



Attracting and Protecting Seasonal Workers from third countries in the EU

Common Template for EMN Study 2020

Final version: 28 February 2020

Deadline for national contributions: 29 May 2020

1 STUDY AIMS

- 1) To better understand the profile of seasonal workers and the sectors they work in (country of origin, age, gender, skills level, sectors of employment, etc.);
 - 2) To analyse if measures are in place to attract seasonal workers and the extent to which seasonal workers fill labour market needs of Member States;
 - 3) To analyse the application of the protective aspects of the Seasonal Workers Directive (rights of seasonal workers).
- The study will provide an overview of national experiences with admitting and employing seasonal workers from third countries more than three years after the Seasonal Workers Directive (2014/36/EU) started applying and will contribute to the Commission implementation report on the Directive planned for the year 2020.

1.1 TARGET GROUPS / AUDIENCES

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

2 SCOPE OF THE STUDY

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

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

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

3 EU LEGAL AND POLICY CONTEXT

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

¹ https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work_en

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

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

4 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

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

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

5 RELEVANT SOURCES AND LITERATURE

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

6 AVAILABLE STATISTICS

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

- Authorisations issued for the purpose of seasonal work by economic sector, sex and citizenship [migr_ressw2]. **Note:** Eurostat data only covers the years 2017 and 2018; data is (currently) not available for both or one of the years for AT, BG, BE, CY, CZ, DE, EL, FI, FR, IE, LU, MT, NL, NO, PL, PT, SE, SK.

- Authorisations for the purpose of seasonal work by status, length of validity, economic sector and citizenship [migr_ressw1_1]. Note: Eurostat data only covers the years 2017 and 2018; data is (currently) not available for both or one of the years for AT, BE, BG, CY, CZ, DE, IE, EL, FI, FR, LU, MT, NL, PL, SE.
- First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc].

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

Kindly note the following: datasets migr_ressw2 and migr_ressw1_1 count the number of permits/authorisations/notifications issued for the purpose of the directives allowing double counting of same persons during the year. Therefore, the unit of measure is the number of permits/authorisations/notifications for these data collections, instead of number of persons as it is in other statistics on residence permits. Please see the respective Eurostat metadata for further details:

https://ec.europa.eu/eurostat/cache/metadata/en/migr_res_esms.htm#meta_update1575469383640

7 DEFINITIONS

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

8 ADVISORY GROUP

Core AG members are in **bold**.

- **LV EMN NCP (Chair, Stanislavs Lopatinskis and Ilze Siliņa-Osmane)**
- **COM (Helene Calers, Silvio Grieco, DG Home)**
- AT EMN NCP (Alexander Spiegelfeld)
- ES EMN NCP (Francisco Martos Leal)
- FR EMN NCP (Christelle Caporali-Petit, Anne-Cécile Jarasse)
- **HU EMN NCP (Gábor Vető)**
- **LU EMN NCP (Adolfo Sommaribas)**
- SI EMN NCP (Helena Korosec)
- **Odysseus network expert (Ulrike Brandl, University of Salzburg)**
- **ICF (EMN Service Provider)**

9 TIMETABLE

The following tentative timetable has been proposed for the Study going forward:

Date	Action
28 February 2020	Launch
29 May 2020	Submission of national reports by EMN NCPs
17 July 2020	First synthesis report to COM (1 week to provide comments)
24 July 2020	Deadline for comments (1 week to address comment and finalise)
31 July 2020	Circulation of the first SR to all NCPs (2 weeks to comment)
14 August 2020	Deadline for comments
28 August 2020	Circulation of the second draft to all NCPs (2 weeks to comment)
11 September 2020	Deadline for comments

³ EMN Glossary Version 6.0, available at https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/seasonal-worker_en

Date	Action
18 September 2020	Circulation of the third draft to all NCPs (2 weeks to comment)
2 October 2020	Deadline for comments
End of October 2020	Publication

10 Template for national contributions

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



Common Template of EMN Study 2020

Attracting and Protecting Seasonal Workers from third countries in the EU

National Contribution from Luxembourg

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

Background information on the Luxembourgish labour market

Seasonal work of third-country nationals, as any other form of work, must be put into the particular context of Luxembourg's labour market.

For almost 150 years, Luxembourg depends on two kinds of migration, qualified and non-qualified, in order to deal with the workforce needs of its economy.ⁱ Compared to other EU Member States, Luxembourg is a country with the largest proportion of foreigners;ⁱⁱ however, this foreign population is mainly composed of EU citizens. In Luxembourg, 296.500 residents (47,4%) of a total population of 626.100 are foreigners. 247.900 are EU citizens representing 39.6% of the total population of the country and 83,6% of the foreign population of the country. The 48.600 third-country nationals represent only 7,8% of the total population and 16.4% of the foreign population.ⁱⁱⁱ

Due to its size and geographic location, Luxembourg has an access to a very particular form of economic migration: cross-border workers. Globalisation has also played a decisive role in the development of economic migration for the Luxembourgish labour market. The financial center was obliged to become highly specialised in order to remain competitive in regards to other financial centers and to maintain its volume of business. In order to maintain its competitive advantage, Luxembourg needs highly skilled personnel, which, up until now, the country has found within the Greater Region.^{iv}

With regards to the labour market: the number of salaried workers on 31 December 2019 shows that Luxembourgish residents represented only 26,5%, EU citizens (other than Luxembourgish) 23,4% and third-country national residents only 4,2%. Cross-border workers⁴ from Belgium, France and Germany^v represented 46% of the workforce.

