli/loi/1980/12/15/1980121550/justel), and legislative proposal 54/3710, p. 27-30 (https://www.lachambre.be/FLWB/PDF/54/3710/54K3710001.pdf).</p>
	EMN NCP Bulgaria	Yes	<p>1. Article 24k of the Law on Foreigners in the Republic of Bulgaria (LFRB) provides for the possibility third-country nationals to be employed as seasonal workers. The permit for a seasonal worker is issued for a period from 90 days to 9 months within each period of 12 months. A copy of the employment contract signed by the parties, in which the term of the contract shall be no longer than 9 months, shall be attached to the application for issuing the permit. In case the maximum term of 9 months within each period of 12 months has been reached, it is not possible to extend the permit for the seasonal employment of the foreigners, issued on the grounds of Article 24k of the LFRB.</p> <p>According to Article 5, Paragraph 2, Item 1 of the Law on the Labour Migration and Labour Mobility, new access to the labour market for the same third-country national worker is allowed when there is a break in employment for a period of not less than three months after the above mentioned maximum period of 9 months.</p>
	EMN NCP Croatia	Yes	<p>1. Article 106. Para 1. of the Aliens Act, which specifies the time period for issuance of the residence permit for seasonal workers, states that „A seasonal worker may work in the Republic of Croatia on the basis of a stay and work permit for seasonal work for the maximum period of six months a year, after which he must leave the Republic of Croatia“. In accordance with the principle</p>


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			of "12-month period", the one-year cumulative period is a rolling one-year, starting from issuance and delivery of the work permit for seasonal worker.
	EMN NCP Cyprus	Yes	1. We calculate the 12 month period from the day of arrival, i.e. starting day for employment.
	EMN NCP Czech Republic	Yes	1. The seasonal workers receive a visa, which is valid according to the validity of work permit issued by the Labour Office. The Labour Office issues the permit for a maximum period of 6 months in any period of 12 consecutive months. This permit cannot be issued to one person more than once every 12 months. The work permit is based on an employment contract or agreement to complete a job, i.e. the visa is actually valid for the period for which the employment relationship is agreed. Therefore, we can agree that the Czech Republic verifies the maximum duration of stay by taking into account the 12-month period between the start and end dates of the employment contract(s). However, this happens indirectly, since we do not control the length of stay according to employment contracts, but we allow the length of stay according to work permits.
	EMN NCP Estonia	Yes	1. In Estonia third-country nationals work on the purpose of employment as a seasonal workers are regulated under short-time employment. They employment has to be registered in the Police and Border Guard Board before the employment commences and before registering short-term employment, an




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			<p>employer is obliged to conclude a fixed-term employment contract with a person or make a binding job offer. Short-term employment in Estonia as a seasonal worker is permitted for up to 270 days within 365 consecutive days.</p>
	EMN NCP Finland	Yes	<p>1. According to Section 16 of the Seasonal Workers Act, a third-country national may be granted a permit for seasonal work for a maximum of nine months within a 12-month period. The permit for seasonal work may start from the start date of the employment contract at the earliest. The entire duration of the permit granted for the previous season is calculated as working time. For example, if the employee worked for two months during the previous season but was issued a certificate/permit for seasonal work for three months, the Finnish Immigration Service calculates the duration of his or her seasonal work to be three months. The 12-month period is calculated backwards from the end of the certificate/permit applied for.</p> <p>A permit is granted according to the duration of the employment contract, so in practice the 12-month period is calculated backwards from the end date of the new employment contract.</p> <p>Example: The employee applies for a seasonal work certificate for the period from 15 March 2021 to 12 June 2021. The employee was also employed in seasonal work in Finland on a seasonal work permit from 13 May 2020 to 13 October 2020. The certificate can be issued because the maximum period of 9 months is not exceeded between the period from 13 June 2020 to 13 June 2021.</p>