The Luxembourgish labour market is not a national labour market but rather a labour market of the Greater Region with a trend to become an international labour market. This situation can be explained in the context of the free movement of services and the posted workers coming from other Member States to Luxembourg. The need of workforce must be placed in this particular context, taking into account the "internal reserves", the free movement of persons from which EU citizens, who reside in the country, benefit and the large majority of cross-border workers. To this framework one must add a range of measures that were introduced by the Luxembourgish authorities in order to regulate the labour market. Some of these measures did not have labour market needs as their only objective, but were also foreseen to manage integration processes.⁵

⁴ Cross-border workers, which consist of skilled and highly skilled labour are substantially attracted for two reasons: 1) more competitive salaries on the Luxembourgish labour market; and 2) a geographical location which allows the commuting of cross-border workers.

⁵ These measures were: a) Measures taken in regards to the transitory conditions on free movement of persons for the

The attitude of the successive governments was to adapt immigration to the economic needs of the country.^{vi} The government policy intends to implement an economic diversification policy, focused on attracting high added value activities such as ICT, health technologies, space, logistics, industry and FinTech.^{vii} In consequence and taking into consideration the specificities of Luxembourg's labour market, third-country national seasonal workers are not a priority of the Luxembourgish government.

Top-line factsheet

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

Please provide a concise summary of the main findings of Sections 1-3:

- Labour market in Luxembourg is characterised by a high number of cross border workers from France, Belgium and Germany, which represent 46% of the labour force of the country.
- The economy of the country is service oriented and the government has been aiming for the diversification of the labour market by supporting growth of such sectors as information technologies, logistics, e-commerce and biotechnologies, while favoring also research and development.
- None of the activities/sectors mentioned before have seasonal nature, therefore there are no specific efforts made to attract seasonal workers or more over third-country national seasonal workers. This is also the reason why it is not possible to provide information on the profile of the third-country national seasonal worker.
- Seasonal activities are clearly defined in the national legislation and the two main sectors in Luxembourg where the seasonal workforce is required are agriculture and hospitality industry (HORECA).
- Luxembourg has chosen the option to apply labour market test to hire seasonal workers, therefore vacancies become available first to nationals and EU nationals and only after those can be made available to third-country nationals. So far persons hired for the available positions have been nationals of other EU countries and not third-country nationals.
- Procedure to hire a third-country-national seasonal worker and the obligations of the employer are the same as those provided for other salaried workers who are nationals of third countries.
- Information on the procedures both for the employers on how to hire a third-country national seasonal worker as well as for the employee on how to enter and stay in Luxembourg is provided in three languages (French, German and English) on the government website.
- Luxembourg is facilitating re-entry of seasonal workers by removing the requirement for a seasonal worker, who has been admitted to Luxembourg at least one time in the previous five years and has respected all obligations, to provide a proof of adequate accommodation.
- Questions related to equal treatment and anti-discrimination matters are clearly addressed in the labour legislation.
- Whether there are restrictions or not to the equal treatment between seasonal workers from third countries and nationals of Luxembourg or other EU countries, who carry out comparable employment activities, depends on the specific area.
- With regard to tax benefits, there are no restrictions. In case of unemployment benefits even if there are no restrictions to the equal treatment between seasonal workers from third countries and nationals of EU countries, the general eligibility rules apply and the seasonal worker might not be in a position, to receive unemployment benefits as it depends on the length of employment. With regard to family benefits, there exists no equal treatment between the third country and the EU seasonal worker. As well as with regard to educational and vocational training there is only right to training

citizens of the new EU Member States; b) Measures taken to reform the working permit system; c) Measures taken to the access to the labour market of third-country nationals, who do not migrate with the objective of exercising an economic activity (i.e., family reunification, students, etc.); d) Measures of successive regularisations of irregular migrants in Luxembourg. The last collective administrative regularisation was from January to February 2013.

that is directly linked to the specific professional activity with the exception of scholarships, student loans and other allowances.

- There are no specific but general procedures/mechanisms in place that apply to all workers to monitor, assess and carry out inspections on whether (seasonal) workers can exercise their equal treatment rights and other rights granted in practice.
- Even though Luxembourg did not experience any difficulties in relation to admission policy of seasonal workers during the COVID-19 situation and no additional measures regarding seasonal work were introduced during this health crisis. The security measures established as a result of the COVID-19 pandemic, and specifically the closure of the borders by France, Germany and Belgium, did remind how dependent the country is on the cross-border workforce.

Section 0: Impact of COVID-19

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

Yes
No

If yes, please explain how:

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

Please explain. On 15 April 2020, in reply to a Parliamentary Question,^{viii} concerning the need to attract seasonal workers from other countries, the Minister of Agriculture, Viticulture and Rural Development indicated that within the context of the COVID-19 pandemic Luxembourg is not planning to take any measures, as there is no great need to attract seasonal workers from other countries. It has been possible to find the labour force needed within Luxembourg or within the Greater Region.

The Minister also pledged to keep the borders with neighboring countries open so that cross-border workers working in an essential sector such as agriculture can reach their workplace.

In the meantime, the Minister referenced the recently created temporary networking platform JobSwitch⁶, which has helped employers to find the lacking labour force during the Covid-19 crisis. During the operation of the platform, particularly with regard to the agriculture sector, there were more requests than job offers.^{ix}

The platform JobSwitch was developed by the Chamber of Commerce via the House of Entrepreneurship, in partnership with the Ministries of Labour and the Economy, the Employment Agency (ADEM) and the Trade Confederation (CLC), Luxembourg Business Federation (FEDIL), National Federation of Hoteliers, Restaurateurs and Cafetiers (HORESCA), the Chamber of Trades and Crafts and the Chamber of Agriculture.^x

Section 1: Profile of seasonal workers

Research Question 1: What is the profile of third-country national seasonal workers in the EU?⁷

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

⁶ The online tool specially designed to facilitate and accelerate the use of additional and available labour during the health crisis linked to the Covid-19 was launched on 24 March 2020 and stopped operating on April 30, 2020.

During this period of just over a month, 1,460 applications were registered on the platform and 537 matchings produced.

⁷ This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

Sub-questions:

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

- Yes
No

No. The additional information is provided for the sake of completeness. Even though, Luxembourg transposed the Directive 2014/36/EU by the law of 8 March 2017 amending the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law), in accordance with the annual report “Regarding asylum, immigration and reception” of the Directorate of Immigration from 2017 to 2019^{xi} there has not been a seasonal worker short term visa (or work permit if the worker does not need a visa to enter the territory, granted for a seasonal work up to 90 days)^{xii} or a seasonal work residence permit, granted for a seasonal work of more than 90 days^{xiii} issued to a third-country national.^{xiv}

Therefore, it is not possible to provide information on the profile of a third-country national seasonal worker in Luxembourg. Nevertheless, the seasonal activities in Luxembourg, in the past and in the present, especially in the agriculture (for example, grape harvesting) and hotel industry, restaurants and catering (HORECA) were/are facing a high demand of seasonal workers but they were/are EU citizens. For example, in the agricultural sector in the past those were Portuguese and today are Polish and Romanian citizens.^{xv}

2. What are the sectors covered by the Seasonal Workers Directive in your Member State?⁸ Please explain.

In accordance with article 49bis of the Immigration Law, and article L. 122 -1, paragraph (2), point 2 of the Labour Code the sectors covered under the Directive are defined by article 1 of the Grand ducal regulation of 11 July 1989^{xvi} which indicates that seasonal employment contracts can only be concluded for activities which are seasonal in nature, such as:

- harvesting (incl. grape harvesting, etc.);
- packaging of harvested products;
- leisure and holiday instructors and coordinators;
- holiday tour guide and tourist guide;
- surveillance and maintenance of public open air swimming pools and camp sites;
- positions held in retail stores, hotels and restaurants that are only open at a certain period of the year;
- positions held in retail stores, hotels and restaurants that have a regular and foreseeable seasonal-related increase in activity during the year;
- positions held in companies active in aviation and the transportation of people that have a regular and foreseeable seasonal-related increase in activity during the year.

a. In which sector(s) were seasonal workers mostly employed in 2018?⁹

N/A As mentioned in the answer to sub-question 1, there are no third-country national seasonal workers in Luxembourg.

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

- Yes
No

⁸ Art.2(2) of the Seasonal Workers Directives requires Member States to list those sectors of employment which include activities that are dependent on the passing of the seasons requires⁸ To be cross-checked with Eurostat data

⁹ Please cross-check with Eurostat data. If data for your Member State is not available on Eurostat, please use the same categorisation of sectors provided in Eurostat to the extent possible.

If yes, please explain.

3. What were the top-5 countries of origin of seasonal workers in your Member State in 2018?¹⁰

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

N/A

4. What was the main age group of seasonal workers who received an authorisation in 2018 in your Member State?¹¹

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

N/A

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

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

N/A

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

Yes

No

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

The social minimum wage in Luxembourg as of 1 January 2020 is EUR 2,141.99 per month.^{xvii}

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

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

N/A. In Luxembourg a seasonal worker will be paid as any other person working in the Grand Duchy of Luxembourg. For non-skilled workers the minimum salary is € 2.141,99 per month from 1 January 2020. If the seasonal worker is qualified, s/he will receive an additional 20% over the minimum salary, which represents a minimum salary of € 2.570,39 per month.^{xviii}

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

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

N/A

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

¹¹ Please refer to the following age groups in your answer: 15-19; 20-24; 25-29; 30-34; 35-39; 40-44 etc.

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

Yes

No

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

In Luxembourg there are several periods during the year when seasonal workers are needed. In spring to harvest asparagus and strawberries. It is also possible that some wine yards hire seasonal workers in spring, if it is not sufficient with their permanent staff.^{xx} During the summer holidays, seasonal workers are needed in the HORECA sector. Another period when seasonal workers are needed in Luxembourg is the grape harvest that normally takes place in September and lasts three to four weeks.

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

Yes

No

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

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

Yes

No

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

N/A as mentioned before, seasonal activities in Luxembourg, are performed only by EU citizens.

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

N/A

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

Yes

No

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

No. The additional information is provided for the sake of completeness. In general, it is impossible to estimate the number of irregular migrant workers regardless of whether they engage in seasonal activities or not. The old regularisation measures carried out in Luxembourg in 2001 and 2013 showed that the HORECA and construction sectors were the sectors most affected by the phenomenon of illegal employment of illegally staying third-country nationals.^{xx} Therefore, it cannot be excluded that in seasonal activities, particularly in the HORECA sector, cases of illegal employment still exist. Even if the trade union organizations are not aware of specific cases.^{xxi}

The existence of irregular migrants in different economic sectors, such as HORECA, were recently highlighted by NGOs in relation to the challenges that could be faced by irregular workers as a result of COVID-19 crisis.^{xxii, xxiii}

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

Research Question 2: To what extent do Member States place specific efforts on attracting seasonal workers to address labour market needs?¹²

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

Luxembourg does not place any specific efforts on attracting seasonal workers to address labour market needs, as those are covered by EU citizens, either residents or cross-border workers.

Sub-questions:

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

Yes

No

Please explain. Luxembourg's economy is mainly focused on attracting the workforce for its financial sector and high added value services sectors (tertiary sector) as well as other new sectors that the government plans to develop (space, fintech, green finance, biomedicine, etc.). These services are not cyclical activities and in consequence, seasonal workers are not part of the overall migration policy. Furthermore, the labour market depends more on the cross-border workers (who are mainly EU citizens) than third-country nationals.

The weight of agricultural sector, which is one of the sectors that attracts and employs seasonal workers, in Luxembourg is constantly decreasing.^{xxiv} Seasonal workers that come to Luxembourg to either work in the fields, collecting fruits and vegetables, or in the wine yards are nationals of other EU Member States and not third-country nationals.

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

Yes

No

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

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

Yes

No

Please explain.

The labour force coming from the European Union covers the needs for seasonal workers.