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	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. Article L. 421-34 of the Code on Entry and Residence of Foreign Nationals and Right of Asylum (CESEDA), which specifies the conditions for issuance of the residence permit for seasonal workers, transposes Article 14 of the directive into French law. In accordance with the principle of “12-month period” mentioned in article 14, the French legislation considers the one-year cumulative period as a rolling one-year.</p>
	<p>EMN NCP Germany</p>	<p>Yes</p>	<p>1. Regarding the maximum duration of stay of a seasonal worker according to Article 14 paragraph 1 of the Directive 2014/36/EU, the competent German Federal Employment Agency considers the 12-month period preceding each day of stay (analogous to Article 6 paragraph 1 of the Schengen Borders Code).</p>
	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. The Consular Authorities issue the following visas for the purpose of seasonal work:</p> <p>a) For seasonal workers who are admitted for stays of longer than 90 days, a national visa for seasonal employment of a nine-month maximum duration is issued, which grants the right of work for the abovementioned validity period. The seasonal worker may apply for a new national visa 3 months after the expiration date of the previous one. In this way the twelve-month period is covered.</p> <p>Alternatively,</p> <p>b) For seasonal workers who are admitted for stays of longer than 90 days, a national visa for seasonal employment of one-year maximum duration is issued, which grants the right of work for up to 9 months, dependent on the work contract concluded.</p> <p>c) For seasonal workers who are admitted for stays no longer than 90 days, a uniform multiple – entry Schengen visa (short-stay visa), for a maximum</p>



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			<p>validity period of 6 months is issued, granting up to 90 days of stay for seasonal employment, according to Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code).</p> <p>For the issuing of all visas, a prior authorisation approving employment for seasonal work by the Migration Department of the Decentralised Authority constitutes a prerequisite. The abovementioned authorisation shall be issued and forwarded to the Consular Authorities. Moreover, all general and special provisions apply accordingly.</p> <p>In all three cases the maximum duration of stay is calculated by taking into account the start and the end dates of the employment contract (duration of employment).</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. A residence permit for the purpose of seasonal employment may be issued for maximum six months, that may be extended by not more than six months within a period of twelve months. A residence permit for the purpose of seasonal employment may not be issued for more than six months within a period of twelve months, and may not be extended for that purpose past the original six-month period. The immigration authority shall have powers to control compliance with and enforce the provisions of the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals. The immigration authority checks whether the legal conditions are met in aliens policing procedures and whether third-country nationals exercise their right of entry, exit and residence as provided under the legislation. The issuance of a 'Residence Permit for the Purpose of Seasonal Employment' shall be refused if the third-country national has already held a 'Residence Permit for the Purpose of Seasonal Employment' for six months within a period of twelve months.</p>



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			Under the same circumstances, the extension of the residence permit shall be refused.
	EMN NCP Italy	Yes	<p>1. Italian legislation regulates seasonal work in art. 24 of Legislative Decree 286/98.</p> <p>The residence permit for seasonal work is issued for a maximum of nine months during the twelve months of the year.</p> <p>Paragraph 7 of the aforementioned article states: The nulla osta for seasonal employment authorises the performance of work activities in the national territory for a maximum of nine months in a twelve-month period.</p> <p>However, if the worker has been issued a residence permit for a shorter period of time, he may request its extension if he finds another work opportunity, but always within the overall maximum limit of nine months from the date of issue of the first residence permit. In this case, the worker is exempt from the obligation to return to the State of origin in order to obtain a further visa from the consular authority (par. 8 - art. 24).</p> <p>At the end of the 9-month period, the worker must in any case leave the national territory, unless he is offered a subordinate work contract while the seasonal residence permit is in force, having worked for at least 3 months as a seasonal worker. In this case, he may request the conversion of the residency permit for seasonal employment into a residency permit for subordinate employment.</p>
	EMN NCP Latvia	Yes	<p>1. A seasonal worker can be employed for up to six months within a period of 12 months. If a citizen of a third country has been issued a long stay visa valid for less than six months within a period of 12 months and he/she wishes to continue their employment (with the same employer or to sign a new seasonal work agreement with another employer) he/she has the rights to request a new</p>