- a. If yes, for which sectors and what are these labour market needs? *Please explain. N/A*
- b. Did the migration of seasonal workers who came to your Member State between 2016-2019 help to address the labour market needs of your Member State?

¹² This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

- Yes
No
To some extent

Please explain. N/A

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

- Yes
No

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

Please explain.

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

- Yes
No

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

Please explain. As there have not been any short-term visa, work permit or residence permit issued to third-country national seasonal workers it is not possible to provide an average processing time for applications. However, the Immigration Law states that the decision on an application for an authorisation to stay as seasonal worker will be treated as soon as possible but it can take up to 90 days.^{xxv}

In case of seasonal work for an activity exceeding 90 days:

within 3 months of the arrival in Luxembourg, the third-country national seasonal worker must apply for a residence permit for third-country nationals from the Immigration Directorate of the Ministry of Foreign and European Affairs.

Together with the application form for the residence permit, the third-country national must provide several other documents, including proof of payment of a fee of € 80 to the account of the Immigration Directorate. The same fee of € 80 is applied for a renewal procedure of a residence permit.^{xxvi}

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

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

- Yes
No

Please briefly explain. N/A

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

Please briefly explain. N/A

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

- Yes
No

Please briefly explain. Before an employer can hire a salaried worker, employer must first make a declaration of vacant position to the ADEM. The declaration will allow the ADEM to check whether there is a suitable candidate available on the local or EU job market. The Immigration Law states that the authorization of stay for seasonal worker is refused if it is detrimental to the priority of hiring local residents or EU citizens.^{xxvii}

If the job offer cannot be filled with a person registered with the ADEM within a 3 weeks deadline, the employer is allowed to conclude an employment contract with a person of his choice, under certain conditions, including a non-EU national.

To this end, the employer must submit an application on plain paper to the ADEM's director and request a certificate granting him the right to hire a third-country national. The employer must then sign a dated employment contract with the future seasonal worker. It may be stated in the contract that the start date is "the date on which the worker obtains the temporary authorisation to stay for seasonal workers".

The employer must hand over the original certificate to the seasonal worker, who must attach it to his application for the work permit which has to be introduced from the country of origin or the authorisation to stay for a stay of more than 3 months. However, the employers may directly forward the certificate to the Directorate of Immigration, if they have been given a mandate by the third-country national to submit the application for a temporary authorisation to stay on their behalf.

Employers hiring seasonal workers from third countries have to:

- request to see the seasonal worker's work permit (stay for less than 3 months) before beginning the working relationship and keep the copy for the whole duration of the contract;
- request to see the seasonal worker's authorisation to stay or residence permit (stay for more than 3 months) before beginning the working relationship and keep the copy for the whole duration of the contract;
- notify the beginning of the working relationship to the Ministry of Foreign and European Affairs within 3 working days from the first day of work.^{xxviii}

21. Does your Member State facilitate the re-entry of seasonal workers?¹³

Yes

No

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

The Immigration Law foresees that the seasonal worker who has been admitted as a seasonal worker at least once in the previous five years and has respected all his/her obligations will be exempted of the proof that s/he disposes of adequate accommodation or that it will be provided by the employer.^{xxix} The other conditions that must be fulfilled are a work contract and a health insurance coverage.

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

Yes

No

¹³ This question refers to measures included within Art. 16 of the Directive and any other measures. Art. 16 of the Seasonal Workers Directive provides that Member States shall facilitate re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays. The facilitate may include measures such as: the grant of an exemption from the requirement to submit one or more of the documents necessary for admission; the issuing of several seasonal worker permits in a single administrative act; an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa; priority in examining applications for admission as a seasonal worker.

Please briefly explain. N/A

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

Please briefly explain. N/A

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

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

All the information necessary for an employer to hire a third-country national seasonal worker is available on the government website guichet.lu.^{xxx} This website is available in French, German and English.

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

Yes

No

If yes, please explain. No, this is expressly excluded by article 39 (3) of the Immigration Law.

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

Yes

No

Please explain.

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

Yes

No

Please briefly explain.

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

Yes

No

Please briefly explain.

Section 3: Protection and rights of seasonal workers

Research Question 3: How does the Seasonal Workers Directive achieve its goal of protecting seasonal workers and their rights?¹⁴

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

¹⁴ This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

Sub-questions:

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

a. Family benefits;¹⁵

Yes

No

If yes, please briefly explain. The family allowance is granted to children, from the month they are born until they turn 18, who:

- are legally domiciled in Luxembourg;
- live in Luxembourg on an actual and uninterrupted basis.

The family allowance is also granted if the children are family members of anyone who is subject to Luxembourg legislation and is covered by European regulations or by another bilateral or multilateral agreement signed by Luxembourg on social security issues and providing for the payment of the family allowance under the legislation of the country of employment, provided that the children are living in a country covered by such regulations or by the agreements in question.^{xxxii}

As third-country national seasonal workers in Luxembourg have no right to family reunification, the right of family benefits for their children living in the country of origin depends on the existence and the content of bilateral or multilateral agreements signed by Luxembourg on social security issues with third countries.

The only bilateral agreement that currently has the disposition on family benefits is the bilateral agreement on social security issues with Cape Verde. The agreement provides for the payment of family allowances for children living in Cape Verde,^{xxxiii} but with application of a special amount indicated in the agreement and in relation to the age limit provided for family allowances according to Cape Verde legislation.^{xxxiii, xxxiv}

b. Unemployment benefits;

Yes

No

If yes, please briefly explain.

No. The additional information is provided for the sake of completeness. In principle there is no distinction between nationalities. However, concerning eligibility to unemployment benefits, *de facto* the seasonal worker is excluded from receiving unemployment benefits, as the law does not foresee the possibility for a seasonal worker to apply for a salaried worker residence permit.^{xxxv}

In order to be entitled to unemployment benefit, the unemployed person must:

- be unemployed against their will (which excludes termination of an employment contract by mutual consent, leaving a job without a valid reason, resignation and dismissal for serious misconduct);^{xxxvi}
- be a resident in Luxembourg;^{xxxvii}
 - at the time of notification of dismissal while on a permanent employment contract;
- be aged between 16 and 64;^{xxxviii}

¹⁵ Art. 23(2)(i) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (d) of the first subparagraph of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Regulation No 1231/2010.

- be fit to work, available for the labour market and ready to accept any appropriate job (according to criteria of pay, physical and mental fitness, working conditions, etc);^{xix}
- be registered as a jobseeker with ADEM and file an application for full unemployment benefit;^{xi}
- have held one or more employment contracts for at least 26 weeks (with at least 16 hours per week) over the 12 months prior to registering with the ADEM as a jobseeker.

c. Educational and vocational training not linked to the specific employment activity;¹⁶

Yes

No

If yes, please briefly explain.

The Immigration Law^{xi} confers on seasonal workers the right to the recognition of their diplomas as well as the right to education and professional training directly linked to the specific professional activity with the exception of scholarships, student loans and other allowances.

d. Tax benefits in cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, does not lie in the territory of the Member State concerned.¹⁷

Yes

No

If yes, please briefly explain.

No. The additional information is provided for the sake of completeness. Remuneration for work carried out in Luxembourg is generally subject to withholding tax at source in Luxembourg, deducted by the employer on the basis of the tax card submitted by the employee.

In general, resident taxpayers, who receive income that is taxable in Luxembourg, may be subject to various tax obligations in Luxembourg. Consequently, some taxpayers must file an income tax return, for example if the annual taxable income at source in Luxembourg exceeds EUR 100,000. Other taxpayers can regularise their tax situation by filing a tax return or by applying for an annual adjustment.

Taxpayers for whom the filing of an income tax return is not compulsory can file a tax return nonetheless if they fall for example in the following category:

- spouses who are not separated, one of whom is a resident taxpayer and the other is a non-resident who chose to be taxed jointly in Luxembourg, provided that the resident taxpayer has earned 90% of the household's income during the tax year.^{xii}

Taxpayers can apply for a tax deduction on their taxable income in the case of extraordinary expenses which are inevitable and considerably reduce their taxpaying ability.^{xiii}

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

¹⁶ Art. 23(2)(ii) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (g) of the first subparagraph of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans.

¹⁷ Art. 23(2)(iii) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (i) of the first subparagraph of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

Yes

No

If yes, please briefly explain.

No. The additional information is provided for the sake of completeness. The Labour Code does not allow any discrimination in the labour conditions between a seasonal worker or any other worker.

It defines the seasonal work contract as a fixed term contract^{xliv} and in consequence, all the rights and duties of this type of contract are applicable. In addition, the Labour Code guarantees the equal treatment principle for seasonal workers as it states that unless otherwise provided by law, the legal and contractual provisions applicable to employees bound by an open-ended contract are also applicable to employees bound by a fixed-term contract.^{xlv}

The Labor Code stipulates equal treatment between employees in matters of employment and work and prohibits any direct or indirect discrimination in the workplace on the basis of religion, beliefs, sexual orientation, age, handicap, belonging or not belonging, true or supposed to be a nationality, a race, or an ethnic group or based on the fact that one is a man or a woman.^{xlvi}

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

In accordance with the Labour Code the ITM is the main state institution responsible for ensuring the respect of labour law and protection of employees. This includes:

- Monitoring of the application of the legislation in particular in relation to the working conditions and the protection of employees;
- Providing practical, legal, technical information, assistance both to employers and employees on implementation of legal, regulatory and administrative provisions in matters of work and occupational safety and health;
- Assuming the function of an interlocutor with a view of preventing and resolving individual labour disputes;
- Putting end to situations contradicting the legal, regulatory, administrative and contractual provisions in matters of work and occupational safety and health;
- Noting offences in the areas of competency (see above) and to notify the state prosecutor about them;
- Carrying out inspections to monitor possible employment of irregularly staying third-country nationals.^{xlvii}

When it comes to labour disputes there are several organisations in Luxembourg that provide mediation services, depending on the nature of the dispute.

In Luxembourg, the employees' representation takes place in two levels: mandatory and voluntary. All employees or pensioners must be members of a professional chamber, which represents their professional category. The 5 professional chambers¹⁸ in Luxembourg are public institutions that primarily serve to defend the interests of a specific category of workers. They are official, elected representatives of the professions. As such, and due to their composition, the chambers are able to voice the opinion of all groups within the national community.^{xlviii} Professional chambers must be asked to give their opinion on legislative proposals affecting their members.

In addition to professional chambers both employers and employees can be members of a trade union. The two general unions concerning workers from the different economic sectors are the Independent Trade Union of Luxembourg (*Onafhängege Gewerkschaftsbond Lëtzebuerg* - OGBL) and the Christian Union of Luxembourg (*Lëtzebuenger Chrëschtliche Gewerkschaftsbond* - LCGB). Both OGBL and LCGB provide information regarding workers'

¹⁸ The five professional chambers in Luxembourg are: 1) Chamber of Employees, 2) Chamber of Civil Servants and Public Employees, 3) Chamber of Agriculture, 4) Chamber of Commerce, 5) Chamber of Skilled Trades and Crafts. The first two chambers mentioned are for employees and the other three for employers

rights and obligations. The mission of unions is to defend the interests of employees vis-à-vis employers and politicians.

It should also be noted that, in accordance with the Labor Code,^{xlix} any employer in the private sector is required to appoint staff representatives in establishments regularly employing at least 15 employees bound by an employment contract, regardless of the nature of their activities, their legal form and sector of activity.