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			<p>long stay visa considering that the extended duration of stay does not exceed six months in total (without leaving the territory of Latvia). The period of 12 months is calculated starting from the validity date of visa (determined in accordance with the information in the work agreement)., if the visa is valid from 01.10.2021. until 01.03.2022. and the seasonal worker wishes to start another seasonal job or to continue the previous one after the expiration date of the first visa, a new visa for seasonal work can be issued for a period no longer than a month (it has to be issued no later than by 30.09.2022). If the third country citizen has been employed as a seasonal worker for six months within a period of 12 months and he/she wishes to continue working, the citizen has to request a long stay visa for up to six months or a temporary residence permit according to the regulations that are in line with the type of his/hers employment status.</p>
	EMN NCP Lithuania	Yes	<p>1. According to Article 61 of the Law on the Legal Status of Foreigners, the working permit for seasonal workers can be issued for up to 6 months in a 12-month period. The period is counted from the first day of entry to the Republic of Lithuania. The 6-month period can consist of a single uninterrupted period or of several shorter periods, the added length of which may not exceed 6 months in a 12-month period.</p>
	EMN NCP Luxembourg	Yes	<p>1. Luxembourg transposed article 14 (1) of the Directive 2014/36/EU in article 49quarter (2) of the amended law of 29 August 2008 on free movement of persons and immigration. Luxembourg verifies the maximum duration of stay (5 months) by taking into account the 12-month period between the start and end dates of the employment contract.</p>



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	EMN NCP Malta	Yes	1. The maximum period of stay for seasonal workers shall be not more than nine months in any twelve month period.
	EMN NCP Netherlands	Yes	<p>1. In the Netherlands the maximum period of stay of seasonal workers has been implemented as follows: seasonal workers may perform seasonal work in the Netherlands several times during a maximum period of 24 weeks, provided that they have stayed outside the Netherlands for at least 14 weeks in the period immediately prior to the application. The 12-month period is not taken into account.</p> <p>Please note, the answer is theoretical because no third-country seasonal workers have been admitted to the Netherlands under the Directive. See the EMN study 2020 'Attracting and Protecting Seasonal Workers from third countries in the EU' on this matter.[1]</p> <p>[1] This information was provided by the Immigration and Naturalisation Service, the Employee Insurance Agency, and the Ministry of Social Affairs and Employment on 26 January 2022.</p>
	EMN NCP Slovakia	Yes	<p>1. The third country national (TCN) can perform seasonal work in the Slovak Republic in three different ways:</p> <ul style="list-style-type: none"> • up until 90 days without granted residence • within granted temporary residence (for maximum of 180 days within 12 consecutive months) • within renewed residence (renewal of granted temporary residence) <p>It is not possible to perform seasonal work for more than 180 days within 12 consecutive month period either with granted temporary residence or without it.</p>


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			<p>Within seasonal work a cumulation of various periods (either with or without granted temporary residence) can occur:</p> <ul style="list-style-type: none"> • the TCN has a granted temporary residence for the whole 180 days period • the TCN has a granted temporary residence for a period less than 180 days and consecutively he/she renews his/her residence for the period of maximum 180 days • the TCN performs seasonal work without granted temporary residence for the period of maximum 90 days and consecutively he/she is granted temporary residence for the period of 90 days • the TCN performs seasonal work without granted temporary residence for the period of maximum 90 days, consecutively he/she is granted temporary residence for the period of less than 90 days and then he/she can still renew his/her residence for the period of maximum 180 days
	EMN NCP Slovenia	Yes	<p>1. A single permit for seasonal work longer than 90 days shall be issued for the period of the employment or work contract with the same employer or contractor and may be extended, while the total duration of seasonal work must not exceed six months or, in exceptional cases (extraordinary conditions of production have arisen, i.e. prolongation of the growing season) determined in the Act governing the employment and work of foreigners, seven months <u>in a calendar year</u>.</p>
	EMN NCP Spain	Yes	<p>1. In Spain, both the Immigration law (Royal Decree 557/2011) and the Collective Management of Hiring in Origin regulation ("Orden GECCO", that is revised annually, currently in force the Ministerial Order ISM/1485/2021, regulating the Collective Management of Hiring in Origin for 2022), states that</p>

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			the 9-month maximum duration of the stay of the seasonal workers will match the start and end dates of the employment contract/s (in case they have several consecutive contracts, up to a total maximum of 9 months as well).
	EMN NCP Sweden	Yes	1. Sweden count a 12-month period from the start of the employment. if an employment with 6 month duration starts 1 May 2022 the applicant can be granted a new permit for seasonal work starting 2 May 2023