The staff delegation¹⁹ has several roles within the business. The overarching role of the staff delegation is to safeguard and defend employees' interests with regard to working conditions, job security and employment status.^l

Thus, it acts as a mediator between the employees and employer. In particular, it is the responsibility of the staff delegation to:

- present the employer with any and all claims, both individual and collective;
- ensure proper enforcement of laws, regulations and collective agreements and strict enforcement of equal treatment of the business's employees;
- offer recommendations on the preparation or modification of the business's internal regulations;
- prevent and settle individual or collective disputes between the employer and employees;
- if disputes cannot be resolved, refer the case to the Inspectorate of Labour and Mines (*Inspection du travail et des mines* – ITM);
- to ensure equal opportunities in terms of access to employment, professional development training, pay and working conditions for employees.^{li}

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

Yes

No

*If yes, please explain.*²⁰

Luxembourg exports pensions to any country in the world, but does not transfer pension contributions as such.

In Luxembourg, old-age pensions are awarded under certain conditions, in particular the completion of minimum insurance periods. If this condition is met, the seasonal worker, who is a third-country national, will be paid a Luxembourg old age pension.

If the periods of insurance completed in Luxembourg are not sufficient to meet this condition, it is possible to do so by adding these periods together with other periods completed in another EU or EEA Member State, in Switzerland or in a country with which Luxembourg has concluded a bilateral social security convention providing for this possibility.

If the seasonal worker still isn't able to meet the conditions for the granting of a Luxembourg old-age pension and has not received, in Luxembourg or abroad, pension benefits on the basis of the insurance periods concerned, then the contributions actually paid into his account, excluding the part payable by the public authorities, can be reimbursed to him on request.^{lii}

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

¹⁹ The employees of the business elect the staff delegation every five years, from lists of candidates presented either by a union, which enjoys general national representativeness, or by a number of company employees representing at least five percent of the total workforce.

²⁰ Art. 23(1) provides that seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country

Yes

No

If yes, please briefly explain. N/A

33. What does your Member State consider an "adequate standard of living" in relation to a accommodation? How does your Member State ensure that seasonal workers benefit from an "accommodation that ensures an adequate standard of living" for the duration of his or her stay?²¹

Please briefly explain.

The Immigration Law does not specify what is understood by "adequate standard of living". However, the Immigration Law requires the applicant for a seasonal permit to work, short term visa or a seasonal worker residence permit to prove that s/he disposes of an appropriate accommodation (e.g. rental contract, proof of property ownership/title deed) or that a adequate accommodation will be provided.^{liii} According to the amended Grand-Ducal Regulation of September 5, 2008 defining the criteria of resources and housing^{liv} provided for by the amended Law of August 29, 2008 on the free movement of people and immigration the condition of a appropriate accommodation provided for by law is assessed in relation to the stipulations of the Grand-ducal regulation of 25 February 1979.^{lv} In this context, this accommodation must have a floor area of at least 12 m² for the first occupant and 9 m² per additional occupant,^{lvi} natural light entering through windows that can be opened and closed properly and which measure at least 1/10 of the floor area, heating, running water, electricity, etc.^{lvii}

The proof that the applicant has an appropriate accommodation can be provided by any document attesting to his capacity as owner or tenant of the accommodation,^{lviii} for example, rental agreement, electricity bill, employer's affidavit.^{lix}

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

Yes

No

If yes, please briefly explain.

Seeing that in Luxembourg obtaining adequate accommodation is a challenge the Immigration Law authorized that the applicant can either provide proof that he/she will have an adequate housing, or that adequate housing will be provided.^{lx} This proof is not necessary if the third-country national has already been admitted to Luxembourg as a seasonal worker at least once in the last five years.^{lxi}

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

Yes

No

If yes, please briefly explain.

In Luxembourg, the ITM^{lxii} as well as the government (through guichet.lu)^{lxiii} provide information through their websites on the conditions that need to be fulfilled both by the employer and the third-country national in order to conclude an employment contract as well as the general working conditions, such as working time, vacation days, rest time, and contract renewal.

²¹ Art. 20(1) provides that Member States shall require evidence that the seasonal workers will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.

Furthermore, trade unions as well as the Chamber of Employees (*Chambre des salariés*) provide information regarding workers' rights and obligations.^{lxiv}

The trade unions also offer their members free legal advice and assistance in social and labor matters.^{lxv}

35. Does your Member State have any specific procedures/mechanisms in place to monitor, assess and carry out inspections on whether:²²

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

Yes

No

If yes, please briefly explain.

No. The additional information is provided for the sake of completeness. There are no specific but general procedures/mechanisms in place to monitor, assess and carry out inspections. The Labour Code defines the seasonal work contract as a fixed term contract^{lxvi} and in consequence, all the rights and duties of this type of contract are applicable. In addition, the Labour Code guarantees the equal treatment principle for seasonal workers as it states that unless otherwise provided by law, the legal and contractual provisions applicable to employees bound by an open-ended contract are also applicable to employees bound by a fixed-term contract.^{lxvii}

The ITM is the main state institution responsible for ensuring the respect of the Labour Law and protection of employees. This includes among others monitoring of the application of the legislation in particular in relation to the working conditions and the protection of employees.^{lxviii}

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

Yes

No

If yes, please briefly explain.

No. The additional information is provided for the sake of completeness. There are no specific procedures foreseen for third-country national seasonal workers, but general procedures apply. The Immigration Law states that the Minister in charge of immigration and asylum may carry out checks and controls, or cause them to be carried out, with a view to verify whether the conditions laid down for the entry and stay of foreigners are fulfilled.^{lxix} The Grand-Ducal Police, in accordance with the Minister's instructions, shall carry out the monitoring and checking of the conditions of the entry and stay of foreigners.^{lxx}

Also, the ITM is responsible for the control that the general working conditions are being respected.^{lxxi}

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

Yes

No

If yes, please briefly explain.

²² Art. 24 provides that Member States shall measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice (Directive 2014/36/EU).

No. The additional information is provided for the sake of completeness. There are no specific procedures foreseen for third-country national seasonal workers, but the general procedures for third-country national workers will apply. The employer of a third-country national is obliged to notify the Minister in charge of immigration and asylum about the date when the employment contract starts in a deadline of three working days after the first day of work of the third-country national.^{lxxxi} If the employer is a physical person and the employment is for private reasons the reporting deadline is 7 working days from the first day of employment.^{lxxxi} Finally, the employer is obliged to require from the third-country national employee, before the employment contract starts, that s/he has a valid authorisation of stay/residence permit and the employee must present it to the employer.^{lxxiv} The employer also must keep during the entire duration of the labour contract a copy of the authorisation of stay/residence permit in case of a possible inspection.^{lxxv}

The ITM is in charge to enforce the application of the labour legislation, especially, the work conditions and the protection of the employees.^{lxxvi} It puts an end to labour situations in contradiction with the legal, regulatory, administrative and conventional provisions in matters of work and health and safety at work.^{lxxvii} It also verifies the infractions through controls^{lxxviii} and informs the public prosecutor.^{lxxix} As well as for ensuring compliance with the equal treatment legislation, based on the principle of non-discrimination at the workplace.^{lxxx}

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

Yes

No

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

No. The additional information is provided for the sake of completeness. In the Annual Report of the ITM for 2018 only general information on the number of performed controls is available. What can be concluded from the report of the ITM is that the second sector after construction where the ITM has performed most inspections and controls is HORECA.^{lxxxi}

37. How can seasonal workers lodge complaints against their employers?²³ Did your Member State set up some specific procedures to protect seasonal workers who lodge complaints?

Yes

No

If yes, please briefly explain.

No. The additional information is provided for the sake of completeness. In Luxembourg, the seasonal workers can lodge complaints against their employers following the general procedure established by the Labour Code. There is no specific procedure for third-country national seasonal workers. The Labour Court is responsible for resolving employment law disputes in Luxembourg.

One should note the mediation role (for more information see answer to the Q30) of the staff delegation between the employees and employer in different businesses that employ at least 15 salaried workers. In particular, it is the responsibility of the staff delegation to:

- present the employer with any and all claims, both individual and collective;
- prevent and settle individual or collective disputes between the employer and employees;
- if disputes cannot be resolved, refer the case to the ITM.

²³ Art.25 provides that Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or through a competent authority of the Member State when provided for by national law.

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

Yes

No

If yes, please briefly explain.

No. The additional information is provided for the sake of completeness. The violations of the conditions of the Seasonal Workers Directive are covered by the general sanctions of the Labour Code. For example, the Labour Code establishes that the employer who has employed an irregularly staying third-country national must pay to the third-country national:

1. salaries and any other emoluments as defined by Article L.-222-1 of the Labour Code (meaning at least the minimum social salary) which a similar employee would have benefited for the same employment;^{lxxxix}
2. the total amount of outstanding remuneration as well as the cost of the transfer of these amounts to the third-country national to the country to which s/he is returned;^{lxxxix}
3. the total amount of unpaid social contributions and taxes, including administrative fines, as well as, court and legal fees.^{lxxxix}

In order to calculate the amounts mentioned above, the Labour Code presumes that the employment relation lasted at least 3 months except if there is any proof against this presumption provided by the employer or the employee.^{lxxxix}

The Labour Code considers that in addition to the entrepreneur, direct subcontractors^{lxxxvi} as well as any intermediate subcontractors^{lxxxvii} who are illegally employing irregularly staying third-country national are jointly and severally liable to pay any outstanding financial sanction and any outstanding debt (remuneration, taxes and social security contributions). The employer is also subject to administrative fines. The administrative fine to the employer is of €2 500 per illegally staying third-country national, when the employer has employed one or more illegally staying third-country nationals.^{lxxxviii} In case of aggravated circumstances²⁴ the employer is subject to imprisonment of 8 days up to 1 year and a fine of €2 501 up to €20 000 or one of both per illegally staying third-country national.

The employer who has employed an irregularly staying third-country national may be subject to the following ancillary criminal penalties:

- the interdiction of a maximum duration of three years from exercising the professional or social activity which served directly or indirectly to commit the offense or
- temporary or permanent closure of the business or establishment used to commit the offense for a maximum of five years.^{lxxxix}

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

Yes

No

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

²⁴ The following circumstances are considered as aggravating circumstances: 1. the offense is repeated; 2. the offense relates to the simultaneous employment of a significant number of illegally staying third-country nationals; 3. the offense is accompanied by particularly abusive working conditions; 4. the offense is committed by an employer who uses the work or the services of an illegally staying third-country national knowing that this person is a victim of trafficking in human beings; 5. the offense relates to the illegal employment of a minor illegally staying third-country national. Article 572-5 (1) 1 to 5 of the Labour Code.

See answer to Q.35

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

Yes

No

If yes, please briefly explain.

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

Yes

No

If yes, please briefly explain.

Section 3: Conclusions and lessons learned

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

Even though in Luxembourg the Seasonal Workers Directive (2014/36/EU) has been transposed by the law of 8 March 2017 amending the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law), the historical development of the country, the type of migration, geographical location as well as labour market priorities defined by successive governments has created labour market where there is no need to use the provisions provided by the Directive.

Specifics of the labour market in Luxembourg is that it is composed of a high number of cross border workers from France, Belgium and Germany, which represent 46% of the labour force. The economy of Luxembourg is service oriented. Besides that Luxembourg is also a well-known international finance centre, as well as home to several EU institutions, for example, the Court of Justice, the General Accounting Office, the European Investment Bank. Therefore sectors that involve seasonal activities are not considered as priorities. Equally, there have been no efforts made to attract third-country national seasonal workers as the available seasonal vacancies are attractive enough for nationals of other EU countries.

Two sectors where seasonal workers are employed in Luxembourg are agriculture and HORECA. The HORECA sector is also one of the sectors with the highest possibility of illegal employment.

A general conclusion that can be made in relation to protection of rights and equal treatment of third-country national seasonal workers is that there are no dedicated procedures introduced and the protection is based on general provisions of the labour legislation.

Annex: national statistics related to seasonal workers

42. Statistics related to seasonal workers are available within the general statistics for first permits for remunerated activities (migr_resocc) and the specific datasets for authorisations for the purpose of seasonal work (migr_ressw1_1 and migr_ressw2). In light of this, if your Member States reports statistics to Eurostat for dataset migr_resocc but not for datasets migr_ressw1_1 and migr_ressw2, do these general statistics indicate those covered by the Directive or not (or do they represent the alternative categories)? Can those be used in the absence of the specific statistics?

Please explain. Luxembourg transposed the Directive 2014/36/EU by the law of 8 March 2017 amending the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law), Nevertheless, in accordance with the annual reports “Regarding asylum, immigration and reception” of the Directorate of Immigration from the year 2017 to 2019 there have been no third-country national seasonal workers admitted in Luxembourg over this period of time. As mentioned before seasonal vacancies in Luxembourg are filled up by nationals of other EU countries. With this in mind, there is no information to be included in the statistical annex of Luxembourg.

43. Please fill out/complete the statistical annex (to be shared with each EMN NCPs by 13 March 2020).

- ⁱ Pauly, Michel, Le phénomène migratoire : une constante de l’histoire luxembourgeoise, in ASTI30+, 2010, p. 72.
- Pauly says : « Au Luxembourg l’immigration a toujours été et reste double : à toutes les époques elle concerne le haut et le bas de l’échelle sociale. Et vu le manque structurel de main d’oeuvre les migrants n’ont pratiquement jamais constitué une concurrence pour les autochtones sur le marché du travail. »
- ⁱⁱ Eurostat. Migration and migrant population statistics. Statistics explained. 2019, p.10. URL: <https://ec.europa.eu/eurostat/statistics-explained/pdfs/cache/1275.pdf>
- ⁱⁱⁱ Statec, Luxembourg Population on 1st January 2020. URL: https://statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12853&IF_Language=fr&MainTheme=2&FldrName=1
- ^{iv} The Greater Region, <http://www.granderegion.net/en/The-Greater-Region-at-a-Glance>, last accessed on 27 March 2020.
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- ^{xii} Article 49bis (3) d) et (4) and article 49quater (1) a) and b) of the amended law of 29 August 2008 on free movement of persons and immigration.
- ^{xiii} Article 49bis (3) c) et (5) and article 49quater (2) of the amended law of 29 August 2008 on free movement of persons and immigration.
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- ^{xv} Information provided by the Chambre d’Agriculture on 24 April 2020.
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- ^{xviii} The website of the government. See URL: <https://guichet.public.lu/en/entreprises/ressources-humaines/remuneration/paiement-remunerations/salaire.html>
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- ^{xxix} Article 49quater (4) in relation with Article 49bis (4) b) and (5) b) of the amended law of 29 August 2008.
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- ^{xxxii} Law of 28 April 1992 approving the Convention between Luxembourg and Cape Verde on social security and the Special Protocol, signed in Luxembourg, on 24 May 1989.
- ^{xxxiii} Article 25 of the Convention between Luxembourg and Cape Verde on social security.

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- xxxix Article L. 521-3 (4) of the Labour Code.
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- xliv Article L.122-1 (2) 2 in accordance with article L.122-2, L. 122-3 (1) 2, L.122-4 (1) and (2) of the Labour Code.
- xlv Article L. 122-10 paragraph 1 of the Labour Code.
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- xlvii Article L. 612-1 of the Labour Code.
- xlviii The website of the government. See URL: https://guichet.public.lu/en/organismes/organismes_citoyens/chambres-professionnelles.html
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- lxi Article 49quater (4) of the amended law of 29 August 2008.
- lxii The website of the ITM. URL: <https://itm.public.lu/fr/questions-reponses/droit-travail/contrats-travail/b/b17.html> and <https://guichet.public.lu/fr/entreprises/ressources-humaines/contrat-convention/contrat-travail/saisonnier.html>
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- lxvi Article L.122-1 (2) 2 in accordance with article L.122-2, L. 122-3 (1) 2, L.122-4 (1) and (2) of the Labour Code.
- lxvii Article L. 122-10 paragraph 1 of the Labour Code.
- lxviii Article L.612-1 a) of the Labour Code.
- lxix Article 133 (1) of the amended law of 29 August 2008.
- lxx Article 134 of the amended law of 29 August 2008.
- lxxi Article L. 612-1 a) of the Labour Code.
- lxxii Article L. 572-3 (1) 3 of the Labour Code.
- lxxiii Article L. 572-3 (2) of the Labour Code.
- lxxiv Article L. 572-3 (1) 1 of the Labour Code.
- lxxv Article L. 572-3 (1) 2 of the Labour Code.
- lxxvi Article L. 612-1 a) of the Labour Code.
- lxxvii Article L. 612-1 c) of the Labour Code.
- lxxviii Article L. 614-3 (3) in accordance with article L. 612-1 f) of the Labour Code.
- lxxix Article L. 612-1 d) of the Labour Code.
- lxxx Article L.254-1 of the Labour Code in relation with articles L.251-2 (1) and L.252-1 to L.254-3 and L.253-1 of the Labour Code.
- lxxxi ITM "Annual Report 2018", p. 15 and p. 19. URL : <https://itm.public.lu/fr/publications/rapports-annuels/rapport-annuel-2018.html>
- lxxxii Article L. 572-7 (1) paragraph 1 in accordance with article 572-2 (9) of the Labour Code.
- lxxxiii Article L. 572-7 (1) paragraph 2 of the Labour Code.
- lxxxiv Article L. 572-7 (2) of the Labour Code.
- lxxxv Article L. 572-9 of the Labour Code.
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- lxxxvii Article L. 572-10 (2) of the Labour Code.
- lxxxviii Article L. 572-4 (1) of the Labour Code.
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